HC-KAR

NC: 2026:KHC:64169
CRL.P No. 9827 of 2021

CNR: KAHC010472902021

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF NOVEMBER, 2026

BEFORE

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

CRIMINAL PETITION NO.9827 OF 2021

BETWEEN:

1. SATHYANARAYANA
S/O GUNDURAO
AGED ABOUT 47 YEARS
OCC-FIRST DIVISION ASSISTANT AT
DISTRICT HEALTH OFFICE
DAVANAGERE DISTGRICT
DAVANAGERE
SMITHA, R/AT 803/05 2ND CROSS
SHIVAKUMARA SWAMY EXTENSION
DAVANAGERE-577005

2. SMT. THRIPULAMBA
D/O H N NIRANJAN
AGED ABOUT 60 YEARS
OCC- RETIRED DISTRICT HEALTH OFFICER
R/AT C/9 3RD CROSS
1ST BUS STOP
VIDYANAGARA
DAVANAGERE-577005

Digitally signed by DEVIKA M
Location: HIGH COURT OF KARNATAKA

...PETITIONERS

(BY SRI. M R HIREMATHAD, ADVOCATE)

AND:

1. STATE OF KARNATAKA
BY PSI, HARIHARA TOWN PS
DAVANAGERE DISTRICT-577601

REP. BY STATE PUBLIC PROSECUTOR
HIGH COURT BUILDINGS
BENGALURU – 560001

2. SMT. DR SAVITA
W/O SURESH BASARAKODA
AGED ABOUT 39 YEARS
OCC-DOCTOR
SHUBHODAYA NURSING HOME
OPPOSITE CITY MUNICIPAL
HARIHARA
DAVANAGERE DISTRICT

…RESPONDENTS

(BY SRI SUHAS GOWDA M, HCGP FOR R1;
SRI S G RAJENDRA REDDY, ADVOCATE FOR R2)

THIS CRL.P IS FILED U/S.482 OF CR.P.C PRAYING TO QUASH THE CHARGE SHEET NO.02/2020 FILED BY THE 1ST PETITIONER-HARIHARA POLICE FOR THE OFFENCE P/U/S 166, 34 OF IPC AND CONSEQUENTLY QUASH THE CRIMINAL PROCEEDINGS IN C.C.NO.830/2021 PENDING ON THE FILE OF I ADDITIONAL CIVIL JUDGE AND J.M.F.C., HARIAHARA 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

This petition is filed praying this Court to quash the charge sheet No.2/2020 for the offence under Section 166 read with Section 34 of IPC and also the proceedings in C.C.No.830/2021 on the file of 1st Additional Civil Judge and JMFC, Harihara.

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

3. The factual matrix of case of the complainant/respondent No.2 that she is a doctor by profession and conducting scanning at nursing home by obtaining the license. The license for conducting scanning was expired on 28.06.2017. The copy of the same is also produced as Annexure-E. Petitioner No.2 issued a show cause notice to respondent No.2 on 17.11.2018 calling for explanation why the nursing home was not registered under the PC and PNDT and the said show cause notice also produced as Annexure-F. Petitioner No.2 issued final notice to respondent No.2 to register her Nursing Home under PC and PNDT and also renew

the license for scanning. Final notice dated 29.12.2018 is also produced as Annexure-G.

4. The counsel for the petitioners would submit that the petitioner No.2 has filed Writ Petition in W.P.No.55173/2018 by challenging the order of the Assistant Commissioner, Davanagere regarding the renewal of license. The Court was pleased to direct the second respondent to approach the Assistant Commissioner of Davanagere to renewal of the license and also directed the Assistant Commissioner of Davanagere to consider the application of respondent No.2 in accordance with law. The copy of the order is also produced as Annexure-H. The counsel appearing for the petitioners would submit that in view of the said direction, the Assistant Commissioner also passed an order on 27.02.2019 and the same is produced as Annexure-J. The counsel also would submit that in view of the order of the Assistant Commissioner passed as per Annexure-J, the complainant has not complied but initiated the proceedings against these two petitioners.

