HC-KAR

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF APRIL, 2026

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

CRIMINAL PETITION NO.3037 OF 2024 (482(Cr.PC) / 528(BNSS)-)

BETWEEN:

MR. VASANTH V. FERNANDES
SON OF LATE MR. SEBASTIAN FERNANDES,
AGED 55 YEARS,
RESIDING AT NO.16,
ALBERT STREET, RICHMOND TOWN,
BANGALORE - 560 025

...PETITIONER

(BY SRI. VASANTH FERNANDES., PARTY-IN-PERSON)

AND:

MS. POOJA R
DAUGHTER OF MR. RUDRAIAH
AGED ABOUT 29 YEARS,
RESIDING AT NO.16,
ALBERT STREET, RICHMOND TOWN ,
BANGALORE - 560 025

...RESPONDENT

(BY SRI. HARIPRASAD M B., ADVOCATE)

Digitally signed by NAGARAJA B M
Location: HIGH COURT OF KARNATAKA

THIS CRL.P IS FILED UNDER SECTION 482 OF CR.P.C PRAYING TO SET ASIDE THE ORDER DATED 10.07.2023 IN PCR.NO.55409/2017 AT ANNEXURE-C TAKING COGNIZANCE OF THE OFFENCES ALLEGEDLY COMMITTED BY THE PETITIONER HEREIN PUNISHABLE UNDER SECTIONS 341, 323, 354, 354(A), 504 AND 506 OF IPC, WHEREBY THE TRIAL COURT HAS NOW CONVERTED THE CASE INTO C.C.NO.55895/2023 ON THE FILE OF XXIX ADDITIONAL CHIEF

METROPOLITAN MAGISTRATE AT MAYO HALL, BENGALURU AND TO GRANT SUCH OTHER RELIEFS DEEMED FIT TO GRANT IN THE CIRCUMSTANCES OF THE CASE, IN FURTHERANCE OF JUSTICE.

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

CORAM: HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

ORAL ORDER

The captioned petition is filed assailing the order dated 10.07.2023 passed in PCR No.55409/2017, whereby the learned Magistrate has taken cognizance of the offences punishable under Sections 341, 323, 354, 354A, 504 and 506 of the IPC and has consequently registered the case in C.C. No.55895/2023.

2. The facts, in brief, as pleaded by the petitioner, are that the petitioner and one Harish are brothers. It is contended that ever since his marriage, the petitioner has been residing in the suit schedule property, which originally belonged to his father. The petitioner asserts that he has contributed substantial amounts to his father

towards maintenance and family expenses. It is further contended that the father had entered into an arrangement with the petitioner agreeing to transfer the entire first floor of the house and one office room on the ground floor in his favour, pursuant to which the petitioner and his wife were put in possession of the said portions.

3. The petitioner further contends that his younger brother Harish had sought permission to use a portion of the first floor for storage purposes, which was acceded to by the petitioner. However, according to the petitioner, Harish, by influencing their parents, secured the property in his favour through a series of documents, including a gift deed, settlement deed and release deed. It is also contended that Harish had instituted O.S.No.1719/2015 seeking injunction and later attempted to implead the parents as additional plaintiffs, which was objected to by the petitioner, resulting in withdrawal of the suit. A subsequent suit in O.S. No.6844/2015 for declaration and possession was also filed and later withdrawn.

4. The petitioner alleges that on 12.12.2016, when he and his family had gone to church, Harish, in collusion with certain antisocial elements and two women, namely the present respondent–complainant and one Premakumari, forcibly trespassed into the house and threw out the petitioner's belongings. It is contended that with police intervention, the petitioner regained entry into the premises and an FIR was registered in respect of the said incident.

5. It is further averred that the respondent–complainant had instituted O.S.No.639/2016 seeking damages, which came to be dismissed. The appeal in RFA No.809/2018 preferred there against was subsequently withdrawn with liberty to seek reopening of O.S.No.6844/2015. It is also contended that Harish had filed W.P.No.8657/2017 seeking refund of court fee, which was dismissed. The petitioner further asserts that his mother initiated proceedings under the Senior Citizens Act as well as under the Protection of Women from Domestic

Violence Act, which, according to the petitioner, are retaliatory in nature.

6. The petitioner also contends that his wife had lodged a complaint on 04.01.2015 alleging harassment by Harish, including an incident where she was allegedly locked on the terrace. According to the petitioner, the present complaint is yet another instance of abuse of process, as the complainant has a history of initiating false proceedings.

