



CNR: KAHC010246372020

NC: 2026:KHC:52613
CRL.P No. 4204 of 2020

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE H.P.SANDESH

CRIMINAL PETITION NO.4204 OF 2020

(482(Cr.PC)/528(BNSS))

BETWEEN:

1. NAVEEN D' SOUZA,
S/O. LATE. JOSEPH D' SOUZA,
R/AT FLAT NO. 303,
ADARSH ENCLAVE,
NEAR BHARATH PETROL PUMP,
MOODABIDRI,
MANGALORE TALUK - 574 145.
2. MARITA D' SOUZA,
R/AT FLAT NO. 303,
ADARSH ENCLAVE,
NEAR BHARATH PETROLE PUMP,
MOODABIDRI,
MANGALORE TALUK - 574 145.
3. DATI D' SOUZA,
W/O JOSEPH D' SOUZA,
R/AT FLAT NO. 303,
ADARSH ENCLAVE,
NEAR BHARATH PETROLE PUMP
MOODABIDRI, MANGALORE TALK 574145

...PETITIONERS

(BY SRI. DHANANJAY KUMAR., ADVOCATE)

AND:

1. STATE OF KARNATAKA,
BY BAJPE POLICE STATION,
MANGALORE,

Digitally signed
by DEVIKA M
Location: HIGH
COURT OF
KARNATAKA



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REP BY STATE PROSECUTOR,
HIGH COURT OF KARNATAKA,
BANGALORE - 560 001.

2. JAGANNATHA DEVADIGA
S/O NAGAPPA DEVADIGA,
R/AT KOLPE HOUSE,
THENKA YEDAPADAV,
MANGALORE TALUK,
DK DISTRICT - 574 144.

...RESPONDENTS

(BY SRI. SUHAS GOWDA M, HCGP FOR R1,
SRI. NATARAJA BALLAL A., ADVOCATE FOR R2)

THIS CRL.P IS FILED UNDER SECTION 482 CR.PC BY THE ADVOCATE FOR THE PETITIONER PRAYING THAT THIS HONBLE COURT MAY BE PLEASSED TO QUASH THE ENTIRE PROCEEDINGS IN PCR NO.80/2012 FILED BY THE RESPONDENT NO.2 ON THE FILE OF THE JMFC II COURT MANGALURU, REGISTERED IN C.C.NO.3809/2017 AGAINST THE PETITIONER FOR THE OFFENCE P/U/S.406,420 R/W SEC.34 OF IPC AND ETC.,

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE H.P.SANDESH

ORAL ORDER

Heard the learned counsel appearing for the petitioners, learned HCGP appearing for the respondent No.1/State and also the learned counsel appearing for the respondent No.2/complainant.



2. The prayer sought in this petition is to quash the proceedings initiated against the petitioners for the offences punishable under Sections 406, 420 r/w Section 34 of IPC, arising out of PCR No.80/2012.

3. The factual matrix of the case of the complainant/respondent No.2 is that, while filing a private complaint under Section 200 in PCR No.80/2012 an allegation is made that accused Nos.1 to 3 have received a sum of Rs.60,000/- from him promising that they would secure an employment for him in abroad. Accused Nos.1 to 3 got the visa to him and when he was sent to Saudi Arabia he was introduced to accused No.4, but they have cheated him by not providing employment visa and made him to stay abroad without securing employment. He worked under accused No.4 as part time driver, but paid salary less than what was payable.

4. The allegation was also that they have promised to pay him 18,000 Riyals and when they did not



provide the job and cheated the complainant, he was forced to come back and lodge the complaint. When the matter was referred under Section 156(3) of Cr.P.C., the police investigated the matter and filed the 'B' Report in detail mentioning the same in Column No.17. Hence, they filed a Protest Memo in terms of objections to the B Report on 31.02.2024, wherein it is stated that the accused herein have cheated the complainant by making false representations stating that there was a good job in Saudi Arabia and thereafter, because of the act of the accused, the complainant was put in lot of trouble and accused persons have committed breach of trust. Neither the complainant nor his witnesses were called in the police station and their statements were recorded by the police and police had ventured to file a false B Report. Hence, prayed the Court to reject the same and permit the complainant.



5. In view of Protest Memo, the trial court recorded the sworn statement of the complainant and got marked Exs.C-1 and C-2. The trial court passed an order taking cognizance against the accused Nos.1 to 3 and came to the conclusion that visa produced by the complainant marked as Ex.C-2 indicates that it was only a temporary visa for a period of 90 days only and hence, Court opines that there exists sufficient materials to issue process to accused Nos.1 to 3 to answer the charge for the offences under Sections 406 and 420 and Section 34 of IPC. The same is challenged before this Court i.e., taking of cognizance.

