IN THE HIGH COURT OF KARNATAKA AT BENGALURU

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DATED THIS THE 2ND DAY OF DECEMBER, 2024

BEFORE

THE HON'BLE MR JUSTICE V SRISHANANDA

CRIMINAL REVISION PETITION NO. 664 OF 2016

BETWEEN:

CHARULATA SOMAL,
D/O VIRENDRA SINGH,
AGE: 28 YEARS,
OCC: CEO, ZILLA PANCHAYAT,
OFFICE OF ZILLA PANCHAYAT,
FORT, MADIKERI,
KODAGU DISTRICT-571 201.

...PETITIONER

(BY SRI H.S. CHANDRAMOULI, SENIOR ADVOCATE FOR
SRI RAJATH, ADVOCATE)

AND:

SHIRIYARA MUDDANNA SHETTY,
AGE: 57 YEARS,
OCC: ADVOCATE, ROOM NO.V.,
MUNICIPALITY COMMERCIAL COMPLEX,
NEW BUS STAND, KUNDAPURA,
UDUPI DISTRICT-576 201.

...RESPONDENT

(BY SRI K.PRASANNA SHETTY, ADVOCATE)

THIS CRIMINAL REVISION PETITION IS FILED UNDER SECTION 397 READ WITH 401 OF CR.P.C PRAYING TO SET ASIDE THE ORDER DATED 07.12.2015 PASSED BY THE ADDITIONAL CIVIL JUDGE AND JMFC, KUNDAPURA, DIRECTING REGISTRATION OF CRIME AND ISSUANCE OF PROCESS AGAINST THE PETITIONER FOR THE OFFENCE PUNISHABLE UNDER SECTIONS 499, 500 AND 504 OF IPC IN PCR NO.315/2015 (C.C.NO.4417/2015).

THIS PETITION, COMING ON FOR FINAL HEARING, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE V SRISHANANDA

ORAL ORDER

Heard Sri H.S.Chandramouli, learned Senior Counsel for the revision petitioner and Sri K.Prasanna Shetty, learned counsel for respondent.

2. In the revision petition, following is the prayer:

> *"WHEREFORE it is most humbly prayed that this Hon'ble Court may be pleased to pass an order, setting aside the order dated 7-12-2015 passed by learned Additional Civil Judge and JMFC, Kundapura, directing registration of crime and issuance of process against the petitioner for the offences punishable under Sections 499, 500 and 504 of IPC in PCR No.315/2015 (C.C.No.4417/2015), in interest of justice and equity."*

3. The facts in nutshell for disposal of the present revision petition are as under:

A private complaint came to be filed on the file of the Additional Civil Judge and JMFC, Kundapura, alleging the commission of offences punishable under Sections 499, 500, 504 and 506 of IPC against the revision petitioner by the

respondent. The contentions urged in the private complaint read as under:

"The complainant begs to submit as follows:

1. That the complainant is a respectable citizen of India. That the complainant is a registered legal practitioner, enrolled as an Advocate in the roll of the Bar Council of State of Karnataka, vide enrollment no. KAR/792/1985. That the complainant is a member of Kundapura Bar Association (Regd.), and has been practicing as an Advocate for the last over 29 years. That the complainant has been practicing as an Advocate in Civil, Criminal, Revenue. Co. Operative and other branches of law. That the complainant is a past president of Kundapura Bar Association. That the complainant is an Ex-President of Shiriyara Grama Panchayath and is the present sitting member of the said Grama Panchayath. He has also served as director of Brahmavara Sugar Factory, and contested the election held for Byndoor Assembly constituency. That the complainant commands great respect in the society, in the legal fraternity and among the clientele.

2. That the accused is a Government Servant and is serving as the Assistant Commissioner at Kundapura in the office of the Assistant Commissioner Kundapura, located at Mini Vidhana Soudha building at Kundapura.

