HC-KAR

NC: 2026:KHC:64026
CRL.P No. 12671 of 2024

CNR: KAHC010659582024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF NOVEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE RAJESH RAI K

CRIMINAL PETITION NO.12671 OF 2024

BETWEEN:

SIDDIQ K.A.
AGED ABOUT 34 YEARS
S/O. ABDUL KADHER
R/AT KALLUMUTLU HOUSE,
GANDHINAGAR.
SULLIA POST AND VILLAGE,
SULLIA- 574 239.

...PETITIONER

(BY SRI. ABDUL ANSAR P., ADVOCATE)

AND:

Digitally signed by PANKAJA S
Location: HIGH COURT OF KARNATAKA

1. STATE BY
SULLIA POLICE STATION,
SULLIA, D.K.
REP BY STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDING,
BENGALURU-01.

2. IBRAHIM HASHIM
S/O HAMZA
AGED ABOUT 26 YEARS
R/AT KUKKUMBALA HOUSE,
ARANTHODU VILLAGE,
SULLIA TALUKU,

D.K. - 574 239.

…RESPONDENTS

(BY SRI.MAHESHA P., HCGP FOR R-1;
R-2 SD BUT UNREPRESENTED)

THIS CRL.P IS FILED U/S 482 OF CR.P.C (U/S 528 BNSS) PRAYING TO QUASH THE CRIMINAL PROCEEDINGS AGAINST THE PETITIONER IN CC.NO.304/2024 RAISED OUT OF CR.NO.88/2024, REGISTERED BY RESPONDENT SULLIA POLICE, FOR THE OFFENCES P/U/S 323, 504 AND 506 OF IPC, PENDING ON THE FILE OF HONBLE SENIOR CIVIL JUDGE AND JMFC, SULLIA.

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

CORAM: HON'BLE MR. JUSTICE RAJESH RAI K

ORAL ORDER

This petition is filed under Section 482 of Cr.P.C. to quash the proceedings in C.C.No.304/2024, arising out of Crime No.88/2024 dated 26.06.2024, filed by the Sullia Police Station, Bengaluru City, against the petitioner for the offences punishable under Sections 323, 504 and 506 of IPC pending on the file of Senior Civil Judge and JMFC, Sullia.

2. The brief facts of the case are that respondent No.2 lodged a private complaint against the petitioner before the Senior Civil Judge and JMFC, Sullia, in PCR No.3/2024, alleging

that on 16.06.2024, at about 6.00 p.m., when the complainant had visited Sullia Town to purchase household essentials and was at Megha Shop, the petitioner approached him, restrained him and caught hold of his motorbike. It is further alleged that a conversation ensued between them with regard to an incident that had taken place at Bengaluru. In the course of the said conversation, the petitioner allegedly assaulted the complainant and threatened him with dire consequences. Thereafter, the complainant approached the Sullia Police Station. However, as the Police failed to register a case against the petitioner, respondent No.2 proceeded to file a private complaint in PCR No.3/2024 before the learned Magistrate. Upon receipt of the complaint, the learned Magistrate referred the matter to respondent No.1-Police under Section 156(3) of Cr.P.C. Accordingly, respondent No.1 registered an FIR in Crime No.88/2024 dated 26.06.2024 for the offences punishable under Sections 341, 504, 323 and 506 of IPC.

3. Subsequently, upon completion of the investigation, respondent No.1-Police filed the charge sheet against the petitioner for the offences punishable under Sections 323, 504

and 506 of IPC, dropping the offence punishable under Section 341 of IPC. The learned Magistrate thereafter took cognizance of the aforesaid offences. Aggrieved by the same, the petitioner has preferred the present petition.

