

IN THE HIGH COURT OF KARNATAKA

CIRCUIT BENCH AT DHARWAD

DATED THIS THE 30TH DAY OF SEPTEMBER 2011

BEFORE

THE HON'BLE MR. JUSTICE ANAND BYRAREDDY

CRIMINAL PETITION No.7416/2009

BETWEEN:

Sri.Shesharaj S/o. Bhimrao Guttal
Age: 65 years, Occ: Ret.
R/o.Keshava Nagar, Dharwad.

... Petitioner

(By Shri K.L.Patil, Advocate.)

AND

The State of Karnataka,
Sub-Urban Police Authorities,
Hubli.

... Respondent

(By Shri Anand K. Navalgimath, Advocate.)

This Criminal Petition is filed under Section 482 of the Code of Criminal Procedure by the advocate for the petitioner praying that this Hon'ble Court may be pleased to allow the petition by setting aside the order passed by the learned Court of 3rd Addl. Civil Judge (Jr.Dn.) and JMFC, Hubli, in C.C.No.298/2001 and 1st Addl. Sessions Judge, Dharwad, at Hubli, in Criminal Revision Petition No.25/2006 and consequently petitioner/accused in C.C.No.298/2001 may kindly be discharged.

This petition coming on for final hearing this day, the Court made the following:

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ORDER

Heard the learned counsel for the petitioner and the Government Pleader.

2. The petitioner was an employee of the Municipal Corporation, Dharwad, and its earlier form as Municipal Borough, Dharwad and he had worked in different capacities for over 38 years. He was holding the post as Junior Engineer Grade-I in the year 1971 and as Assistant Executive Engineer in the year 1980 and as Executive Engineer in the year 1991. he retired from service in the year 1999 and handed over charge to one Tiwari as on 31.3.1999. He was thereafter appointed for one year on contract basis by the Corporation. However in the year 2000 a complaint was lodged whereby the petitioner's name does not figure alleging that one Noolvi, Contractor, had committed fraud in the issuance of bills during the period 30.4.1999 to 15.2.2000. The petitioner incidentally had retired from service prior to 30.4.1999 and was only re-employed on contract basis and was posted to the Health Department. Therefore, on the face of it he did not have any authority to forward the bills in question in respect of the work said to have been executed by the said Contractor. But, based on the

complaint of the Executive Engineer, a detailed investigation has been conducted and a charge sheet is filed before the Jurisdictional Magistrate alleging offences punishable under Sections 409, 468, 471, 201 read with Section 34 of the Indian Penal Code, 1860, against eight accused of whom accused No.1 to 4 were engineers working with the Corporation and 5 to 7 were officers in the Accounts Department and accused No.8 was the Contractor and in order to substantiate the charge, several witnesses have been cited and if the statements of the said witnesses are examined, it is the case of the petitioner that his involvement in the incident cannot be traced. However, in the charge sheet it is sought to be alleged that the petitioner and others were responsible in enabling the Contractor to encash on the fraudulent bills. It is in this background that the petitioner is before this Court.

3. The learned counsel for the petitioner would submit that there were two sets of bills in question. The present proceedings initiated are in respect of one set of bills, whereas in respect of yet another set of bills, whereby there was alleged forgery, both the sets of bills had been sent to a handwriting expert to ascertain whether the signatures were that of the petitioner. In respect of both the sets

of bills the opinion of the handwriting expert was to the effect that the signature said to be of the petitioner were not in his hand. This was on comparison of his original signature with that of the signatures which were alleged to be forged. Insofar as the other set of bills which are not the subject matter of the present proceedings, the prosecution has not filed any charge sheet against the petitioner but has named him as one of the prosecution witnesses, whereas in the present proceedings he is said to be arrayed as accused, though there is no allegation to be found either in the complaint or in the statement of material witnesses in support of the case of the prosecution. It is this clear circumstance which is sought to be highlighted by the learned counsel for the petitioner to contend that the involvement of the present petitioner in the proceedings would at best be in the form of witness for the prosecution and he cannot be arrayed as accused and it is on this limited aspect of the matter that the present petition is sought to be urged.

4. The learned Government Pleader would submit that as held by the Courts below whether the signature is that of the petitioner or not shall be the subject matter of the trial. The mere opinion of the handwriting expert by itself is not final and that there

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are other incriminating material against the petitioner which requires to be assessed at the trial and therefore he would submit that there is no infirmity in the trial Court having rejected the contention of the petitioner and having proceeded to frame the charges.

5. The learned counsel for the petitioner on the other hand would submit that such a contention as to the report of the handwriting expert in being final and that the petitioner unnecessarily having to await the trial to establish his case is not tenable in a circumstance where the petitioner seeks to rely upon the very document which has been cited in support of the prosecution and it is not a case where the petitioner is disputing the opinion of the handwriting expert in order to sustain his case and therefore he would submit that the inexplicable circumstance of the prosecution having not filed charge sheet insofar as the other set of bills is concerned as well unexplained and hence he would seek appropriate direction to the trial Court to delete the name of the petitioner from the array of the accused and at best to name him as one of the prosecution witnesses.

6. Given the above facts and circumstances, the reasoning of the Court below that the petitioner should unnecessarily

await the out come of the trial notwithstanding the handwriting expert's opinion which is clearly in his favour and the fact that the petitioner had retired from service even before the alleged bills were executed would demonstrate that the petitioner was not involved in the transaction and the further report of the handwriting expert to the effect that the signatures purportedly being that of the petitioner were indeed forged and not in the hand of the petitioner would be a circumstance which would support the contention raised on behalf of the petitioner. Hence the petitioner being named as accused when the prosecution did not feel that no case was made out against him in respect of another set of bills challenged under similar circumstances is inexplicable.

7. Therefore the petition is allowed. The trial Court is directed to delete the name of the petitioner from the array of the accused and to name him at best as a witness for the prosecution as has been done in the other proceedings in respect of identical bills which have been generated in identical circumstances. The petition stands allowed accordingly.

**Sd/-
JUDGE**

Mrk/-