

IN THE HIGH COURT OF KARNATAKA

CIRCUIT BENCH AT DHARWAD

DATED THIS THE 30<sup>TH</sup> DAY OF SEPTEMBER 2011

BEFORE

THE HON'BLE MR. JUSTICE ANAND BYRAREDDY

CRIMINAL PETITION No.7947/2010

BETWEEN:

1. Mohan S/o. Bhikaro Bholashettikar  
Age: about 53 years, Occ: Business.  
R/o. Gurumath Road, Sankriwada,  
Kajubag, Karwar.
2. Divesh S/o. Mohan Bholashettikar  
Age: about 28 years, Occ: Advocate,  
R/o. Gurumath Road, Sankriwada,  
Kajubag, Karwar.
3. Sushila W/o.Mohan Bholashettikar  
Age: about 40 years, Occ: Household,  
R/o. Gurumath Road, Sankriwada,  
Kajubag, Karwar.
4. Anila D/o. Laxman Durgekar  
Age: about 45 years, Occ: Business,  
R/o. Sea Bird Colony, Chittakula,  
Karwar.
5. Nirmala W/o.Laxman Durgekar  
Age: about 40 years, Occ: Staff Nurse,  
R/o. Primary Health Centre, Surathkal,  
Mangalore.

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6. Geeta W/o. Shrinivas Manjalikar  
Age: about 38 years. Occ: Household.  
R/o. Kursiwada. Tq: & Dist: Karwar.

.... PETITIONERS

(By Shri S.S.Yadrami, Advocate.)

AND:

1. The State of Karnataka,  
By PSI, Karwar Town P.S.,  
Karwar,  
Rep. by State Public Prosecutor,  
The High Court of Karnataka,  
Circuit Bench at Dharwad.
2. Smt.Kalpana W/o. Sudarshan Durgekar  
Age: 29 years. Occ: Household work.  
R/o. Seabird Colony, Chittakula,  
Sadashivagad, Karwar.  
Now R/at: Manjuguni, Tq: Ankola.  
Dist: U.K.

...RESPONDENTS

(By Shri Vinayak S. Kulkarni, Government Pleader for R.1.)  
(Shri Anil Kale, Advocate, for R.2.)

This Criminal Petition is filed under Section 482 of the Code of Criminal Procedure seeking to quash the impugned complaint. order of issuance of process in C.C.No:217/2010 vide Annexures E and L respectively, on the file of JMFC, Karwar (UK).

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 learned counsel for the respondent No.2.

2. The facts are as follows:

One Sudarshan son of Laxman Durgekar aged about 34 years was a resident of Seabird Colony, Chittakula, along with his wife Kalpana, his mother and his unmarried sister Anita, petitioner No.4 herein. The petitioners No.3 to 6 are sisters of Sudarshan and petitioners No.1 and 2 are the husband and son of petitioner No.3, respectively. It transpires that petitioner No.4 the unmarried sister of Sudarshan had purchased a shop on lease at Karwar Bus Stand in the year 2006 in a scheme of the Karwar Municipality at a public auction, for a consideration of ₹.3.36 lakhs and had established a medical shop in the name and style of 'Shubham Medicals', along with her brother Sudarshan and they were jointly running the business. It transpires that Sudarshan had fallen victim to drug addiction and Kalpana, the wife of Sudarshan was away, at her maternal house for her child's delivery in the year 2008. It transpires that on 28.07.2008 the petitioner No.1 had received a call from

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petitioner No.4 informing him that Sudarshan had not returned home even at 12.00 midnight. The petitioner No.1 therefore went in search of him and while moving on the National Highway No.17, he saw that a motorcycle had dashed against an electrical pole and the rider was lying on the ground. On closer examination it was found that the man had died and it was Sudarshan. He was seriously injured in the head and there was heavy loss of blood. The petitioner No.4 immediately informed about the incident to his relatives and also registered a complaint with the jurisdictional police by 2.30 a.m. with the Karwar Traffic Police Station about the accident. A case was registered in Crime No.49/2008 in this regard. The postmortem report of the body was conducted at the District Hospital, Karwar, which indicated that Sudarshan had died as a result of crush injury on deformity of nose and maxilla, deformity of mandible, multiple fractures of facial and skull bones etc.. The cause of death was shown as, due to intra-cranial haemorrhage sustained by him in a road traffic accident. The police have thereafter filed a charge sheeted against the deceased Sudarshan. Kalpana, the widow of deceased Sudarshan thereafter approached the petitioner No.1 and demanded that the ownership of the medical shop which was run jointly by Sudarshan and the petitioner No.4 be transferred entirely