3. That the complainant has taken up the brief of the Appellant Smt Sheelavathi Shedthy, in the Revenue Appeal bearing REV.SR. Appeal no.1/2015-16, on the

file of the Assistant Commissioner at Kundapura. That the appellant has preferred the said appeal challenging the order dt.09-08-2002, passed by the Tahasildar Kundapura, in his proceedings bearing No.NCR DR 108/2002-03. That the above appeal stood posted to 27-07-2015, at 3.00 P.M., for hearing the Arguments of the parties. As usual the cases were taken up for hearing during the afternoon hours of the day. That the complainant made his presence in the court hall located in the above mentioned address at 3.00 P.M. When the case was called, the complainant stood up and proposed to advance his arguments on the appeal, at that time, the accused intervened and stated in a harsh voice, that "You stop it, I have got no time to hear your oral Arguments, whatever you want to say, put it in writing". At that time the complainant pleaded that he would not take much time, and that he would enlighten the court with regard to a few facts, which are quite relevant for deciding the appeal, and that he would not take more than five minutes. On hearing the complainant the accused became erratic, and furious and shouted at the complainant, in a harsh voice ***"No, No, get out from here"****. By that the complainant was shocked, surprised, and stunned at the unexpected behavior of the accused. When the complainant became stand still, the accused called the Dafedar of the court and directed him to drag out the complainant from the court hall. When the Dafedar started his move towards the complainant, the complainant scenting the threat of physical assault on him, came out of the court hall, to avoid illegal physical assault on him.*

4. It is submitted that, the accused has absolutely no right to oust an advocate who is ready to advance oral arguments in a case. That the accused has defamed the complainant, by shouting, ***"No, No, get out from here"****. During the time when the accused has used the above referred defamatory words, number of advocates, clients, and officials were present. The defamatory imputations made by the accused refers to the complainant, and are made with the intention of defaming the complainant. That on account of the defamatory imputations made against the complainant, the general public, clients, advocates are looking at the complainant with suspicion, contempt, hatred, and ridicule. The reputation of the complainant is lowered in the estimation of the right thinking members of the society. The words used by the accused are perse-defamatory and is unbecoming for any Government Servant on duty to be used during the course of her duty. That the above referred defamatory imputation are not made by the accused in the discharge of her official duty, nor are used in the color of her duty. That the imputation made by the accused has tended to injure the reputation of the complainant in his profession, and he is being shunned or avoided by his clients, and friends. That the imputations made by the accused are not excepted under any of the exceptions to section 499 of the Indian Penal Code. As such the imputations made by the accused amounts to "defamation", within the meaning of section 499 of Indian Penal Code and is punishable under section 500 of Indian Penal Code.*

5. That the accused by directing her servant / Dafedar to drag the complainant out of the court hall has threatened to injure the reputation of the complainant. That the act of the accused amounts to criminal intimidation within the meaning of section 503 of Indian Penal Code and is punishable under section 504 and 506 of Indian Penal Code. That the accused has intentionally insulted the complainant with the designed desire of provoking the complainant. But the complainant in spite of the illegal acts committed by the accused kept quiet and walked out of the court hall to avoid any unhealthy atmosphere in the court hall.

6. That the complainant after coming out of the court hall, gave a representation to the Bar Association Kundapura on the very same day, by filing a written Memorandum dt. 27- 07-2015, the copy of the same is produced herewith. That in persuance of the representation made by the complainant, a special general body meeting of the members of the Bar association was held on 28-07-2015, at 4.30 P.M., in the premises of the Bar association. The President and the Secretary of the association also called a press conference and enlighten the media about the unruly behavior of the accused.

7. That among other persons, the under named persons have witnessed the incident.

Prayer: That the complainant therefore prays that the Hon'ble court may be pleased to take cognizance of the offences committed by the accused and may be

punished her after trial for the offences committed by her and do justice."

4. The respondent being a Senior lawyer and a member of Kundapura Bar Association, who held some prestigious positions in the past in Kundapura Bar Association said to have been hurt by the conduct of the revision petitioner.

5. The revision petitioner was posted as Assistant Commissioner at Kundapura. After taking charge of the said post, the revision petitioner said to have assessed the number of pendency in her Court. Needless to emphasise that the revision petitioner was required to exercise the *quasi judicial* function insofar as revenue matters are concerned.