4. Heard the learned counsel for the parties.

5. The primary contention of the learned counsel for the petitioner is that the private complaint was not accompanied by an affidavit and, as such, the mandatory requirement under Section 156(3) of Cr.P.C., as laid down by the Hon'ble Apex Court in the case of ***Priyanka Srivastava v. State of Uttar Pradesh and Others***, reported in ***(2015) 6 SCC 287***, as well as in the subsequent judgment in the case of ***S.N. Vijayalakshmi and Others v. State of Karnataka and Another***, in ***SLP (Crl.) No.8626/2024***, has not been complied with. He further contends that, on perusal of the averments made in the complaint and the charge sheet, except for certain omnibus allegations against the petitioner, no specific averments are forthcoming either with regard to the motive behind the alleged incident or the manner in which the incident is stated to have occurred. In such circumstances, he

submits that the private complaint has been instituted purely out of vengeance and that the continuation of the proceedings against the petitioner is unsustainable in law. Accordingly, he prays to allow the petition.

6. Despite service of notice to respondent No.2, he remained unrepresented.

7. Learned HCGP has opposed the prayer on the ground that the private complaint has culminated in filing of the charge sheet and the learned Magistrate has thereafter taken cognizance of the offences. In such circumstances, the proceedings cannot be quashed merely on the ground that the private complaint was not accompanied by an affidavit. He further contends that the statements of the witnesses recorded during the course of investigation and forming part of the charge sheet disclose a *prima facie* case against the petitioner and, therefore, the proceedings are not liable to be quashed. Accordingly, he prays to dismiss the petition.

8. I have given my anxious consideration both on the submission and perused the materials available on record.

9. Before going into the merits of the case, on perusal of the private complaint and the documents appended thereto, it is evident that the complainant has not filed any affidavit along with the private complaint. This position is also not seriously disputed by the learned HCGP. Thus, it is clear that the respondent-complainant has failed to file an affidavit accompanying the private complaint. The Hon'ble Apex Court, in ***Priyanka Srivastava's*** case, referred to *supra*, has held that filing of an affidavit along with an application under Section 156(3) of Cr.P.C. is mandatory. The object behind insisting upon such an affidavit is to curtail frivolous litigation and to ensure that the complainant has approached the jurisdictional Police and the higher Police authorities before invoking the jurisdiction of the Magistrate under Section 156(3) of Cr.P.C. The said requirement has been held to be essential and mandatory. The aforesaid position of law has been further reiterated by the Hon'ble Apex Court in the case of ***S.N. Vijayalakshmi and Others*** case referred to *supra*. The relevant conclusion of the above judgment is as under:

> *"Non-filing of the supporting affidavit is a curable defect, but must be cured before the Magistrate passes any substantive*

order on the complaint/application, and; (iv) If the Magistrate proceeds without the requisite affidavit, such order/any consequential orders/proceedings can be quashed on the sole ground of non-compliance with Priyanka Srivastava (supra)."

10. The contention of the learned HCGP that, since the private complaint has culminated in the filing of the charge sheet and the learned Magistrate has taken cognizance of the offences, the proceedings cannot be quashed merely on the ground of non-filing of an affidavit, requires consideration. On careful reading of the judgment of the Hon'ble Apex Court in ***S.N. Vijayalakshmi and Others***, referred to *supra*, it is evident that the Hon'ble Apex Court has discussed the law laid down in ***Priyanka Srivastava's*** case and reiterated the position of law enunciated therein. In the instant case, the learned Magistrate has not merely referred the private complaint to the Police for investigation but has also proceeded to take cognizance of the offences. Thus, the order passed by the learned Magistrate is a substantive order, which has been passed without the complainant complying with the mandatory requirement of filing an affidavit. In such circumstances, the law laid down by the Hon'ble Apex Court in the aforesaid judgments squarely applies to the facts and circumstances of

the present case. Accordingly, the proceedings cannot be continued. Accordingly, I proceed to pass the following:

ORDER

i. The criminal petition is ***allowed***.

ii. The proceedings against the petitioner/accused in C.C.No.304/2024, arising out of Crime No.88/2024 dated 26.06.2024, filed by the Sullia Police Station, Bengaluru City, for the offences punishable under Sections 323, 504 and 506 of IPC pending on the file of Senior Civil Judge and JMFC, Sullia, are hereby quashed.

SD/-
(RAJESH RAI K)
JUDGE

GPG
List No.: 1 Sl No.: 10