



CRL.P No. 8929 of 2021

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 2ND DAY OF SEPTEMBER, 2022

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BEFORE

THE HON'BLE MR JUSTICE M.NAGAPRASANNA

CRIMINAL PETITION NO. 8929 OF 2021

BETWEEN:

1. SANJANA FERNANDES @ RAVEERA

...PETITIONER

(BY SRI. AMAR CORREA, ADVOCATE)

AND:

1. STATE OF KARNATAKA
REPRESENTED BY NORTH CEN POLICE STATION
BANGALORE CITY
REPRESENTED BY STATE
PUBLIC PROSECUTOR
HIGH COURT BUILDING
BANGALORE 560001

Digitally signed by
PADMAVATHI B K
Location: HIGH
COURT OF
KARNATAKA

2. SHANKAR GANESH P J

...RESPONDENTS

(BY SRI K.S.ABHIJITA, HCGP FOR R1
SRI S. DIRAVIAM DINESH, ADVOCATE FOR R2)



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THIS CRL.P IS FILED U/S.482 CR.P.C PRAYING TO QUASH THE CRIMINAL PROCEEDINGS AGAINST THE PETITIONER PENDING IN C.C.NO.22955/2021 ON THE FILE OF I ADDL.C.M.M., BENGALURU FOR THE OFFENCE P/U/S 66(C),66(D),67(A) OF THE INFORMATION TECHNOLOGY ACT AND SECTION 419 AND 420 OF IPC AND ALLOW THIS CRL.P.

THIS PETITION COMING ON ADMISSION THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The petitioner is before this Court calling in question proceedings in C.C.No.22955 of 2021 pending on the file of the I Additional Chief Metropolitan Magistrate, Bangalore arising out of crime in Crime No.245 of 2021 registered for offences punishable under Sections 66(C), 66(D) and 67(A) of the Information Technology Act, 2000 and Sections 419 and 420 of the IPC.

2. Heard Sri Amar Correa, learned counsel for the petitioner, Shri K.S Abhijith, learned High Court Government Pleader for respondent No.1 and Sri S.Diraviam Dinesh, learned counsel appearing for respondent No.2.

3. Brief facts, as projected by the prosecution, are as follows:

The complainant is an information technology professional. The petitioner and the complainant come in



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contact with each other with a dating app 'Tinder'. Both of them get acquainted to each other and it appears that on a particular night when they were on chat, the complainant claims to be completely stressed and expresses such stress to the petitioner. The petitioner then represents that she has an instagram page "positivity-for-a-360-life" and she is a Wellness Therapist who would advocate and promote general well being of mind, body and soul. The complainant on the representation being made by the petitioner with regard to her qualification in the therapist goes on transferring amounts on class to class basis. After the end of the class, the complainant claims to be satisfied of the class and then transferred the money.

4. This goes on throughout the period the country was engulfed with Covid-19 and intermittent lock-down being in place. The classes of wellness therapy goes little wrong when the complainant begins to get interested in meeting the wellness therapist, the petitioner, as they had never met each other. The transaction or the classes had happened through instagram. The complainant getting interested in the petitioner started sending lewd messages and started to post indecent contents containing pornography and other material on the



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inbox of the petitioner. Then the petitioner blocks the account of the complainant. It is then the complainant begins to dig at the veracity of the therapy that the petitioner claimed and comes to know that the petitioner had 15 such profiles of instagram or other social media and then registers a complaint against the petitioner for offence of cheating and the offence under the Information Technology Act in Crime No.245 of 2021. The Police after investigation file a charge sheet for the very offences so alleged earlier on 4-08-2021 in C.C.No.22955 of 2021. It is the filing of the charge sheet that drives the petitioner to this Court in the subject petition.

5. The learned counsel for the petitioner would contend that the petitioner who is a wellness therapist is innocent of what is alleged against her. It is the complainant who approached the petitioner for his well being and after taking treatment, on being satisfied with every class, has voluntarily transferred all the amounts. It is only because the petitioner did not yield to the lewd requests of the complainant, the complaint comes to be registered. It is purely a matter of contract between the petitioner and the complainant who has



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consented to the classes and seeks quashment of entire proceedings.