7. The private complaint filed by the respondent–complainant alleges that she is a civil engineer and was residing as a tenant, along with one Prema, in a portion of the first floor of the premises belonging to Harish. It is alleged that the petitioner, along with his wife and children, were occupying another portion of the same floor and that, upon vacating the premises in November 2016, the complainant was permitted by the owner to occupy the portion previously held by the petitioner. It is in this

background that allegations of abuse, assault and criminal intimidation have been made against the petitioner, leading to registration of the impugned proceedings.

8. Learned counsel for the petitioner would contend that the impugned order taking cognizance is mechanical and suffers from non-application of mind, particularly in the backdrop of long-standing civil disputes between the parties. It is contended that the complaint is manifestly attended with mala fides and is a counterblast to earlier proceedings.

9. Per contra, learned counsel appearing for the respondent would submit that the allegations are serious in nature, the statements recorded during sworn enquiry *prima facie* disclose commission of cognizable offences and that the matter requires full-fledged trial. It is thus contended that no interference is warranted at the stage of cognizance.

10. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent/complainant.

11. In the light of the rival contentions, the following points arise for *consideration:*

(i) Whether the allegations made in the private complaint, read in their entirety, disclose the commission of cognizable offences so as to justify continuation of criminal proceedings?

(ii) Whether the dispute between the parties is predominantly civil in nature arising out of inter se property disputes between family members?

(iii) Whether the initiation and continuation of criminal proceedings amount to abuse of process of Court warranting interference under Section 482 of the Code of Criminal Procedure?

Finding on Point No.(i):

12. Before adverting to the case on hand, this Court deems it fit to extract the relevant portion of the complaint. The same is extracted, which reads as under:

" 4. The Complainant submits that on 12th December, 2016, the Accused came to the house of the Complainant to take his leftover things. The Accused picked up quarrel with the owner who was in terrace. The Complainant submits that she was hanging her washed clothes in terrace; the Accused made comments outraging the modesty of the complainant by calling her as owner's "mistress and keep" and abused the Complainant in filthy language and went away. Thus the Accused committed the offence of outraging the modesty of woman.

5. It is submitted that on 12th December, 2016, at around 10.30 pm after the gate and main door was locked, the Accused came along with his wife and henchmen tried to break the gate and enter the house. The Complainant submits that again at 1 am night on 13-12-2016, the Accused forcefully opened the gate with the support of police and enter the house along with his wife and police. The Accused tried to assault the owner, his aged parents were scared and requested us to record the incident. The Complainant submits that when Prema was started recording the incident the Accused & his wife abused the Complainant and her friend Prema in filthy language. It is submitted that the Accused and police hit the Complainant when she was protecting the owner's aged mother. The accused even hit the hand of the Complainant due to the criminal force used burn wound on the hand of the complainant opened up. It is submitted that the Complainant's roommate Prema was recording the incident:

the police twisted her hand and pulled away the camera from her hand and destroyed all the evidences.

6. It is submitted that on 13-12-2016, the complainant and her roommate Prema went to Bowring Hospital, where they took treatment and did MLC. The Complainant approached the Ashoknagar Police to lodge complaint, but the police did not register their complaint. The Complainant herewith producing the MLC for the kind perusal of this Honourable Court as Document No.3. The Complainant submits that after forcefully enter the house the Accused started residing in the house along with his family. The Accused, his wife and his children constantly threatening and using abusive and vulgar languages against the Complainant and threatening to file false cases against the Complainant if she does not leave premises"

13. The gist of the allegations in the private complaint is that on 12.12.2016, the petitioner/accused visited the premises in question with the stated intent of collecting certain belongings left behind. It is alleged that upon reaching the premises, the petitioner picked up a quarrel with the owner, who was present on the terrace. The complainant asserts that she was at that point of time on the terrace engaged in hanging washed clothes, when

the petitioner/accused is stated to have directed abusive and derogatory remarks against her, allegedly imputing illicit relations with the owner and referring to her in a manner intended to outrage her modesty. It is further alleged that the petitioner/accused used filthy and abusive language and thereafter left the premises.