6. A revenue appeal bearing No.REV.SR.Appeal No.1/2015-16 pertaining to one Smt.Sheelavathi Shedthy was also pending before the Court of Assistant Commissioner, Kundapura, and the same was posted for arguments on 27.07.2015 at about 3.00 p.m. When the said case was called out in the open Court, the respondent proposed to address the arguments. At that juncture, the revision petitioner allegedly

intervened and addressed in a harsh voice that "You stop it, I have got no time to hear your oral arguments, whatever you want to say, put it in writing".

7. When the respondent repeatedly requested the revision petitioner to hear the arguments as he intended to enlighten a few facts that would not consume more than five minutes, the revision petitioner said to have acted erratically and became furious and shouted at the respondent again in a harsh voice, "No, No, get out from here".

8. By hearing such words, the respondent got shocked and also surprised. He was stunned by the unprecedented behaviour on the part of the revision petitioner. Matter did not stop there. The revision petitioner said to have called the Dafedar of the Court and directed him to take away the respondent from the Court. The respondent, with an intention to avoid the ugly incident, voluntarily walked out of the Court and a number of advocates and officials present in the Court witnessed the said incident.

9. According to the respondent, the uttering of the above words was *per se* defamatory in nature and resulted in

tarnishing the image of the respondent, who held a respectable position in the Society as well as in the Bar.

10. On receipt of the private complaint on 30.07.2015, the learned Trial Judge directed the matter to be registered and it was registered as PCR No.315/2015.

11. Learned Magistrate thereafter recorded the sworn statement of the respondent and by the order dated 12.08.2015 noted that sanction was not necessary to prosecute the present revision petitioner, and took cognizance of the offences alleged against the revision petitioner and proceeded with the case.

12. Being aggrieved by the same, the present revision petition came to be filed.

13. Sri H.S.Chandramouli, learned Senior Counsel for the revision petitioner reiterating the grounds urged in the revision petition contended that the Trial Magistrate took cognizance of the offences alleged against the revision petitioner herein without adverting to the Judges (Protection) Act, 1985 ('Act' for short) especially Section 3 of the said Act which has resulted in

grave miscarriage of justice and sought for quashing the order of taking cognizance.

14. He also placed number of decisions in this regard in support of his arguments and drew the attention of this Court to the case of ***High Court of Karnataka v/s C.M.Manjunath and Others*** passed in ***Crl.P.No.3337/2020 (SUO-MOTU)*** reported in ***ILR 2021 KAR 357*** wherein, at paragraph Nos.16 to 20, it is held as under:

> *"16. The third provision is Section 197 which provides that when a Judicial Officer is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction as provided therein.*
>
> *17. There is one more enactment which is most relevant. It is the Judges (Protection) Act, 1985 (for short 'the said Act of 1985'). In the preamble of the said Act of 1985, it is stated thus:*
>
> *"An Act for securing additional protection for Judges and others acting Judicially and for matters connected therewith" Section 2 to 4 of the said Act of 1985 read thus:*
>
> *"2.* ***Definition****. – In this Act, "Judge" means not only*

every person who is officially designated as a Judge, but also every person –

> *(a) who is empowered by law to give in any legal proceeding a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive; or*
>
> *(b) who is one of a body of persons which body of persons is empowered by law to give such a judgment as is referred to in clause (a).*

3. ***Additional protection to Judges****. –*

(1) Notwithstanding anything contained in any other law for the time being in force and subject to the provisions of sub-sec. (2), no Court shall entertain or continue any civil or criminal proceeding against any person who is or was a Judge for any act, thing or word committed, done or spoken by him when, or in the course of, acting or purporting to act in the discharge of his official or judicial duty or function.

(2) Nothing in sub-sec. (1) shall debar or affect in any manner the power of the Central Government or the State Government or the Supreme Court of India or any High Court or any other authority under any law for the time being in force to take such action (whether by way of civil, criminal, or departmental proceedings or otherwise) against any person who is or was a Judge.

