



CNR: KAHC010605432026

NC: 2026:KHC:47586
CRL.P No. 13373 of 2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 1ST DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE M.NAGAPRASANNA

CRIMINAL PETITION NO. 13373 OF 2026

BETWEEN:

SWAMY@ GUNDA,
S/O NANJUNDE GOWDA,
AGED ABOUT 41 YEARS,
RESIDING AT NO.220, 7TH CROSS,
9TH MAIN, KODIGEHALI, TATA NAGAR,
VTC: SAHAKARNAGAR POST,
PO: SAHAKARNAGAR,
BENGALURU DISTRICT, KARNATAKA-560092

...PETITIONER

(BY SMT. KEERTHI KRISHNA REDDY.,ADVOCATE)

AND:

1. STATE BY KARNATAKA
BY YESHWANTHPUR POLICE STATION,
BENGALURU
REP BY STATE PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA,
BENGALURU- 560 001.
2. NARASIMHAN
POLICE OFFICER,
POLICE SUB-INSPECTOR,
YESHWANTHPUR, BENGALURU-560022

...RESPONDENTS

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

Digitally
signed by
CHETAN B C
Location:
High Court
of Karnataka



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THIS CRL.P IS FILED U/S.482 OF CR.PC (FILED U/S 528 BNNS) PRAYING TO QUASH THE ENTIRE PROCEEDINGS IN SC NO.227/2023 (ARISING OUT OF CRIME NO.37/2017) REGISTERED BY THE YESHWANTHPUR POLICE STATION PRESENTLY PENDING ON THE FILE OF THE LII ADDL.CITY CIVIL AND SESSIONS JUDGE (CCH-53) AT BENGALURU FOR THE OFFENCES P/U/S 399, 402 OF IPC, 1860 IS MARKED AT (ANNEXURE-'B AND E'), INsofar AS THE PRESENT PETITIONER IN THE INTERST OF JUSTICE.

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 said to be accused No.5 is before this Court calling in question the continuance of proceedings in S.C.No.227/2023 registered for the offences punishable under Sections 399 and 402 of the IPC.

2. Heard Smt. Keerthi Krishna Reddy, learned counsel appearing for the petitioner, 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.37/2017 for offences punishable as afore-quoted. The police



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conduct investigation and file a charge sheet for the offences again as afore-quoted. The concerned Court acquits accused Nos.1 to 3 who are available for trial and the petitioner not being available for trial, a split charge is drawn against him in S.C.No.227/2023, which is now hanging on the head of the petitioner.

4. Learned counsel appearing before the petitioner submits that the reasons that went into acquitting accused Nos.1 to 3 would become straight away applicable to the petitioner as well. Learned counsel further submits that as the offence is the one punishable under Sections 399 and 402 of the IPC, which is preparation or commission of dacoity, a collective act, the petitioner cannot be singled out for a different treatment. Hence, he does seek quashment of the proceedings.

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 accused Nos.1 to 3 and would seek dismissal of the petition.



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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 as afore-quoted. The allegation is that all the accused together did indulge in the commission of the offence. The concerned Court answering the prosecution's allegations, acquitted accused Nos.1 to 3 in S.C.No.387/2019, who were available for trial on the following reasons:

"8. POINT NO.1 AND 2:- These points are taken together for consideration in order to avoid repetition of facts and evidence of the case and also for the reason that findings on one point may have bearing on finding of other points. The police have registered the case against the accused alleging that the accused have committed the offence punishable under Section 399 and 402 of IPC.

9. In order to prove it's case prosecution has got examined four witnesses as per PW.1 to 4 and got marked 8 documents as per Ex.P.1 to 8. CW.4 B.N.Nataraj S/o. Narasimhaiah who is said to be an official participated in alleged raid with CW.1 is examined as PW.1. This witness has reiterated the case of prosecution that on 03.02.2017 as per credible information received by CW.1, he and CW.5 to 7 rushed near a Railway Playground of Yeshwanthpura and found that accused No.1 to 5 were prepared to commit dacoity of general public by carrying aforesaid deadly weapons. He has



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further testified with regard to apprehending accused No.1 to 4 on confirmation of above information and seizure of aforesaid deadly weapons from their custody under raid mahazar in presence of CW.2 and 3 panchas. He has further testified with regard to seizure of aforesaid Auto No.KA-05-AE-450 and KA-41-A-6866 from the spot and thereafter lodging of First Information by CW.1 before IO along with accused and seized property. He has identified the raid mahazar as per Ex.P.1 and his signature on it as per Ex.P.1(a). Further he has also identified seized Iron machete, Iron rod, Wooden club and Chilly Powder Packet as per MO.1 to 4 and photos of aforesaid two seized Auto Rickshaws as per Ex.P.2 and 3. Further he has also identified accused No.1 to 3 before court and states that he has given statement before IO. The entire evidence of this witness is denied by defence side by way of cross- examination and it is suggested to him that absolutely no raid was conducted and MO.1 to 4 were not seized from the custody of accused persons along with aforesaid Auto Rickshaws. It is further suggested to him that the above case is registered for statistical purpose, CW.2 and 3 are stock witnesses of their Police station and there is no nexus between alleged crime and accused persons.

