

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF MAY, 2022

BEFORE

THE HON'BLE MR. JUSTICE HEMANT CHANDANGOUDAR

WRIT PETITION NO.5923/2018 (GM-RES)

BETWEEN:

RT REV PRASANNA KUMAR SAMUEL

...PETITIONER

(BY SRI ARUN B M., ADVOCATE)

AND:

- 1 . STATE OF KARNATAKA
BY ITS PRINCIPAL SECRETARY
DEPARTMENT OF PERSONNEL
(POLICE SERVICES-B),
MULTISTORIED BUILDINGS,
AMBEDKAR VEEDHI,
BENGALURU - 560 001.
- 2 . STATE BY CUBBON PARK POLICE
BY ITS STATION HOUSE OFFICER
BENGALURU - 560 001.

3 . DR. SUDHAKAR

...RESPONDENTS

(BY SRI S. VISHNAMURTHY, HCGP FOR R1 AND R2
R3 SERVED

SRI K.V. MUTHUKUMAR, ADVOCATE FOR
IMPLEADING APPLICANT ON I.A.NO.1/2019
SRI CHETHAN DESAI, ADVOCATE FOR
IMPLEADING APPLICANT IN I.A.NO.3/2019)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA READ WITH SECTION 482 OF THE CODE OF CRIMINAL PROCEDURE, 1973 PRAYING TO QUASH THE COMPLAINT DATED 10.01.2015 FILED BY LATE MRS. MARY SUSHEELA BEFORE THE 2ND RESPONDENT POLICE, VIDE ANNEXURE-A; QUASH THE FIR IN NO.020/2015 REGISTERED BY 2ND RESPONDENT POLICE, VIDE ANNEXURE-A1; QUASH THE ORDER DATED 12.12.2017 IN SPL CC.NO.188/2017 PASSED BY THE L ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU (CCH-51), VIDE ANNEXURE-B; QUASH THE NOTIFICATION DATED 10.07.2017 ISSUED BY THE 1ST RESPONDENT IN NO. OE 194 PPE 2017, VIDE ANNEXURE-C, THEREBY APPOINTING THE 3RD RESPONDENT AS SPECIAL PUBLIC PROSECUTOR.

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

O R D E R

This FIR was registered for the offences punishable under Sections 504, 506, 354, 34 of IPC and Section 8, 9(F) and 10 of Protection of Children from Sexual Offences Act 2012 in Crime No.20/2015 dated 10.01.2015 against the petitioner and four other accused. The police after investigation submitted the charge sheet against 4 other before the learned Magistrate on 11.2.2016. However petitioner was left out from the charge sheet since there was no material against the petitioner.

2. After the committal, the learned Sessions Judge took cognizance of the aforesaid offences against the 4 other accused. Such being the case, the Public Prosecutor on behalf of the Investigation Officer filed an application under Section 190 of Cr.P.C. read with Section 33 of POCSO Act alleging that there are specific allegations of overt act against the petitioner and also in the statement of the victim girl

recorded by the learned Magistrate under Section 164 of Cr.P.C and despite the same, the police have not filed the charge sheet against the petitioner.

3. Learned Sessions Judge by order dated 12.12.2017 issued summons to the petitioner. Taking exception to the same this petition is filed.

4. The learned counsel for the petitioner submits that the application filed under Section 190 of Cr.P.C. read with Section 33 of POCSO Act is not maintainable and as such the issuance of the summons to the petitioner by the learned Sessions Judge is impermissible. He further submits that in the absence of any material, the Sessions Judge without application of mind has issued summons to the petitioner and the same is not sustainable in the law.

5. Learned HCGP appearing for the State does not dispute that on 19.11.2019 this court recorded the submission of the learned HCGP who has stated that the name of the

petitioner have been dropped from the charge sheet since there was no material available against the petitioner.

6. I have considered the submission made by the parties.

7. The perusal of the charge sheet material and so also the statement of the victim recorded under Section 164 of Cr.P.C which clearly discloses that the petitioner is not involved in the commission of the aforesaid offences. However, an application was filed by the learned Public Prosecutor under Section 190 of Cr.P.C. read with 33 of POCSO Act, stating that there are specific allegation of overt act and also the statement of the victim girl recorded by the learned Magistrate under Section 164 of Cr.P.C against the petitioner clearly discloses that the petitioner is involved in the commission of crime. The learned Magistrate without considering the material on record has issued notice to the petitioner. The charge sheet material does not disclose that the petitioner has committed the aforesaid offences and also the Investigating Officer has specifically stated before this

Court on 19.11.2019 there are no material available against the petitioner. However learned Magistrate without perusing the charge sheet material, without application of mind, has issued the summons and the same is impermissible and is an abuse of process of law.

Accordingly, I pass the following order;

The Writ Petition is allowed.

The Impugned Order dated 12.12.2017 in Spl.CC.No.188/2017 passed by the 50th Additional City Civil and Sessions Judge, Bengaluru, is hereby quashed.

In view of the disposal of the main petition, pending application, if any, does not survive for consideration.

Sd/-
JUDGE

AKV