5.1. On the other hand, the learned counsel appearing for the 2nd respondent/complainant would refute the submissions to contend that it is not the complainant who approached the petitioner since the first message comes from the petitioner to the complainant in a particular name called 'Rishta' which is not her name. She then represented that she is a wellness therapist and lured the petitioner into treatment and ultimately cheated the petitioner for transfer of close to Rs.3,15,000/- and would, therefore, contend that the petitioner is a con-woman and seeks dismissal of the petition. The learned High Court Government Pleader would also contend that there are abundant materials of cheating against the petitioner and therefore, it is a matter for trial.

6. I have given my anxious consideration to the submissions made by the respective learned counsel and perused the material on record.

7. The afore-narrated facts though not in dispute a little elaboration of the charge sheet materials which are



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appended to the petition clearly demonstrate that the petitioner initially sent a message to the complainant on Tinder and later began to chat with the complainant or the complainant with the petitioner on instagram. The chats would reveal that on a particular night when the complainant came to be stressed out, the petitioner represents that she is a wellness therapist and has a team of wellness therapists and her team would take care of the well being of the petitioner. It is from this date the wellness therapy on the complainant began. Wellness classes were administered upon the complainant and the complainant on being satisfied with those classes had sent several amounts intermittently totaling to Rs.3,15,000/- to the petitioner for the said therapy.

8. The complainant generates interest in the petitioner and seeks that he wanted to meet her which she refused and then the therapy goes wrong. The complainant starts to send lewd messages which led to blocking of the account of the complainant. It is later the discovery happens with regard to the nature and functioning of the petitioner through several instagram web pages. Then a complaint comes to be registered against the petitioner. It is here it becomes germane to notice



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the claim of the petitioner. The petitioner claims to be a wellness therapist, a professional, handling a web-page 'positivity-for-a-360-life'. The claim of the petitioner is seen in the consent form, therefore, the consent form becomes germane to be noticed, and is extracted hereunder for the purpose of quick reference:

"About your Wellness-

Teletherapy is an online service which facilitates mental health therapy sessions between a client (you) and a counsellor/coach (us). Our online sessions are conducted through Skype, Hangouts, Zoom sessions or any interactive internet technologies. Client and the counsellor/coach need not be in the same physical location.

Sessions are based on an individual's need and expectations. Clients are expected to attend sessions regularly and require a minimum of twenty-four hours' notice for cancellation and reschedule. Also, cancellations of sessions are at the discretion of the client and coach/counsellor.

Our service (through teletherapy), program or curriculum is not an emergency service provider:

We are in no means affiliated with a government entity. We cater only on a need-to-basis. At the moment, we are not partnered with any of the other private organizations which in turn offer any coupons, discounts or anything that promises credits a reimbursement policy and thereon. Such claims, at any point shall not be entertained by any coach/counsellor.



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Our services includes an elaborate curriculum designed on holistic wellness a baton bearer that empathizes with the mind, body and the soul. Wellness being multidimensional, focusses on integrating a self's Spiritual, Physical, Emotional, Career, Intellectual, Environmental, Social aspects for continued growth and balance. The program which executes through teletherapy sessions will also include perception-based activities.

Please note that we do not promote any religion in the process.

Complementary and alternative therapies include, expressive art therapy, picture perception, journal/journey therapy, Trauma-Focused Cognitive Behavioral Therapy (TF-CBT), Neuropsychology, narrative therapy, Schema Therapy among others.

The continuum extends to understanding self-responsibility & love, stress management, critical thinking, finding meaning, transcending, supportive therapy, effective communication and so on. This is designed to provide a sense of optimal wellness, but by no means is prescriptive. The roadmap ahead is not one-size-fits-all!

Client-Coach Privileges-

Clients and Coaches are allowed to keep their details confidential. If a client choose not to reveal his/her name for documentation purposes, the coach can auto address the client with a pseudo name.

In case of clients having a deterministic diagnosis, we rely on supportive, alternative therapies than differential diagnosis By this, we only provide supportive and emotional case. In rare cases, we limit our consult to a maximum of sharing an opinion, which by no means should be considered prescriptive. Ultimate decision, however, remains with the clients always!