14. The complaint further proceeds to allege that on the very same day, i.e., 12.12.2016, at about 10:30 p.m., after the main gate and doors of the house had been secured, the petitioner/accused returned to the premises accompanied by his wife and certain henchmen, and attempted to forcibly break open the gate and gain entry into the house. It is further alleged that in the early hours of 13.12.2016, at about 1:00 a.m., the petitioner/accused, with the aid of police personnel, again entered the premises by opening the gate and, along with his wife and the police, attempted to assault the owner, namely Harish, and his aged parents.

15. It is further averred that at the request of the aged parents of the owner, when the complainant attempted to record the incident, the petitioner/accused and his wife allegedly abused the complainant and her companion in filthy language. The complainant further alleges that when she attempted to shield the aged mother of the owner, she was assaulted by the petitioner/accused and the accompanying police personnel, resulting in injuries.

16. The complainant, in support of her allegations, is stated to have produced medical records, including the Medico-Legal Case (MLC) extract. Upon presentation of the complaint, the learned Magistrate recorded the sworn statement of the complainant and her witnesses and, being satisfied that a *prima facie* case is made out, proceeded to take cognizance of the offences alleged and issued process against the petitioner/accused.

17. This Court has bestowed its anxious consideration to the rival submissions and has meticulously examined the averments made in the private complaint, the sworn statements, and the voluminous material placed on record reflecting a series of litigations between the parties. At the outset, insofar as point No.(i) is concerned, it is trite that while considering the validity of an order taking cognizance under Section 200 of the Code of Criminal Procedure, the Court is required to ascertain whether the allegations, taken at their face value and accepted in their entirety, disclose the essential ingredients constituting the offences alleged. A roving enquiry into disputed questions of fact is impermissible at this stage. However, this principle cannot be stretched to sustain proceedings which are ex facie frivolous, vexatious or manifestly attended with mala fides.

18. On a careful reading of the complaint in the present case, this Court finds that the allegations relating to abuse, assault and outraging modesty are couched in

general and omnibus terms without specific attribution of overt acts satisfying the ingredients of the offences punishable under Sections 341, 323, 354, 354A, 504 and 506 of IPC. The narrative in the complaint appears to be an embellishment of incidents arising out of a pre-existing dispute relating to possession of the property. The allegations, when tested on the touchstone of the statutory ingredients of the offences invoked, do not inspire confidence so as to constitute a *prima facie* case warranting continuation of criminal prosecution. Therefore, Point No.(i) is answered in the ***Negative***.

Finding on Point No.(ii):

19. The material on record overwhelmingly indicates that the dispute between the petitioner and his brother Harish is deeply rooted in competing claims over the residential property belonging to their parents. The petitioner asserts rights based on prior possession and an alleged family arrangement, whereas Harish relies upon

subsequent conveyances such as gift, settlement and release deeds. This rivalry has led to a multiplicity of civil proceedings,

20. On a careful examination of the material placed on record, this Court finds that the entire dispute stems from a long-standing property dispute between the petitioner and his brother, namely Harish. The pleadings would unmistakably reveal that the petitioner claims rights over portions of the family property on the strength of an alleged arrangement with his father, whereas the brother, Harish, is asserting competing rights on the basis of subsequent documents such as gift deed, settlement deed and release deed.

21. The records further disclose a chequered history of civil litigation between the parties. Harish had instituted O.S.No.1719/2015 seeking injunction, which came to be withdrawn. A subsequent suit in O.S.No.6844/2015 for declaration and possession was also withdrawn. Yet

another proceeding in O.S.No.639/2016 filed by the complainant seeking damages came to be dismissed, and the appeal in RFA No.809/2018 was withdrawn with liberty to pursue remedies in earlier proceedings. Even the writ petition in W.P. No.8657/2017 filed seeking refund of court fee came to be dismissed. The material on record would further indicate that proceedings under the Senior Citizens Act initiated by the petitioner's mother and other litigations are also pending between the parties.

22. The latest order passed in W.P.No.10970/2022, which is placed before this Court, would also indicate that the proceedings initiated by the petitioner's mother came to be dismissed as withdrawn. These series of litigations clearly demonstrate that the petitioner and his brother are embroiled in a protracted and bitter civil dispute concerning family property.

23. It is in this background that the present private complaint filed by the respondent, who claims to be a

tenant under Harish, requires to be examined. The timing, tenor and substance of the complaint give rise to a strong inference that the present proceedings are not independent in nature but are closely intertwined with the ongoing civil disputes between the brothers.