5. The counsel would vehemently contend that there is a protection under Section 197 of Criminal Procedure Code. If

any proceedings is initiated against the Public Servant, there cannot be any criminal prosecution and without the sanction, there cannot be any prosecution also. The complainant filed the complaint with a mala fide intention and the averments of the complainant are also not clear. Hence, there cannot be any criminal prosecution against the petitioners and it requires interference of this court.

6. Per contra, the learned counsel appearing for respondent No.2 brought to notice of this court the detailed accusation made in the complaint wherein specific accusation is made against both of them that even i spite of application was filed, the same was not considered and on several occasions, the applications are given and instead of considering the same, harassed the complainant. In the complaint, specific accusations are made while filing the private complaint and matter was referred for investigation and police also filed the charge sheet. The counsel also brought to notice of this court that Annexure-H is also very clear that when the complainant had approached this court in view of non-renewal of license, direction was sought and this court also while disposing of the

writ petition, given the liberty to the complainant to file objections along with necessary documents to show that she has already filed an application for renewal well in advance. If such objections are filed by the complainant, petitioners shall consider the same and pass an appropriate order.

7. The counsel for respondent No.2 would submit that respondent No.2 has given a letter to petitioner No.2 on 24.04.2019 i.e., subsequent to the passing of an order wherein also request was made to comply with the directions of the High Court. The counsel would submit that the reply was rejected by passing an order on 29.04.2019 and hence, there cannot be any quashing of the proceedings.

8. In reply to this argument, counsel would submit that specific direction is given on 27.02.2019 to apply for the renewal within 7 days as per the PC and PNDT rules and if the same is not done, appropriate action will be taken. The counsel also brought to notice of this Court on 29.12.2018 even subsequent to the order passed by the High Court, final notice was also issued by petitioner No.2 to apply for the same in the portal of Balika (Online submission of F-Form) wherein

categorically stated that inspite of direction was given to apply in the portal, the same is not done. Even referred the letter of the committee wherein committee also stated that if it is not filed within time, action will be taken. When compliance is not made in respect of Annexure-G and Annexure-J, the question of initiating the criminal prosecution does not arise.

9. Having heard the learned counsel appearing for the respective parties and also on perusal of the material on record, it discloses that a private complaint is filed before the trial court and the same is numbered as PCR No.49/2019 wherein action is sought for the offences under Sections 166, 354, 448, 504 of IPC. The Trial Judge, having perused the contents of the complaint, though mentioned in the order that cognizance is taken, referred the matter to the Dy.SP Rural, Davanagere for investigation under Section 156(3) of CrPC and the said order is not correct. It is only a pre-cognizance order and not the cognizance order. However, material discloses that in view of the direction given to the Dy.SP Rural Davanagere, police have also investigated the matter and filed the charge sheet. Hence, present petition is filed before this Court.

10. The main contention of the counsel appearing for the petitioners is that the petitioners are protected under Section 197 of CrPC and while initiating the proceedings against the public servants, there must be a sanction. The counsel appearing for the petitioners would submit that Court has taken the cognizance without the sanction. But this Court already pointed out that no cognizance was taken and there was an error on the part of the Magistrate mentioning that cognizance was taken, but order was passed under Section 156(3) and the same is a pre-cognizance order. Hence, the question of obtaining of sanction as contended by the counsel appearing to the petitioners does not arise. If the Magistrate proceeded to record the sworn statement of the complainant, the same would amounts to taking of cognizance. But in the case on hand, Trial Court though mentioned as cognizance is taken, ought to have referred in the order that perused the contents of the complaint and matter requires investigation and the same has not been done. But pre-cognizance order was passed under Section 156(3) and hence, the very contention of the petitioners' counsel cannot be accepted. However, admittedly

charge sheet is filed by the police after the investigation and before filing the charge sheet, sanction is also obtained.

