



CNR: KAHC010305892019

NC: 2026:KHC:36695
CRL.P No. 7031 of 2019

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE RAVI V HOSMANI

CRIMINAL PETITION NO.7031 OF 2019

BETWEEN:

STATE BY SPECIAL EXECUTIVE MAGISTRATE
MANGALURU CITY COMMISSIONERATE,
MANGALURU, D.K.,
REP BY STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDING,
BENGALURU-01.

...PETITIONER

(BY SMT. SOWMYA R., HCGP)

AND:

MR. HAMZA
S/O PODIYABBA,
AGED ABOUT 39 YEARS,
R/AT MUNDOLI HOUSE,
PRAKASH NAGAR,
SOMESHWAR VILLAGE,
MANGALURU TALUK - 575 001.

...RESPONDENT

(BY SMT. MAITREYI KRISHNAN, ADVOCATE FOR
SRI. CLIFTON D ROZARIO, ADVOCATE)

THIS CRL.P IS FILED U/S.482 CR.P.C PRAYING TO SET
ASIDE THE ORDER DATED 05.04.2019 PASSED IN
CRL.RP.NO.64/2019 ON THE FILE OF THE LEARNED II
ADDITIONAL DISTRICT AND SESSIONS JUDGE, D.K.,
MANGALORE THEREBY SETTING ASIDE THE ORDER OF

Digitally signed
by ANUSHA V
Location: High
Court of
Karnataka



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LEARNED SPECIAL EXECUTIVE MAGISTRATE, MANALURU CITY COMMISSIONERATE, MANGALURU IN PROCEEDINGS NO.SEM /991/M.C/2019 DATED 08.03.2019.

THIS PETITION, COMING ON FOR *ADMISSION*, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE RAVI V HOSMANI

ORAL ORDER

Challenging order dated 05.04.2019 passed by II Additional District and Sessions Judge, D.K., Mangaluru (**Sessions Court**) in Crl.R.P. no.64/2019, this petition is filed.

2. Smt.Sowmya R., learned HCGP for petitioner - State submitted based on apprehension as respondent was earlier involved in offences punishable under Sections 4 and 5 of Karnataka Prevention of Cow Slaughter and Cattle Preservation Act, 1964 (**Act**), Section 11 (d) of Prevention of Cruelty to Animals Act, 1960 (**PCA**), Section 177 of Motor Vehicles Act, 1988 (**MV Act**) read with Section 34 of Indian Penal Code, 1860 (**IPC**) in a communally sensitive area and was likely to cause breach of peace and damage to public property etc., a notice was given to respondent calling upon



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him to furnish an undertaking of good behaviour and bond for Rs.1,00,000/-. An order was passed to said effect on 08.03.2019. Assailing same, respondent had filed CrI.R.P. no.64/2019 before Sessions Court. Under impugned order, Sessions Court had set aside order passed by Special Executive Magistrate, assailing present petition was filed.

3. It was submitted, Section 110 of Code of Criminal Procedure 1973 (**CrPC**), authorized Special Executive Magistrate to call upon a person within his jurisdiction to provide security for good behaviour. Since respondent was earlier involved in offences and there was likelihood of his committing breach of peace etc., order came to be passed by Special Executive Magistrate. Only reason assigned by Sessions Court was that order was passed without application of mind. It was submitted that when involvement of respondent in offences and registration of FIR was not disputed, finding of Sessions Court that there was non-application of mind would not be justified and prayed for allowing petition.



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4. On other hand, Smt.Maitreyi Krishnan, learned counsel appearing for Sri Clifton D. Rozario, advocate for respondent opposed petition. It was submitted, even if a complaint was registered against respondent earlier, said proceedings were closed in year 2013 itself. Based on same, issuance of show cause notice and passing of impugned order in year 2019, nearly more than 6 years thereafter would not be justified. Same would indicate lack of application of mind and Sessions Court has rightly set aside order. Therefore, no interference was warranted in this petition.

5. Heard learned counsel and perused impugned order.

6. Perusal of order dated 08.03.2019 passed by Special Executive Magistrate would reveal that there is no other basis than registration of Crime no.205/2012 for various offences. While passing impugned order, Sessions Court has noted that said proceedings were closed in year 2013 itself. Besides same, there is absolutely no other material. Therefore, observation by Sessions Court that order passed was



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mechanical in nature without application of mind would be justified. I say so for yet another reason that Section 110 of CrPC, can be invoked only in cases of habitual offender. Without any other instance or basis, there would be no justification for Special Executive Magistrate to have come to conclusion that respondent was habitual offender. Therefore, resort to Section 110 of CrPC, would be illegal. Consequently, there would be no merit in challenge. Hence, petition is ***dismissed.***

**Sd/-
(RAVI V HOSMANI)
JUDGE**

GRD
List No.: 1 SI No.: 20