

**IN THE COURT OF THE PRINCIPAL CIVIL JUDGE AND
J. M. F. C., DHARWAD**

Present :Sri. Girisha R.B.,
B.A.L., LL.B.,
Principal Civil Judge & JMFC, Dharwad.

Dated: This, the 22nd day of September, 2022

C.C. No. 795/2015

Complainant : Prahalad S/o Venkatesh Joshi,
Age: 51 years, Occ: Business,
R/o: Priyadarshini Colony,
Tq: Hubballi, Dist: Dharwad.

(By Shri.A.Joshi., Advocate)

-V/s -

Accused : S.R.Hiremath,
R/o: Sadhankeri, Dharwad.

(By Shri. S.B.A., Advocate)

PARTIES TO Application Dated:07-11-2017

Applicant : S.R.Hiremath,

- V/s -

Opponent : Prahalad S/o Venkatesh Joshi,

**ORDER ON APPLICATION FILED UNDER SECTION
239 OF Cr.P.C.**

The present application is came to be filed by the
accuse at the time of evidence before charge.

2. In the application it is stated that, the complaint against the applicant was made in the first place as the applicant is a respectable person of high social esteem and a crusader against corruption, illegal mining and more particularly against illegal encroachment of lands and several land grabbing issues. This complaint is a concentrated effort to silence the applicant from exercising his fundamental right of speech and expression to bring in light to the public the various issues of mis-governance, corruption, red-tapism, bureaucracy and irregularities committed by prominent and influential people holding public office. It is further contended that, there are no materials or evidence placed on record to support the allegations leveled by the complainant against the accused due to which the charges filed by the complainant are infructuous as the complainant has not made out a prima-facie case, since there was not commission of a crime and for the above reasons, the accused is liable to be discharged.

It is pertinent to state that, the alleged statement were made were to protect the interest of the general public and for public good with a view to caution the intended audience in the interest of public good. The same has explained as the KGA which had the Respondent as the Honorary Vice-President had decided to convert the said public ground into a recreational club which was only to the members of the club and those members were required to pay sum of Rs. 12,000/- and the same is also accepted by the club in their letter dated: 16.09.2013. Subsequently the same letter also throws light on the students having required to pay to use the said facilities and it is further stated that, the same body which is represented by the Respondent had contemplated to have holiday or summer vacation membership to benefit students of 2-3 months period at much reduced fee, and again the same application made on 16.09.2013 mentioned about the outdoor games with special reference to cricket, lawn tennis, swimming pool, basketball and other facilities which would only be

included in high standard recreational club. From the supra stated letter dated: 16.09.2013 it is abundantly clear that all the facilities are offered to the members of the club on public area which would clearly indicate that the interest of general public the said statements it true and hence the question of commission of offence of defamation does not arise in the first place as the said explanation of the aforesaid facts comes under the purview of exception 9 and 10 of section 499 of the Indian Penal Code 1860 and hence the commission of crime of defamation is not committed by the applicant. Hence, prayed to consider the present application.

3. On the other hand, complainant has filed objections thereby contended that:

a) The accused person is having habit of levying baseless allegations against the prominent persons involved in politics and social work. Likewise continuously for few years accused falsely issued several paper statements without any iota of truth, only to defame the

complainant in the eyes of the general public particularly at the time of elections. Thus the paper statements produced in the present case reveals that this accused called the complainant as land-grabber without any bases. Than the accused appeared before the court and than approached Hon'ble High Court in Crl.P.No:101954/2015 wherein he requested Hon'ble High Court to quash the proceedings in present C.C.No.795/2015 which was dismissed on 30th November 2016 with observation that "In that view of the matter, quashing of the same in a routine manner does not arise. Liberty is reserved to the petitioner herein to appear before the learned Magistrate and seek his discharge, if he is able to establish that the offence alleged against him as false and frivolous. In any event, it is not open for him to seek quashing of the proceedings, more particularly, when the order taking cognizance by the learned Magistrate in the aforesaid offence appears to be just and proper". Now without any Evidence and cross-examination of witnesses court cannot come to the conclusion that the accused is having no

evidence against him. Accused just want to throw the dirty mud on the public representative who is serving the society and wants to vanish his political carrier without anybase. As accused has hidden agenda t see the victory of opponent candidate against the complainant. Hence, he is levying baseless allegations with ulterior political moto.

