

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 03RD DAY OF SEPTEMBER, 2026

PRESENT

THE HON'BLE MR. JUSTICE H.P.SANDESH

AND

THE HON'BLE MR. JUSTICE B.PRAMOD

CRIMINAL APPEAL NO.200 OF 2019

BETWEEN:

STATE OF KARNATAKA
BY ASHOKNAGAR POLICE STATION
REP. BY STATE PUBLIC PROSECUTOR
HIGH COURT BUILDING
BENGALURU-560001

...APPELLANT

(BY SRI. MOHAMMED AYUB ALI, ADDL. SPP)

AND:

DR. PARVEEN
W/O KURNAL PRAKASH
AGED ABOUT 51 YEARS
R/AT NO.20, 1ST CROSS
ROSEGARDEN NEELASANDRA
BENGALURU-560001

...RESPONDENT

(BY SRI. TOMY SEBASTIAN, SENIOR COUNSEL FOR
SMT. JAYALAKSHMI A.V., ADVOCATE)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION
378(1) AND (3) OF CR.P.C PRAYING TO GRANT LEAVE TO
APPEAL AGAINST THE JUDGMENT AND ORDER OF ACQUITTAL

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Location: HIGH
COURT OF
KARNATAKA

DATED 02.05.2018 PASSED IN SPL.C.C.NO.281/2016 BY THE COURT OF 50TH ADDITIONAL SESSIONS JUDGE, CITY CIVIL COURT, BENGALURU, THEREBY ACQUITTING THE ACCUSED/RESPONDENT OF THE OFFENCES PUNISHABLE UNDER SECTIONS 317 AND 371 OF IPC AND SECTION 23 OF JUVENILE JUSTICE ACT, 2000 AND ETC.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 31.08.2026, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE H.P.SANDESH
and
HON'BLE MR. JUSTICE B.PRAMOD

CAV JUDGMENT

(PER: HON'BLE MR. JUSTICE H.P.SANDESH)

This appeal is filed by the State praying this Court to set aside the judgment of acquittal dated 02.05.2018 passed in Spl.C.C.No.281/2016 by the 50th Additional Sessions Judge, City Civil Court, Bengaluru and also prays for the conviction and sentence against the accused for the offences punishable under Sections 317 and 371 of IPC and Section 23 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (for short 'JJ Act').

2. Heard the learned Additional SPP Sri Mohammed Ayub Ali appearing for the State/complainant and also the Senior Counsel Sri Tomy Sebastian appearing for the respondent/accused.

3. The factual matrix of case of the prosecution is that accused No.1/respondent herein is a doctor. On 27.12.2012 at about 10.00 a.m. when the complainant - Police Official was on duty has received the credible information about the sale of the child. Based on that information, at about 11.00 a.m., PW1 sent Decoy Police Constable to verify the same. On confirmation, PW1, PW3 and PW4 went to the spot and trapped the accused. Hence, based on the complaint of PW1 as per Ex.P2, the case was registered and mahazar was drawn in terms of Ex.P1 and investigated the matter. After completion of investigation, charge sheet was filed. The accused was secured and he did not plead guilty and claims the trial.

4. In order to prove the case, the prosecution examined the witnesses as PW1 to PW12 and got marked

the documents at Ex.P1 to PW24 and also seized the material object i.e., cash of Rs.20,000/- at MO1. On closure of the prosecution evidence, 313 statement of accused was recorded and accused did not choose to lead any evidence, however, filed the written statement explaining that at the instance of one Niranjan Shetty, the alleged trap was made with vengeance in order to knock of the nursing home belongs to the accused and all of them indulged in such act. The Trial Court having considered both oral and documentary evidence available on record particularly, the evidence of PW1 and PW4 and so also the evidence of PW3 comes to the conclusion that the very case of the prosecution not inspires the confidence of the Court even though the child was in the custody of the accused and also comes to the conclusion that mother left the child in the hospital and FSL report also supports the fact that the mother - Jaya is the biological mother of the child and acquitted the accused.

