

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 23RD DAY OF DECEMBER, 2010

BEFORE:

THE HON'BLE MR. JUSTICE JAWAD RAHIM

CRL.P.No.8637 OF 2010

BETWEEN:

1. YALLAP^PA,
S/O SHIVAPPA KALLUR
AGE: 30 YEARS,
OCC: AGRICULTURE
2. BASAVARAJ,
S/O SHIVAPPA KALLUR,
AGE: 32 YEARS,
OCC: TEACHER PRIVATE SCHOOL

ALL R/O DEVAL GHANGAPUR
TQ. AFZALPUR,
DISTRICT GULBARGA.

..PETITIONERS

(BY SRI.R.K.HIREMATH & SRI.CHAITANYA KUMAR,
ADVOCATES)

AND:

THE STATE OF KARNATAKA
THROUGH DEVAL GHANGAPUR POLICE STATION
REPRESENTED BY SPP,
HIGH COURT BUILDING,
CIRCUIT BENCH AT GULBARGA. ..RESPONDENT

(BY SRI.SUBHASH MALLAPUR, HCGP)



THIS CRIMINAL PETITION FILED UNDER SECTION 482 CR.P.C BY THE ADVOCATE FOR THE PETITIONER PRAYING THAT THIS HON'BLE COURT MAY BE PLEASED TO QUASH THE F.I.R AGAINST THE PETITIONERS IN CRIME NO.79/2008 OF DEVALGHANAGAPUR POLICE STATION, WHICH IS REGISTERED FOR THE OFFENCES PUNISHABLE UNDER SECTION 143, 147, 148, 341, 323, 324, 504, 302, 149 OF IPC AND 25, 27 OF ARMS ACT

THIS CRIMINAL PETITION HAVING BEEN HEARD FINALLY AT CIRCUIT BENCH AT GULBARGA AND RESERVED FOR PRONOUNCEMENT, JUSTICE JAWAD RAHIM PRONOUNCED AT PRINCIPAL BENCH AT BANGALORE THE FOLLOWING:

ORDER

Petitioners who are arraigned as accused in Cr. No. 79/2008, which is converted to C.C. No.337/2008 seeking quashing of the proceedings.

2. Heard both sides.

3. The contextual facts reveal, on the basis of report of Kamma W/o Gurappa Navi, a case came to be registered in Cr. No.79/2008 for offences punishable under Section 143, 147, 148, 341, 323, 504 and 302 of IPC against the petitioners and others. In the report she alleged that on 08.08.2008 when she along with her husband Gurappa Navi were near bus stand in her Village



petitioners along with others assaulted her son Basavaraj killing him. She described overt acts.

4. She further averred that her son Basavaraj was working under Maruthi Mooranatti, a popular citizen in the area. Yallappa Kallur and his brothers who are also residents of the same village warned her husband not to allow their son Basavaraj to mix with Maruthi Mooranatti. However, Basavaraj did not listen to them and continued to associate with Maruthi Mooranatti. Therefore, Yallappa and Basavaraj (accused – petitioners herein) nurtured ill-will.

5. On 07.08.2008, when her husband had gone to get Jawar from his daughter Siddamma, she (Complainant) along with Basavaraj went to bus stop to receive him. At 6.30PM when her husband (Gurappa Navi) arrived the accused - Yallappa Kallur, Mallu Nimbargi, Umesh Havanoor, Srishail Waded, Basavaraj Kallur, Dattappa Nimbargi, Kalyani Kallur, Subhash Kallur and others rushed towards him and attacked. It is alleged Yallappa fired gun causing bullet injury to Basavaraj, to which he



fell. Thereafter petitioners and others have alleged to have assaulted Basavaraj killing him.

6. On the basis of such report some of the accused were arrested but the petitioners in this petition could not be arrested. The arrested accused were put on trial in S.C. No.52/2009. So far as petitioners are concerned soon they were not arrested they were declared absconding and charge sheet was split against them.

7. The other accused were put to trial in which Kamma, the Complainant and her husband Gurappa Navi were examined as star witnesses of the prosecution. However, Complainant Kamma (mother of the deceased) for unexplained reasons retracted from her statement before the police and all the allegations in the complaint and totally absolved the accused who were put to trial. Similarly, her husband also fell in line with her and spoke no incriminating aspects against the accused or petitioners herein.



8. In fact, the learned trial Judge noticed that the allegations in the complaint that petitioners along with other accused had assaulted Basavaraj was not established by any acceptable evidence. Noticing adverse animus in her evidence, the learned trial Judge acquitted the co-accused by Judgment dated 29.01.2009 in S.C. No. 52/2009. The petitioners undoubtedly are not put to trial in that case as they were absconding. As split up charge sheet is ordered to be filed against them.

9. The petitioners have successfully pointed out that the trial in SC No.52/2009 resulting in acquittal of co-accused due to totally lack of material evidence to support the charge. The allegations on the basis of which the co-accused were put to trial is not different from the allegations against the petitioners. On this basis they contend since the same material has been tested in SC No.52/09 it will serve no purpose if separate charge sheet is filed against the petitioners for fresh trial.

10. On perusal of the Judgment dated 29.01.2009 in S.C. No.52/2009 it is seen the co-accused, namely,



Mallu (accused No.2); Umesh (accused No.3); Srishail (accused No.4); Shanker (accused No.6); Shivasharanappa (accused No.7); Dattappa (accused No.8); Kalyani (accused No.9); Subhash (accused No.10); Mallari (accused No.11); Malkanna (accused No.12); Raju (accused No.14) and Avdhoot (accused No.15) were put to trial on the basis of direct allegation that they had along with petitioners herein killed Basavraj, an offence punishable under Section 302 of IPC as result of sharing common object. Therefore, the allegations in the complaint was to indict petitioners as also the accused named above for causing death of Basavaraj, on the same set of facts and allegations.

11. In the trial all co-accused named above in SC No.52/2009 are acquitted for want of material evidence. The petitioners are right in pointing out that though they were absconding and split charge sheet is ordered to be filed, no purpose would be served, because in the trial that would be conducted prosecution would examine, viz., Kamma, Gurappa, Guranna, Shamarao, Sharanappa as



its star witnesses, who have already reciled from the earlier statement and absolved the other co-accused.

12. Based on what is discussed above I am satisfied that though initially learned Magistrate was justified in directing filing. of split charge sheet against the petitioners based on the FIR in Cr.No.79/2008 converted to CC No.337/2008 filing of fresh charge sheet by way of split charge sheet against the petitioners will not serve any purpose. Hence, all further proceedings pursuant to the order passed by the learned Magistrate in Cr. No.79/2008 in C.C. No.337/2008 directing to file split charge sheet on petitioners and all further proceedings in pursuance thereto against the petitioners are quashed.

Sd/-
JUDGE

SBN
VK