**IN THE HIGH COURT OF KARNATAKA,
DHARWAD BENCH**

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DATED THIS THE 28TH DAY OF NOVEMBER, 2023

BEFORE

THE HON'BLE MR JUSTICE SHIVASHANKAR AMARANNAVAR

CRIMINAL PETITION NO.100331 OF 2023

BETWEEN:

1. SRI. YALLAPPA S/O RAMAPPA
@ DODDABASAPPA LAKKANNAVAR,
AGE. 56 YEARS, OCC. GOVT. EMPLOYEE,
R/O. KALLIMATH ONI, NAVALGUND,
TQ. NAVALGUND, DIST. DHARWAD,
PIN CODE-582208.

2. SRI. MANOJKUMAR S/O. RAMAPPA
@ DODDABASAPPA LAKKANNAVAR,
AGE. 48 YEARS, OCC. AGRICULTURIST,
R/O. KALLIMATH ONI, NAVALGUND,
TQ. NAVALGUND, DIST. DHARWAD,
PIN CODE-582208.

VIJAYALAKSHMI M KANKUPPI
Digitally signed by VIJAYALAKSHMI M KANKUPPI
Date: 2023.12.12 11:01:56 +0530

... PETITIONERS

(BY SRI.B.S. KUKANAGOUDAR, ADVOCATE)

AND:

SMT. KALLAVVA W/O HANUMANTAPPA KURIYAVAR,
AGE. 65 YEARS, OCC. HOUSEHOLD,
R/O. GANESHPET, HUBBALLI,
TQ. HUBBALLI, DIST. DHARWAD-580020.

... RESPONDENT

(BY SRI. S.L. MATTI, ADVOCATE)

THIS CRIMINAL PETITION IS FILED U/SEC.482 OF CR.P.C., SEEKING TO QUASH THE ORDER DATED 16.04.2022 PASSED IN C.C.NO.820/2022 (PC NO. 116/2021) ON THE FILE OF CIVIL JUDGE AND J.M.F.C. COURT, NAVALGUND, TAKING COGNIZANCE AND ISSUING PROCESS AGAINST THE PEITTIONERS/A-1 AND A-2 FOR THE OFFENCES PUNISHABLE U/SEC.500 OF IPC VIDE ANNEXURE-E, IN THE INTEREST OF JUSTICE AND EQUITY.

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDER ON 20.11.2023 AND COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT DELIVERED THE FOLLOWING:

ORDER

The petitioners are accused in C.C.No.820/2022 on the file of Civil Judge and J.M.F.C., Navalgund. The respondent is complainant in the said case. The respondent has filed complaint in P.C.No.116/2021 alleging that petitioners have committed the offence punishable under Section 500 of Indian Penal Code (hereinafter referred as 'IPC' for brevity). Seeking to quash the same, petitioners have come up before this Court with this petition.

2. The facts of the case would be as follows;

The respondent is one of the daughter of Smt. Fakkiravva W/o Huchchappa Lakkanavar. The

respondent, her two sisters and mother filed a suit in O.S.No.132/2016 on the file of Senior Civil Judge, Navalgund seeking the relief of declaration that the sale deed dated 22.02.2016 executed by Huchchappa Lakkanavar in favour of 2nd petitioner Sri. Manojkumar in respect of property bearing Sy.No.379 measuring 23-Acres 13-Guntas of Navalgund village is void *ab-initio* and to declare that they are the absolute owners in possession of suit schedule 'B' properties. The said suit is filed claiming that they are the legal heirs of Huchchappa Lakkannavar. The petitioners who were defendant Nos.1 and 2 in the said suit filed written statement and made averment denying the relationship of plaintiffs in the suit with Huchchappa Lakkannavar. According to respondent, in the written statement in O.S.No.132/2016 and in the evidence affidavit of petitioners herein, they have made defamatory imputations making out a clear offence punishable under Section 500 of IPC. With these allegations, the respondent has filed the instant private complaint. The petitioners who are accused Nos.1 and 2 have came before this Court

seeking to quash the entire proceedings. The imputations as extracted in the complaint, are reproduced below.

