

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

AT H.D.KOTE

PRESENT

Sri Mohammed Shaiz Chouthai, B.A. LL.B. (Hons.), LL.M.(M.L.)
Civil Judge & JMFC.,
Heggadadevanakote

Dated this the 27th day of December 2021

C.C.No.28/2015

COMPLAINANT ::

K.G.Sahana W/o.Late C.M.Mahesh,
Aged about 26 years, R/o.Theranimunti
Village, Kandalike Hobli, H.D.Kote Taluk.

[By Sri.D.S., Advocate]

/ V E R S U S /

ACCUSED ::

1. K.M.Muddappa S/o.Mallappa,
Aged about 65 years,
2. C.M.Swamy S/o.K.M.Muddappa,
Aged about 40 years,
3. C.M.Suresha S/o.K.M.Muddappa,
Aged about 38 years,
4. C.M.Ravikumar S/o.K.M.Muddappa,
Aged about 36 years,
5. Adarsha S/o.K.M.Muddappa,
Aged about 33 years,

All are R/o.Chikkakereyuru Village,
H.D.Kote Taluk.

[By : Sri.B.L.T., Advocate]

ORDERS ON APPLICATION FILED BY ACCUSED

NO.1 TO 5 U/s.239 of CR.PC

The instant application is filed by accused
No.1 to 5 seeking to discharge them since there

are no sufficient documents to proceed against them. According to them, the allegations made by the complainant are false and are based on vested interest to make unlawful gain and to harass them.

2. The complainant has filed objections to the said application contending that, there are sufficient materials to proceed against accused No.1 to 5. The offence committed by them involves violation of human rights, which appears from the face of the records.

3. Heard learned Counsel for the complainant and the accused persons.

4. The following points would arise for my consideration are:-

- 1) Whether the accused persons prove that no case has been made against them and therefore they have to be discharged?
- 2) What Order?

5. My answer to the above points are as under:-

Point No.1 : In the Negative

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

REASONS

6. **POINT NO.1:-** At the first instance, it is necessary to note that, the proceedings herein have been initiated based on the complaint filed by the complainant U/s.200 of Cr.P.C. This Court after examining the complainant and her witnesses, took the cognizance of the offences punishable U/s.448, 323, 324, 392 and 506 R/W Section 149 of I.P.C. against the accused No.1 to 5. The instant application is filed U/s.239 of Cr.P.C., which fall under Part-A of Chapter XIX of Cr.P.C. It deals with the trial of warrant cases by Magistrate instituted on a Police report. As such, the provision U/s.239 of Cr.P.C., has no application to the facts and circumstances of the present case. The instant

proceedings is initiated on a private complaint filed U/s.200 of Cr.P.C. Therefore, Part-B of Chapter XIX is applicable to the facts of the present case. The instant application should have been filed not U/s.239 of Cr.P.C., but U/s.245 of Cr.P.C.

7. Notwithstanding the above *lacuna*, it has to be seen whether the allegations made against the accused No.1 to 5 are groundless, which necessitates their discharge from the present case.

8. The complainant in her complaint has alleged that, accused No.1 is her father-in-law and accused No.2 to 5 are his children. It is further stated that, one C.M.Mahesh, who is also the son of accused No.1, married to the complainant. Out of their wedlock, they have a child of 04 years old. The husband of the complainant, i.e., C.M.Mahesh is no more. It is the case of the complainant that, her husband-C.M.Mahesh is a driver by profession. During his lifetime, he had owned and possessed a

Tractor and Trailor bearing registration No.KA-45-T-652 and KA-45-T-653. He had also owned Winger bearing registration No.KA-45-6717 and also two wheelers bearing registration No.KA-45-L-2635 and KA-45-E-7054. Late C.M.Mahesh had owned and possessed all the above vehicles and are standing in his name. After his demise, the complainant became absolute owner and had possessed all the above vehicles.

9. It is alleged that, after the demise of her husband, the complainant resided at Handpost, Yarahalli. That on 10/03/2014 at about 10.00 A.M., when the complainant was alone in the house, accused No.1 to 5 illegally trespassed, assaulted, criminally intimidated and threatened to kill her and also forcefully took the keys and went away with vehicles. On these allegations coupled with other facts, this present complaint came to be filed by the complainant. After filing of the complaint, she got herself examined U/s.200 of Cr.P.C., along with 03

other witnesses, who have alleged the above sequence of facts against the accused No.1 to 5.

