



CNR: KAHC010505612026

NC: 2026:KHC:47006
CRL.P No. 11075 of 2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF AUGUST, 2026

BEFORE

THE HON'BLE MR. JUSTICE M.NAGAPRASANNA

CRIMINAL PETITION NO. 11075 OF 2026

BETWEEN:

1. SRI. SALEEM PASHA @ AUTO SALEEM
S/O JEELANI
AGED 44 YEARS
NO. 32, TIPU NAGAR, KOTTIPURA
RAMANAGARAM, KARNATAKA-562159.

...PETITIONER

(BY SRI. THEJAS, ADVOCATE)

AND:

1. STATE OF KARNATAKA
BY BHANASHAKRI.P.S
REPRESENTED BY HCGP
HIGH COURT BUILDING, BENGALURU - 560001.
2. MANJU BP
(POLICE) SUB INSEPCTOR
AGED ABOUT NOT KNOW YEARS
BANASHANKARI P.S
BANASHANKARI 2ND STATGE
BENGALURU -70

...RESPONDENTS

(BY SRI. K. NAGESHWARAPPA, HCGPR FOR R1)

THIS CRL.P IS FILED U/S.482(FILED U/S.528 BNSS)
CR.P.C PRAYING TO QUASH THE ENTIRE PROCEEDINGS IN
S.C.NO.1570/2019 FOR THE OFFENCE P/US/ 399, 402 OF IPC
OF BHANASHANKARI P.S., PENDING ON THE FILE OF THE



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LEARNED 61ST ADDL. CITY CIVIL AND SESSIONS JUDGE AT BENGALURU (CCH-62).

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

CORAM: HON'BLE MR. JUSTICE M.NAGAPRASANNA

ORAL ORDER

The petitioner is accused No.5 in S.C.No.1570/2019, which is split-up charge sheet drawn in Crime No.134/2013 against the petitioner.

2. Heard Sri.Thejas, learned counsel appearing for the petitioner, Sri.K.Nageshwarappa, learned HCGP appearing for respondent No.1 and have perused the material on record.

3. The petitioner and others get embroiled in a crime for the offence punishable under Sections 399 and 402 of the IPC. At the relevant point of time, the petitioner was not available for trial. The concerned Court proceeded with the trial against those accused, who were available for trial and acquitted them by order dated 29.09.2014. The petitioner, who was not available for trial at that point of time, is now being tried for the offence punishable under Sections 399 and 402 of IPC. The petitioner is drawn as accused No.5. The accused Nos.2 to 4



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have been acquitted. The offences are the ones punishable under Sections 399 and 402 is preparation and commission of dacoity. Therefore, the reasons rendered for acquittal of accused Nos.2 to 4 are necessary to be noticed. The relevant paragraphs are extracted, which reads as under;

"14.Pw.1/Shivakumaraiah, who is alleged to be accompanied with the complainant in his evidence has stated that, on 2.4.2013 along with Cw.5 to 7 and Cw.1 visited to the 35th Cross, behind Dobighat, Banashakari, where 5 persons assembled by parking auto rickshaw and holding deadly weapons like long, knife, clubs and thereafter, they confirmed that, they were assembled for the purpose of committing dacoity and were preparing to commit dacoity, they raided and caught hold them. One person escaped from the place. Thereafter, Cw.1 seized one long, knife, club from the possession of the accused persons which are at Mo.1 to 4 by recording seizure panchanama. Thereafter they returned back to the police station and has given statement to that effect.

15. Pw.2/Venkatesh, P.C.9445, who in his evidence has stated that, on 2.4.2013 he accompanied Cw.1 for a raid at 35th Cross, Behind Dobhighat, Banashankarinagar along with Cw.4 to 6 and they found where 5 persons were assembled for the purpose of committing dacoity were preparing to commit dacoity by holding deadly weapons. Thereafter raided and caught hold 4 persons. Cw.1 seized one long, one knife, one club from the possession of the accused persons by recording seizure panchanama in presence of the panchas.

16. Pw.3/Manju, who is complainant in his evidence has stated that, on 2.4.2013 he received a credible information that, in a vacant space near 100 feet ring road, behind Dobighat, Banashankari, accused persons are assembled for the purpose of committing dacoity. Accordingly he along with Cw.2 and 3 panch and Cw.4 to 7, his officials visited to the spot and raided and caught hold 4 persons and one person escaped from them. They were preparing to commit dacoity of house situated at Dobighat. He seized the Mo.1 to 4 from the possession of the accused persons by recording seizure panchanama. Thereafter, returned back to the police station and got registered a case against the accused persons for the offences punishable U/s.