> ***"ವಾದಿಯರು ಮೈತ ಹುಚ್ಚಪ್ಪ ದೊಡ್ಡರಾಮಪ್ಪ ಲಕನ್ನವರ ಇವರಿಗೆ ಯಾವುದೇ ರೀತಿಯಿಂದ ಸಂಬಂಧ ಇರುವುದಿಲ್ಲ. 1ನೇ ವಾದಿ ಮೈತ ಹುಚ್ಚಪ್ಪನ ಕಾಯ್ದೆಸಿರ ಹೆಂಡತಿ ಇರುವುದಿಲ್ಲ. ವಾದಿ ನಂ.2 ರಿಂದ 4 ನೇದವರು ಹುಚ್ಚಪ್ಪನ ಮಕ್ಕಳು ಇರುವುದಿಲ್ಲ. 1ನೇ ವಾದಿಯೂ ಮೈತ ಹುಚ್ಚಪ್ಪನ ದೂರದ ಸಂಬಂಧಿಯಿದ್ದು, ಹುಚ್ಚಪ್ಪನ ದತ್ತಕವಾದ ನಂತರ ಹುಚ್ಚಪ್ಪನು ಸಣ್ಣವನಿದ್ದಾಗ ಸದರ 1ನೇ ವಾದಿ ಫಕ್ಕಿರವಾ ಇವಳನ್ನು ಹುಚ್ಚಪ್ಪನಿಗೆ ಕೊಟ್ಟು ಮದುವೆ ಮಾಡಿಕೊಡಬೇಕು ಅಂತಾ ಬಂದು ಬಳಗ ಅಂದುಕೊಳ್ಳುತ್ತಿದ್ದರು. ಮುಂದೆ ಸದರ 1ನೇ ವಾದಿಯೂ ದೊಡ್ಡವಳಾದ ಮೇಲೆ ಅವಳ ಜೀವನದಲ್ಲಿ ನಡೆಯಬಾರದ ಘಟನೆ ನಡೆದು ಲಗ್ನವಾಗದೆ ಉಳಿದುಕೊಂಡಿದ್ದು ಇರುತ್ತದೆ. ಕಾರಣ 2 ರಿಂದ 4ನೇ ವಾದಿಯರು ಮೈತ ಹುಚ್ಚಪ್ಪನ ಮಕ್ಕಳು ಇರುವುದಿಲ್ಲ. ಕಾರಣ ಸದರ ಮೈತ ಹುಚ್ಚಪ್ಪನಿಗೆ ಸಂಬಂಧಿಸಿದ ಯಾವತ್ತು ಆಸ್ತಿಗಳಿಗೆ ವಾದಿಯರು ಯಾವುದೇ ರೀತಿಯಿಂದ ಹಕ್ಕುಳ್ಳವರು ಇರುವುದಿಲ್ಲ."***

3. The above said imputations are contained in the written statement filed by the petitioners and in their affidavits filed in lieu of examination-in-chief in O.S.No.132/2016. In the averments of written statement and affidavits, the petitioners have stated that respondent, her sisters and their mother are not related to deceased Huchchappa DoddaRamappa Lakkannavar; the 1st plaintiff-Fakkiravva is not the legally wedded wife of Huchchappa. The plaintiffs 2-4 are not the children of Huchchappa. The 1st plaintiff is the distant relative of Huchchappa. After

adoption of Huchchappa, the relatives decided to perform marriage of 1st plaintiff-Fakkiravva with Huchchappa. When 1st plaintiff grown up, at that time, some unwanted incident had happened and her marriage was not performed and therefore, plaintiff Nos.2 to 4 are not the children of Huchchappa and they are not having any right in the property of Huchchappa.

4. Learned counsel for the petitioners would submit that these averments have been made in the complaint only out of good faith which would fall squarely under Exception 9 to Section 499 of IPC. The learned Counsel would further submit that these averments are absolutely necessary for proving the issues involved in the civil suit. Learned counsel would further submits that it cannot be stated that these averments, which according to the respondent are defamatory in nature, are absolutely unnecessary for the issues involved in the suit. These averments are necessary and relevant and the petitioners are prepared to prove the same before the Civil Court.

