NC: 2024:KHC:52675
CRL.P No. 10021 of 2024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF DECEMBER, 2024

BEFORE

THE HON'BLE MR JUSTICE M.NAGAPRASANNA

CRIMINAL PETITION NO. 10021 OF 2024

BETWEEN:

ASHWATHA. S,
S/O. SHIVANNA GOWDA,
AGED ABOUT 38 YEARS,
R/AT NO. 88, 4TH CROSS,
2ND MAIN ROAD, ESHWARINAGARA,
HOSKERHALLI, BANGALORE SOUTH,
BANGALORE - 560 085.

…PETITIONER

(BY SRI. CHANDRAPPA K.N, ADVOCATE)

AND:

1. STATE OF KARNATAKA,
STATION HOUSE OFFICER,
JAYANAGARA POLICE STATION,
BANGALORE CITY, REPRESENTED BY
STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA,
BANGALORE - 560 001.

2. MANJUNATH N,
POLICE INSPECTOR,
JAYANAGARA POLICE STATION,
BANGALORE CITY - 560 041.

…RESPONDENTS

(BY SRI. RANGASWAMY R, HCGP)

Digitally signed by NAGAVENI
Location: HIGH COURT OF KARNATAKA

THIS CRL.P. IS FILED U/S.482 OF CR.P.C (U/S 528 BNSS) PRAYING TO QUASH THE ENTIRE PROCEEDINGS IN MATTER BEARING CC.NO.19425/2018, PENDING IN THE FILE OF THE HONBLE II ACMM, BANGALORE CITY AS AGAINST THE PETITIONER HEREIN IS ARRAIGNED AS ACCUSED NO.5, FOR THE ALLEGED OFFENCES U/S 399 AND 402 OF IPC.

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 - accused No.5 is knocking the doors of this Court calling in question continuation of proceedings in C.C.No.19425/2018 for offences punishable under Sections 399 and 402 read with Section 34 of the IPC.

2. Heard Sri. Chandrappa K.N., learned counsel appearing for the petitioner, Sri. Rangaswamy R., learned HCGP appearing for the respondents and have perused the material on record.

3. The petitioner along with others gets embroiled in a crime in Crime No.218/2017 for the aforesaid offences. At the relevant point in time, the petitioner was not available for trial. Therefore, the concerned Court draws up a split charge sheet against the petitioner and tries the other accused. Accused Nos.1 and 2 have been acquitted of the offences by

the order of the concerned Court dated 01.10.2021. The concerned court, while acquitting accused Nos.1 and 2 in S.C.No.1373/2018 holds as follows:

> "13. PW's.1 and 3 are police officers. No punch or other independent witnesses examined. Evidence of punch and other independent witnesses is requires to believe the evidence of PW.'s 1 and 3 to substantiate that the aforesaid accused No.1 & 2 along with A.3 to 6 were present in the said place on the aforesaid date and time with an intention and prepared to commit dacoity on the public. In spite of issuance of summons, warrants etc., the prosecution has failed to keep another panch witness of Ex.P.1 mahazar before this Court for their examination on its side. In the absence of his evidence and based on the evidence of PW's.1 and 3 only, it cannot be accepted that on the aforesaid date, time and place, aforesaid A-1 & 2 along with A-3 to 6 have committed the aforesaid offenses as alleged. The evidence of PW's.1 and 3 does not attract the ingredients of the alleged offenses. Therefore, I am of the opinion that the evidence of PW's.1 to 4 cannot be relied in support of the case of the prosecution. Therefore, it is clear that the prosecution has utterly failed to prove its case as alleged against A.1 & 2 beyond reasonable doubt. Therefore, Points No.1 and 2 are answered as in the Negative.
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> 14. **Point No.3** : In view of the discussion made above and the findings given on point Nos.1 to 2, I proceed to pass the following:
>
> **ORDER**
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> Acting U/Sec.235 of Cr.P.C., A.1 & 2 are hereby attracted of the offences punishable U/Secs.399 and 402 of the IPC.

> A.1 & 2 are set at liberty forthwith if they are not required to other case/s. their bail and surety bonds stands cancelled. Take P.B of Rs.50,000/- from A.1 & 2 for the purpose of Sec.437(A) Cr.P.C.

4. If the reason so rendered by the concerned Court is perused, it would undoubtedly become applicable to the petitioner as well as, the offences are punishable under Sections 399 and 402 of the IPC, which requires an act of being together. Since all the accused are alleged of the same offence, permitting further trial against this petitioner for eventual acquittal would be wastage of precious judicial time.

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 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 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 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 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 entile 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.

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 C.C.No.19425/2018 pending before the II Additional Chief Metropolitan Magistrate, Bangalore City, stands quashed, *qua* the petitioner.

Sd/-
(M.NAGAPRASANNA)
JUDGE

SJK
List No.: 2 Sl No.: 10
CT: BHK