*4. **Saving**. – The provision of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force providing for protection of Judges."*

(underlines supplied)

18. In the preamble of the said Act of 1985, it is stated that the said Act of 1985 is for securing additional protection for Judges and others acting judicially. Section 4 makes it clear that the provisions of the said Act of 1985 are in addition to, and not in derogation of the provisions of any other law for the time being in force providing for protection to Judges. Thus, the protection granted under the said Act of 1985 is in addition to the protection granted under Section 77 of IPC and Section 197 of Cr.P.C. It is important to note that Sub-Section 1 of Section 3 starts with a non-obstante clause which shows that Sub-Section 1 of Section 3 overrides the provisions of the other laws.

19. Sub-Section 1 of Section 3 of the said Act imposes a prohibition on entertaining or continuing any Criminal or Civil Proceedings against any person who is or was a Judge for any act, thing or word committed, done or spoken by him when, or in the course of, acting or purporting to act in discharge of a Judicial function. It must be noted here that Sub-Section 1 of Section 3 of 1850 protects a Judicial Officer from being sued in any Civil Court for any act done in discharge of his judicial duty provided that the Judicial Officer in good faith, believed himself to have jurisdiction to do or to order the act complained of. Even Section 7 of IPC incorporates a condition of acting good faith. Section 3 of the said Act of 1985 does not incorporate requirement of a judge acting in good faith or a Judge believing

that he had jurisdiction to do what he has done. For an act or word, committed, done or spoken by a Judicial Officer in the course of acting or purporting to act in discharge of his official duty or function, no Court can entertain or continue any Civil or Criminal proceedings against the Judicial Officer.

20. Thus, for attracting the protection of Sub-Section 1 of Section 3 of said Act of 1985, the act, thing or words of the Judicial Officer need not have been done or said in good faith. This is an additional protection extended to the Judicial Officers for protecting them against both Civil and Criminal cases. Obviously, the legislature in its wisdom was of the view that the protection granted to the Judges by earlier statutes was not enough and therefore, the said Act of 1985 was enacted which came into force from 6th September 1985."

15. Sri H.S.Chandramouli, learned Senior Counsel also relied on the dictum of the Hon'ble Apex Court in the case of ***Devinder Singh and Others v/s State of Punjab*** reported in ***(2016) 12 Supreme Court Cases 87***, of which paragraphs Nos.68, 69 and 70 are most relevant and are culled out hereunder:

> *"68: If in doing an official duty a policeman has acted in excess of duty, but there is a reasonable connection between the act and the performance of the official duty, the fact that the act alleged is in excess of duty will not be ground enough to deprive the*

policeman of the protection of the government sanction for initiation of criminal action against him.

69: The language and tenor of Section 197 of the Code of Criminal Procedure and Section 170 of the Karnataka Police Act makes it absolutely clear that sanction is required not only for acts done in discharge of official duty, it is also required for an act purported to be done in discharge of official duty and/or act done under colour of or in excess of such duty or authority.

70: To decide whether sanction is necessary, the test is whether the act is totally unconnected with official duty or whether there is a reasonable connection with the official duty. In the case of an act of a policeman or any other public servant unconnected with the official duty there can be no question of sanction. However, if the act alleged against a policeman is reasonably connected with discharge of his official duty, it does not matter if the policeman has exceeded the scope of his powers and/or acted beyond the four corners of law."

16. He also relied on several judgments in this regard and submits that obtaining the sanction under Section 197 of Cr.P.C. is required in respect of other official acts done by the officials in the official capacity, but insofar as the Judges are concerned, the special Act viz., the Judges (Protection) Act, 1985, further insulates the Acts of the Judge and the definition

of the Judge found in Section 2 of the said Act. Therefore, the opinion formed by the learned Trial Magistrate that no sanction is necessary to proceed with the case has resulted in grave injustice and sought for allowing the revision petition.

17. *Per contra*, Sri K.Prasanna Shetty, learned counsel representing the respondent vehemently contended that the question of valid sanction shall always be considered by the Court at the final hearing of the matter. Therefore, the Trial Magistrate taking cognizance and proceeding with the case is perfectly justified.

