

The petitioner has preferred this petition challenging the order dated 28.04.2023 passed in MAG:CR:50/2022-23 by the respondent No.1 by which the petitioner herein has been summoned to appear before him by registering the case against him under section 145 of Cr.P.C on the ground that the impugned order does not indicate the application of quasi-judicial mind and the respondent No.1 has erred in law in initiating proceedings under section 145 of Cr.P.C, when our Hon'ble High Court and Civil Courts at Chikkamagaluru and Mudigere are seized of the civil disputes between the petitioner and the respondent No.3. It is also contended by the petitioner that the respondent No.1 has no jurisdiction to invoke his quasi-judicial powers under section 145 of Cr.P.C, when the civil courts are seized of the matters and the impugned order passed by the respondent No.1 is contrary to law laid down by the Apex Court in the case of Mohamed Abid and others V/s Ravi Naresh and others reported in 2022 Live Law (SC) 921 dated 01.11.2022 and also contrary to law laid down by our Hon'ble High Court in Crl.Petition No.211/2020 dated 12.09.2022.

2. Along with the petition, the petitioner has filed I.A No.I under section 397 of Cr.P.C and sought for staying the further proceedings MAG:CR:50/2022-23 on the file of respondent No.1 till disposal of the above revision petition.

3. The learned Public Prosecutor took notice for respondent Nos.1 and 2 and orally objected I.A No.1 by vehemently contending that no revision can be preferred in relation to any interlocutory order as per section 397(2) of Cr.P.C and as such, the present petition is not maintainable since the petitioner has challenged the only the preliminary order passed by the respondent No.1.

4. In view of the said submission, the moot question that arise for consideration at this stage is whether the order impugned in this petition is interlocutory or not.

5. In the case on hand, by passing the preliminary order which is impugned in this petition, the petitioner herein has been summoned by respondent No.1 to appear before him on 24.05.2023 by registering the case against him under section 145 of Cr.P.C on the basis of report submitted by respondent No.2. Hence, the said order of 1st respondent directing issuance of process to the petitioner herein becomes final. Once the petitioner appears and subjects himself to the jurisdiction of respondent No.1, it becomes final in so far said stage is concerned. Though the impugned order has been passed and notice has been issued to the petitioner in the interim stage of the proceedings, it has got all the trappings of final order. Therefore, the order impugned in this revision petition cannot be considered as

interlocutory as contended by the learned Public Prosecutor. The aforesaid view on the said point is supported by the decision of Hon'ble Supreme Court in the case of Rajendrakumar Sitaram Pande and others vs Uttam and another reported in (1999) 3 SCC 134, wherein it has been held by discussing various decisions on the said point at paragraph No.6 that “.....it would not be appropriate to hold that an order directing issuance of process is purely interlocutory and therefore, the bar under sub-section 2 of section 397 of Cr.P.C would apply. On the other hand, it must be held to be intermediate or quasi final and therefore the revisional jurisdiction under section 397 would be exercised against the same. The High Court, therefore was not justified in coming to the conclusion that the Sessions Judge had no jurisdiction to interfere with the order in view of the bar under sub-section 2 of section 397 of the Code”

6. Thus, in view of the above discussion and in view of the proposition held in the aforesaid decision, the impugned order passed by the 1st respondent directing issuance of process to the petitioner herein by registering the case under section 145 of Cr.P.C against him cannot be said to be an interlocutory order.

7. As stated above, the order passed by the respondent No.1 has been impugned in this revision petition by urging certain grounds. This

court is of the humble opinion that the contentions urged in the petition and the correctness and propriety of the order impugned in this petition are required to be considered. Hence, if the further proceedings on the file of the respondent No.1 is not stayed, the purpose of filing this revision petition would become infructuous. Hence, it would be proper to stay the further proceedings in MAG:CR:50/2022-23 on the file of respondent No.1. Accordingly, the application filed under section 397 of Cr.P.C is hereby allowed and further proceedings in MAG:CR:50/2022-23 on the file of respondent No.1 is stayed till further orders.

Issue notice to respondent No.3 and office to call records from respondent No.1 by 01.06.2023.

Sd/-

(BHANUMATHI. B.C)

I/C., I Addl. District & Sessions Judge,
Chikkamagaluru.