

IN THE HIGH COURT OF KARNATAKA
CIRCUIT BENCH GULBARGA

JUDGMENT PRONOUNCED AT PRINCIPAL BENCH, BANGALORE

DATED THIS THE 23RD DAY OF DECEMBER 2010

B E F O R E

THE HON'BLE MR.JUSTICE JAWAD RAHIM

CRL.PETITION NO. 8620/2010

BETWEEN:

BASAWARAJ, S/OSHIVARAYA NAIKODI
AGED ABOUT 26 YEARS,
OCC: COOLIE,
R/O KEREBOSSAGA, TQ & DIST. GULBARGA
... PETITIONER

(BY SRI NANDAKISHORE BOOB, ADV.)

AND:

THE STATE THROUGH RAGHAVENDRA NAGAR
POLICE STATION, GULBARGA.

... RESPONDENT

(BY SRI SUBHASH MALLAPUR, HCGP.,)

CRL.PETITION IS FILED U/S 482, Cr.P.C. PRAYING
TO QUASH THE PROCEEDINGS IN C.C.NO.1903/07
PENDING ON THE FILE OF II ADDL. JMFC GULBARGA, SO
FAR AS THE PETITIONER / A NO.1 IS CONCERNED.

This Criminal petition having been heard finally and
reserved at Gulbarga Circuit Bench, this day the court
pronounced the following order in Bangalore:



O R D E R

Under Section 482, Cr.P.C., petitioner seeks to quash the proceedings in C.C.1903/07 on the file of II Additional JMFC, Gulbarga.

2. Contextual facts are:

Respondent-police registered a case for the offence punishable under Sections 143, 147, 148, 427, 302 read with Section 149, I.P.C. against several accused. It was investigated and charge sheet was filed. However, as the petitioner who is arraigned as one of the accused was not traceable, separate charge sheet was ordered to be filed. The main case proceeded in S.C.374/07 while split charge sheet was filed against the petitioner in C.C.1903/07. Since he was not available, non-bailable warrant is issued.

3. Meanwhile, trial of accused indicted in S.C.374/07 was proceeded and during such trial, all the witnesses turned hostile showing adverse animus consequent to which accused nos.2 to 8 were acquitted on merit by the trial court vide judgment dated 2.5.2009.

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4. Petitioner has now approached this court to quash the proceedings on the ground that no purpose would be served by subjecting him to trial as the same witnesses will have to be re-examined who have rendered no assistance to the prosecution in S.C.374/07, resulting in acquittal of co-accused.

5. Prosecution does not dispute that in S.C.374/07 it examined in all 16 witnesses and placed reliance on 29 documents, but could not salvage any incriminating evidence in support of the charges and the trial court found evidence was too feeble and did not make out any case against accused nos. 2 to 8. Petitioner who was arraigned as 1st accused was absconding is now sought to be tried in fresh trial registered.

6. The question is, whether any fruitful purpose would be served in subjecting the petitioner to trial. Undoubtedly, he was arrested and produced before court on 29.11.2009 and is now remanded to judicial custody. The reasons assigned in S.C.374/07 to acquit the co-

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accused, is that none of the witnesses have supported the allegation in the charge sheet. If the same witnesses are to be re-examined, they may tender the same evidence, However, even if, under any circumstances, they tender evidence against the present accused, then the question will be which version is to be believed. When there are two versions, one in favour of the prosecution and another in favour of the accused, the version in favour of the accused normally has to be accepted. In this view, conducting trial will be an empty formality and no purpose will be served.

6. For the reasons stated above, the petition is allowed. Proceedings in C.C.1903/07 on the file of II Additional JMFC, Gulbarga, are quashed.

**Sd/-
JUDGE**

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