Therefore, according to the learned Counsel for the petitioners, the complaint is liable to be quashed.

5. Here, it is pertinent to note that admittedly, the suit is subjudice and it is yet to be disposed of. Hence, whether the statement is true or defamatory has to be ascertained only after the disposal of the suit. In such circumstances, I am of the opinion, as per the dictum of Hon'ble Apex Court in the case of ***State of Bihar and Others Vs Kripalu Shankar and Others***[1] pending matters are immune from comments made by the parties. The averments mentioned in the pleadings filed before the judicial forum is not coming under the purview of Section 499 IPC., wherein the proceedings are pending and subjudice. Hence, no *prima-facie* case has been made out for taking cognizance for offence under Section 500 IPC.

6. The learned Counsel appearing for the respondent would stoutly oppose this petition. According to him, Exception 9 to Section 499 of IPC is to be pleaded

[1] (**1987) 3 Supreme Court Cases 34**

and proved only at the time of trial. Plea of good faith cannot be presumed as the same requires to be proved. In the case on hand, though it is stated by the petitioners that these averments had been made out of good faith, it is for the Criminal Court to decide as to whether they have been made, out of good faith or not, on the basis of the evidence to be let in by both the parties. Thus, according to the learned Counsel for the respondent, it is too pre mature, at this stage, to presume good faith and quash the proceedings. It is contention of learned counsel that pendency of the civil suit has got nothing to do with the criminal case. In other words, according to the learned Counsel for the respondent, there is no bar for filing a prosecution for defamation on the basis of the averments found in a pleading filed before the Civil Court.

7. Learned counsel for the respondent would further contend that there is no need for the respondent to wait for the outcome of the civil suit and therefore, the present prosecution is maintainable. Thus, according to

the learned Counsel for the respondent, this petition is liable to be dismissed.

8. I have considered the above submissions and I have also perused the materials available on record.

9. At the outset, I want to state that, there is no legal bar for filing a private complaint alleging that a party to a civil proceeding has made certain imputations in the pleadings before the Civil Court, which are per se defamatory. I am also clear that the pendency of the said civil suit is not an impediment for the aggrieved to file a private complaint and without waiting for the final outcome of the suit, he can very well approach the Criminal Court by way of a private complaint seeking to punish the accused for defamatory statements made in the pleadings, provided the averments in the pleadings are totally unconnected to or unwarranted for the issues involved in the civil suit and they are per se defamatory. In any civil proceeding, it is absolutely necessary for the party concerned to make averments relevant to the issues. If such relevant averments are not made, the Civil Court

may not permit the party to make a plea on that subject orally and also to lead evidence. It is common knowledge that in civil suits, there cannot be any evidence let in without there being relevant pleading. The circumstances like relationship between deceased and plaintiffs are too relevant to the core issue of claiming title to the property of deceased Huchchappa.

10. In the case on hand, the averments, which are stated to be defamatory, relate to her relationship with the deceased Huchchappa. This, in fact, relevant for the civil Court to decide the issue as to whether plaintiffs are entitled to the relief of declaration. If these averments have not been made in the pleadings before the Civil Court, as I have already stated, the petitioners may not be permitted by the Civil Court to plead on that subject orally and lead evidence and as a result, they may not be in a position to disprove the relationship of the plaintiffs with deceased Huchchappa.

11. In this regard, it is useful to refer to Order VI Rule 16 of the Code of Civil Procedure which reads as follows:

> *"**O.6 R.16. Striking out pleadings**:- The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading---*
>
> *(a) which may be unnecessary, scandalous, frivolous or vexatious, or*
>
> *(b) which may tend to prejudice, embarrass or delay the fair trial of the suit, or*
>
> *c) which is otherwise an abuse of process of the Court."*

12. As per the said rule, if it is the case of the respondent that these averments are either unnecessary or scandalous, frivolous or vexatious or which may tend to prejudice the mind of the Court, she could have very well made an application under this provision before the Civil Court seeking to strike out the above averments in the written statement. If any such petition is filed, certainly, the Civil Court would give a finding as to whether these averments have got any relevance to the issues involved in the suit and whether these averments are scandalous, frivolous and vexatious or they are in the nature of

causing prejudice in the mind of the Court. If only such a finding is given by the Civil Court, then, the respondent would be entitled to approach the Criminal Court that the statements are defamatory because they are scandalous. In my considered opinion, when the averments are very relevant to the issues involved in the suit and the suit is pending, the respondent is precluded to file a private complaint.

