HC-KAR

NC: 2026:KHC:63696
WP No. 28977 of 2019

CNR: KAHC010188612019

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF NOVEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

WRIT PETITION NO. 28977 OF 2019 (GM-RES)

BETWEEN:

1. SRI. K. SHANTHA KUMAR,
S/O KARI GOWDA,
AGED ABOUT 46 YEARS,
R/AT DODDABASAVANAPURA,
NEAR SHASTRI MEMORIAL SCHOOL,
VIRGO NAGARA POST,
BANGALORE-560049.

2. SRI. RAKESH,
S/O KODANDA RAMAIAH,
AGED ABOUT 33 YEARS,
R/AT NEAR GANESH TEMPLE,
MEDAHALLI, K.R. PURAM,
BENGALURU-560049.

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

3. SRI. ANTHONY DEVID,
S/O SHANTHAPPA,
AGED ABOUT 42 YEARS,
R/AT NO.22, NEAR GOVT.HOSPITAL,
SIGEHALLI, K R PURAM,
BANGALORE-560049.

DIED ON 27.07.2021
DELETED V/O DATED 06.03.2025.

4. SRI. NAVEEN,
S/O JAYAPPA,
AGED ABOUT 30 YEARS,
R/AT SUNDARA HOUSE ROAD,
NEAR GOVT. HOSPITAL, SIGEHALLI,
K R PURAM,

BANGALORE-560049.

…PETITIONERS

(BY SRI. R. SHASHI KUMAR, ADVOCATE FOR R-1, R-2 & R-4;
R-3 IS DELETED V/O DATED 06.03.2025)

AND:

1. STATE BY K.R.PURAM POLICE,
REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA,
BENGALURU-560001.

2. SRI. RAMACHANDRAN,
S/O LATE KRISHNA SWAMY,
AGED ABOUT 47 YEARS,
R/AT NO.72, JAGADAMBAL NILAYA,
BALAKRISHNA STREET, R.H. ROAD,
MYLAPURA, CHENNAI-600004,
TAMILNADU.

…RESPONDENTS

(BY SMT. WAHEEDA M.M, HCGP FOR R-1;
SRI. HRISHIKESH DIWAKAR, ADVOCATE FOR R-2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA READ WITH SECTION 482 OF THE CRIMINAL PROCEDURE CODE, 1973 PRAYING TO CALL FOR THE ENTIRE RECORDS IN CC.NO.52346/2019 PENDING ON THE FILE OF THE X ADDITIONAL CHIEF METROPOLITAN MAGISTRATE, MAYOHALL AT BANGALORE; QUASH THE COMPLAINT OF R-2 DATED 05.03.2018 VIDE ANNEXURE-A AND CONSEQUENTLY THE FIR REGISTERED IN CRIME NO.118 OF 2018 BY THE R-1 POLICE VIDE ANNEXURE-B AND ALSO THE CHARGE SHEET FILED IN C.C.NO.52346/2019 PENDING ON THE FILE OF THE X

ADDITIONAL CHIEF METROPOLITAN MAGISTRATE, MAYOHALL AT BANGALORE, VIDE ANNEXURE-C.

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

CORAM: HON'BLE MR. JUSTICE V SRISHANANDA

ORAL ORDER

Heard Sri.R.Shashi Kumar, learned counsel for petitioner Nos.1, 2 and 4, Smt.Waheeda M.M., learned High Court Government Pleader for respondent No.1 and Sri.Hrishikesh Diwakar, learned counsel for respondent No.2.

2. Petition under Articles 226 and 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, is filed by the petitioners with the following prayers:

> *"(i) Call for the entire records in CC.No.52346/2019 pending on the file of the X Additional Chief Metropolitan Magistrate, Mayohall at Bangalore.*
>
> *(ii) Quash the Complaint of Respondent No.2 dated 05.03.2018 Vide Annexure-A, and consequently the FIR*

registered in Crime No.118 of 2018 by the 1st Respondent Police vide Annexure-B and also the charge sheet filed in C.C No. 52346/2019 pending on the file of the pending on the file the X Additional Chief Metropolitan Magistrate, Mayohall at Bangalore, vide Annexure-C, and;

(iii) Grant such other orders as this Hon'ble court deems fit in the fact and circumstances of the case in the interest of justice."

3. Petitioners herein are accused Nos.1 and 2. Petitioner No.3-accused No.3 is no more and criminal case as against him stands abated.

