



CNR: KAHC010605412026

NC: 2026:KHC:46991
WP No. 27117 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

WRIT PETITION NO. 27117 OF 2026 (GM-RES)

BETWEEN:

1. SRI. DAYANANDA
AGED 50 YEARS
S/O LATE ANANDA TINGALAYA
R/AT NEAR VYAGHRA CHAMUNDESHWARI TEMPLE
MOGAVEERA PATTANA, ULLAL
MANGALURU TALUK, D.K. DISTRICT - 575020.
...PETITIONER

(BY SRI. GANAPATHI BHAT, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
BY THE SUB-INSPECTOR OF POLICE
ULLAL POLICE STATION
MANGALURU
REPRESENTED BY
THE STATE PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA
BENGALURU - 560001
2. THE SUB-INSPECTOR OF POLICE
ULLAL POLICE STATION, ULLAL
MANGALURU CITY
DAKSHINA KANNADA DISTRICT - 575020
...RESPONDENTS

(BY SMT. WAHEEDA .M.M, HCGP FOR R1 AND R2)

Digitally signed
by: CHAITHRA A
Location: HIGH
COURT OF
KARNATAKA



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THIS W.P. IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE ENTIRE CRIMINAL PROCEEDINGS IN C.C.NO. 1346/2021 (ARISING FROM MAIN C.C.NO.761/2018 IN CRIME NO.45/2014 OF ULLAL POLICE STATION), PENDING ON THE FILE OF JMFC VII COURT, MANGALURU, FOR THE OFFENCES P/U/S 143, 144, 147, 148, 353, 332, 324, 326, 307, 427 R/W SECTION 149 OF IPC AND SECTION 2(A) OF THE KARNATAKA PREVENTTION OF DESTRUCTION AND LOSS OF PROPERTY ACT, 1981, AS AGAINST PETITIONER HEREIN/ACCUSED IS CONCERNED, THE ORDERSHEET OF WHICH IS PRODUCED AT ANNEXURE-A.

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

CORAM: HON'BLE MR. JUSTICE M.NAGAPRASANNA

ORAL ORDER

The petitioner is said to be accused No.5 is before this Court calling in question the continuance of proceedings in C.C.No.1346/2021 (arising from Main C.C.No.761/2018 in Crime No.45/2014 of Ullal Police Station) for offences punishable under Sections 143, 144, 147, 148, 353, 332, 324, 326, 307, 427 read with Section 149 of IPC and Section 2(a) of



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the Karnataka Prevention of Destruction and Loss of Property Act, 1981.

2. Heard Sri.Ganapathi Bhat, learned counsel appearing for the petitioners, Smt.Waheeda M.M., learned HCGP appearing for respondent No.1 and have perused the material on record.

3. Facts in brief, germane, are as follows:

The petitioner gets embroiled in a crime in Crime No.45/2014 for offences punishable as afore-quoted. The police conduct investigation and file a charge sheet for the offences again as afore-quoted. The concerned Court acquits accused Nos.1 to 4, 6, 7, 9 to 11, 13 to 18, 20 to 32, 34, 35, 37 to 41 and 43 to 58, who are available for trial and the petitioner not being available for trial, a split charge is drawn against him in C.C.No.1346/2021, which is now hanging on the head of the petitioner.

4. Learned counsel appearing for the petitioner submits that the reasons that went into acquitting the other accused would become straight away applicable to the



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petitioner as well, as the offence is one to form unlawful assembly, causing hurt to public servants, attempt to murder and causing damage to the property as obtaining under Sections 143, 144, 147, 148, 353, 332, 324, 326, 307, 427 read with Section 149 of IPC and Section 2(a) of the Karnataka Prevention of Destruction and Loss of Property Act, 1981. If it is a collective act, the learned counsel submits that the petitioner cannot be singled out for a different treatment.

5. Learned HCGP would, however, refute the submissions contending that the petitioner has escaped trial. Therefore, he must be directed to face trial and come out clean like the other accused and would seek dismissal of the petition.

6. I have given my anxious consideration to the respective submissions made by the learned counsel and have perused the material on record.