13. This may also be viewed from a different angle. Let us assume that the present prosecution is allowed to continue further and if the Criminal Court holds that these statements are scandalous and accordingly punishes the accused and later on, the Civil Court gives a finding that they are not scandalous, frivolous, vexatious and holds that they are necessary to the issues involved in the suit, then, the said finding of the Civil Court will be contrary to the findings of the Criminal Court. Such a situation leading two courts of law to render two conflicting judgments cannot be permitted. Therefore, in my considered opinion, it is for the respondent either to approach the respective

Civil Court under Order VI Rule 16 or to wait till the final outcome of the civil suit and then to work out his remedies in the manner known to law.

14. In the case of ***Alli Rani Joseph Mathew and others Vs P. Arun Kumar***[2], the Hon'ble High Court of Madras while considering the statements made in the petition attracts the offences of defamation has observed that statements made in the pleadings are necessary to the issues involved in the suit. If the Criminal Court holds that these statements are scandalous and punishes the accused and later on, the Civil Court gives a finding that they are not scandalous and holds that they are necessary to the issues involved in the suit, then, the said finding of the Civil Court will be contrary to the findings of the Criminal Court and such a situation leads to render two conflicting judgments and with that observations quashed the criminal case registered for the offence under Section 500 of IPC.

[2] Crl.O.P.No.10481/2012, Disposed of on 03.08.2012.

15. The Hon'ble High Court of Madras in the case of ***Geetha Vs A.K.Dhamodharan***[3] while considering the statements made in the averments seeking divorce has held that, the case is subjudice and it is yet to be disposed of and pending matters are immune from comments and further held that, the averments mentioned in the pleadings filed before the judicial forum is not coming under the purview of Section 499 of I.P.C., wherein the proceedings are pending and subjudice.

16. Now coming to the exception pleaded by the learned Counsel for the petitioners, there can be no second opinion that a plea of good faith is a matter to be pleaded and proved. Good faith cannot be readily inferred. The term 'good faith' has been defined in Section 52 of the Indian Penal Code which reads as follows:

> *"**52. "Good Faith"**.--- Nothing is said to be done or believed in "good faith" which is done or believed without due care and attention."*

17. A close reading of the above definition would make one to clearly understand that if a statement has

[3] Crl.R.C.No.784 of 2009, Disposed of on 28.06.2011.

been made without due care and attention, then, it cannot be said that he acted in good faith. Here in this case, the petitioners have made these averments that are very relevant for the issues, which according to them have been stated with due care and attention. Whether these averments made by the petitioners in the written statement are statements of truth or not is going to be decided by the Civil Court because there is a relevant issue on the relationship of the plaintiffs with deceased Huchchappa. Therefore, it cannot be said at this stage that the petitioners have made the above averments without due care and attention.

18. The decision relied upon by learned counsel for respondent in Crl.P.No.4359/2022 and connected matter, the Co-ordinate bench of this Court has held that statement made by the petitioner cannot be said to be in good faith. Therefore, the decision does not help the respondent as the averments are made in a good faith.

19. In view of the foregoing discussion, I hold that this is not a case where the statements are per se

defamatory so as to disallow the plea of good faith at this stage so as to allow the respondent to go ahead with the prosecution. In view of the above, I proceed to pass the following:

ORDER

The Criminal Petition is allowed.

The proceedings in C.C.No.820/2022 (P.C.No.116/2021) on the file of Civil Judge and J.M.F.C., Navalgund, are hereby quashed.

Sd/-
JUDGE

AM/-.