6. The counsel appearing for the petitioners would vehemently contend that the very issuance of process against the petitioners is erroneous. The necessary ingredients for constituting an offence under the alleged offences are not even remotely made out. The complaint came to be filed as an afterthought. The respondent No.2



has filed private complaint only to harass the petitioners. The counsel appearing for the petitioners would submit that prior complaint was given on 07.05.2012 when the threat was made to the petitioners and hence, the NCR was issued to the complaint dated 07.05.2012. Learned counsel would submit that this present complaint is filed afterthought on 21.05.2012 before the police and the police did not register the case, since earlier when the complaint was given by the petitioner he was called and advised and hence, he has filed the separate complaint.

7. The counsel would also submit that when the complaint was filed and the same is also not based on the Affidavit, as held in the judgment of **PRIYANKA SRIVASTAVA AND ANOTHER v. STATE OF UTTAR PRADESH AND OTHERS** reported in **(2015) 6 SCC 287** the Apex Court has held that while referring the matter under Section 156(3) of Cr.P.C. there must be an Affidavit in order to substantiate the contents of the complaint



averments and also to avoid abuse of process and the same has not been complied.

8. The counsel also vehemently contended that while passing issuance of summons and nothing is disclosed with regard to application of judicious mind by the Magistrate, referring the contents of objections to B Report would suggest that objections to B Report must be treated as complaint. Having considered the statement of objections filed to B Report, except an allegation that police have not conducted the investigation properly, while passing an order the trial Court did not apply its mind.

9. The learned counsel would also submit that while issuing the summons also, the trial court even did not mention anything about whether B Report is rejected and also there is any reference of taking cognizance and proceeding and the order impugned is not in compliance with the procedure when the Protest Memo is filed and



nothing is stated in the order and hence, the same is not sustainable.

10. Per contra, the counsel appearing for the respondent No.2/complainant would submit that after filing of B Report, statement of objections filed and also trial court proceeded to record the sworn statement, considered the sworn statement, the contents of the Protest Memo and so also the reasons are given for issuance of summons that visa obtained is also for a period of 90 days.

11. In reply to this argument, counsel would submit on behalf of the petitioners that it is not in dispute that even though he had been to Saudi Arabia, he did not come back after 90 days of the expiry of visa, instead he continued for about 1 year 5 months and the same is also not disputed by the respondent No.2/complainant. The only allegation is that the proper salary is not paid by the accused No.4. The contention of the counsel appearing for



the accused No.4 that the Court has not taken any cognizance against the accused No.4, since no sanction was obtained and cannot make any allegation against these petitioners that as per the request, visa was got in favour of the complainant and in pursuance of obtaining the visa, he went to Saudi Arabia and he worked there. The only accusation is that the appropriate salary was not paid to him and hence, there cannot be any invocation of offences under Sections 406 and 420 of IPC.

12. The counsel appearing to the complainant/ respondent No.2 also brought to the notice of this Court the averment made in paragraph No.6 that they are going to send him to jail implicating in a drug case. Accused No.4 fails to pay 4,900 Riyals and he had snatched the amount, which was there with him and also obtained his signature on the blank papers and he was not having any money. Even they have not given any ticket to return to his village. Though called on 07.05.2012, when he was



waiting at Edapadavu, but call was received from the Mudabidiri Police and caused threat to him, such averments are made in the complaint.

13. Having heard the counsel appearing for the petitioners and also the counsel appearing for the respondents, there is no dispute with regard to the fact that the petitioners have got the visa in favour of the complainant. It is also not in dispute that in terms of the visa, the complainant/respondent No.2 fled to Saudi Arabia. It is also not in dispute that he did not return within 90 days, but he was there for a period of 1 year 5 months at Saudi Arabia. The same is not disputed by the complainant/respondent No.2. The Court has to take note of factual aspects of the case and it is the specific case of the petitioners that when he insisted to refund the money of Rs.60,000/-, which was given to get the visa, they themselves have given the complaint on 07.05.2012. Since he was causing threat, based on that complaint



police called him and advised him. This complaint was filed on 21.05.2012 before the Court and the police did not register the case and that is the allegation.