7. The afore-narrated facts are not in dispute. The issue before the Court relates to the offences punishable under Sections 143, 144, 147, 148, 353, 332, 324, 326, 307, 427 read with Section 149 of IPC and Section 2(a) of the Karnataka



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Prevention of Destruction and Loss of Property Act, 1981, which is to form unlawful assembly, causing hurt to public servants, attempt to murder and causing damage to the property. The allegation is that all the accused together did indulge in forming unlawful assembly, attempt to murder and causing damage to the property. The concerned Court answering the prosecution's allegations, acquitted all the other accused, who were available for trial on the following reasons:

" 11. Point Nos.1 to 11 :- Since these eleven points are interconnected and inter-related to each other in order to avoid the repetition of facts, they are taken up together.

12. In order to prove its case, the prosecution has examined in all twenty six witnesses. The sums and substance of evidence of witnesses is that:

13. PW-1 is the complainant/first informant and he was present at the place of incident. PW-2, PW-13, PW-16, PW-20 to PW-24 are the police witnesses and same are injured witnesses. They deposed that on 06.02.2014 a 'peace meeting' was called upon in the premises of Ullal police station. Prior to that, there was a rumor that some persons belonging to some religion had damaged the fishing boat belonging to other religion and in this regard, the residence of Mogaveera area of Ullal Village had formed an unlawful assembly and they were holding deadly weapons and they were proceeding from an area called Mogaveera/Hindus area to another area called Kotekar/Muslims area, with an intention to damage the properties of their rival persons and to kill any of the persons belonging to other religion. On the same day, at the same time, the Muslim community persons residing in Kotekar area formed an unlawful assembly by holding



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deadly weapons, they were proceeding towards, Mogaveera area, where more Hindus were residing, with an intention to cause damage to their properties and to kill anyone of those persons. This information was received by the police and they went to the place. There were several male and female persons of more than 250-300. They were damaging the property belongs to Muslims and by each acts they caused fears in the mind of public at large and threatened to kill those persons. At the same time, the residents of Kotekar area, belongs to Muslim religion of around 150-200 persons were proceeding to Mogaveera area, where mere Hindus were residing and they were damaging the properties of rivals and pelted stones to their houses. By that time, prohibitory injunction was ordered under Sec.144 of IPC and as per the said order, more than 2 to 5 persons should not be gathered in the same place. All those persons of two groups asked them to prevent the said act. Even then, they were proceeding with deadly weapons and causing damage to the public and private properties. At that time, several persons belongs to both religions sustained injury. When the police persons went to prevent the said acts the accused persons assaulted the police. During said time, police persons i.e., CW-25, CW-28, CW-39 and CW-42 sustained injuries. Then accused persons were arrested in the said place. Thereafter, PW-1 filed first information statement and registered an FIR. The injured were sent to hospital for medical treatment.

14. PW-2 to PW-12 are eye witnesses to the incident and some are injured victims, who had suffered damage to their house and other properties. PW-2 deposed that no such communal clash had occurred and he has not seen any incident and his house was not damaged. PW-3 deposed that his boat was damaged, but he does not know who had caused such damage. PW-4 deposed that he had not seen any incident and his son had not sustained any injuries. PW-5 deposed that he received information that his rented house was damaged, but he does not know who had caused such damages, but during said time, there was a communal clash between persons belongs to two groups. PW-6 deposed that he does not know about any incident or any communal clash.



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PW-7 deposed that no such incident had had happened and his son had not assaulted by anyone. PW-8 deposed that his house was not damaged. PW-9, PW-10 and PW-11 deposed that no such incident of communal clash had happened. PW-12 deposed that his house was damaged, but he does not know who had caused such damage.