18. In support of his stand, Sri K.Prasanna Shetty, learned counsel placed reliance on the following judgments:

1) ***Namdeo Kashinath Aher v. H.G.Vartak and another***, *reported in* ***AIR 1970 Bombay 385***.

2) ***Balbir Singh v. D.N.Kadian and another. Delhi Admn., Delhi Petitioner v. D.N.Kadian and others*** *reported in* ***AIR 1986 Supreme Court 345***. *The relevant portion of the said judgment reads as under:*

"Where it is alleged that the act of tampering with the Search Memo was committed by the appellants - Sub-Inspector and Constable of Delhi Police Force-while the Search Memo was in custody of the Court, it cannot be deemed to be an act purported to have been done by the appellants in discharge of their official duties. herefore, the previous sanction of the Lt.Governor as provided in S. 197(3) was not at all necessary for initiating the proceedings against them."

3) ***P.K.Pradhan v. The State of Sikkim represented by the Central Bureau of Investigation*** *reported in* ***AIR 2001 Supreme Court 2547****. The relevant portion of the said judgment reads as under:*

"(A) Criminal P.C. (2 of 1974), S.197- Sanction to prosecute - Section imposes prohibition on Court from taking cognizance- For necessity of sanction, there must be reasonable connection between act complained of and official duty.

The legislative mandate engrafted in S.197(1) debarring a Court from taking cognizance of an offence except with the previous sanction of the Government concerned in a case where the acts complained of are alleged to have been committed by a public

servant in discharge of his official duty or purporting to be in the discharge of his official duty and such public servant is not removable from office save by or with the sanction of the Government touches the jurisdiction of the Court itself. It is a prohibition imposed by the statute from taking cognizance. The offence alleged to have been committed must have something to do, or must be related in some manner, with the discharge of official duty. No question of sanction can arise under S. 197, unless the act complained of is an offence, the only point for determination is whether it was committed in the discharge of official duty. There must be a reasonable connection between the act and the official duty. It does not matter even if the act exceeds what is strictly necessary for the discharge of the duty, as this question will arise only at a later stage when the trial proceeds on merits. What a Court has to find out is whether the act and the official duty are so interrelated that one can postulate reasonably that it was done by the accused in the performance of official duty, though, possibly in excess of the needs and requirements of situation.

(B) Criminal P.C. (2 of 1974), S.197- Sanction to prosecute Necessity Question as to Need not always be decided as preliminary issue- In cases where such question cannot be decided without giving opportunity to defence to

establish that act was done in discharge of official duty Question can be left open for decision on conclusion of trial.

It is well settled that question under S.197 can be raised any time after the cognizance, may be immediately after cognizance or framing of charge or even at the time of conclusion of trial and after conviction as well. But there may be certain cases where it may not be possible to decide the question effectively without giving opportunity to the defence to establish that what he did was in discharge of official duty. In order to come to the conclusion whether claim of the accused, that the act that he did was in course of the performance of his duty was reasonable one and neither pretended nor fanciful, can be examined during the course of trial by giving opportunity to the defence to establish it. In such an eventuality, the question of sanction should be left open to be decided in the main judgment which may be delivered upon conclusion of the trial."

4) ***Prakash Singh Badal and Anr v. State of Punjab and Ors*** reported in ***AIR 2007 SC 1274***.

5) ***Chilakamarthi Venkateswarlu and another v. State of Andhra Pradesh and another*** reported in ***AIR 2019 SC 3913***.

19. Sri K.Prasanna Shetty, learned counsel for respondent further contended that taking cognizance is a judicial function and want of sanction under Section 197 of Cr.P.C. need not be always necessarily considered as a preliminary issue to proceed with taking cognizance and in a given case, if there is a nexus between the act complained which is beyond discharge of the official duty, the question of valid sanction can be kept open to be decided in the main matter. In such cases, the matter can be proceeded even without a valid sanction, as is held in the case of ***P.K.Pradhan*** referred to *supra*.

20. This Court having heard the parties, perused the records, so also the principles of law enunciated in the judgments relied on behalf of the revision petitioner and the respondent, meticulously.