14. Having perused the contents of the complaint, when the matter was referred, the police investigated the matter and filed the B Report, Protest Memo was filed, once the B report was filed and Protest Memo is filed, it is settled law that when B Report is filed and the objections filed to the B Report i.e., Protest Memo itself has to be treated as complaint. Having considered the contents of the complaint, it is the specific case of the complainant that accused herein have cheated the complainant by making false representations that they would get a good job, but the job which was provided at Saudi Arabia is not the good salary job. The allegation that neither the complainant nor his witnesses were called in the police station and their statements were not recorded by the police and hence, grievance was urged.



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15. Having perused this Protest Memo, except in Paragraph No.4, the definite case of the complainant that the accused herein has cheated him by making false representations stating that there was a good job in Saudi Arabia and thereafter, because of the act of the accused, the complainant was put in lot of trouble. But nothing is reiterated in the Protest Memo even with regard to the contents of the complaint. While issuing the summons also and rejecting the B Report, Court has to take note of the contents of the Protest Memo and having considered the Protest Memo, except the averment made in paragraph No.4 with regard to the fraud played by the accused persons, no detailed Protest Memo is filed. But to file second Protest Memo is not restricted and complainant can file second Protest Memo also stating the allegations and the same can be considered, if chooses to do so.

16. Apart from that, when B Report was filed and when the trial court proceeded to record the sworn



statement, even not taken any cognizance and also not passed any order either rejecting the B Report and proceeded to record the sworn statement or in the cognizance order also nothing is stated either rejecting the B Report or proceeding.

17. It is also important to note that when the Protest Memo was filed, the Magistrate has to apply his judicious mind with regard to the B Report and also give a finding whether B Report could be accepted or not. Having perused the cognizance order, nothing is mentioned except mentioning that insofar as Act attributed to the accused No.4 is concerned and also he was in Saudi Arabia and also no sanction is taken, but only taken note of that complainant stated on oath that he has paid money to accused Nos.1 to 3 in installments. No dispute to that effect that he made the payment and also the amount is also paid to get the visa, that is also not in dispute and also he has traveled based on the visa obtained by these



petitioners. The only allegation against the accused No.4 is that he did not pay the good salary and also the Magistrate fails to take note of the contents of the protest memo and also the sworn statement while passing the order of taking of cognizance.

18. Except relying upon Ex.C-2 indicates that it was only a temporary visa given only for 90 days, but fails to apply its judicious mind and why the court is rejecting or accepting the B Report, nothing is stated. There is no any order with regard to the grounds which have been urged in the protest memo that the police have not properly investigated the matter and also no reasons are given either for rejecting the B Report or for accepting but committed an error in one single sentence that the visa indicates that it was only a temporary visa given only for 90 days. But the fact is that he was there for about 1 year 5 months in Saudi is also not in dispute and did not return immediately after lapse of 90 days.



19. The allegation is also that to get the visa an amount of Rs.60,000/- was paid and the learned Magistrate while issuing the summons also ought to have applied his judicious mind with regard to the protest memo and also with regard to the reasons given by the police in filing the B Report is correct or not, nothing is discussed in the order while issuing the summons. There is no reason with regard to the rejection of B Report and also not stated on the B Report. When such order is passed by the learned Magistrate, it is nothing but non application of mind by the learned Magistrate while issuing the summons and not followed the procedure as contemplated under Section 200 of Cr.P.C. In case if B Report is filed, what could be the procedure to be followed and having taken note of the reason and also the order passed by the trial court while issuing the summons, not followed the procedure and hence, the order passed by the trial Court is not sustainable in the eye of law.



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20. In view of the discussion made above, the following:

ORDER

- (i) The petition is ***allowed***.
- (ii) The proceedings initiated against the petitioners in PCR No.80/2012 on the file of JMFC II Court, Mangalore, registered in C.C.No.3809/2017, is hereby quashed and the matter is remitted back to the trial Court to follow the procedure.
- (iii) When Protest Memo was filed, the trial court to treat the Protest Memo as complaint and also consider the sworn statement and make reference while passing the order. Also to pass an order either to reject the B Report or allow the B Report, & to issue the summons and that procedure has not been followed by the trial court as contemplated under Section 200 of Cr.P.C. and also Section 190 of Cr.P.C. in taking the cognizance. Hence, the same has to be complied by the Magistrate in



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view of the observations made by this Court.

- (iv) Since the complaint is filed in the year 2012 and almost a decade is elapsed, the case is still pending. As such, the trial Court is directed to consider the same within a period of 3 months from today.
- (v) Parties are directed to furnish the copy of this order to the trial Court to take up the matter and pass appropriate order within a time bound period and both parties and their respective counsels are directed to assist the trial court in taking decision within time bound period as directed above.

Sd/-
(H.P.SANDESH)
JUDGE