15. PW-15 and PW-17 are the mahazar witnesses, who deposed hostile evidence that no such mahazar was conducted in their presence and nothing was seized in their presence and they have signed the mahazar in the police station. PW-18 and PW-19 are the doctors. PW-18 deposed that on 06.02.2014 at about 09.00 pm one Lingamma was brought to hospital. She had sustained multiple injuries, i.e., contusion on chin measuring 4x4 cm, contusion on right infra memory area of 4x4 cms on chest and contusion on the left flank of 3x3 cms. The injuries were fresh and simple in nature. Accordingly, he issued medical report as per Ex.P.16. On the same day, one Ranjith was brought by the police. He had injuries in his ankle and right leg. They were simple and fresh in nature. He issued medical report as per Ex.P.17. On the same day one Mahesh was brought to the hospital and he had injuries of contusion on the right index finger on its dorsal aspect and he had tenderness on his right hand. They were simple and fresh in nature and he issued a report as per Ex.P.18. On the same day, one Kiran Kumar was brought to the hospital and he had sustained contusion on the right shoulder and he had tenderness on the right shoulder. They were simple and fresh in nature and he issued a report as per Ex.P.19.

16. PW-19 is the doctor who deposed that on 07.02.2014 at about 12.30 pm, one Shajan was brought to the hospital with a history of assault on 06.02.2024 at about 08.30pm and on examination he found that injured had sustained sutured wound of 3 cms over the anterior aspect of left leg. X-ray was done, such injuries were grievous in nature and he issued a wound certificate as per Ex.P.20.

17. PW-25 and PW-26 are the Investigating Officers, who deposed about their part of investigation, regarding arrest of accused persons, conduct of mahazar



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at the place of incident, seizure of deadly weapons, used for commission of offence, collection of medical reports and other documents and filing of charge sheet. With these evidence, the prosecution sought to prove the guilt of the accused persons.

18. On careful perusal of evidence on record, it is alleged that, there was a communal clash between two groups. When such being the case, on 06.02.2014 at about 10.15 am, A-1 to A-18 and other children in conflict with law as mentioned in Sl.No.59 to 64 had gathered near Mookambika Circle and they were proceeding towards Kotekar area to damage to properties of rival group and to public persons of such rival group. On the other hand, A-9 to A-15 formed an unlawful assembly, so as to cause damage to the public and private properties of rival group and to kill the persons belong to other religion and they were proceeding from Kotekar area towards Mookambika Circle. Therefore, with an intention to cause damage to public and private properties and to kill the rival persons, these A-1 to A-18 and children in conflict with law as mentioned in Sl.No.59 to 64 were proceeding from Mookambika Circle to Kotekar area where more Muslims are resided. On the other hand, A-19 to A-58 had formed an unlawful assembly to cause destruction of property of public and private and to kill the rival groups, they were proceeding to area where more Hindus were residing. By that time, police persons i.e., CW-1, CW-18 to CW-46 interrupted in those areas for the purpose of prevention of unlawful assembly, to prevent such acts and to maintain the law and order. During said time, these accused persons were raising slogans and causing destruction to public and private properties, when they tried to prevent the accused persons, accused persons prevented those police persons from discharging their public duty and also assaulted to police officials including CW-25, CW-28, CW-39 and CW-42. Due to this CW-25, CW-28, CW-39 and CW-42 sustained simple injuries. During said time, accused persons had pelted stones on the houses. By the time, CW-6 sustained simple injuries and CW-14 sustained grievous injuries. Police arrested the accused persons in place and they were brought to the police station. Thereafter, based on the first information statement of



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CW-1, an FIR was registered against the accused persons. During investigation, accused persons were arrested, the weapons used in the commission of offence i.e., stones, talwar and other things were seized, mahazar was conducted at the place of incident and statement of witnesses were recorded. The injured were sent to the hospital for treatment and after medical examination, their medical reports were received. After investigation, charge sheet is filed against them for the offences punishable under U/Sec's. 143, 144, 147, 148, 353, 332, 324, 326, 307, 427 r/w 149 of IPC and 2(a) of KPDL Act.