21. On such meticulous perusal of the material on record, it is seen that, on the date when revenue appeal bearing No.REV.SR.Appeal No.1/2015-16, was taken up for arguments, there was some exchange of words between the revision petitioner and the respondent as referred *supra*.

22. Admittedly, the revision petitioner was discharged from the *quasi judicial* function as she was newly appointed as Assistant Commissioner, Kundapura, who had taken charge of said office about three days back.

23. At the most, the incident can be construed as heated exchange of words between the Lawyer(respondent) and the Presiding Officer.

24. Therefore, *per se* from looking into the words uttered by the revision petitioner, there are no ingredients which would attract the offences under Sections 499, 500, 504 and 506 of IPC.

25. The order of the Trial Magistrate taking cognizance is extracted hereunder for ready reference, which reads as under:

> *"Complainant is present. heard Sri. KCS Advocate, perused the complaint and the documents produced along with the complaint. Sri KCS advocate for the complainant relied upon 2009 AIAR (Criminal) 94 and 2015 AIAR (Criminal) 567. I have gone through both the authorities in detail.*
>
> *In the present case also, the allegations made against the accused goes to show that the act of the accused is beyond the scope of her official duty. Hence,*

I am of the opinion that prior sanction is not required to prosecute the accused who is Assistant Commissioner of Kundapura Taluk. On perusal of materials available before me, prima facie case is made out against the accused and as such, cognizance is taken for the offence punishable u/s 499, 500, 504 and 506 of IPC. Office is directed to register the complaint FR register and put up for sworn statement by 12/8."

26. There cannot be any dispute as to the principles of law enunciated in the decisions relied on by the revision petitioner as well as the respondent. But one distinction in the case on hand that needs to be borne in mind while appreciating the case of revision petitioner is that, the revision petitioner is not an official who was discharging more official function.

27. The facts of the case would depict that the revision petitioner as on the date of the incident was discharging the *quasi judicial* function. Therefore, she could be treated as a Judge, as per definition of the word 'Judge' found in Section 2 of the said Act. The same is dealt with in detail in the case of ***High Court of Karnataka v/s C.M.Manjunath and Others*** referred to *supra*.

28. Therefore, in the light of the special enactment more so Section 3 of the said Act commences with a non-obstante clause, even assuming that the sanction under Section 197 of Cr.P.C. was not necessary by accepting the arguments of the respondent for the limited purpose of disposal of the present revision petition, the respondent cannot and should not support the impugned order as the Trial Magistrate failed to understand the required sanction in view of the Section 3 of the Judges (Protection) Act, 1985.

29. In other words, the revision petitioner herein had double insulation whereby the Trial Magistrate should have been very slow in accepting the case of the revision petitioner before taking cognizance and registering the criminal case against the revision petitioner.

30. Needless to emphasise that such an order passed by the Trial Magistrate ignoring the Section 3 of the Judges (Protection) Act, 1985, has resulted in improper exercising of the jurisdiction vested in the Trial Magistrate calling for interference by this Court by exercising the revisional jurisdiction.

31. Having said so, the only alternative left for this Court is to set aside the impugned order and direct the Trial Magistrate to proceed with the case from the stage of taking cognizance by directing the respondent to obtain the necessary sanction.

32. At this distance of time, if the same is allowed to be permitted, the same would result in futile exercise, more so taking note of the fact that the respondent is in the age of early 70's, as is submitted by the learned counsel for the respondent.

33. As such, this Court is of the considered opinion that directing the revision petitioner to send an apology letter to the respondent who is a Senior member of the Bar at Kundapura and if wisdom prevails on the respondent, matter could be put at rest.

34. With that direction, the following:

ORDER

a) The impugned order taking cognizance and directing the criminal case to be registered against the revision petitioner stands hereby set aside.

b) The matter is remitted to the Trial Court for fresh disposal in accordance with law.

c) This Court does hope and trust that the apology letter to be sent by the revision petitioner to the respondent would rest the matter at that stage itself.

Sd/-
(V SRISHANANDA)
JUDGE

CPN