

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 23<sup>RD</sup> DAY OF SEPTEMBER, 2020**

**BEFORE**

**THE HON'BLE MR.JUSTICE ASHOK G. NIJAGANNAVAR**

**CRIMINAL PETITION NO.1625 OF 2016**

**BETWEEN:**

GAVIN MENDES,

...PETITIONER

(BY SRI ASHOK PATIL, ADVOCATE)

**AND:**

STATE OF KARNATAKA,  
HEBBAL POLICE STATION,  
BANGALORE – 560 094,  
REPRESENTED BY SPP.

...RESPONDENT

(BY SRI MAHESH SHETTY, HCGP)

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THIS CRIMINAL PETITION IS FILED UNDER SECTION 428 CR.P.C. PRAYING TO QUASH THE CHARGE SHEET FILED BY THE RESPONDENT IN CR.NO.29/2014 IN C.C.NO.3060/2014 ON THE FILE OF THE C.M.M., COURT, BANGALORE AT ANNEXURE-C AS AGAINST THE PETITIONER.

THIS PETITION HAVING BEEN HEARD THROUGH VIDEO CONFERENCE / PHYSICAL HEARING AND RESERVED FOR ORDERS, COMING ON FOR PRONOUNCEMENT OF ORDER, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

**ORDER**

This petition is filed under Section 482 of the Code of Criminal Procedure by Accused No.4 for quashing the chargesheet filed in C.C. No.30760/2014 arising out of Crime No.29/2014 of Hebbal Police Station, on the file of Chief Metropolitan Magistrate, Bengaluru, for the offences punishable under Sections 4, 5 & 7 of the Immoral Traffic Prevention Act, Sections 370, 370 A (2), 292 of IPC, 67 of Information Technology Act and Section 14 of Foreigners Act.

2. Heard learned counsel for the petitioner and learned High Court Government Pleader. Perused the chargesheet records.

3. The facts leading to the petition are that on the report filed by the Police Inspector, Women &

Narcotic Drugs Squad, C.C.B., the Hebbal police have registered the case in FIR No.29/2014. The allegations are that on 07.02.2014, the complainant - Police Inspector received credible information about illegal activities regarding prostitution by supplying foreign and Indian girls by contacting customers through international website. The said information was confirmed by sending a decoy. Thereafter, on 08.02.2014, the persons involved in the said activities were called through decoy for supply of foreign girls. On receiving the reply regarding supply of the girls for prostitution at a place called the Kaisar Service Apartment, the complainant, his staff along with panchas have conducted the raid at the said apartment and have arrested three accused namely two girls and a man who had supplied the said girls to the decoy. On the information given by the accused No.1, it is learnt that he has solicited the customers through E.Mail I.D., i.e., [mail@kavitasingh.com](mailto:mail@kavitasingh.com) and [neesaroy@gmail.com](mailto:neesaroy@gmail.com)

and website designed by accused No.4 – Gavin Mendes. After completion of the investigation, the police have submitted the chargesheet. The petitioner is arrayed as accused No.4.

4. The learned counsel for the petitioner strenuously contended that the petitioner is a resident of Panaji, Goa and he is a professional software Engineer and a software developer. In view of the order placed by accused No.1 – Bidu Bhushan Mohapathra @ Rakesh @ John, the petitioner has designed the website and delivered it to him online. The said accused No.1 - Bidu Bhushan Mohapathra @ Rakesh @ John has paid the professional charges directly to the petitioner's account through website transfer – RTGS/NEFT. Thus, the petitioner had no direct contact whatsoever with accused No.1 and he has never met him in-person. In addition to that, the petitioner had no knowledge as to for what purpose the said website was used by accused

No.1. The name of the petitioner is not found in the FIR, but he has been arrayed as accused No.4 in the chargesheet. There is no prima facie case made out against the petitioner. Hence, the question of fixing the liability on the petitioner does not arise. In the event of continuing the proceedings, the petitioner would be put to great hardship and injustice.