19. In order to prove its case, the prosecution examined in all 26 witnesses and got marked 22 documents. PW-1, PW-13, PW-14, PW-16 and PW-20 to PW-24 are police witnesses, who were present at the place of incident at the time of communal clash occurred on 06.02.2014 at about 08.15 pm near Mogaveera Circle area and Kotekar area. They deposed that accused Nos.1 to 18 were gathered near Mogaveera area and proceeding towards Kotekar area and during said time, they caused damage to the public and private properties and pelted stones towards the house belongs to Muslims community. By that time, the accused Nos.19 to 58 had gathered near Kotekar area and proceeding towards Mogaveera circle area, where mere Hindus were residing and they were damaging the private and public properties and pelting stones to the houses belongs to Hindus. During said time, CW-6 and CW-14 had sustained injuries. Further, the police persons interrupted them to prevent if they sustained simple injuries due to such stone pelting.

20. PW-20 to PW-24 deposed about the said incident and sustaining injuries by them. None of the police witnesses have deposed as to which accused caused which particular injury to which injured. They have not particularly pointed out the accused persons by naming them. Therefore, vague allegations are made against accused persons that they were present at the place of incident and have assaulted to them. They have not deposed as to which accused persons had caused injury to which injured or which accused had caused damage to which property. Unless these specific facts and overt acts of accused persons are deposed by the police witnesses or other eye witnesses, the persons who were



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present in the said place cannot be held responsible. The specific evidence is required to fasten the criminal liability on the accused persons. The persons who were present at the place of incident cannot be held responsible for every each and act done by any other persons, present in the said place. There may be several persons in the said place who were watchers or passerby persons or proceeding in the road. The persons present in the said area and the persons who were commuting in the road situated near the place of incident cannot be prosecuted only on the ground that they were present in that place. Unless the prosecution proves that these persons committed the acts, by damaging the properties or causing injuries to public by pelting stones, accused persons cannot be responsible. Therefore, there is no specific evidence on record to establish that these accused persons were involved in the alleged offence.

21. PW-18 and PW-19 are the doctors who deposed about sustaining of injuries by CW-6/Lingamma, Ranjith/CW-39, Mahesh/CW-28 and Kiran Kumar/CW-42. PW-19 deposed that one Shajan had sustained grievous injuries. Apart from this evidence, there is no other evidence on record to show that PW-20 to PW-24 had taken treatment for their injuries. There is no medical report to establish that they had sustained such kind of injuries, during such incident. Except oral say of those witnesses, no other evidence is available on record to prove that police officials had sustained injuries during incident. The independent witnesses i.e., PW-2 to PW-12 have turned hostile and not deposed about any injuries sustained in the hands of accused persons. They deposed that accused persons are not known to them and no such communal clash had happened. Some of the witnesses say that incident had happened. Some of them say that no such incident had happened by a communal class had taken place. All the independent witnesses have not identified the accused persons and some witnesses specifically stated that these accused persons were not involved in the said offences, nor given any trouble to them. Therefore, there is no clear and convincing evidence on record to establish that these accused persons were involved in the alleged offence and they were members of an unlawful assembly and holding



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deadly weapons, they damaged to the public and private properties and caused injuries to the injured persons on the said date, time and place. There is no specific evidence on record to establish that these accused persons were only present in the said place of incident or they were present along with other persons in the group.

22. As held above, unless there is no specific evidence against each accused persons, they cannot be convicted at all. Even if they were present at the place of incident, they cannot be held responsible. There is no evidence to establish that accused persons had prevented the police officials from discharging their duties or attempted to commit murder of the rival group and the police officials. There is no evidence on record to establish that these accused persons caused grievous and simple injuries to police officials and other independent witnesses and damage to public properties. Therefore, prosecution failed to prove beyond reasonable doubt of the commission of the offences charged against accused persons. In view of the same, accused persons are entitled for benefit of doubt.

