

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 5TH DAY OF APRIL, 2016

BEFORE

THE HON'BLE MR. JUSTICE PRADEEP D. WAINGANKAR

CRIMINAL PETITION NO.2683/2015

BETWEEN:-

M. MAHESH
POLICE SUB-INSPECTOR
SOMWARPET P.S.
KODAGU DISTRICT-571 236.

... PETITIONER

(BY SRI: CHANDRAMCULI H S, ADV.,)

AND:-

1. THE STATE OF KARNATAKA
BY THE POLICE OF SOMWARPET
POLICE STATION
KODAGU DISTRICT-571 236.

2. SRI. K. G. KALAPPA
S/O K M GURAPPA
AGED ABOUT 60 YEARS
R/AT. KALAKANDUR VILLAGE
SOMWARPET TALUK
KODAGU DISTRICT-571 236.

... RESPONDENTS

(BY SRI: CHETAN DESAI, HCGP FOR R1
SRI: MITHUN G.A, ADV., FOR
SRI: G.D. ASWATHANARAYANA, ADV., FOR R2)

THIS CRLP IS FILED U/S.482 CR.P.C PRAYING TO
QUASH THE ENTIRE PROCEEDINGS IN PCR NO.7/2014 (PHR
NO.2/2012) ON THE FILE OF PRL. S.J., KODAGU AT MADIKERI

AS AGAINST THE PETR. HEREIN FOR THE OFFENCES P/U/S 166, 504 AND 506 OF IPC.

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS, THIS DAY THE COURT PRONOUNCED THE FOLLOWING:

ORDER

In this petition under Section 482 of Cr.P.C. the petitioner has sought for quashing of the proceedings initiated against him by the respondent No.2 in PCR No.7/2014 (PHR No.2/2012) on the file of the Prl. Sessions Judge, Kodagu, Madikeri.

2. Respondent No.2 presented complaint under Section 30 of the Protection of Human Rights Act, 1993 before the Sessions Judge at Madikeri against the petitioner and others who are all Police personnel working as Police Constable, Sub-Inspector and Circle Inspectors. The averments made out in the complaint in a nutshell are that the respondent No.2 is in possession, enjoyment and cultivation of the lands bearing Sy.No.55/121 measuring 2.20

acres, Sy.No.55/122-A measuring 3.40 acres, Sy.No.55/123 measuring 2.20 acres and Sy.No.55/124 P 1 measuring 2 acres of Kalkanduru village of Somwarpet Taluk in Kodagu District. The Government granted the landed properties to respondent No.2 after survey and demarcation. Respondent No.2 paid land value to the Government. The Tahasildar, Somwarpet issued Saguvali Chit to respondent No.2 in Form No.7 under Rule 29 of the Karnataka Land Grant Rules. Mutation Entry has been made in the name of respondent No.2. RTC changed in the name of respondent No.2. Respondent No.2 is paying land revenue and other cess to the Government from time to time. Respondent No.2 converted the lands into a coffee estate. The petitioner and others who are PSI and the Police Constable of Somwarpet police station were not in good terms with the respondent No.2. K.G. Thimmaiah and his wife Vanajakshi, K.G. Chengappa and K.C. Girija the brothers and brother's wives of the

complainant/respondent No.2 were not in good terms with respondent No.2. They were harassing respondent No.2 in one way or the other and the police personnel attached to Somwarpet Police Station were helping them in all their illegal activities. K.G. Thimmaiah, Vanajakshi, K.G. Chengappa and K.C. Girija are having an evil eye over the properties of respondent No.2 stated as above. Though they have no right, title and interest over the aforesaid properties, they unlawfully trespassed into the properties of respondent No.2 along with the PSI and police constable on 02.01.2012, 03.01.2012, 04.01.2012, 05.01.2012 and 06.01.2012, picked coffee from the aforesaid properties of respondent No.2 worth Rs.10,00,000/- by force and by giving threat to the life of respondent No.2. Thus, their acts are wholly illegal, improper and perverse which have caused loss to the tune of Rs.10,00,000/- to respondent No.2. Therefore, respondent No.2 filed complaint before the Sessions Judge to punish all

of them for the offences punishable under Sections 166, 447, 379, 504 and 506 of IPC.

3. The order sheet of the Sessions Judge in PHR No. 2/2012 dated 10.01.2012 reads as under:-

“The petition presented on 09.01.2012 by Sri.T.R. Veereshwara, Advocate for the petitioners U/S 30 of PHR Act.

Prays to punish the 3rd & 4th to 8th respondent in accordance with law for violation of human rights of the petitioner.

Petition copy not served to the Respondents.

Complainant present.

Heard counsel.

Issue notice to respondent by 29.03.2012.”