24. A careful reading of the complaint would indicate that the allegations are largely bald, omnibus and lacking in specific particulars. Though allegations are made with regard to abuse, assault and outraging modesty, the same are couched in general terms without clear and specific overt acts attributable to the petitioner that would satisfy the ingredients of the offences alleged.

25. It is no doubt true that at the stage of taking cognizance under Section 200 of Cr.P.C., the learned Magistrate is only required to ascertain whether a *prima facie* case is made out and a roving enquiry into disputed facts is not warranted. However, it is equally well settled that where the complaint, even if taken at face value, does

not disclose the essential ingredients of the offences alleged, or where the proceedings are manifestly attended with mala fides, this Court would be justified in exercising its inherent jurisdiction to prevent abuse of process.

26. In the case on hand, the entire sequence of events, coupled with the admitted civil disputes between the petitioner and his brother, would clearly indicate that the criminal proceedings are being used as a tool to exert pressure and to settle scores arising out of property disputes. The involvement of the complainant, who is admittedly a tenant under the petitioner's brother, further strengthens the inference that the complaint is instigated at the behest of Harish.

27. This Court also cannot lose sight of the fact that the complaint pertains to the year 2016 and has remained pending for nearly a decade. The prolonged pendency of such proceedings, which are rooted in a civil dispute, itself militates against the interest of justice and reinforces the

conclusion that continuation of the proceedings would amount to abuse of process.

28. The Hon'ble Supreme Court has consistently held that criminal law cannot be permitted to be used as an instrument of harassment or for settling civil disputes. When the substratum of the dispute is civil in nature, initiation of criminal proceedings would be wholly unwarranted.

29. In the present case, this Court is of the considered view that the dispute between the petitioner and his brother is essentially a family dispute relating to property, and the criminal proceedings initiated through the present complaint are nothing but an offshoot of such civil discord.

30. The present complaint is filed by a person who claims to be a tenant under Harish and whose entry into the property itself is a subject matter of dispute. The timing and tenor of the complaint, coupled with the

admitted history of litigation, unmistakably indicate that the criminal proceedings are not independent in character but are intrinsically linked to the underlying civil dispute. The allegations in the complaint are thus a mere extension of the property dispute and are clearly an attempt to give a criminal colour to what is essentially a civil dispute between family members. Accordingly, Point No.(ii) is answered in the ***Affirmative***, holding that the dispute is predominantly civil in nature.

Finding on Point No.(iii):

31. The inherent power of this Court under Section 482 of the Code of Criminal Procedure is intended to prevent abuse of the process of Court and to secure the ends of justice. The facts of the present case reveal a classic instance where criminal law has been set in motion as a tool of harassment in a civil dispute. The long-standing litigation history, the strained relationship between the petitioner and his brother, and the

involvement of the complainant, who is closely connected to Harish, clearly indicate that the present prosecution is actuated by mala fides and is intended to exert pressure in the ongoing property dispute.

32. This Court cannot lose sight of the fact that the complaint pertains to the year 2016 and has remained pending for several years, thereby subjecting the petitioner to prolonged criminal prosecution without any substantial material disclosing the commission of cognizable offences. The continuation of such proceedings would not only result in miscarriage of justice but would also amount to permitting the abuse of the judicial process.

33. In view of the aforesaid analysis, this Court is of the considered opinion that the present case squarely falls within the parameters warranting interference under Section 482 of Cr.P.C., as the proceedings are manifestly attended with mala fides, the allegations do not disclose

the commission of cognizable offences, and the dispute is essentially civil in nature. Accordingly, Point No.(iii) is answered in the ***Affirmative***, holding that continuation of the criminal proceedings would amount to abuse of process of Court.

34. Consequently, all the points framed for consideration are answered in favour of the petitioner, warranting interference by this Court to quash the impugned proceedings in order to secure the ends of justice.

35. For the foregoing reasons, this Court proceeds to pass the following:

ORDER

(i) The criminal petition is ***allowed***;

(ii) The impugned order dated 10.07.2023 passed in PCR.No.55409/2017 (C.C.No.55895/2023) on the file of the XXIX ACMM, Mayohall, Bengaluru taking cognizance

of the offences punishable under Sections 341, 323, 354, 354(A), 504 and 506 of IPC vide Annexure-C, insofar as petitioner is concerned, is hereby set aside.

(iii) Pending I.As., if any, do not survive for consideration and stands disposed of.

Sd/-
(SACHIN SHANKAR MAGADUM)
JUDGE

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List No.: 2 Sl No.: 47