



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 9TH DAY OF SEPTEMBER, 2022

BEFORE

THE HON'BLE MR JUSTICE SURAJ GOVINDARAJ

WRIT PETITION NO. 54069 OF 2017 (GM-RES)



BETWEEN:

MR K S MAHADEVAN

... PETITIONER

(BY SRI. G. KRISHNAMURTHY, SR.COUNSEL A/W
SRI. SRIKANTH PATIL. K., ADV.)

AND:

1. MR CYPRIAN MENEZES

2. MR K DINESH MALLYA

... RESPONDENTS

(BY SRI.THONTADHARYA R.K. ADV.,
FOR SRI.P.B.AJITH, ADV., FOR R1.,
SRI.H.MALATESH, ADV., FOR R2)

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SHIVANNA
Location: HIGH
COURT OF
KARNATAKA



THIS WRIT PETITION FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA R/W. SECTION 482 OF THE CR.P.C. PRAYING TO CALL FOR THE RECORDS IN C.C.NO. 2541/2017 (P.C.R.NO.30/2017) PENDING ON THE FILE OF JUDICIAL MAGISTRATE FIRST CLASS-II, MANGALURU AND ETC.

THIS WRIT PETITION, COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

1. The petitioner is before this Court seeking for the following reliefs:-

"i) Call for the records in C.C.No.2541/2017 (PCR No.30/2017) pending on the file of Judicial Magistrate First Class-II, Mangaluru.

(ii) Quash the complaint dtd.02.02.2017 (Annexure-A) and the entire proceedings in C.C.No.2541/2017 (PCR No.30/2017) pending on the file of Judicial Magistrate First Class-II, Mangaluru (Annexure-B) in so far as it relates to petitioner herein, in the interest of justice and equity.

(iii) Grant such other and further reliefs as are just even including the costs of this petition."

2. A private complaint in PCR No.30/2017 has been filed by the first respondent - complainant alleging that the petitioner has held out himself to be a very Senior Advocate in Bangalore and having connections with



Senior Advocate of the Supreme Court and had represented that he could put across the complainant to such Senior Advocates who could represent the matter and obtain favourable orders. It is on that basis, various amounts were paid to the petitioner to be paid to the Advocate appearing before the Supreme Court as also to enable the petitioner to travel to Supreme Court and appear in the said matter.

3. It is alleged that on 18.04.2016, when the matter was taken up for hearing before the Apex Court and at the end of the day when the complainant called the petitioner enquiring about the status of the matter, the petitioner did not inform him properly and as such, the complainant suspected the bonafides of the petitioner and it is on that basis a criminal complaint came to filed in the aforesaid PCR seeking for action to be taken against the petitioner.
4. Sri.G.Krishnamurthy, learned Senior counsel appearing for the petitioner would submit that the petitioner has



only discharged his duties as an Advocate and has appeared in the matter along with the counsel before the Apex Court. The orders that may be passed by the Apex Court or any other Court is left to the Court. There is only an effort which would be made by a counsel to try and get favourable orders and that is the only promise that was made, which cannot amount to an offence under Section 406 and 420 of the IPC in as much as the petitioner is only discharging his professional functions and there is no inducement as such made by the petitioner.

5. Per contra, Sri.Thontadharya R.K., learned counsel appearing for the respondent No.1 would submit that a huge amount of Rs.14,60,000/- was made payment for the conduct of the matter before the Apex Court and on that day, the matter after hearing was only adjourned and no favorable orders was passed. Therefore, offence under Sections 406 and 420 have been committed.



6. Respondent No.2 has not been appearing in the matter and on 24.08.2022, this Court had recorded that if none were to appear for respondent No.2, the matter would be taken up for consideration. As such, the matter is taken up for consideration.
7. Heard Sri.G.Krishnamurthy, learned Senior appearing for the petitioner and Sri.Thontadharya R.K., learned counsel appearing for respondent No.1 and perused the papers.
8. In the present matter, allegations have been made by a client against an Advocate alleging that since he did not obtain favourable orders as contended by him, offences under Sections 406 and 420 of IPC have been committed. A perusal of the complaint would indicate that the statement attributed to the petitioner is that the petitioner would introduce and or refer the matter to an Advocate in Delhi and also that the petitioner would appear before the Apex Court in a matter of the complainant. An advocate can only appear and make his best efforts in the matter. No advocate can either state



or hold out that he would obtain favourable orders nor could a client believe that an Advocate will definitely obtain favourable orders just because he has made payment of the fees to the Advocate.

9. Merely because a client were not to succeed in the matter and favourable orders were not passed in favour of that particular client, the said client cannot make out a case that there is a fraud which has been committed by the Advocate and offence under Sections 406 and 420 of IPC which has been committed by an Advocate. That would lead to disastrous consequences. It is for all litigants to understand that an Advocate can only make best efforts in the matter and the case would be decided on the basis of merits. In a Adversarial system like that in our Country were one party initiates a litigation against the other it is bound to happen that one will win and other will lose which is on the basis of the facts of the case and the law applicable.



10. Whoever the Advocate may be, the outcome depends on the facts and the law applicable thereto. Hence, the payment of fees, the amount of fees is also not relevant for the outcome of the matter that is a private matter between the client and the Advocate.
11. In the above background, the allegations now being made that since the huge amount of money has been paid as fees to the Advocate, the Advocate had to obtain favourable orders, it is not sustainable nor it would amount to an offence under Section 406 and 420 of IPC. No grounds have been made out in the compliant. The criminal proceedings being an abuse in the process of the Court. As such, I pass the following:-

ORDER

- i. The petition is ***allowed***.
- ii. The proceedings in C.C.No.2541/2017 arising out of PCR No.30/2017 pending on the file of Judicial Magistrate First Class-II, Mangaluru is hereby quashed.



iii. It is needless to state that the order of cognizance dated 06.02.2017 is also quashed.

**Sd/-
JUDGE**

VMB
List No.. 1 SI No.: 17