The client is privileged to his/her privacy. By no means, a counsellor/coach is allowed to share any personal information with a third-party source unless summoned by an authorized subject in cases of a client's wrongful doing or a misleading conduct. Should there be such cases, we are allowed to either participate in the exercise or opt-out of it totally. Any subject affiliated with offering wellness program will not be held responsible or will not be included in anything that may seem demeaning or be subjected to jeopardy. If such instances occur, we may approach the court of law.

The content or information shared within a counselling session is by no means admissible as a government document or in the court of law or as any medium-bases evidence, should there be a summon.

DECLARATION-

I,have read the above information and have understood all terms and conditions of the offering/service. I hereby consent to all the code of conduct and best practices as mentioned, to maintain a healthy client-coach/counsellor relationship.

*Date-
Place-
Signature"*

(emphasis supplied)

In the said consent form, it is claimed that the team of the petitioner, are baton bearers which emphasizes wellness of mind, body and soul. It also depicts that complementary and alternative therapies to include, expressive art therapy, picture perception, journal/journey therapy, trauma-focused cognitive



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behavioral therapy, neuropsychology, narrative therapy, schema therapy among others. The complainant has no doubt signed the consent form but that does not mean that the petitioner can escape the clutches of law merely because the complainant has signed the consent form. There is no document or rather is an admitted fact that the petitioner has no qualification to be in the field of any kind of wellness therapy as projected. It is her own generated web page, without any qualification. Therefore it is a case where the petitioner without any substance or qualification lured the customers into the web of wellness therapy through the web page.

9. A perusal at the chats that are appended clearly demonstrate that it is the petitioner who has lured the complainant getting into the said wellness therapy and the discovery as also the charge sheet material is that the petitioner has several such web pages in different names. In fact the name of the petitioner is not even divulged in the therapy that she has administered upon the complainant in the subject petition. Therefore, it becomes necessary for a trial for the petitioner to come out clean. It is also germane to notice that over the lewd messages, a crime is registered by the



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petitioner against the complainant and the same is pending adjudication. Therefore, the petitioner is required to come out clean in the impugned proceedings as the offences alleged against the petitioner are for the one punishable under Sections 419 and 420 of the IPC. Section 419 and 420 of the IPC read as follows:

"419. Punishment for cheating by personation.—Whoever cheats by personation shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

420. Cheating and dishonestly inducing delivery of property.—Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

Section 420 has its ingredients in Section 415. Section 415 mandates that if the accused has induced the victim or lured the victim into parting with any property with a dishonest intention at the inception, it becomes an ingredient for the offence of cheating. The chats would reveal that the petitioner had initially represented that she is a wellness therapist and her team would take care of the complainant. Therefore,



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without having any team or any qualification whatsoever, it was the web page prima facie created to lure the complainant and the like. It is therefore, the offence of cheating comes clearly made out against the petitioner. The other offences alleged are the one punishable under the Information Technology Act. An entry in the complaint or the summary of the charge sheet clearly makes out an offence that would become ingredients of Sections 66(C) & (D) and 67(A) of the Information Technology Act and these are in the realm of seriously disputed questions of fact. Reference being made to the Judgment of the Apex Court in the case of **KAPTAN SINGH v. STATE OF UTTAR PRADESH – (2021) 9 SCC 35**, in the circumstances, becomes apposite. The Apex Court in the said judgment has held as follows:

"9.1. At the outset, it is required to be noted that in the present case the High Court in exercise of powers under Section 482 CrPC has quashed the criminal proceedings for the offences under Sections 147, 148, 149, 406, 329 and 386 IPC. It is required to be noted that when the High Court in exercise of powers under Section 482 CrPC quashed the criminal proceedings, by the time the investigating officer after recording the statement of the witnesses, statement of the complainant and collecting the evidence from the incident place and after taking statement of the independent witnesses and even statement of the accused persons, has filed the charge-sheet before the