10. CW.1 B.K.Narasimhan S/o. B.Krishnaswamy the then PSI of Yeshwanthpura Police station and First Informant of this case is examined as PW.2. This witness has also reiterated the case prosecution with regard to receiving of credible information against accused persons about preparation of committing dacoity, securing CW.2 and 3 panchas and conducting raid at the spot along with CW.4 to 9 officials. He has further testified with regard to seizure of MO.1 to 4 deadly weapons from the custody of accused No.1 to 4 along with aforesaid two Auto Rickshaws, fleeing away of accused No.5 from the spot of, conducting of raid mahazar at the spot and thereafter lodging of First Information before IO along with accused and seized property as per Ex.P.4. He has identified



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his signature on First Information Report as per Ex.P.4(a) and his signature of raid mahazar as per Ex.P.1(b). He has also identified MO.1 to 4 weapons said to have been seized from accused persons and photos of above two Auto Rickshaws as per Ex.P.2 and 3. Further PW.2 has also identified accused No.1 to 3 before court. In relevant portion of cross-examination by defence side PW.2 admits that he has not given any written notice to panchas, they were secured from his staff members and now he does not remember them. The entire evidence of this witness is also denied by defence side in toto and it is suggested to him that though there is no nexus between seized property and accused persons and though they have never indulged in any such crime, a false case has been lodged against them for statistical purpose and he is deposing falsely as per instance of his superior.

11. CW.9 Rajaram S/o. Late Thimmaiah the then PSI of Yeshwanthpura Police station and IO of this case is examined as PW.3. This witness has testified that on 03.02.2017 at 7.00 am early morning CW.1 produced accused No.1 to 4 before him with seized property and lodged Ex.P.4 First Information Report. He has registered the case in their PS Crime No.37/2017 and issued FIR. He identified FIR as per Ex.P.5 and his signatures on above documents as per Ex.P.4(b) and P.5(a) respectively. Further he has testified that he recorded voluntary statements of accused No.1 to 4 and he has identified seized weapons as per MO.1 to 4 and photos of seized autos as per Ex.P.2 and 3. Further he has identified PF No.37/2017 issued in respect of aforesaid seized property as per Ex.P.6 and his signature on it as per Ex.P.6(a). He has further testified that he recorded statements of CW.2 to 7 and released seized Auto No.KA-05-AE-450 in favour of CW.8 by recording his statement. He has further stated that in view of sufficient materials, he filed charge sheet against accused No.1 to 5 and he has identified accused No.1 to 3 before court. In cross-examination by defence side entire evidence of this witness is also denied in toto



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and it is suggested to him that though accused are innocent, a false case is registered against them for statistical purpose. It is further suggested to him that though he has not recorded statements of any witnesses and though there was no evidence against accused persons, he has filed a false charge sheet and deposing falsely.

12. Finally prosecution has got examined CW.8 Mohan Raj S/o. Late Govinde Gowda, who is said to be the owner of Auto No.KA-05-AE-450 as PW.4. This witness has testified that he had handed over the above Auto to accused No.3 Praveen Kumar on 05.02.2017 and on said day itself Yeshwanthpur Police contacted him asking to get release said Auto by executing a bond. He has further stated that he got released said Auto by executing his bond as per Ex.P.7 and he has identified his signature on it as per Ex.P.7(a). Further he has identified accused No.3 before court and his Auto Rickshaw in Ex.P.2 and 3 photos. However this witness has partly turned hostile by testifying that he does not know for what reason the Yeshwanthpur Police had seized the above Auto Rickshaw. Though this witness is treated as hostile and cross-examined at length by Ld. PP, nothing worthwhile is elicited from him mouth to prove the alleged crime by accused persons much-less to prove that the above Auto was used for said crime. He has denied that accused persons had used the above Auto for the purpose of committing dacoity and he has also denied to have given statement before IO as per Ex.P.8. Hence this hostile evidence of PW4 does not help prosecution in any manner to bring home the guilt of accused persons.

13. Further CW.2 and 3 panchas could not be secured despite coercive steps and hence said witnesses are dropped. Further CW.6 and 7 officials are given up by prosecution. Thus on perusal of oral and documentary evidence adduced by prosecution, it shows that except evidence of CW.1 and 4 raiding officials and CW 9 IO absolutely there is nothing on record to prove that accused persons



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were indulged in committing dacoity at aforesaid spot and date. Further PW.4 being owner of one of seized Auto rickshaw has turned hostile with regard to alleged act of attempt of dacoity by accused persons by using his Rickshaw No.KA05 AE-0450 and he has denied to have given statement before I.O. about guilt of accused persons. Hence oral and documentary evidence adduced by prosecution does not inspire confidence of the court to hold that accused No.1 to 3 along with other absconding accused No.4 and 5 had made preparation to commit dacoity with deadly weapons on aforesaid date, place and time and thereby they have committed alleged offences. Hence prosecution has failed to prove beyond reasonable doubts that accused No.1 to 3 have committed offences punishable under Section 399 and 402 of IPC. Hence Point No.1 and 2 are answered in the Negative.

14. POINT NO.3:- For reasons stated and findings given on Point No.1, following is :-

ORDER

Acting under Section 235(1) of the Cr.P.C., the accused No.1 to 3 are hereby acquitted for the offences punishable under Section 399 and 402 of IPC.

Seized MO.1 to 4 articles shall be retained and produced in split-up case/ charge sheet filed against accused No.4 and 5. Further Owners of seized Auto Rickshaws shall produce their respective Auto Rickshaws before Court in split-up case against accused No.4 and 5 as and when directed to do so.

Accused No.1 to 3 shall execute personal bond for Rs.50,000/- each in compliance of Section 437(A) of Cr.P.C. which shall be in force till six months from the date of this order."



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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 accused Nos.1 to 3 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 jurisdiction under Section 528 of BNSS 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 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***



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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 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



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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 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



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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 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



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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 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*



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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 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 accused Nos.1 to 3 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



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was not charged against accused Nos.1 to 3, 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.
- ii. Proceedings in S.C.No.227/2023 pending before the LII Addl. City Civil and Sessions Judge, Bengaluru, stand quashed, *qua* the petitioner.

**Sd/-
(M.NAGAPRASANNA)
JUDGE**

MCR
List No.: 2 SI No.: 47