4. On 29.03.2012, the case was called, the complainant was absent, exemption application filed was allowed. One Sri. BRH, Advocate filed Vakalath for respondent Nos.2 to 4 and One ABS, Advocate filed Vakalath for respondent Nos.5, 6, 7 and 8. The case was

posted on 13.06.2012, awaiting notice of respondent No.1 on 30.06.2012. Thereafter, the case came to be adjourned to 28.07.2012, 29.08.2012, 31.10.2012, 24.12.2012, 30.01.2013, 12.03.2013, 22.04.2013, 29.05.2013, 09.07.2013, 10.09.2013, 22.10.2013, 25.11.2013, 23.12.2013, 22.01.2014, 17.03.2014, 29.04.2014, 30.06.2014, 29.09.2014, 20.10.2014, 27.10.2014, 17.11.2014. On 17.11.2014, the order sheet discloses that office was directed to register this case as PCR Under Section 200 of Cr.P.C. r/w Section 30 of Protection of Human Rights Act, 1993. The case was posted on 28.11.2014, 11.12.2014, 03.01.2015, 30.01.2015, 06.02.2015, 07.03.2015, 28.03.2015 on which day amended PCR was filed and same was referred to S.P. Kodagu District under Rule 6(2) of Karnataka State Human Rights Courts Rules, 2006 with the direction to investigate and submit report by 18.04.2015.

5. At this stage, the petitioner who is arrayed as accused has filed this petition to quash the proceedings on

the ground that the Sessions Judge having taken cognizance on the complaint by his order dated 10.01.2012 and summoned the accused who attended the Court about 20 times as directed by the Sessions Judge, it is not open for the Sessions Judge to amend the complaint and refer it for investigation under Section 156(3) of Cr.P.C. It is further contended that the complaint has been referred under Section 156(3) for investigation and report to none other than the Superintendent of Police, Kodagu who is arrayed as accused No.2 in the complaint. The accused cannot be an Investigating Officer. It is also contended that no prior sanction as required under Section 197 of Cr.P.C. has been obtained to take cognizance of the offences as against the petitioner who is public servant. For all these reasons, the learned counsel for the petitioner sought to quash the complaint and all further proceedings arising out of it.

6. On the other hand, the learned counsel appearing for the respondent No.2/complainant relying upon the decision of the Supreme Court reported in (2015) 9 *Supreme Court Cases 609* in the case of *S.R. Sukumar vs. S. Sunaad Raghuram*, would submit that the amendment of the complaint is permissible, the amendment of the complaint is in noway changed the nature of the complaint or the relief claimed therein. The learned counsel further submitted that though accused No.2 is a Superintendent of Police, Kodagu to whom the complaint has been referred for investigation, the allegations made out are against the Superintendent of Police who was working at Kodagu as on the date of the incident and therefore there is nothing wrong in referring the complaint to the present Superintendent of Police, Kodagu for investigation. Further, so far as sanction is concerned, it is submitted that the rules themselves speak that after investigation the records of the investigation will

have to be submitted to the sanctioning authorities and therefore, the question of obtaining sanction will come into play at the time of taking cognizance of the offence by the Court and not at the time of referring the complaint for investigation. For all these reasons, the learned counsel for respondent No.2/complainant has sought for dismissal of the petition filed by the petitioner.

7. Admittedly, the petition filed on 10.01.2012 is a complaint for all purpose under Section 200 of Cr.P.C. r/w Section 30 of Protection of Human Rights Act, 1993 before the Sessions Judge. The Sessions Judge issued notice to the petitioner/accused on 10.01.2012, the date of presentation of the complaint and summoned him to appear before him. The very fact that the Sessions Judge issued notice to the petitioner goes to show that he took cognizance of the offences against them. The accused/petitioner appeared in response to the summons. The case came to be adjourned

from time to time for years together and on 17.11.2014, after two years the Sessions Judge directed the office to register the case as PCR under Section 200 of Cr.P.C. r/w Section 30 of the Protection of Human Rights Act, 1993. After registration of the complaint under Section 200 of Cr.P.C. r/w Section 30 of the Protection of Human Rights Act, 1993, by order dated 28.03.2015 the learned Sessions Judge referred the complaint to S.P. Kodagu under Rule 6(2) of Karnataka States Human Rights Courts Rules for investigation and report. Thus, the learned Sessions Judge having taken cognizance on his own at the first instance, is not empowered subsequently to refer the complaint for investigation to Superintendent of Police, Kodagu. It is impermissible in law. As such, the proceedings are liable to be quashed for the said reason. Further, the complaint has been referred to the Superintendent of Police, Kodagu, for investigation who is arrayed as accused No.2. Needless to say that an accused cannot be an Investigating

Officer. On this count also the complaint is liable to be quashed.

8. For the reasons stated above, the petition is *allowed*. The proceedings initiated in PCR No.7/2014 (PHR No.2/2012) on the file of the Sessions Judge, Kodagu, Madikeri are hereby quashed.

**Sd/-
JUDGE**

PMR