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399 and 402 of I.P.C., on the basis of his own complaint in its Cr.No.134/2013 and sent the F.I.R. to the court. He identified the panchanama at Ex.P.1 and F.I.R. at Ex.P.3 and complaint at Ex.P.2.

17. Pw.4/Venkatesh who is alleged to be present at the time of recovery panchanama in his evidence has specifically stated that, the police had took him about 1 ½ years back near Dobighat at 9.00 to 9.30 p.m., where 4 to 5 persons were assembled there. In a vacant space they were possessed long, chopper, and rods. Among them one person escaped, police have arrested 4 persons and also seized long, rod and chopper from their possession and obtained his signature on panchanama at Ex.P.1. He identified the same at Mo.1 to 4. The police have also seized one auto and identified accused No.2 to 4 who are persons arrested by Cw.1 in his presence.

18. As this witness is not supported the case of the prosecution, the learned Public Prosecutor has treated this witness as hostile and cross examined at great length. However, nothing is elicited from the cross-examination of Pw.4 to show that, the accused have committed the alleged offences in the alleged manner.

19. Pw.5/Shivakumara who is also alleged to be accompanied the Cw.1 on the alleged raid in his evidence has stated that, on 2.4.2013 he had accompanied the Cw.1 for raid along with Cw.3, 7 and 4 and 6 along with panchas. They got watch from some distance where in a vacant space at behind Dobighat, Banashankari, some 5 persons were assembled and making preparation for committing dacoity and accordingly, they raided and caught hold 4 persons and seized Mo.1 to 4 in presence of panchas.

20. During the course of the cross-examination Pw.5 has specifically stated that, about 100 to 200 meter they got watch. It was not possible for him to say what they were talking among themselves. They were assembled at vacant space. It is not possible for him to show which is exact place where the accused persons were assembled and he was unable to give the explanation what is situated around the said place.

21. From the said version of Pw.5 during the course of cross-examination it shows that, he was not visited to the alleged raid as he stated along with Cw.1 and other officials and spot panchas. Therefore his version is not reliable one and is not of trustworthy as the independent witnesses Pw.4 recovery panch has turned hostile and has not supported the case of the prosecution.



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22. Though the Pw.1 to 3 have given their version that, they visited to the raid and caught hold the accused persons along with Mo.1 to 4 and seized the same by recording seizure panchanama, they have not tendered for cross-examination. Therefore, their version is not helpful to the prosecution to bring home the guilt of the accused persons beyond all reasonable doubt.

23. On going through the version of Pw.3 complainant who raided initially is elicited to show that, the complainant has seized any money from the possession of the accused persons or he has produced copy of the panchanama to the accused persons or obtained signatures of the accused persons on the spot panchanama and recovery panchanama.

24. In a decision reported in 2006 CrL.L.J. 1775 in case of Ram Kishan Vs/.State of U.P. wherein it is held as under:

"Penal Code (45 of 1869), Ss.399, 402 – Preparation to commit dacoity – Arrest of accused persons along with arms and ammunition – No public witness summoned to witness incident – Neither signature of accused were obtained – neither signatures of accused were obtained on seizure memo nor copy therefore was furnished to any of accused – Out of six dacoits, three were armed with country made pistols and were having ten live cartridges also – However, none of them had loaded their pistols – Is also could not be believed that accused dacoits who had assembled at culvert were talking so loudly that their voice was heard by police party in odd hours of night – Police party did not recover a single penny from possession of any of accused – Non recovery of coins or currency notes from pockets of accused makes prosecution story doubtful – Accused held entitled to be acquitted."

The principles laid down in the supra cited decision are followed.

25. As the no money are recovered from the possession of the accused persons, signature of the accused persons are not obtained on recovery panchanama and copies of the same are not furnished to the accused persons, a benefit of doubt is to be given to the accused persons. The prosecution has failed to cross-examine the Investigating Officer who has submitted the charge sheet to court. The non-examination of the Investigating Officer is fatal to the case of the prosecution.



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Therefore, I have no hesitation whatsoever to come to the conclusion that, the prosecution has failed to prove the guilt of the accused persons beyond all reasonable doubt in the alleged manner. Accordingly, I answer these points No.1 and 2 in the Negative.