11. Now, the question arises before this court is with regard to the criminal prosecution is concerned. The specific accusation made in the charge sheet that several approach was made but not considered the same and instead of considering the same, show cause notice was issued to take action in view of non-renewal. Having considered the material available on record, it discloses that applied for the renewal of the license and fee also paid.

12. It is also important to note that the complainant had knocked the door of this court by filing a writ petition and this court also while disposing of the writ petition an observation is made that though writ petition was not maintainable, but liberty is given to the petitioner therein to file objections along with necessary documents to show that she has already filed an application for renewal well in advance i.e., on 18.05.2017. If such objections are filed by the petitioner, respondent No.2 shall consider the same and pass appropriate orders strictly in accordance with law. It is also clear that till

such consideration, the respondents shall not initiate any precipitative action against the petitioner. Having considered this order, it is very clear that the petitioner i.e., complainant has to file an objection. Letter was addressed on 24.04.2019 and the request was rejected. But counsel appearing for the petitioners brought to notice of this Court that consequent upon the order passed by this Court in Writ Petition, immediately, final notice was given by the second petitioner on 29.12.2018, wherein also specifically stated that apply in the portal of Balika (Online submission of F-Farm) and till date not applied for the same and also reference was made that committee has taken decision that if it is not filed within time, take action as per the rules. This letter was also produced as Annexure-G.

13. The counsel appearing for respondent No.2/complainant has not placed any document to show that once again she has applied online submission of F-Farm in terms of the letter dated 29.12.2018. The counsel appearing for the petitioners brought to notice of this Court the Annexure-J wherein the Competent Authority passed an order on 27.02.2019 once again directing the complainant to apply for

the renewal of license within 7 days and also specifically stated that if it is not done, action will be taken.

14. This Court, when the matter was heard in the previous occasion, directed the complainant counsel to produce a document to show that complainant has acted upon in terms of the order passed by the Assistant Commissioner on 27.02.2019 and also in respect of Annexure-G, but, nothing is placed on record. But counsel placed on record a letter addressed to the second petitioner dated 24.04.2019 and the same is not in compliance with Annexure-G and J. Having perused the letter dated 24.04.2019, it is very clear that they have applied for the renewal on 12.04.2019 through online and also paid the amount by way of Demand Draft and obtained the endorsement on 15.04.2019. The counsel appearing for the petitioners brought to notice of this Court that Assistant Commissioner passed an order vide order No.90/2012-13 dated 29.04.2019 and endorsement was issued by the petitioner No.2. If the complainant is having any grouse against the decision of the competent authority in rejecting the prayer vide order dated 29.04.2019 ought to have pursued the grievance

consequent upon the endorsement issued by the petitioner No.2. But when such direction was given specifically by this Court and also correspondence was made before passing such an order, this present complaint is filed on 22.03.2019 and the same is prior to making an application and hence there cannot be prosecution.

15. Having taken note of all these factors into consideration, it discloses that it is not a case for initiate the criminal action against the petitioners. Instead of pursuing the remedy in view of the rejection of the representation and application of the complainant, continuing of this criminal prosecution against the petitioners does not arise. Petitioner No.2 consequent upon the order passed by this Court, on 29.12.2018 itself given the final notice and acted upon and subsequently, the competent authority has taken the decision. When such being the case, I am of the opinion that the grievances of the complainant has to be redressed in accordance with law and knocking the door of criminal prosecution against the petitioners is nothing but an abuse of process. If petition is continued, it amounts to miscarriage of

justice. Hence, I do not find any grounds to continue the proceedings, particularly for the offence of Section 166 read with Section 34 of IPC against the petitioners herein and it requires interference of this Court.

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

ORDER

The petition is allowed.

The charge sheet No.2/2020 for the offence under Section 166 read with Section 34 of IPC and also the proceedings in C.C.No.830/2021 on the file of 1st Additional Civil Judge and JMFC, Harihara are hereby quashed.

Sd/-
(H.P.SANDESH)
JUDGE

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