4. Respondent No.2 lodged the complaint with K.R.Puram police contending that property bearing No.166 of Shirdi Sai Layout, Seegehalli, White City Layout, belongs to respondent No.2, having been purchased and Confirmation Deed being executed by petitioner No.3 in favour of respondent No.2 and said property was protected by respondent No.2 with a compound wall constructed with hollow bricks.

5. It is the specific case of respondent No.2 that on 09.02.2018 at about 02:00 p.m., petitioners herein along with accused No.4, came near the said site and damaged the compound wall by trespassing into the property resulting in loss of Rs.20,000/-.

6. In respect of the dispute, there is a civil suit filed by respondent No.2 in O.S.No.1369/2025 which is pending.

7. Petitioner No.1 is defendant No.1 in the said civil suit.

8. Police after thorough investigation, filed the charge sheet for the offences punishable under Sections 447, 427 read with Section 34 of the Indian Penal Code. Learned trial Magistrate took cognizance of the aforesaid offences and is proceeding with the criminal case.

9. Validity of the order taking cognizance and proceeding with the criminal case is challenged in this petition.

10. Sri.R.Shashi Kumar, learned counsel for petitioners reiterating the grounds urged in the petition would contend that petitioners are the owners of the property bearing No.43/3 and they have been in possession of the said property having purchased from petitioner No.3 and his wife.

11. He has further contended that they have constructed a residential building therein and living in the said residential house even today and as such, there is no iota of truth in the allegations found in the complaint and thus, sought for allowing the petition.

12. He would further contend that there cannot be any allegation of trespass into the property of the petitioners themselves, and therefore, the order taking cognizance and proceeding with the criminal case is nothing but abuse of process of law.

13. *Per contra*, Smt.Waheeda M.M., learned High Court Government Pleader would support the filing of the charge sheet and sought for continuation of the criminal case to

adjudicate upon the charges leveled against the petitioners herein.

14. Sri.Hrishikesh Diwakar, learned counsel for respondent No.2 while adopting the arguments of learned High Court Government Pleader, would contend that the site purchased by respondent No.2 from petitioner No.3 is bearing site No.166 and petitioner Nos.1 and 2 in the guise of having a sale deed in their favour, have trespassed into the property bearing No.166. Therefore, investigation agency is justified in filing the charge sheet which requires an adjudication.

15. He would further contend that the sale deed and the confirmation deed executed by petitioner No.3 in favour of respondent No.2 makes it clear that property purchased by the petitioners herein from petitioner No.3 is a different property than the property that was sold to respondent No.2 which is having a number as 166, whereas the property purchased by the petitioners is admittedly property bearing No.43/3 which are two distinct properties and therefore, sought for dismissal of the petition.

16. Having heard the arguments of both sides, what is to be looked into is that there is a dispute as to the identity of the property purchased by respondent No.2 as well as petitioner No.1 and 2.

17. The proper authority to decide upon the said issue is the Civil Court for which already a suit is instituted by respondent No.2 and others in O.S.No.1369/2025 against petitioner No.1 herein and others.

18. In other words, the dispute as could be seen between the parties is purely civil in nature and there is some force in the argument put forth on behalf of the petitioners herein that there cannot be any allegation against the owners for an offence under Section 447 of the Indian Penal Code, for which the learned trial Magistrate has taken cognizance.

19. Ultimately, if the property which is in occupation of the petitioners herein is held to be the property of respondent No.2 holding that the sale deed executed by petitioner No.3 in

their favour and the confirmation deed executed by petitioner No.3 in favour of respondent No.2 is valid, necessarily petitioners have to yield the possession to respondent No.2 along with damages, if any.

20. Reserving such liberty for respondent No.2 to be urged in the pending civil suit and reserving liberty to the petitioners herein to canvass all the available defences in the pending civil suit, this Court is of the considered opinion that the continuation of the criminal case is nothing but abuse of process of law.

21. Accordingly, the following:

O R D E R

[I] Petition is ***allowed***.

[II] Consequently, pending proceedings in C.C.No.52346/2019 (arising out of Crime No.118/2018) pending on the file of the X Additional Chief Metropolitan Magistrate, Mayohall at

Bangalore, is hereby quashed *qua* petitioner Nos.1, 2 and 4.

[III] Further, the observations made by this Court in this order shall not affect the rights of the parties in the pending civil suit.

Sd/-
(V SRISHANANDA)
JUDGE

CBC
List No.: 1 Sl No.: 36