learned Magistrate for the offences under Sections 147, 148, 149, 406, 329 and 386 IPC and even the learned Magistrate also took the cognizance. From the impugned judgment and order [Radhey Shyam Gupta v. State of U.P., 2020 SCC OnLine All 914] passed by the High Court, it does not appear that the High Court took into consideration the material collected during the investigation/inquiry and even the statements recorded. **If the petition under Section 482 CrPC was at the stage of FIR in that case the allegations in the FIR/complaint only are required to be considered and whether a cognizable offence is disclosed or not is required to be considered. However, thereafter when the statements are recorded, evidence is collected and the charge-sheet is filed after conclusion of the investigation/inquiry the matter stands on different footing and the Court is required to consider the material/evidence collected during the investigation.** Even at this stage also, as observed and held by this Court in a catena of decisions, the High Court is not required to go into the merits of the allegations and/or enter into the merits of the case as if the High Court is exercising the appellate jurisdiction and/or conducting the trial. As held by this Court in *Dineshbhai Chandubhai Patel* [Dineshbhai Chandubhai Patel v. State of Gujarat, (2018) 3 SCC 104 : (2018) 1 SCC (Cri) 683] in order to examine as to whether factual contents of FIR disclose any cognizable offence or not, the High Court cannot act like the investigating agency nor can exercise the powers like an appellate court. It is further observed and held that that question is required to be examined keeping in view, the contents of FIR and prima facie material, if any, requiring no proof. **At such stage, the High Court cannot appreciate evidence nor can it draw its own inferences from contents of FIR and material relied on. It is further observed it is more so, when the material relied on is disputed. It is further observed that in such a**



situation, it becomes the job of the investigating authority at such stage to probe and then of the court to examine questions once the charge-sheet is filed along with such material as to how far and to what extent reliance can be placed on such material.

9.2. In *Dhruvaram Murlidhar Sonar v. State of Maharashtra*, (2019) 18 SCC 191 : (2020) 3 SCC (Cri) 672] after considering the decisions of this Court in *Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426]*, it is held by this Court that exercise of powers under Section 482 CrPC to quash the proceedings is an exception and not a rule. It is further observed that inherent jurisdiction under Section 482 CrPC though wide is to be exercised sparingly, carefully and with caution, only when such exercise is justified by tests specifically laid down in the section itself. It is further observed that appreciation of evidence is not permissible at the stage of quashing of proceedings in exercise of powers under Section 482 CrPC. Similar view has been expressed by this Court in *Arvind Khanna [CBI v. Arvind Khanna, (2019) 10 SCC 686 : (2020) 1 SCC (Cri) 94]*, *Managipet [State of Telangana v. Managipet, (2019) 19 SCC 87 : (2020) 3 SCC (Cri) 702]* and in *XYZ [XYZ v. State of Gujarat, (2019) 10 SCC 337 : (2020) 1 SCC (Cri) 173]*, referred to hereinabove.

9.3. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand, we are of the opinion that the High Court has exceeded its jurisdiction in quashing the criminal proceedings in exercise of powers under Section 482 CrPC.

10. The High Court has failed to appreciate and consider the fact that there are very serious triable issues/allegations which are required to be gone into and considered at the time of trial. The High Court has lost sight of crucial aspects which have emerged



during the course of the investigation. The High Court has failed to appreciate and consider the fact that the document i.e. a joint notarised affidavit of Mamta Gupta Accused 2 and Munni Devi under which according to Accused 2 Ms Mamta Gupta, Rs 25 lakhs was paid and the possession was transferred to her itself is seriously disputed. It is required to be noted that in the registered agreement to sell dated 27-10-2010, the sale consideration is stated to be Rs 25 lakhs and with no reference to payment of Rs 25 lakhs to Ms Munni Devi and no reference to handing over the possession. However, in the joint notarised affidavit of the same date i.e. 27-10-2010 sale consideration is stated to be Rs 35 lakhs out of which Rs 25 lakhs is alleged to have been paid and there is a reference to transfer of possession to Accused 2. Whether Rs 25 lakhs has been paid or not the accused have to establish during the trial, because the accused are relying upon the said document and payment of Rs 25 lakhs as mentioned in the joint notarised affidavit dated 27-10-2010. It is also required to be considered that the first agreement to sell in which Rs 25 lakhs is stated to be sale consideration and there is reference to the payment of Rs 10 lakhs by cheques. It is a registered document. The aforesaid are all triable issues/allegations which are required to be considered at the time of trial. The High Court has failed to notice and/or consider the material collected during the investigation.