5. Being aggrieved by the judgment of acquittal, the present appeal is filed by the State before this Court.

6. The learned Additional SPP – Sri Mohammed Ayub Ali appearing for the State in his arguments would vehemently contend that the Trial Court while acquitting the accused has not at all appreciated the evidence available on record and no sound reasons are assigned while acquitting the accused. The Trial Court except discussing the evidence led, has not at all appreciated the evidence available on record in all perspective and instead of considering the evidence on record committed an error in coming to a wrong conclusion and acquitted the accused which has resulted in miscarriage of justice. The counsel would vehemently contend that Trial Court ought to have considered the fact that the child was with the accused and the same is not in dispute and the evidence of PW5 to PW8 are very clear with regard to seizure of the amount of Rs.20,000/- which was received by the accused under decoy. The combined appreciation of the evidence would clearly establish the fact that the prosecution has proved its case. Hence, the Trial Court ought not to have

acquitted the accused when the prosecution has proved its case.

7. The learned Additional SPP also brought to the notice of this Court the very provisions of Section 32 of JJ Act, 2000 and so also the amendment to the said Act in 2015 and contend that Section 32 of old Act and new Act is very clear that it is the mandatory duty on the part of the doctor to hand over the child to the committee. But the same has not been done by the accused since accused is not having any lawful authority to keep the child. The said fact is not considered by the Trial Court when the accused itself not disputed the fact that the child is in her custody. The evidence of PW1, PW3 and PW4 is consistent but the Trial Court committed an error in appreciating the same. Hence, prayed this Court to convict and sentence the accused.

8. Per contra, the Senior Counsel Sri Tomy Sebastian appearing for the accused/respondent would vehemently contend that in the old Act of JJ Act, Section

32 does not disclose any duty on the part of either the hospital or the doctor and only in 2015, when enactment was made, the same was inserted, thus, the same is not applicable considering the date of alleged incident. The counsel also would submit that the accused has given his explanation by filing a written statement that the very hospital was sold to one Niranjan Shetty and this trap is also a set up of the said Niranjan Shetty in order to make wrongful gain. The counsel also would vehemently contend that Ex.P1 and P2 is very clear that PW1 did not make any mention about the permission obtained by the Joint Commissioner and PW1 also belongs to different police station. The Ex.P1 and P2 also does not disclose anything about the permission given to PW1 to conduct the raid. PW4 also not stated about receiving of the amount from PW1. PW3 says that there is no such incident prior to this incident, thus, the evidence of PW3 is inconsistent with the evidence of PW4 and there are contradictions and the same was taken note of by the Trial Court. PW4 cannot work as a decoy as she has categorically admitted that she

was having acquaintance with the very same hospital and also deposes that earlier also, she has given the complaint and at her instance only, earlier also both the accused and her husband were taken to the custody. When such being the case, the evidence of PW4 cannot be believed.

9. The counsel also brought to notice of this Court the ingredients of Section 317 of IPC which deals with the exposure and abandonment of child under 12 years, by parent or person having care of it and so also the Charge No.2 which is in respect of Section 371 with regard to habitually dealing in slaves and Charge No.3 which is also in respect of Section 23 of JJ Act with regard to cruelty to juvenile or child and contend that these ingredients do not attract to the case of the accused. The counsel also brought to notice of this Court the material evidence of prosecution i.e., only PW1, PW3 and PW4 and mahazar at Ex.P1 dated 27.12.2012 drawn at Get Well Hospital, Neelasandra and also Ex.P2-complaint of PW1 dated 27.12.2012. The counsel also brought to notice of this Court the evidence relating to securing the panchas,