26. POINT NO.3: In view of my findings on the above points, I proceed to pass the following:

ORDER

In view of power conferred U/s. 235(1) of Cr.P.C., the accused No.2 to 4 are acquitted from the offences punishable U/s. 399 and 402 of I.P.C.

Their bail bonds and surety bonds shall stand cancelled.

Office is hereby directed to preserve the entire file as the case is split up against the accused No.1 and 5."

4. The reason so rendered by the concerned Court is that the prosecution has miserably failed to prove the guilt beyond all reasonable doubt. Therefore, the said reasons would render the quoted supra would become applicable to the petitioner. Though this Court has repeatedly observed that persons, who escape trial, should not be shown any indulgence. But what merits consideration is the precious judicial time would go waste in an eventual acquittal if the petitioner is even permitted to be tried. In that light, to save the precious judicial time, I deem it appropriate to exercise the jurisdiction under Section 482 of Cr.P.C. and obliterate the same.



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5. The view of mine, in this regard, is fortified by the judgment rendered by a Co-ordinate Bench of this Court in Crl.P.4796/2017, wherein the Co-ordinate Bench considering identical set of facts has held as follows:

*"12. Having heard the learned Advocates appearing for parties and on perusal of records it would disclose that petitioner/accused was never traced and non-bailable warrant issued against him was never executed. Hon'ble Apex Court in the case of **CENTRAL BUREAU OF INVESTIGATION vs AKHILESH SINGH** reported in **AIR 2005 SCC 268** has held quashing of charge and order discharging co-accused can be passed, if the proceedings initiated against co-accused is on similar allegations and if said judgment had reached finality. It is also held that discharge of a co-accused by the High Court by holding that no purpose would be served in further proceeding with the case, is just and proper. In another ruling in **MOHAMMED ILIAS vs. STATE OF KARNATAKA** reported in **(2001) 3 Kant LJ 551** this Court has held as under:*

"The petitioner is the accused in the case and he is shown to be the absconding. Therefore, the case against the petitioner was split up and charge-sheet was laid against other available accused Nos.1 and 3 for committing an offence punishable under Sections 498A and 307 IPC r/w 34 Indian Penal Code, 1860. After the trial, the Sessions Judge acquitted the accused Nos.1 to 3. The petitioner was arrested and proceedings were revived against him in the split charge sheet.... In the instant case also, the full pledged trial was held



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against accused Nos.1 to 3, in respect of the same offence. In the second round of trial against the petitioner, the evidence to be produced cannot be different from the one that was produced by the prosecution in the earlier case. Therefore, in that view of the matter, the proceeding is quashed."

13. Yet, in another ruling **THE STATE OF KARNATAKA vs. K.C.NARASEGOWDA** reported in **ILR 2005 Kar. 1822** this Court has held to the following effect:

"As the case before the Sessions Judge is not a pending case, he cannot keep the file any longer pending nor he can close the case as he has to await appearance of the accused or the production by the State, for passing orders regarding undergoing sentence. As such, considering these peculiar facts and circumstances, it is deemed proper to exercise the inherent jurisdiction under Section 482 of Cr.P.C. instead of jurisdiction under Section 385 of Cr.P.C. in the interest of justice. As the entire material evidence of the prosecutions is one and the same, as against all the accused including the non-appealing accused No.1, who is said to be absconding, there is no second opinion that he is also entitled for the same benefit of doubt as he is extended for his co-accused. Accused acquitted by giving benefit of doubt."

14. In this background, when the facts on hand are examined, it would clearly indicate that not only complainant but also other witnesses including



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the inmates of ambulance in which they were travelling on the date of incident, had turned hostile in the proceedings which was continued against co-accused. Though, P.W.1 – complainant had admitted that he has lodged a compliant as per Ex.P-1 and had also admitted that he has given a statement identifying the accused before the Investigation Officer, he did not identify the accused persons present before Court. In fact, statements given by him as per Exs.P-2 to P-4 when confronted, he denied the same and had also denied the suggestion put by the public prosecutor that he had furnished the statements as per Exs.P-2 to P-4 as false. P.W.2 to P.W.8 had not identified the accused persons present before the jurisdictional Sessions Court. In fact, they have not even identified the statements made by them before the Investigating Officer and nothing worthwhile has been elicited in their cross-examination to disbelieve their evidence. Thus, taking into consideration said evidence available on record Sessions Court had arrived at a conclusion that evidence of the witnesses examined by prosecution would not come to their assistance. In fact, witnesses to the seizure panchnama - Ex.P-40, who were examined as P.W.16 and P.W.17, have also turned hostile and they have stated that police had called them a year back to the police station and when they went to the police station, they had not seen any accused persons in police station. However, they admit police having taken their signatures on the papers and contents of it were not known to them.