11. Now so far as the finding recorded by the High Court that no case is made out for the offence under Section 406 IPC is concerned, it is to be noted that the High Court itself has noted that the joint notarised affidavit dated 27-10-2010 is seriously disputed, however as per the High Court the same is required to be considered in the civil proceedings. There the High Court has committed an error. Even the High Court has failed to notice that another FIR has been lodged against the accused for the offences under Sections 467, 468, 471 IPC with respect to the said alleged joint notarised affidavit. Even according



to the accused the possession was handed over to them. However, when the payment of Rs 25 lakhs as mentioned in the joint notarised affidavit is seriously disputed and even one of the cheques out of 5 cheques each of Rs 2 lakhs was dishonoured and according to the accused they were handed over the possession (which is seriously disputed) it can be said to be entrustment of property. Therefore, at this stage to opine that no case is made out for the offence under Section 406 IPC is premature and the aforesaid aspect is to be considered during trial. It is also required to be noted that the first suit was filed by Munni Devi and thereafter subsequent suit came to be filed by the accused and that too for permanent injunction only. Nothing is on record that any suit for specific performance has been filed. Be that as it may, all the aforesaid aspects are required to be considered at the time of trial only.

12. Therefore, the High Court has grossly erred in quashing the criminal proceedings by entering into the merits of the allegations as if the High Court was exercising the appellate jurisdiction and/or conducting the trial. The High Court has exceeded its jurisdiction in quashing the criminal proceedings in exercise of powers under Section 482 CrPC.

13. Even the High Court has erred in observing that original complaint has no locus. The aforesaid observation is made on the premise that the complainant has not placed on record the power of attorney along with the counter filed before the High Court. However, when it is specifically stated in the FIR that Munni Devi has executed the power of attorney and thereafter the investigating officer has conducted the investigation and has recorded the statement of the complainant, accused and the independent witnesses, thereafter whether the complainant is having the power of attorney or not is to be considered during trial.



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14. In view of the above and for the reasons stated above, the impugned judgment and order [Radhey Shyam Gupta v. State of U.P., 2020 SCC OnLine All 914] passed by the High Court quashing the criminal proceedings in exercise of powers under Section 482 CrPC is unsustainable and the same deserves to be quashed and set aside and is accordingly quashed and set aside. Now, the trial is to be conducted and proceeded further in accordance with law and on its own merits. It is made clear that the observations made by this Court in the present proceedings are to be treated to be confined to the proceedings under Section 482 CrPC only and the trial court to decide the case in accordance with law and on its own merits and on the basis of the evidence to be laid and without being influenced by any of the observations made by us hereinabove. The present appeal is accordingly allowed."

(Emphasis supplied)

In the light of the aforesaid facts and the judgment of the Apex Court in the case of Kaptan Singh, I do not find any warrant to interfere with the case on hand as the petitioner has not demonstrated by production of such unimpeachable evidence of sterling character for this Court to interfere or interject the proceedings in exercise of its jurisdiction under Section 482 of the CrPC.

10. A parting observation in the case may not be inapt. It is in public domain that there are huge mushrooming of so called therapies and therapists on social media i.e., instagram, twitter or facebook as the case would be, wherein therapists



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pose themselves to be in the field of any therapy. It is also in public domain that they are all pseudo-therapists who are "instagram influencers". The present case concerns psychosomatic therapy or the wellness therapy. Therapists of the kind, are many in number on social media, in reality, they are not bound by any ethics or not regulated by any norms. Cases of this nature have begun to emerge in large proportions where people wanting to get some therapy fall prey to such pseudo-therapists. Therefore, it is time that the Government comes up with some regulatory measure to check the growth of such therapists.

11. Since the *wellness* therapy has generated such *illness* as is complained of by the complainant and finding no merit in the petition, the petition stands dismissed.

I.A.No.1/2021 is disposed, as a consequence.

**Sd/-
JUDGE**

VM
List No.: 1 Sl No.: 50