



CNR: KAHC010505552019

NC: 2026:KHC:51189
CRL.P No. 8598 of 2019

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF SEPTEMBER, 2026

BEFORE

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

CRIMINAL PETITION NO.8598 OF 2019

BETWEEN:

1. SMT. SONY THAKUR
D/O ANIL KUMAR THAKUR
AGED ABOUT 31 YEARS
2. SRI. ANIL KKUMAR THAKUR
S/O HARIDEV THAKUR
AGED ABOUT 57 YEARS
3. SMT. SUDHA THAKUR
W/O ANIL KUMAR THAKUR
AGED ABOUT 54 YEARS

Digitally signed
by DEVIKA M
Location: HIGH
COURT OF
KARNATAKA

4. SRI. NANDAN THAKUR
S/O ANIL KUMAR THAKUR
AGED ABOUT 30 YEARS

PETITIONERS NO.1 TO 4 ARE
R/AT NO.77, R.K. PURAM
PHASE-1, TAJ NAGRI, AGRA
UTTAR PRADESH-282001

5. SRI. GUNJAN THAKUR
S/O ANIL KUMAR THAKUR
AGED ABOUT 27 YEARS
R/AT C/O BISHWANATH PRATHAP SINGH
#21, 2ND MIAN, 3RD CROSS
BIKASIPURA, PIPELINE ROAD



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ISRO LAYOUT
BENGALURU-560078

...PETITIONERS

(BY SRI. RAKSHITH KUMAR, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
BY JAGAYANAGAR POLICE STATION
STATION HOUSE OFFICER
30TH CROSS ROAD
4TH BLOCK, JAYANAGARA
BENGALURU-560011
REP. BY SPP
HIGH COURT BUILDING
BANGALORE – 560001
2. SRI. ADITY SHARMA
S/O RAKESH KUMAR SHARMA
AGED ABOUT 32 YEARS
R/AT NO.423, 18TH CROSS
4TH 'T' BLOCK, JAYANAGARA
BENGALURU-560041

...RESPONDENTS

(BY SRISUHAS GOWDA M, HCGP FOR R1;
MS. VINATA YATTINAHALLI, ADVOCATE FOR
SMT. RAMA R IYER, ADVOCATE FOR R2)

THIS CRL.P IS FILED U/S.482 OF CR.P.C PRAYING TO
QUASH THE ENTIRE PROCEEDINGS AND UNDER THE CHARGE
SHEET DATED 14.04.2018 FILED IN C.C.NO.16879/2018
PENDING BEFORE IV ADDITIONAL CHIEF METROPOLITAN
MAGISTRATE BENGALURU CITY COURT, FOR THE OFFENCE
P/U/S.380, 386, 406, 420, 426, 506, 109, 120-B R/W SEC.34
OF IPC AND ETC.

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



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

ORAL ORDER

In this petition the prayer sought to quash the entire proceedings in the charge sheet in C.C.No.16879/2018 pending on the file of 4th Additional Chief Metropolitan Magistrate, Bangalore City, for the offences punishable under Section 403, 384, 511, 109, 120B, read with 34 of IPC.

2. Heard the learned counsel appearing for the respective parties.

3. The factual matrix of the case of complainant while filing a private complaint before the Trial Court that marriage between the complainant and the first petitioner was taken place on 29.02.2016 and both of them lived in House No.429 Bangalore, 18th Main Road, Jayanagar 4th 'T' Block. In the said wedlock, differences were arisen between them. That in the month of August 2016, these petitioners insisted CW1 to make payment of Rs.15,00,000/- in order to buy a property at Agra and when CW1 expressed his inability



to make the payment, a threat was made. It is also the allegation in the complaint that, on 12.08.2016, when CW1 had gone to work, accused No.1, allegedly acting at the instigation of accused Nos.2 and 3 and in conspiracy with accused Nos.4 and 5, took away the gold ornaments valued at Rs.16,52,010/-, along with household articles and cash. Hence, they have committed the offences under Sections 403, 384, 511, 109, 120B r/w 34 IPC. This charge sheet is filed after having referred the matter to the police under Section 156(3) of Cr.P.C and police have investigated the matter and filed the charge sheet.

4. Now, the counsel appearing for the petitioner would vehemently contend that according to the complainant, the first petitioner was taken along with other accused and to that effect, the complaint was filed on 12.08.2016. The complainant noticed that house was ransacked and jewelry worth Rs.15 to 17 lakhs was missing. His wife, brother-in-law and parents-in-law are not taking any calls and do not know the whereabouts of them. Hence,



requested the police to take action. But police have not registered the case but issued NCR on the very same day. The police have not taken any action when the said allegations are made at the first instance. But, belatedly, after 7 to 8 months, the present complaint is filed making a false allegation. Except an omnibus allegation was made in the first complaint, nothing is stated. The very delay itself clearly discloses that with an intention to harass the petitioners, the complaint is filed belatedly i.e., on 07.04.2017 and there is no proper explanation for the said delay is concerned.