15. It is in this background, trial Court on appreciation of entire evidence had acquitted all the accused persons by holding that prosecution had failed to prove the offence alleging accused persons beyond reasonable doubt attracting the ingredients of provisions of the offence alleged against them. In



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fact, Sessions Court has observed that there was certain communal disturbance in Dakshina Kannada district and other places at Bantwal Taluk and to please on community of people, the Investigating Officer might have falsely implicated the accused persons in a false case or to avoid the blame to be received from the public or other community people and such possibilities cannot be ruled out. In this background, when prayer of petitioner sought for in the present petition is examined, it can be noticed that contents of supplementary charge sheet filed against the petitioner is similar, identical and in fact, it is replica of charge made against accused Nos.1 to 23 and 25 to 33, who¹⁵ were tried in S.C.No.12/2007, 94/2007 and 26/2008 and had been acquitted.

16. In that view of the matter, this Court is of the firm view that judgment rendered by trial Court insofar as it relates to accused Nos.1 to 23 and 25 to 33 is similar and identical to the charge made against the present petitioner. This Court does not find any independent or separate material having been placed by the prosecution against present petitioner to put him on trial once again and directing the petitioner-accused to undergo the order of trial, which ultimately would fetch same result as that of accused Nos.1 to 23 and 25 to 33. When allegation made against accused Nos.1 to 23 and 25 to 33 is compared with the allegation made against present petitioner, it has to be necessarily held that they are identical, similar and inseparable in nature and no independent decision can be taken against the present petitioner. Therefore, no purpose would be served even if the present petitioner is ordered to be tried by the trial Court.

17. In view of the afore stated facts and the law laid down, as discussed hereinabove, it would



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*emerge that there would be no harm or injustice that would be caused to prosecution if benefit of acquittal order is passed in favour of accused – petitioner, since accused Nos.1 to 23 and 25 to 33 against whom similar allegation had been made is already acquitted. Though, it is contended by Sri. Rachaiah, learned HCGP appearing for the State that petitioner should not be extended said benefit, since he is an absconder, by relying upon judgment of Coordinate Bench this Court is not inclined to accept said contention for single reason that said judgment had been rendered based on the judgment of Apex Court in the case of **DEEPAK RAJAK vs. STATE OF WEST BENGAL** reported in **(2007) 15 SCC 305** where under Apex Court after noticing the facts obtained in the said case, had held that benefit of acquittal, should be extended to the appellant, since co-accused had been acquitted and held that a departure can be made in cases where accused has not surrendered "**after conviction**" in addition to not filing an appeal against the conviction. As such, noticing earlier position of law laid down it was held by the Apex Court that in case of acquittal of a accused for same offence on same set of facts and on similar accusations, if considered, it would entitle for acquittal of co-accused also.*

18. In that view of the matter, present proceedings initiated against petitioner is liable to be quashed.

Hence, I proceed to pass the following:

ORDER

- (i) Criminal petition is hereby allowed.*
- (ii) Proceedings in C.C.No.1170/2007 pending on the file of Addl. Civil Judge & JMFC, Bantwal, in Cr.No.130/2006 registered by Bantwal Rural*



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Police Station, is hereby quashed insofar petitioner is concerned.

In view of criminal petition having been disposed of on merits, I.A.No.1/2017 for stay does not survive for consideration and same stands rejected."

The Co-ordinate Bench was considering a case where the co-accused who had escaped trial had not surrendered or was not arrested by the police.

6. In the light of there being no evidence against any of the accused and the split up charge against the petitioner being tried now before the learned Sessions Judge would become an exercise in futility. In the teeth of there being no evidence or a specific charge against this petitioner, that was not charged against others, I deem it appropriate to obliterate the proceedings against the petitioner.

7. For the aforesaid reasons, I pass the following:

ORDER

- i. Criminal Petition is allowed.
- ii. Proceedings in S.C.No.1570/2019 pending before the 61st Additional City Civil and Sessions Judge at



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Bangalore (CCH-62), stand quashed, *qua* the
petitioner.

iii. Pending applications, if any, are also disposed of.

SD/-
(M.NAGAPRASANNA)
JUDGE