

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF MAY 2019

BEFORE

THE HON'BLE MR. JUSTICE MOHAMMAD NAWAZ

CRIMINAL APPEAL No.894 OF 2019

Sri. H.M. Rudrakumar

v/s.

Smt. Gowramma H.R.

JUDGMENT

This criminal appeal is filed under Section 341 of the Code of Criminal Procedure to set aside the order dated 09.04.2019 passed in CrI.P.No.8789/2017 filed under Section 482 of Cr.P.C, and consequently to allow the application filed by the appellant under Section 340 of Cr.P.C. in the said petition and to order an enquiry under Section 195 (1) (b) (i) of Cr.P.C.

2. The Office has raised objection regarding maintainability of the appeal.

3. I have heard Sri. H.M. Rudrakumar, the appellant-party-in-person.

4. The brief facts of the case are that:

The complaint filed by the appellant herein in P.C.R.No.7063/2017 on the file of the 45th Additional Chief Metropolitan Magistrate Court, Bengaluru, was referred to Police for investigation under Section 156(3) of Cr.P.C, and a case was registered by the Peenya Police against accused/respondents No.1 to 14 in Crime No.358/2017 for the offences punishable under Sections 506, 341, 504, 340, 339 and 149 of the Indian Penal Code, 1860.

5. Accused/respondents No.1 to 14 preferred Criminal Petition No.8789/2017 under Section 482 of Cr.P.C, before this Court praying to quash the proceedings in P.C.R.No.7063/2017.

6. The appellant/complainant was respondent No.2 in the said criminal petition. Notice was issued to him and on his appearance, he filed I.A.No.1/2019 under Section 340 of Cr.P.C, stating that several averments made in the petition are false and that the petitioners therein have made contradictory statements, accordingly, sought for an enquiry to be ordered under Section 195 (1) (b) (i) of Cr.P.C.

7. In the aforesaid criminal petition, on filing of the charge sheet against accused/respondents herein, they filed a memo dated 4.12.2018, seeking to withdraw the petition. This Court after observing that, since the charge sheet has been filed, petitioners seeking quashing of the FIR would not sub-serve the ends of justice, dismissed Criminal Petition No.8789/2017 as withdrawn by an order dated 09.04.2019, reserving liberty to both the parties to urge their respective contentions in criminal petition No.6085/2018 filed by the accused challenging the charge sheet. Aggrieved by the said order, the present appeal has been preferred.

8. The contention of the appellant/party-in-person is that the application I.A.No.1/2019 filed by him in CrI.P.No.8789/2017 was still pending and therefore without considering the same the said petition could not have been disposed off. He submits that the application filed under Section 340 of Cr.P.C, has not been decided and under Section 340 of Cr.P.C., an enquiry ought to have been initiated. Hence, the order impugned is appealable under Section 341 of Cr.P.C., before this Court and the Court either passing or refusing to pass an order on an application filed under Section 340 Cr.P.C., is a Court subordinate to a Court dealing with an appeal under Section 341 of Cr.P.C. He

therefore submits that the present appeal filed under Section 341 Cr.P.C., is maintainable either before the Single Judge or before the Division Bench of this Court and it may be decided in accordance with law.

9. In support of his arguments, the appellant has relied on the following judgments:

(1) *M.S. Sheriff and another vs. State of Madras and others*, AIR 1954 SC 397;

(2) *Pritish vs. State of Maharashtra and Others* (2002)1 SCC 253;

(3) *Tarulata Mondal vs. State of West Bengal and Others* 2013 CRI.L.J.3882;

10. The point that arise for consideration is as to whether a criminal appeal filed under Section 341 of Cr.P.C. against an order passed by a Co-ordinate Bench of this Court in a petition filed under Section 482 of Cr.P.C., either refusing to make a complaint under Section 340 Cr.P.C., or against whom such a complaint has been made, is maintainable either before a Division Bench or before a Single Judge of this Court.?

11. The impugned order is passed by a Coordinate Bench of this Court in CrI.P.No.8789/2017, filed by the accused persons under Section 482 of Cr.P.C. This Court

having noticed that the accused have challenged the charge sheet filed against them in a separate Criminal Petition No.6085/2018, dismissed CrI.P.No.8789/2017 filed seeking quashing of the FIR, reserving liberty to both the parties to urge their respective contentions in Criminal Petition No.6085/2018.

12. The grievance of the Appellant/party-in-person is that, while dismissing the petition, I.A.No.1/2019 filed by him, under Section 340 of Cr.P.C., seeking an enquiry as contemplated under Section 195(1) (b) (i) of Cr.P.C., has not been considered and that no order has been passed in respect of the said application.

13. Admittedly, the impugned order is passed by a Coordinate Bench of this Court. According to the appellant the said order is appealable under Section 341 of Cr.P.C., before this Court and the Bench which passed the order is a Court Sub-ordinate to the Bench dealing an appeal under Section 341 of Cr.P.C.

14. Section 341 of Cr.P.C. reads thus:

“Any person on whose application any Court other than a High Court has refused to make a complaint under sub-section (1) or sub-section (2) of section 340, or against whom such a complaint has

been made by such Court, may appeal to the Court to which such former Court is subordinate within the meaning of sub-section (4) of section 195, and the superior Court may thereupon, after notice to the parties concerned, direct the withdrawal of the complaint or, as the case may be, making of the complaint which such former Court might have made under section 340, and if it makes such complaint, the provisions of that section shall apply accordingly.”