b) It is further contended that, the accused work is like hit and run, he don't want to sustain his allegations in the court of law. The accused only issues baseless statements to harm the reputation of popular person in the society. If at all he levies a allegation with any truth or evidence why he is afraid of protecting himself in the court of law. Freedom speech and Expression no doubt is fundamental right of a citizen of India. But it should not harm the fundamental right and reputation of other person and baselessly it should not be used for the political purpose. If such persons are left free they will make it as a passion to say any false allegation against any person and misguide general public and voters at the time of elections false propaganda against the particular person or a party

is also detrimental to the democratic system, and fundamental right promised by Indian Constitution and Rule Law. Hence, adjudication is needed in this case, to come out with truth. At the above said grounds prayed to reject the application filed by the accused.

4. Considering the application, averments and on perusal of the records, following points arose for my consideration for proper adjudication of the present application.

1. Whether the accused has made out sufficient grounds to consider present application at this stage?
2. What order?

5. Heard both side. Perused material available on record, this court answer to the above points are as under:

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

Point No.2: As per the final order
for the following:

REASONS

6. **Point No.1:-** At the outset it is to be noted that present case is came to be registered on strength private complaint filed by the complainant U/sec.200 of Cr.P.C. for the punishable under section 499, 500, 501 and 502 of I.P.C. Further it appears that this court has taken cognizance for the offence punishable U/sec. 500 of I.P.C. only. Thereafter summons got issued for the said offence, accordingly accused appeared and preferred appeal against the order of this court in Criminal Petition No.101954/2015, wherein it was came to be dismiss. On perusal of record it appears that complainant has alleged that in order to defamed his name in society the accused intentionally gave statements in press conference on 06.01.2014, 23.01.2014 and 19.04.2014 respectively. It is further averred that, the alleged statements are defamatory in nature hence, prayed to take action against accused. In support of his claim complainant himself as got examined as P.W.1 and marked Ex.C.1 to Ex.C.5. Further, he has examined another witnesses by name

Mohan S/o Kashinath Ramdurga as P.W.2. On careful perusal of the statements given by P.W.1 and 2 is corroborated each other. Further the paper publication also furnished which frima-facie supports the version of complainant.

7. It is specific contention of the accused that, he has given those statement in good faith, therefore, he claimed shelter the exception of 9 and 10 attached to the sec.499 of C.P.C. It is significant note that evidence of complainant is yet to be commenced. Further, mere taking defence in respect of good faith is not sufficient to discharge accused at this stage. Whether those statements were given in good faith or not needs to be consider at the time of trail. On the other hand, it is the burden of the accused to demonstrate that the allegation or the statement made against complainant are in good faith and he has materials to show the same. Therefore, the ascertain the contention of the accused this court cannot conduct mini trail at this stage. Further, this court feels that while considering this application, this court is

not supposed to go into the merits of case. On the other hand, it is incumbent on the part of the court to see only prima-facie case against accused. As observed above statement of P.W.1 and 2 and paper publication it appears that there are materials to proceed with the matter. Hence, this court feels that it is not right stage to discharge the accused as sought. Hence, this court has no hesitation the answer point No.1 in the Negative. Accordingly, Point No. 1 is answered in the Negative.

8. **Point No. 2:** For the above said reasons this court pass the following:

ORDER

Application filed by the accused
under Section 239 of Cr.P.C. is hereby
rejected.

(Dictated to the stenographer directly on computer, and computerized by her, corrected, signed and then pronounced by me in the open court on this the 22nd day of September 2022)

(Girisha R.B.)
Principal Civil Judge & JMFC,
Dharwad.