

IN THE COURT OF 39th ACMM COURT BANGALORE
Dated this the 1st day of July 2023

PRESENT

Smt.Roopashri, B.Com. LL.B.,
39th ACMM Court Bangalore

C.C.NO. 22477 /2016

Complainant : Smt. Gayathri

(By Sri. S. Ananda Advocate)

- VS -

Accused : S. N. Bhat

(By Sri. M. K. Venkataramana Advocate)

Orders on application filed under section
249 of Cr.P.C

The learned counsel for the accused has filed application under section 249 of Cr.P.C for discharge of the accused from the charges leveled against him in the ends of justice and equity.

2. Opposing the said application the learned counsel for complainant filed statement of objection.

3. Heard the learned counsel for accused and learned counsel for complainant and perused the materials available on records.

4. The point that arise for the consideration of the court is
Whether the accused has made out grounds for her discharge?

5. My answer to the above point is in the Negative for the following

REASONS

6. Point No 1: Based on the private complaint lodged by the complainant case was registered against the accused for the offence punishable under section 420 of IPC.

7. In the complaint it is alleged that accused is introduced to the complainant through her husband and the accused told that he is the dealer of Royal Pet Brand Injection moulding machines , he will supply fully automatic injection moulding machines , he will supply fully automatic injection moulding machine and further instigated the complainant that he will make arrangement for loan from the Canara Bank . Accused has opened the account in the said bank and submitted the loan papers along with quotation . Loan was granted to the complainant and the said loan amount of Rs 12,32,385/ was transferred to the account of accused through Canara Bank as the accused agreed to supply the machine as per quotation and there by caused loss to the complainant and cheated her .

8. This court has taken the cognizance , there after recorded the sworn statement of the complainant and registered the case . After issuance of process the accused appeared before the court and enlarged on bail. There after evidence before charge was recorded in chief by filing the affidavit of the complainant in lieu of oral evidence and documents were marked as exhibits . When the case was posted for the cross examination of complainant , the learned counsel for the complainant filed memo to discard the evidence given by the complainant by way of affidavit and prayed to permit the complainant to give his oral evidence . For the said

memo the learned counsel for the accused filed serious objection and later filed present application for discharge of the accused.

9. It is submitted by the learned counsel for accused that, prior to the filing of the private complaint the complainant has not approached the jurisdictional police and not lodged any complaint and they have not approached the higher authority of the jurisdictional PS for giving direction to the jurisdictional PS to accept the complaint and without exhausting all the remedies the complainant has approached the court and lodged the private complaint, hence the complainant has not exhausted the remedies' as provided under section 154(1) and 154(3) of the Cr. P.C and there is no affidavit filed by the complainant swearing to the genuineness of the contents of the complaint and there is no compliance of mandatory requirement and the complaint lodged by the complainant is not in accordance with the principle enunciated in Priyanka Srivasthava case as reported in AIR 2015 SC 1758 , hence on that ground alone the complaint is liable to be dismissed .

10. It is further submitted that in view of the memo filed by the complainant praying to discard the evidence given by way of affidavit in lieu of oral evidence, on that count also the complaint is liable to be dismissed. It is submitted by the learned counsel for accused that if the first prayer of the complainant made in the memo is granted , and there by the evidence given by the complainant by way of affidavit in lieu of oral evidence is discarded by this court, then there left no evidence of the complainant for appreciation and such being the case , the entire case has to be dismissed and there is no provision to consider the second prayer to give permission to lead oral evidence. It is further submitted

that complainant has not established the prima facie case against the accused for the alleged offence as stated in the private complaint. Hence on the said ground also complaint is liable to be dismissed.

11. Per contra while narrating the case of the complainant it is submitted by the learned counsel for the complainant that accused taking undue advantage of the technical latches has chosen to file the instant application. It is further submitted that prior to the filing of the present complaint, the complainant had approached the jurisdictional PS who have advised the complainant to approach the competent courts of law, under the circumstances, the complainant preferred the private complaint and the court after taking cognizance registered the case. Under the facts and circumstances, the accused is not entitled for the discharge.

12. If the materials placed on record, it is true that complainant has not produced any document or acknowledgment for having given information / complaint to the SHO of Jurisdictional PS. The complainant has not produced any document in compliance of section 154 of Cr.P.C. Further complainant has not filed affidavit along with the complaint. But the aforesaid fact has to be considered by the court while registering the case and taking cognizance of the offence. But the predecessor in office of this court has ordered to register the case in PCR and after recording the sworn statement, on the basis of the sworn statement and the documents placed, this court had taken cognizance for the offence punishable under section 420 of IPC and issued process against the accused. Hence when this court has already taken cognizance against the accused for the offence under section 420 of IPC, the court at this juncture or at this stage on the ground of

non compliance of section 154(1) and 154(3) of Cr.P.C cannot dismiss the complaint and thereby cannot discharge the accused . The court which passed the order cannot revoke or recall its own order. If the order passed by this court taking cognizance is wrong and against to law , then the option left open to the accused is to challenge the said order before the appellate court and he cannot on that ground seek for discharge.

13. So far as the memo filed by the complainant to discard his evidence given by way of affidavit and permit him to lead oral evidence is concerned and to discharge the accused on account of the prayer made in the said memo is concerned , , at first this court has not passed any orders on the said memo . The memo filed by the complainant is pending for consideration. Till the memo is considered by the court and necessary orders on memo is passed , the accused cannot claim for discharge . Hence the prayer for discharge claimed by the accused on the ground of the prayer made in the memo is premature one. Hence it can be said that accused has not made out any ground for his discharge. Accordingly above point is answered in the Negative and proceed to pass the following

ORDER

Application filed under section 249 Cr.P.C is rejected.

(Typed by me in Laptop, then corrected and pronounced by in the open court on the 1st day of July 2023)

*(Roopashri),
39th ACMM Court ,
Bangalore .*