15. A plain reading of Section 341 of Cr.P.C, makes it explicit that any person on whose application any Court other than a High Court has refused to make a complaint under sub Section (1) or sub Section (2) of Section 340 of Cr.P.C, may, appeal to the Court which such former court is subordinate. In the present case, the impugned order under challenge is not passed by a Court other than a High Court. Hence, the contention of the appellant that the said order is appealable before this Court under Section 341 of Cr.P.C. holds no water.

16. Section 195(4) para (a) and (b) of Cr.P.C. reads thus:

“(4) For the purposes of clause (b) of sub-section (1), a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies, to the principal Court having ordinary

*original civil jurisdiction within local jurisdiction such
Civil Court is situate:*

Provided that-

*(a) Where appeals lie to more than one Court,
the Appellate Court of inferior jurisdiction shall
be the Court to which such Court shall be
deemed to be subordinate;*

*(b) Where appeals lie to a civil and also to a
Revenue Court, such Court shall be deemed to
be subordinate to the Civil or Revenue Court
according to the nature of the case or
proceeding in connection with which the offence
is alleged to have been committed.*

17. The above provision does not give any indication that a Single Bench or the Division Bench of this Court can entertain an appeal filed under Section 341 of Cr.P.C, against an order passed by a learned Single Judge under Section 340 of Cr.P.C. The learned Single Judge passing an order in criminal petition under Section 482 of Cr.P.C. is not a Court subordinate to Division Bench. An appeal does not lie from an order passed by a learned Single Judge under Section 482 of Cr.P.C. to a Division Bench, under the Karnataka High Court Act, 1961.

18. Section 5 (ii) of the Karnataka High Court Act 1961 reads thus:

*“(ii) All Criminal Appeals against Judgments
in which sentence of death or imprisonment for life is
passed and against Judgments of acquittal in cases
in which offences are punishable with death or
imprisonment for life shall be heard by a Bench
consisting of not less than two Judges of the High
Court and other Criminal Appeals shall be heard by a
single Judge of the High Court”*

19. Therefore, it is clear that criminal appeals against the judgments in which sentence of death or imprisonment of life is passed and against judgments of acquittal in cases in which offences are punishable with death or imprisonment for life shall be heard by a Bench consisting of not less than two Judges of the High Court and other criminal appeals shall be heard by a Single judge. Those Criminal appeals arise out of the judgment and order passed by a Court subordinate to the High Court. Hence, even an appeal filed under Section 341 of Cr.P.C., against an order passed by a subordinate court to the High Court would be before the learned Single Judge of the High Court. An appeal under Section 341 Cr.P.C., would come under the term of 'other criminal appeals' as provided under Section 5 of the Karnataka High Court Act.

20. The judgments relied upon by the appellant in the cases noted supra are not applicable to the case on hand.

21. The Hon'ble Apex Court, in the case of *Pritish Vs. State of Maharashtra* (Supra) relied by the appellant, at para 14 has held as follows:

14. Section 341 of the Code confers a power on the party on whose application the court has decided or not decided to make a complaint, as well as the party against whom it is decided to make such complaint, to file

an appeal to the court to which the former court is subordinate. But the mere fact that such an appeal is provided, it is not a premise for concluding that the court is under a legal obligation to afford an opportunity (to the persons against whom the complaint would be made) to be heard prior to making the complaint. There are other provisions in the Code for reaching conclusions whether a person should be arrayed as accused in criminal proceedings or not, but in most of those proceedings there is no legal obligation cast on the court or the authorities concerned, to afford an opportunity of hearing to the would-be accused. In any event the appellant has already availed of the opportunity of the provisions of Section 341 of the Code by filing the appeal before the High Court as stated earlier.”

22. The Hon’ble Apex Court in *Pritish Vs. State of Maharashtra* (Supra) has not held that an order refusing to entertain an application under Section 340 of Cr.P.C, by the learned Single Judge is appealable to the Division Bench of the same Court or that the learned Single Judge exercising power under Section 482 Cr.P.C., is a Court subordinate to the Division Bench of the same Court.

23. The Hon’ble Apex Court in *M.S.Sheriff’s* case referred supra, at para 9 has held that the only Court to which an appeal ‘ordinarily’ lies from the ‘appealable’ decrees

and sentences of a Division Bench of a High Court is the said Court i.e., the Apex Court. Therefore, a Division Bench of a High Court is a Court “Subordinate” to Apex Court within the meaning of Section 195(3) Cr.P.C. It is held that appeal lies to the Hon’ble Apex Court from an order of a Division Bench of a High Court passed under Section 476 of Cr.P.C.(old code)

24. In the case of *Tarulata Mondal* referred supra, it is observed that Section 341 of Cr.P.C, confers a power on the party on whose application the Court has decided or not decided to make a complaint, as well as the party against whom it is decided to make such complaint, to file an appeal to the Court to which the former Court is subordinate.

25. As already held this Court exercising power under Section 482 Cr.P.C., deciding or not deciding to make a complaint under Section 340 Cr.P.C., is not a Court subordinate to a Single Bench or a Division Bench of this Court and therefore the present appeal filed under Section 341 Cr.P.C., is not maintainable.

27. An appeal under Section 341 of Cr.P.C., therefore does not lie against an order either allowing or refusing to entertain an application filed under Section 340 of Cr.P.C, by a learned Single Judge of this Court before another learned Single Judge or before the Division Bench of this Court.

The present appeal is not maintainable.

Accordingly, Appeal is dismissed.