5. Per contra, the learned High Court Government Pleader submitted that accused Nos.1 to 3 have made use of the website designed by accused No.4 for committing wrongful acts of prostitution to make illegal gains, thereby, the accused No.4 has facilitated the accused Nos.1 to 3 and has also colluded with them. As such, there are no valid grounds for quashing the proceedings or the chargesheet.

6. Before entering into the facts of the present case, it is necessary to consider the ambit and scope of jurisdiction under Section 482 CrPC vested in the High

Court. Section 482 CrPC saves the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice.

7. After referring to several other cases, the Hon'ble Supreme Court in *Vineet Kumar case* [*Vineet Kumar v. State of U.P.*, (2017) 13 SCC 369 : (2017) 4 SCC (Cri) 633] concluded and made the following observations in para 41.

*"41. Inherent power given to the High Court under Section 482 CrPC is with the purpose and object of advancement of justice. In case solemn process of court is sought to be abused by a person with some oblique motive, the court has to thwart the attempt at the very threshold. The court cannot permit a prosecution to go on if the case falls in one of the categories as illustratively enumerated by this Court in State of Haryana v. Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp*

*(1) SCC 335 : 1992 SCC (Cri) 426] . Judicial process is a solemn proceeding which cannot be allowed to be converted into an instrument of operation or harassment.”*

8. In the case of *State of Haryana v. Bhajan Lal*, para 102 which enumerates 7 categories of cases where power can be exercised under Section 482 CrPC is extracted as follows: (*Bhajan Lal case [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] , SCC pp. 378-79)*

*“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or*

*otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised:*

*(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*

*(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*

*(3) Where the uncontroverted allegations made in the FIR or complaint and the*



*evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*

*(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*

*(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*

*(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the*

*Act concerned, providing efficacious redress for the grievance of the aggrieved party.*

*(7) Where a criminal proceeding is manifestly attended with mala fides and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”*

9. In the present case, the averments made in the complaint are, that the petitioner who is arrayed as accused No.4 in the chargesheet has designed the website at the request of accused No.1. There are no specific allegations that the petitioner had designed the said website with sole intention to facilitate accused Nos.1 to 3 to solicit the customers for prostitution and thereby he had colluded with them. On perusal of the chargesheet records, no prima facie material is found to prove the involvement of the petitioner in commission of the offence alleged against him. Another ground urged by the learned counsel for the petitioner is that when

there are allegations of any offence under Section 67 of the Information Technology Act, the investigation must be conducted by the concerned Cyber Crime Branch and not by the respondent police, as they have no jurisdiction to do so. It is also alleged in the complaint that the petitioner has designed the website at Goa and supplied to the accused No.1, thereafter, it is being used at Bengaluru by accused No.1 to 3. Thus, the place of designing the website was beyond the jurisdiction of the City Crime Branch, Bengaluru or respondent – Hebbal Police Station.

10. As already stated above, criminal prosecution can be allowed to proceed only when a prima facie offence said to have been committed by accused No.4 has been disclosed. It is pertinent to note that the accused Nos.1 to 3 have faced the trial in Sessions Case No.547/2015 before the LXVIII Additional City Civil & Sessions Judge, Bengaluru City (CCH-69)

and they have been acquitted of the offences alleged against them. The copy of the judgment dated 28.03.2019 furnished by the learned counsel for the petitioner confirms the same. The charges against the present petitioner are also the same. Unless the chargesheet records reveal that the petitioner has actively involved with other accused in immoral trafficking or user of foreign girls by accused No.4 for the said purpose by specifically designing the website for them, the proceedings cannot be allowed to be continued against him. As such, the proceedings deserves to be quashed as per the parameters laid down by the Hon'ble Supreme Court in the case of *State of Haryana v. Bhajan Lal*.

11. For the foregoing reasons, there are valid grounds to quash the proceedings. Accordingly, this Court proceed to pass the following:

**ORDER**

i. The Criminal Petition is allowed.

ii. The chargesheet filed in C.C. No.30760/2014 arising out of Crime No.29/2014 of Hebbal Police Station, on the file of Chief Metropolitan Magistrate, Bengaluru, as against the petitioner is quashed.

**Sd/-  
JUDGE**

SJ