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IN THE COURT JUDICIAL MAGISTRATE

FIRST CLASS (III COURT),

AT MYSURU

P R E S E N T

**Sri Raghu.C.J, LL.B. MBA.,
JMFC., III COURT, MYSURU**

DATED THIS THE 21st DAY OF FEBRUARY 2025

CC.No.10280/2022

COMPLAINANT : Basavaraju S/o.Doddabasavaiah,
Aged 57 years,
R/o.No.153, 4th Cross Road,
Raghavendra Nagar, Mysuru.
(By By Sri MS., Advocate)

- V E R S U S -

ACCUSED : 1. Venugopal S/o.Late Lingaiah,
PERSONS Aged 58 years,
2. Harshita Venugopal @ Ammu
D/o.Venugopal, Aged 24 years,
Both are R/o.No.23/2,
2nd Cross, Near K.V.School,
Raghavendranagar, Mysuru city.
(By Sri RMS., Advocate)

Date of Offence	20.09.2020
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Date of the complaint	08.04.2022
Arrest of the accused persons	Not applicable
Name of Complainant	Basavaraju
Date of Commencement of evidence	23.09.2022
Date of closure of Evidence	05.11.2024
Committed Offences	Under Section 323, 504, 506 R/w., Section 34 of IPC
Opinion of the Judge	Accused No.1 & 2 are not found guilty

(Raghu.C.J)
III J.M.F.C., MYSURU

: J U D G E M E N T :

The complainant has filed this private complaint against the accused No.1 & 2 for the alleged offences punishable Under Section 323, 504, 506 R/w., Section 34 of IPC.

2. The complainant's case in brief :

On 20.09.2020 at about 2.30 pm., near 2nd Cross, Giryabovipalya, Mysuru, accused No.1 & 2 in furtherance

of their common intention picked up quarrel with the complainant, abused him with filthy language, assaulted him by slapping with hands and kicking with legs and threatened him with dire consequences of life. In this regard the complainant has filed first information statement before Nazarbad police, for which police have issued an acknowledgment under reference No.GSE-PO-0054200600756 and called accused No.1 and 2 to the police station, took joint undertaking statement by them and closed the case. Hence the complainant being the aggrieved person has filed this private complaint before this court on 08.04.2022.

3. On the basis of private complaint filed by the complainant, this court has registered the same in PCR No.220/2022, examined the complainant, got marked the documents as Ex.C.1 to 3 and after hearing the counsel for the complainant, on 14.10.2022 this court took cognizance and ordered to register the present CC case against accused No.1 & 2 for the aforesaid offences.

4. **Trail before Court** : Upon registering the case, this court issued process to the accused No.1 & 2. They appeared through their counsel and they are enlarged on bail. Copies of complaint furnished to them as per Section 207 of Cr.P.C. Thereafter, since there were sufficient materials available on record, after hearing both sides charge is framed and read over to accused No.1 & 2 in the language known to them and they pleaded not guilty and claimed to be tried.

5. In order to prove the case, the complainant got examined himself as PW.1 and counsel for the accused cross-examined PW.1 and closed his side.

6. Thereafter the statement of accused No.1 & 2 under section 313 of Cr.P.C., recorded in the language known to them and they have denied incriminating evidence on record but not lead any defense nor got marked any documents on their behalf.

7. Heard arguments of Learned Counsel for accused persons. Complainant side arguments not

addressed with liberty to file written arguments if any. But complainant counsel has not filed any written arguments. Perused entire materials on record.

8. The following points arise for consideration of this court :

1. Whether the complainant proves beyond all reasonable doubt that, on 20.09.2020 at about 2.30 pm., near 2nd Cross, Giriyabovipalya, Mysuru, accused No.1 & 2 in furtherance of their common intention picked up quarrel with the complainant and abused him with filthy language and they have committed an offence punishable under Section 504 R/w., Section 34 of I.P.C., ?
2. Whether the complainant proves beyond all reasonable doubt that on the aforesaid date, place and time, accused No.1 & 2 in furtherance of their common intention

voluntarily caused hurt to him by assaulting by slapping with hands and kicking with legs and thereby they have committed an offence punishable under Section 323 R/w., Section 34 of I.P.C., ?

3. Whether the complainant proves beyond all reasonable doubt that on the aforesaid date, place and time, accused No.1 & 2 in furtherance of their common intention voluntarily threatened the complainant with dire consequences of life posed life threat to him and thereby they have committed an offence punishable under Section 506 R/w., Section 34 of I.P.C., ?

4. What order or sentence ?

9. This court answers the above points as under :

Point No.1 to 3 : In the **Negative**

Point No.4 : As per final order for the following :

: R E A S O N S :

10. **POINT No.1 to 3** : Since these points are interconnected to each other, they are taken up together in order to avoid repetition of facts and evidence.

11. The complainant has got examined himself as PW.1. Before proceeding with discussions on the merits of the case, it is necessary to look into the gist of evidence of complainant witnesses.