5. The counsel also vehemently contend that the Magistrate while referring the matter under Section 156(3) of Cr.P.C would have applied his judicious mind to the fact that whether the complaint discloses the committing of any offences but the same has not been done. The counsel also vehemently contend that while taking the cognizance also the Trial Court did not apply his mind. The counsel also submits that even when the complaint was filed, the same is



not in compliance with the judgment of the Apex Court in the case of **PRIYANKA SRIVASTAVA (2015 AIR SCW 2075)**. The counsel also vehemently contend that it is nothing but an improved version in the second private complaint and only with an oblique motive, the present complaint is filed only to harass the petitioners since there was no such incident has been taken either the theft of money or gold ornaments and the false allegations are made in the complaint.

6. The counsel in support of his arguments, relied upon the judgment of the Apex Court decided on **08.03.2021** in **Krishna Lal Chawla and Others vs State of UP**. The counsel also brought to notice of this Court discussion made in paragraph 5 wherein the Apex Court referred the judgment of **Upkar Singh**. The Apex Court held that the question of material improvements made in a subsequent private complaint by the same complainant against the same accused to be taken note of. The counsel also vehemently contend that when the earlier complaint was



filed, the police have not taken any cognizance or registered any case but issued the NCR long back and there was a delay in filing second complaint. The counsel also brought to notice of this Court the discussion made in paragraph 13 of the said judgment, wherein also, Apex Court observed that the powers of the Magistrate must be exercised with great caution and after suitable judicial application of mind. The counsel also brought to notice of this Court the discussion made with regard to a similar view which was taken in the judgment in **Pepsi Foods Ltd. vs Special Judicial Magistrate (1998) 5 SCC 749**. The counsel also vehemently contend that in paragraph 28 of the said **Pepsi Foods Ltd.** case, extracts wherein it is held that summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set in motion as a matter of course. It is not the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set in motion. The counsel also vehemently contend that in paragraph 14, an observation is made that on receipt of a private complaint, the Magistrate must first scrutinize it to



examine if the allegations made in the private complaint, inter alia, smack of an instance of frivolous litigation; and second, examine and elicit the material that supports the case of the complainant. The counsel also contend that in paragraph 19 of the judgment, also made an observation that the controversy poses a typical example of frivolous litigants abusing court process to achieve their mischievous ends. It was incumbent on the Magistrate to examine any possibility of abuse of process of the court, make further enquiries and dismiss the frivolous complaint at the outset after judicial application of mind.

7. The counsel referring this judgment would contend that the Trial Court has not done anything in the case on hand. In a mechanical process, gave the direction to the police to investigate the matter. Even while taking the cognizance also not applied its judicious mind. Hence, it is a fit case to quash the proceedings initiated against the petitioners.



8. Per contra, the counsel appearing for the respondent/complainant would submit that when the earlier complaint was given, an endorsement was issued by the police. The marriage subsists only for a period of six months since the marriage was taken place in month of February 2016 and wife of the complainant along with other accused persons left the house with the gold articles and other articles in the month of August 2016. The counsel also would contend that the complainant was waiting for his wife under the guise that she along with the other petitioners may come back and join him. But in that process, he could not file the complaint. But when they did not turn up, he was forced to file a complaint wherein, the specific allegations are made that they have extorted the money from the complainant and without any consent, they have taken the money as well as gold ornaments and the same is set out in the private complaint. The counsel also vehemently contend that complaint was filed on 10.03.2017 itself and matter was also referred under Section 156(3) of Cr.P.C and when the police investigated the matter, found the material and filed the



charge sheet. Thus, there are no grounds to quash the proceedings.

9. The counsel also produced the documents before this Court along with a memo i.e., Order Sheet of PCR No.4315/2017; copy of the memorandum of complaint along with affidavit; copy of the judgment in H.M.A.No.1991/2018; copy of the final order passed under Section 125 of Cr.P.C along with translation copy. The counsel would vehemently contend that even the proceedings initiated under Section 125 of Cr.P.C is also dismissed. The counsel would vehemently contend that the verifying affidavit is also filed along with the PCR.

10. The counsel appearing for the State would contend that already police have investigated the matter and filed the charge sheet and with regard to the accusation is concerned, the matter requires trial.