in her name and also to exchange the motorcycle involved in the accident in order to it would enable her to claim compensation in respect of the motor accident. The petitioner No.1 agreed to provide some amount to Kalpana in order to ensure that she do not suffer on account of her husband's death, but disagreed with some demands made by her on the footing that the petitioner No.4 who was also unmarried and totally dependent on the said shop for her livelihood could not be deprived of the same. It is in the wake of this circumstance that five months after the accident and with a view to bring pressure on the petitioners and to ensure that they would succumb to her demands, the widow of Sudarshan had filed a private complaint on 03.12.2008 in a case P.C.No.146/2008 before the jurisdictional Magistrate First Class, Karwar, for the offences punishable under Sections 143, 147, 302 and 506 read with Section 149 of the Indian Penal Code, 1860, alleging that the petitioner No.4 had borrowed money from her husband and had purchased the shop and further, since the petitioner No.2 was an unemployed man, the petitioners were forcing the deceased Sudarshan to hand over the medical shop to him and he was constantly under threat by the petitioners and that he was ultimately done to death with the assistance of hired killers and it is on the basis of that complaint that



the Magistrate had ordered for an investigation. The Superintendent of Police, Karwar, in turn had submitted a report holding that there was no case made out as suggested in the private complaint. The complainant Kalpana had thereafter filed a protest petition. The Magistrate in turn without recording the sworn statement of the complainant and merely on the basis of the objections filed to the 'B' report, has taken cognizance of the case and has issued process. It is in this background that the present petition is filed.

3. The learned counsel for the petitioners would point out that the entire allegations in the complaint even if unrebutted, would not make out a case against the petitioners and on that principle the proceedings would have to be quashed before the Magistrate. The learned counsel would further point out that the proceedings are vitiated for the failure to comply with the mandatory requirement under Section 200 read with Section 202 of the Code of Criminal Procedure, 1973 (hereinafter referred to as Cr.P.C., for brevity). He would submit that the sworn statement of the complainant ought to have been recorded in the first instance, before the Magistrate taking cognizance of the complaint, since the original private complaint was directed to be investigated and if Section 202 of the Cr.P.C.

came into play, it was again necessary that the complainant and the witnesses ought to have been examined on oath. This has not been complied with and the mechanical approach of the Magistrate in having taken cognizance on the basis of the protest petition, which is filed by the complainant is wholly irregular and would indicate a non application of mind in taking cognizance of the case which subjects the petitioners to the agony of a trial when there is no basis for the allegations and when there was a clear case of a road accident, in which the deceased had died. The theory of murder through hired killers by the petitioners is therefore a figment and complainant's imagination and this motivated as aforesaid by her intention to bring pressure on the petitioners to compromise the situation by giving up the property which she claims.

4. The learned counsel for the respondent on the other hand would contend that in terms of Section 190 of the Cr.P.C., the Magistrate is not required to record the statements of the complainant and the witnesses, if action is taken on the police report. In the instant case the Magistrate having taken cognizance on the basis of the protest petition is in fact action taken on the police report. Since certain infirmities in the police report having been

highlighted, the Magistrate has thought it fit to act upon the same notwithstanding the opinion of the police that there was no case made out to proceed further and he would further submit that even if there was any procedural infirmity in the sworn statement of the complainant not having been recorded or the examination of witnesses on behalf of the complainant and the complainant herself, the same can be cured by remanding the matter and directing the Magistrate to comply with the said procedure. Hence to negate the case of the complainant at the threshold on the footing that if the entire allegations are un rebuttal, it would have bring home the charge, is not tenable contention. If the entire allegations go unrebut, the petitioners should not be subject to conviction for the offence of serious offence of murder and therefore there is no warrant for quashing the proceedings at this stage and even if the petitioners are capable of making out a case for the discharge, the stage not having been arrived, it is open for the petitioners to raise such contention at the appropriate time before the Court below and hence would submit that there is no warrant for interference.

5. Given the above facts and circumstances the belated complaint in itself watered down the seriousness of the allegations.



There was no indication in the manner in which Sudarshan had died though it was not on account of the road accident but was killed by anybody. The allegation that he was done to death through hired killers being made five months after the incident is without preamble. The complainant apparently has not indicated the manner in which she has discovered the conspiracy and how the petitioners were instrumental in engaging hired killers and whether the petitioners had intended in engaging the said hired killers to carry out the murder of Sudarshan for gain, since the complainant's own case is that the said Sudarshan had invested about six lakh rupees, whereas the business was commenced by the petitioner No.4 with the contributions made by sisters and brother of petitioner No.5 in a sum of ₹.3.36 lakhs and the deceased Sudarshan having joined the business and having assisted the petitioner No.4 thereafter, would belie the suggestion that there was a huge investment of six lakh rupees thereafter. Apparently there is no material produced before the Court below in this regard. Hence the Magistrate having proceeded in a mechanical manner in taking cognizance in spite of the 'B' report having been filed after sustained investigation by the Superintendent of Police would vitiate the proceedings. The facts and circumstances do not revoke the confidence of the Court of a

prima facie case having been made out. The version that there is curable defect if any and that the petitioners ought to argue the case before the Magistrate for discharge at the appropriate time is a contention that can be accepted. From a totality of the circumstances present, it cannot be said that a case has been made out for the Magistrate to have been taken cognizance without a further detailed examination of the statements of the complainant and her witnesses if any and on reexamination of the material on record. Hence the Magistrate having taken cognizance in the above circumstances is totally out of place.

6. Accordingly the petition stands allowed. The Proceedings before the Magistrate stands quashed.

**Sd/-  
JUDGE**

Mrk/-