10. According to the accused No.1 to 5, the complainant after her marriage with Late C.M.Mahesh, was residing in the family of accused No.1. The complainant and her husband happily resided in the house of accused. Her husband was elder son of accused No.1 and he was managing the affairs of the family. After the death of her husband on 04/01/2014, the complainant started to show hostile attitude against the family of the accused No.1 to 5. Thereafter, she went on to reside with her father. On the instigation of her family members and henchmen who are not in good terms with accused persons, foisted the false complaint. According to accused No.1 to 5, there is not even a single complaint against them even during the lifetime and after the death of the husband of the complainant. It is stated that, even before the marriage of complainant with Late C.M.Mahesh, the joint family

had purchased Tractor bearing registration No.KA-45-652 and Tractor No.KA-49-T-653 and also purchased two wheeler bike bearing registration No.KA-E-7954 out of joint family income by obtaining loan. The vehicles were being used by the family members for the agriculture purpose. Even the accused No.1 also signed the registered Mortgage Deed while obtaining loan. The family of the accused persons purchased Winger bearing registration No.KA-45-6717 by borrowing loan from Sri.Ram Chits Company, Hunsur and also purchased Hero Honda Passion Bike bearing registration No.KA-45-L-2635 in the name of the husband of complainant. Even the down payments of the said vehicles were paid out of joint family funds. The allegation that, accused No.1 to 5 have illegally trespassed into the house of the complainant and thereby took the keys of the vehicles from her house are false and concocted. The allegations made by the complainant are only self serving statements. The alleged

telephonic calls to accused No.1 and also summoning of Panchayath are false and created one only for the purpose of this present complaint. In a nutshell, the accused No.1 to 5 state that, there are no sufficient documents produced by the complainant before this Court and there are no sufficient grounds made out by the complainant to proceed with the case against accused No.1 to 5. Hence, they prayed to discharge them.

11. As could be seen from the facts narrated in the application, the ground on which accused No.1 to 5 seeks to discharge them is that, there are no documents to prove the allegations against them and the said allegations are false and concocted.

12. The provision U/s.245 of Cr.P.C., deals with a situation when accused shall be discharged. The provision is herein supplied:-

“Section 245 – When accused shall be discharged – (1) If, upon taking all the evidence referred to in Section 244, the

*Magistrate considers, for the reasons to be recorded, that no case against accused has been made out which, **if unrebutted, would warrant his conviction**, the Magistrate shall discharged him.*

(2) Nothing in this section shall be deemed to prevent the Magistrate from discharging the accused at any previous stage of the case if, for the reasons to be recorded by such Magistrate, he considered the charge to be groundless.”

When accused take shelter under the provision of Section 245 of Cr.P.C., he must show that, no case has been made out against him from the evidence given by the complainant and his witnesses U/s.244 of Cr.P.C. In other words, there should be a situation where the evidence given by the complainant and his witnesses must be such that there is no necessity of rebutting such evidence, and thus it leads to discharge of the accused. In the instant case, the complainant has examined herself and also examined 03 other witnesses, who have deposed about the illegal trespass by accused No.1 to 5 into the house

of the complainant, assaulted the complainant and also threatened to kill her. They also deposed that, accused No.1 to 5 have taken the keys of the vehicles and thereby took the possession of the vehicles as narrated in the complaint. The evidence given by PW.1 to PW.4 against accused No.1 to 5, if goes un rebutted would eventually lead to their conviction. In other words, if the evidence of PW.1 to PW.4 is left as it is, it would end in conviction of accused No.1 to 5. With regard to ownership of vehicles, where a *prima-facie* case is made out regarding alleged criminal trespass, the discharge of accused persons by bringing a discussion of title to property, i.e., the vehicles, is improper. Therefore, in the opinion of this Court, it is improper to say that, no case has been made against accused No.1 to 5 so as to discharge them. The accused No.1 to 5 have not made any of the grounds to discharge them either U/s.239 of Cr.P.C., or U/s.245 of Cr.P.C. As such, Point No.1 is answered in the **Negative**.

13. **POINT NO.2:-** In view of the above discussions, I proceed to pass the following:-

ORDER

Application filed U/s.239 of
Cr.P.C., by the accused No.1 to 5, is
hereby dismissed.

[Dictated to the Stenographer directly, typed by him into computer, revised and corrected by me and signed, pronounced in the Open Court on this the **27th day of December 2021**]

(MOHAMMED SHAIZ CHOUTHAI)
CIVIL JUDGE AND J.M.F.C.,
H.D.KOTE