visiting Ashok Nagar police station and then reaching the Get Well Hospital and then drawing the mahazar by Sub-Inspector of Police i.e., PW1. In Ex.P2, there is no reference that PW1 has handed over Rs.20,000/- to PW4-Gunasheela. In Ex.P1 also there is no reference that PW1 - Roopa Hadagali has handed over Rs.20,000/- to PW4-Gunasheela either at Ashok Nagar Police Station or at any place, before both of them entered into the hospital. Though there is a reference to the order of Joint Commissioner in Ex.P1, no such reference is made in Ex.P2. The counsel further would vehemently contend that on the contrary, in Ex.P2, there is a reference of receiving the information from the informant but the same is not appearing in Ex.P1. The counsel would contend that all these materials were taken note of by the Trial Court while acquitting the accused.

10. The counsel further contend that PW4 says that mahazar was written by hand at the hospital and later, the same was typed in the police station and PW4 also says that herself and PW1 went inside the hospital and met one

lady doctor that is accused and asked for a child and lady doctor agreed and asked to pay Rs.85,000/- but they offered to give only Rs.20,000/- and the accused accepted the same and the said amount was handed over to her son Harsha. After collecting the money, the accused handed over the child. But there are contradictions in the evidence of this witness since PW4 says that earlier also she only gave the complaint against this accused and she does not remember in which Court she gave evidence in respect of earlier case registered against the very same doctor, but claims that one child from Orissa was left by the security stating as his wife died and he cannot look after the child and child was about 9 years old. When such evidence is available on record, the question of approaching the accused or purchase of the child by PW4 does not arise unless she is a stranger. The Trial Court has taken note of the said fact into consideration and not committed any error in considering both oral and documentary evidence placed on record while acquitting the accused. Hence, it does not require interference of this Court.

11. Having heard the counsel appearing for the State and also the learned Senior Counsel appearing for the respondent and also on re-appraisal of both oral and documentary evidence placed on record, the point that would arise for the consideration of this appeal is:

1. Whether the Trial Court committed an error in acquitting the accused and whether it requires interference of this Court?
2. What order?

Point No.1:

12. Having heard the learned counsel appearing for the respective parties and also on perusal of the material on record, it discloses that it is the case of the prosecution that on credible information, PW1 conducted the trap with the help of PW3 and PW4 and made the payment of Rs.20,000/- to accused No.1 and accused No.1 collected the said money and handed over the same to her son and case was registered at the instance of PW1.

13. The evidence of PW1, who is the architect of the said raid is that she has received the credible information on 27.12.2012 when she was in Gandhi Nagar, Freedom Park bandhobasth duty and she has proceeded based on the oral permission of Joint Commissioner of Police. It is also her evidence that she has secured the panchas and instructed PW4 to accompany her to deal for the purchase of the child and trap was conducted. It is also her evidence that accused brought the male child from first floor and handed over to PW4 having accepted the amount of Rs.20,000/-. The mahazar was drawn in terms of Ex.P1 and also given the requisition to police as per Ex.P2. This witness was subjected to cross-examination. In the cross-examination, she categorically admits that the place of raid comes within the jurisdiction of Ashok Nagara Police Station and she is working in Upparpet police station. Though PW1 says that oral permission was taken from Joint Commissioner, but she did not collect the permission letter given by the Joint Commissioner even after conducting the raid. Hence, it is clear that she was not

authorized to conduct the raid and the place where she conducted the raid is also not comes within her jurisdiction.

14. It is also important to note that PW1 did not take any permission either from Police Inspector or from ACP of the particular police station of Ashok Nagar Police Station and so also from Police Inspector and ACP of her police station. It is also important to note that both PW3 and PW4 are from same address. It is also important to note that in Ex.P1 and P2 not stated that she has taken the permission from the Joint Commissioner. PW1 admitted that amount which was used for trap i.e., Rs.20,000/- was belongs to her but why she kept that amount, no explanation and only says that she was having that amount for some other purpose. PW1 categorically admits that having given the amount of Rs.20,000/- to PW4 was not disclosed in Ex.P1 and P2. PW1 in further cross-examination admits that she did not produce any document for having received the credible information of sale of child; receiving permission from the Joint

