

IN THE HIGH COURT OF KARNATAKA, BANGALORE

DATED THIS THE 31<sup>ST</sup> DAY OF OCTOBER, 2014

:BEFORE:

THE HON'BLE MR.JUSTICE K.N. PHANEENDRA

CRIMINAL PETITION NO.4552/2014

BETWEEN

K.DHARANENDRAPPA,  
S/O. CHANNABASAPPA,  
AGED ABOUT 54 YEARS,  
PROP. M/S.KANAKA LAKSHMI TRADERS,  
R/O.667/03, B.S.CROSS,  
HONDADA ROAD, DAVANGERE-01. ... PETITIONER

(BY SRI.BASAVARAJ M. MEKKI, ADVOCATE)

AND

R.SELVARAJ,  
PROP.SRI RAYAL AGENCIES,  
SELAM ROAD, OPP: NAMAKKAL,  
LORRY UNION OFFICE,  
NAMAKKAL, TAMIL NADU. ... RESPONDENT

THIS CRL.P IS FILED U/S.482 CR.P.C PRAYING TO QUASH  
THE ORDER IN CRL.R.P.NO.65/13 PASSED BY THE PRL.DIST. &  
S.J., DAVANAGERE DATED 05-04-2014 AND ORDERS PASSED  
IN C.C.NO.1811/2009 (PCR NO.629/2008) BY THE COURT OF  
THE JMFC II-COURT AT DAVANAGERE DATED 29-01-2013,  
ALLOW THE PETITION AND OPPORTUNITY MAY KINDLY BE  
GIVEN TO THE PETITIONER COMPLAINANT TO PROCEED WITH  
THE CASE.

THIS PETITION COMING ON FOR ADMISSION, THIS DAY,  
THE COURT MADE THE FOLLOWING:

ORDER

Notice to be issued to the respondent is dispensed with as he never appeared before the trial Court in pursuance of any summons or warrant.

2. Heard the learned counsel for the petitioner.  
Perused the records.

3. The petitioner has approached this court seeking to set aside the order dated 05.04.2014 passed by the Principal District and Sessions Judge, Davangere, in CrI. R.P. No.65/2013 and also consequently to set aside the order dated 29.01.2013 passed by the JMFC-II, Davangere, in C.C. No.1811/2009 (PCR No.629/2008).

4. The records disclose that the petitioner has filed a private complaint against the Respondent/accused by name R. Selvaraj in C.C. No.2066/2008. The said case was dismissed on 29.01.2013, after a long lapse of five years, on the ground that the petitioner has not taken sufficient steps

and also not assisted the police in securing the accused before the Court. The said order was challenged in the Revision Petition. The Revisional Court has affirmed the said order stating that the notice sent to the respondent was not served on the ground that the respondent is staying in Tamil Nadu and that the notice was also sent to Tamil Nadu as per the request of the petitioner, but that was also not served him. Therefore, the Revisional Court also dismissed the revision petition observing that no purpose would be served, even if the complaint is restored and even there are no chances of securing the accused in the near future and it would amount to waste of the court's time.

5. The learned counsel for the petitioner has also brought to my notice that in other two cases before the same court, i.e., in C.C. No.612/2012 and 617/2012 pending on the file of the JMFC-II, Davangere (same court), the accused in this case, has also been appearing and those cases are set-down for recording of the plea. Therefore, if the complainant was given an

opportunity to make an application to face the case on the same day, on which date those two cases in which the accused is appearing before the same court, are posted, the accused could have been secured, but abruptly, the complaint came to be dismissed. The certified copy of the order sheet in the above said case-C.C. Nos. 612/2012 and 617/2012 are also produced before this court with a memo.

6. In view of the above circumstances, when the case has not been concluded by reaching its logical end and when the substantial material is produced before the court that the same accused is appearing in some other cases in the same court, in my opinion, dismissing of the complaint was not warranted. Of course, there is a lapse on the part of the petitioner in not bringing it to the notice of the Revisional Court.

7. In view of the above said facts and circumstances of the case, I am of the opinion that one more chance has to be given to the complainant to assist the court by furnishing the process and correct

address and to assist the police in securing the accused. If the complainant is again failed to furnish the process and correct address, as and when required by the court and in assisting the court in securing the accused, he would not be entitled for the relief as granted in this petition.

8. In the above circumstances, I proceed to pass the following:-

The petition is allowed. Consequently, the order dated 05.04.2014 passed by the Principal Sessions Judge, Davangere in Criminal R.P. 65/2013 and the consequent order dated 29.01.2013 passed by the learned Magistrate in C.C. No.2066/2008, are hereby set aside. The complaint of the petitioner is restored on to the file of the JMFC-II, Davangere, with a direction to re-open the case and issue process against the accused on furnishing of the correct address by the complainant. If for any reason, the complainant does not assist the court by furnishing process fee and correct address of the accused, as and when required, the trial

Court is at liberty to pass appropriate orders.

SD/-  
JUDGE

KGR\*