23. The Hon'ble Apex Court in Dhirubhai Bhailalbhai Chauhan vs The State Of Gujarat on 21 March, 2025 in 2025 0 Supreme (SC) 518, at para-14 held as follows:

14. There may, however, be a situation where a crowd of assailants, who are members of an unlawful assembly, proceeds to commit murder in pursuance of the common object of that assembly. In such a case, any person who is a member of that unlawful assembly is equally liable even though no specific overt act of assault is attributed to him. Otherwise also, where the assailants are large in number it may not be possible for witnesses to describe accurately the part played by each one of them. Besides, if a large crowd of persons armed with weapons assault the intended victims, it may not be necessary that all of them must take part in the actual assault. Therefore, in a situation like this, what is important for the Court is to determine whether the accused put



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on trial was a part of the unlawful assembly or just a bystander. Such determination is inferential, based on the proven facts of the case. Though it is not feasible to exhaustively lay down the list of circumstances from which an inference regarding the accused being part of the unlawful assembly be drawn, the Courts have generally held the accused vicariously liable, with the aid of Section 149 of the IPC, inter alia,

(a) where he had proceeded to the scene of crime along with other members of the assembly carrying arms or instruments which could serve the object of the assembly; and

(b) where he had participated in any manner in the events which serve the common object of the assembly.

24. In the case on hand, the prosecution failed to prove that these accused persons were members of an unlawful assembly. None of the witnesses deposed about against these accused persons for having caused injury to them, causing damage to their properties or being present in the place of incident. The evidence of police witnesses is not corroborated by independent witness to prove that accused persons were present at the place of incident. Unless the prosecution proved that the accused persons who are put in trial were the part of unlawful assembly, they cannot be liable and they cannot be convicted for the charges leveled against them. Therefore, under these circumstances, the accused persons are entitled for benefit of doubt. In view of the above reasons, the prosecution has failed to prove its case beyond all reasonable doubt and hence, accused persons are entitled to acquittal. Hence, point Nos.1 to 11 are answered in the negative.

25. Point No.12 :- In view of the findings on point No's.1 to 11, I proceed to pass the following:

ORDER

Acting U/Sec. 235(1) of Cr.P.C., accused
Nos.1 to 4, 6, 7, 9 to 11, 13 to 18, A-20 to 32,



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34, 35, 37 to 41, 43 to 58 are acquitted of the charges of offences punishable U/Sec's. 143, 144, 147, 148, 353, 332, 324, 326, 307, 427 r/w 149 of Indian Penal Code and 2(a) of Karnataka Prevention of Destruction and Loss of Property Act, 1981 registered in Crime No.45/2014 of Ullal Police Station.

Accused Nos.1 to 4, 6, 7, 9 to 11, 13 to 18, A-20 to 32, 34, 35, 37 to 41, 43 to 58 are set at liberty.

Bail bonds executed by accused Nos.1 to 4, 6, 7, 9 to 11, 13 to 18, A-20 to 32, 34, 35, 37 to 41, 43 to 58 and their sureties bonds shall stand canceled.

The surety furnished by accused Nos.1 to 4, 6, 7, 9 to 11, 13 to 18, A-20 to 32, 34, 35, 37 to 41, 43 to 58 in compliance of Sec. 437A of Cr.P.C. / Sec.481 of BNSS shall be in force for a period of six months or appeal is disposed off if filed, whichever is later.

Preserve M.O.1 to 30 till disposal of split-up case registered against accused Nos.5 and 42."

8. The reason so rendered by the concerned Court is that the prosecution has miserably failed to prove the guilt beyond all reasonable doubt. If that be the case against the other accused for passing an order of acquittal, it cannot be said that the petitioner would get convicted, if a trial is permitted on the same set of evidence. In that light, to save the precious judicial time, I deem it appropriate to exercise the



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jurisdiction under Section 482 of Cr.P.C. and obliterate the same.

9. The view of mine, in this regard, is fortified by the judgment rendered by a Co-ordinate Bench of this Court in CrI.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



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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 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



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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 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.*



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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 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*



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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 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:



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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 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.

10. 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.

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

ORDER

i. Criminal Petition is allowed.



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- ii. Proceedings in C.C.No.1346/2021 (Arising from Main C.C.No.761/2018, in Crime No.45/2014 of Ullal Police Station) pending before the JMFC VII Court, Mangaluru, stand quashed, *qua* the petitioners
- iii. Pending applications, if any, are also disposed of.

SD/-
(M.NAGAPRASANNA)
JUDGE

NBM
List No.: 1 SI No.: 62