

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF APRIL, 2022

BEFORE

THE HON'BLE MR. JUSTICE K. NATARAJAN

CRIMINAL PETITION No.1172 OF 2018

BETWEEN:

Sri. Stanley Joseph

...Petitioner

(By Sri K.N. Praveen Kumar - Advocate)

AND:

1. State
By Yeshwanthpur Police
Bengaluru – 560023
Represented by SPP.

2.

...Respondents

(By Sri. Mahesh Shetty , HCGP for R-1;
R-2 served - unrepresented)

This Criminal petition is filed under Section 482 of Cr.P.C. praying to set aside the impugned proceedings in Crime No.449/2017 on the file of XXIV-ACMM, Bengaluru for the offence punishable under Sections 420, 323 and 417 of IPC being investigated by 1st Respondent by allowing this petition.

This Criminal petition coming on for Admission, this day, the Court made the following:

ORDER

This petition is filed by the petitioner / accused under Section 482 Cr P.C. questioning the FIR in Crime No.449/2017 registered by the Yeshwanthpur police for the offence punishable under Sections 420, 323, 417 of IPC pending on the file of XXIV Addl.CMM, Bengaluru.

2. Heard arguments of learned counsel for the petitioner and learned HCGP for State. Respondent No.2 is served but remained unrepresented.

3. The case of the prosecution is that on the complaint of respondent No.2 police registered a case against the petitioner on 15.12.2017 alleging that petitioner is said to be film director by profession and she was acquainted with the petitioner and got attracted and then he has taken

picture by name My Cornerstone and being inspired the said movie, she developed friendship with the petitioner. Thereafter they said to be stayed together between 2015 and 2016 and subsequently, the petitioner went to Australia and after returning, there was some clash between them. Therefore, MLC assault case was registered in K.C.General Hospital. Thereafter, he was found missing. She has also stated that the petitioner borrowed Rs.9.50 lakhs from her and returned only Rs.2.00 lakh and he also promised to return the same but did not return and also failed to marry her. She has alleged that the accused said to have abused her using filthy language and he has made character assassination. After registering the case, the police said to have arrested the petitioner and released on bail. Subsequently, the petitioner is before this Court challenging the FIR.

4. Learned counsel for the petitioner contended that the information given by the complainant before the police on 15.12.2017 is not the first information. As per her own

complaint she has already made complaint on 18.11.2017 itself and the MLC case was registered. Therefore, it is not a first information. Further, it is contended that if at all the petitioner is said to have assaulted, the offence registered by the police there is no ingredients to constitute offence under Section 420 of IPC as the petitioner is a married man and respondent is also a married woman having grown up child and the question of marrying the petitioner is not possible as she was having affair with some other person which reveals from the whatsapp messages produced herein. Hence, prayed for allowing the petition.

5. Per contra, learned HCGP contended that the police investigated the case partly where they collected rental receipts for having stayed together at Yeshwantpur. Statements were also recorded, challan for having transferred Rs.7.50 lakhs is also recovered by the police. The matter requires further investigation. Therefore, contended that petitioner has cheated her by receiving

alleged amount and did not repay the same. Therefore, sought for dismissal of petition.

6. Upon hearing arguments and on perusal of records, of course, petitioner and respondent are married people and they continued living together until 18.11.2017. It is also stated that there was MLC assault case registered in K.C.General Hospital on 19.11.2017. Thereafter, the petitioner was missing. Learned counsel for the petitioner contended it is not the first information but second information. In order to show the assault, the MLC was registered in K.C.General Hospital wherein police complaint has been lodged or police registered case against the petitioner and no documents produced before this Court to show that the first information registered by the police is second information which is not permissible under law. Therefore, merely she has stated in her complaint that MLC case was registered in K.C.General Hospital that itself cannot be a ground to say that case has already been registered against the petitioner on the complaint of

respondent No.2. Merely registering the MLC assault case that itself is not a ground to say that criminal case has been registered. Therefore, the contention of learned counsel for the petitioner in the first ground cannot be acceptable as it is a secondary information.

7. The another ground contended is that there are no ingredients to attract offence under Sections 417 or 420 of I.P.C. Of course, the petitioner said to have promised to marry her and there was no marriage and no question of marrying or person but respondent No.2 in order to attract Section 417 of I.P.C. This Court also has held in various cases that promise to marry will not attract Section 417 of IPC. Further, in respect of Section 420 of IPC, petitioner borrowed a loan of Rs.9.50 lakhs and there is record to show that she has transferred the amount to the petitioner by bank transfer. He did not repay the amount which attracts offence of cheating. Of course, promise to marry and cheating will not attract, but obtaining loan and not repaying the same will amount to criminal intention to cheating her attracting Section 420 of IPC. Therefore,

petitioner is required to undergo investigation before the Investigating Officer. This Court cannot go into investigating the matter by verifying whatsapp messages and the photographs produced by the petitioner. That being the case, the contention raised by learned counsel for the petitioner cannot be acceptable that ingredients under Section 420 of IPC is not attracted. Therefore, I am of the opinion, the case is required to be investigated by the police. Accordingly, the petition is dismissed.

**Sd/-
JUDGE**

DKB/-