11. Having heard the learned counsel appearing for the respective parties and also on perusal of the material on



record, it is not in dispute that at the first instance, on 12.08.2016, a complaint was given to the police. In the said complaint an allegation is made that wife has left the house along with other petitioners with gold ornaments to the tune of Rs.15 to 17 lakhs. But nothing is stated in the first complaint regarding that they have also taken the money as well as household articles are concerned. It is also not in dispute that when the first complaint was filed, the police have issued the NCR. It is also not in dispute that present complaint is filed in the month of March 2017 and there was no any action from August 2016 to March 2017. The Court has to take note of the averments made in the second complaint. Having considered the averments of the complaint, it discloses that an allegation is made with regard to taking of money and so also an allegation is made with regard to that without the permission of the complainant, they have taken the gold ornaments and when the complainant tried to call them and none of them have received the calls and these petitioners were disappeared from the house of the complainant without any sort of



information. All of them have conspired together and stolen all the jewels worth about Rs.15 to 17 lakhs. Apart from that even they have taken all other household articles from the house without the permission of the complainant. No doubt, such allegations are not made in the first complaint.

12. The Court has to take note that when the complaint was filed, the same was not supported by the affidavit. The counsel appearing for the petitioners also brought to notice of this Court the judgment of **Priyanka Srivastava** case contending that even prior to filing of this complaint, the Apex Court in 2015 itself held that whatever the allegations are made in the private complaint, the same must be supported by an affidavit reiterating the act of the accused persons and a litigant at his own whims and fancy cannot invoke the authority of the Magistrate, and really aggrieved citizen with clean hands must approach the Court and Magistrate also has to apply his mind while considering the complaint.



13. But counsel appearing for the respondent/complainant would submit that verifying affidavit is filed. The verifying affidavit is not the affidavit as contemplated in the judgment of the Apex Court in **Priyanka Srivastava** case. It is also important to note that when there was a delay in lodging the complaint and if really there was a theft and extortion as contended in the complaint, if police have issued the NCR, could have filed the complaint immediately, but the same was not filed. But there was a delay in lodging the subsequent complaint and delay is also not properly explained. It has to be noted that there was a complaint vice versa between the parties. It is also not in dispute that there was a differences between the husband and wife with regard to the matrimonial dispute. When the very foundational facts are not found in the case that when the allegations are made regarding theft as well as extortion and taking of the articles and when there was an inordinate delay in lodging the complaint, the court has to take note of the same. The counsel appearing for the petitioners also brought to notice of the Court that the first complaint was



filed on 12.08.2016 as well as subsequent complaint was filed according to the petitioners is in the month of April 2017 and according to the complainant that is in the month of March 2017. When the complaint is not supported by the affidavit of the complainant, the Magistrate Court ought to have applied its judicious mind while referring the matter under Section 156(3) of Cr.P.C and so also while taking the cognizance but committed an error. That there was an inordinate delay in filing the subsequent complaint and an afterthought the said complaint was filed. When such material is found, it is a fit case to exercise the powers under Section 482 of Cr.P.C or otherwise it amounts to an abuse of process which leads to a miscarriage of justice.

14. In view of the principles laid down in the judgment referred supra by the petitioner's counsel, wherein also the Apex Court in detail discussed regarding improvisation in the second complaint and that too made in the afterthought. In the case on hand, the complaint was also a delayed one i.e., almost after 7 to 8 months of the



first complaint. The accusation is also with regard to the extortion and even if any such payments are made, the ingredients of Section 384 could not be invoked and the ingredients of offences which have been invoked in the charge sheet also does not constitute in the case. Hence, there is a force in the contention of the counsel for the petitioners that the Magistrate has not applied his mind while invoking the offences of 403, 384, 511, 109 read with Section 34 of IPC and in respect of Section 120B also, there is no any such averments with regard to the conspiracy is concerned. The specific allegation is also made in the first complaint that they came and took his wife. That is only at the instance of other accused persons. But nothing is stated with regard to the conspiracy is concerned. Conspiracy has to be proved only by circumstances and not by direct evidence. Under the circumstances, it is a fit case to exercise the powers under Section 482 of Cr.P.C.

15. In view of the discussions made above, I pass the following:



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ORDER

The petition is allowed.

The proceedings initiated against the petitioners in C.C.No.16879/2018 pending on the file of 4th Additional Chief Metropolitan Magistrate, Bangalore City, for the offences punishable under Section 403, 384, 511, 109, 120B, read with 34 of IPC is hereby quashed.

Sd/-
(H.P.SANDESH)
JUDGE

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