12. PW.1 - Basavaraju being the complainant in his examination-in-chief has reiterated the complainant averments. Learned counsel for the accused cross-examined him wherein he has deposed as under :

"ಆರೋಪಿಗಳು ನನಗೆ ಯಾವ ದಿನ ಹಲ್ಲೆ ಮಾಡಿದರು ಎಂದು ನನಗೆ ಗೊತ್ತಿಲ್ಲ. ನನಗೆ 2ನೇ ಆರೋಪಿ ಹಲ್ಲೆ ಮಾಡಿರುತ್ತಾರೆ. 2ನೇ ಆರೋಪಿಯ ಜೊತೆಯಲ್ಲಿ ಸುಮಾರು 10 ರಿಂದ 15 ಜನ ಬಂದಿದ್ದರು ಅವರು ಹೆಸರು ನನಗೆ ಗೊತ್ತಿಲ್ಲ. ಆರೋಪಿಗಳು ಸುಟ್ಟು ಹಾಕಿದರು ಎನ್ನಲಾದ ಪೇಪರ್ ಯಾವ ಪೇಪರ್ ಎಂದು ನನಗೆ ಗೊತ್ತಿಲ್ಲ. ಆರೋಪಿಗಳ ಜೊತೆಯಲ್ಲಿ ನನ್ನ ಮೇಲೆ ಹಲ್ಲೆ ಮಾಡಲು ಬಂದ ವ್ಯಕ್ತಿಗಳ ಮೇಲೆ ನಾನು ದೂರು ಸಲ್ಲಿಸಿಲ್ಲ."

13. On perusal of the evidence of PW.1 and the averments of the complaint, it is clear that, the alleged incident has taken place on 20.09.2020 and he has filed the complaint before the police on 24.09.2020 after lapse of 4 days. Thereafter after lapse of 2 years he has filed this private complaint before the court. Moreover accused states that accused No.2 was accompanied with 10-15 persons during the incident but he has not made those persons who had accompanied accused No.2, as accused even in the first information statement before the police nor in this private complainant. It is prima facie clear that, there is a personal grudge between complainant and accused No.1 and 2. There are no eye witnesses to the incident and no other independent witnesses are brought on record to prove the alleged incident. However complainant has not produced any document to show that he has taken treatment for the injuries sustained by him due to the said assault by the accused persons. It is crystal clear that the complainant has not followed the

due process of law to file a private complaint as established under law. Hence the evidence of PW.1 is completely doubtful and not believable.

14. With regard to the present case, it is necessary to refer to the decision of Hon'ble Apex court in Priyanka Srivastava and another Vs., State of Uttar Pradesh, wherein it is held as under :

“27. In our considered opinion, a stage has come in this country where Section 156(3) Cr.P.C. applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can

be challenged under the framework of said Act or under Article 226 of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores. We have already indicated that there has to be prior applications under Section 154(1) and 154(3) while filing a petition under Section 156(3). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. The warrant for giving a direction that an application under Section 156(3) be supported by an affidavit so that the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with law. This will deter him to casually invoke the authority of the Magistrate under Section 156(3). That apart, we have already stated that the veracity of the same can also be verified by the learned Magistrate, regard being had to the nature of allegations of the case. We are compelled to say so as a number of cases pertaining to fiscal sphere, matrimonial dispute/family disputes, commercial offences, medical negligence cases, corruption cases and the cases where

there is abnormal delay/laches in initiating criminal prosecution, as are illustrated in Lalita Kumari are being filed.”

15. Considering the ratio laid down in the above said case and the procedure contemplated to file a private complaint, it is clear that the complainant has not followed the mandate of the settled position of law. However, no independent witnesses are brought on record to prove the case. The evidence of PW.1 is not probable to believe and his evidence is not only sufficient to prove the case of complainant beyond all reasonable doubt. Hence, accused No.1 & 2 are entitled for benefit of doubt.

16. In a criminal trial it is the duty of complainant to prove the guilt of the accused beyond reasonable doubt. In this case there are inconsistencies found in the evidence of PW.1. Therefore, the guilt of the accused persons is not proved by the evidence placed before the court. Therefore, the accused persons are entitled for benefit of doubt in this case. Under these circumstances,

this court is of humble opinion that, complainant is failed to prove the case. Hence this court answers point No.1 to 3 in the **Negative**.

17. **Point No.4** : For the foregoing reasons stated in point No.1 to 3, this court proceed to pass following :

ORDER

Accused No.1 & 2 are found not guilty for the offences punishable under Section 323, 504, 506 R/w., Section 34 of IPC.

Acting under Section 248 (1) of Cr.P.C., the accused No.1 & 2 are acquitted for the offences punishable under Section 323, 504, 506 R/w., Section 34 of IPC and they are set at their liberty.

Bail bond and surety bonds stands cancelled.

(Dictated to the Stenographer directly, typed by her into computer, revised and corrected by me and signed, pronounced in the Open Court this the 21th day of FEBRUARY 2025)

(RAGHU.C.J)

JMFC III COURT, MYSURU

ANNEXURE**LIST OF WITNESSES EXAMINED FOR COMPLAINANT :**

PW.1 Basavaraju

LIST OF DOCUMENTS MARKED FOR COMPLAINANT :

Ex.C.1 Certified copy of First information statement

Ex.C.2 Police acknowledgment

Ex.C.3 Copy of joint statement

LIST OF WITNESSES EXAMINED FOR ACCUSED PERSONS :

NIL

LIST OF DOCUMENTS MARKED FOR ACCUSED PERSONS :

NIL

LIST OF MATERIAL OBJECTS MARKED FOR COMPLAINANT:

NIL

(RAGHU.C.J)

JMFC III COURT, MYSURU