Commissioner and calling the decoy and CDR is not placed before the Court and also even not given any report for having conducted the trap to the Joint Commissioner. PW2 is only who collected the blood samples. PW3 is also a punch witness who accompanied with PW1 and PW4. Having perused the evidence of PW3 and so also the evidence of PW4, it discloses that there are contradiction in their evidence. PW3 says that there is no such incident prior to this incident. But PW4 says that earlier also in respect of this hospital, she has given the complaint and accused persons were arrested and sent them to the jail. PW3 admits that now the accused is not running the hospital, but categorically admits that now hospital is running in different name. The same substantiate the defence of the accused that the trap was held at the instance of Niranjana Shetty. PW3 says that he was standing outside and after 10 to 15 minutes he was taken inside. But he says that he went along with PW1 and male PC. But claims that the amount was given to women PC by

male PC and that amount was on the table. In his presence the amount was not given to the accused.

15. The evidence of PW4 who worked as decoy is that she visited the hospital and dealt with the accused for purchase of the child and gave an amount of Rs.20,000/- and that amount was the personal amount of PW1. There is no explanation with regard to that what made PW1 to use the personal money for trap and PW1 has no proper permission and also not having jurisdiction to conduct the raid in respect of other jurisdictional police station. But in the cross-examination, she claims that she has received the call from PW1 over the phone and herself and PW3 went to Ashok Nagar Police Station. PW4 further deposes that earlier also i.e., 2 years ago, similar type of trap was done in the accused hospital and she only gave the complaint and the said trap was done by Ashok Nagar Police and the child was belongs to Orissa and the father, who was working as security, has expressed that he was not able to take care of the child of 9 years. It is also her evidence that she gave evidence in the Court, but she did

not remember that in which Court, she gave the evidence. When such being the case, the very PW4 acting as decoy does not arise since she was having an acquaintance with the accused. Only a stranger can participate in the trap as decoy. Normally if there was any such case 2 years ago, the accused will having acquaintance with PW4 and hence, she cannot act as decoy. These are the materials which were taken note of by Trial Court while acquitting the accused.

16. No doubt, other witnesses were also examined i.e., doctors and professors and so also mahazar witnesses and also considered the FSL report. But those materials are not materials when the very trap was doubtful since the trap was conducted at the instance of one Niranjan Shetty and the very same defence was taken by the accused in her written statement which was filed after recording her 313 statement. It is also not in dispute that very same Niranjan Shetty had purchased the very same nursing home from the accused within a span of one year of the incident of trap. Hence, the very defence is probable

and the same is taken note of by the Trial Court while acquitting the accused extending the benefit of doubt.

17. Having perused all these materials available on record, it discloses that there is no error in appreciation of both oral and documentary evidence placed on record by the Trial Court and there is no perversity in the reasoning of the Trial Court. The judgment of the Trial Court does not lead to miscarriage of justice as contented by the learned Additional SPP for the State since the Trial Court has taken note of all materials available on record, particularly the evidence of PW3 and PW1 and PW4, who are the architects of this trap and their evidence does not inspires the confidence of the Court. Hence, it is not a case for converting the judgment of acquittal into conviction.

18. No doubt, the learned Addl. SPP brought to notice of this Court Section 32 of JJ Act of 2000 as well as 2006 and 2015 but the same will not comes to the aid of the prosecution since amendment was brought inclusive of the doctor and nurses only in 2015 and this incident was

taken place prior to that i.e., in 2012 and hence, new Act of 2015 of JJ Act is not applicable. Hence, we answer the above point as negative.

Point No.2:

19. In view of the discussions made above, we pass the following:

ORDER

The appeal is dismissed.

**Sd/-
(H.P.SANDESH)
JUDGE**

**Sd/-
(B.PRAMOD)
JUDGE**

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