

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31st DAY OF MAY, 2018

BEFORE

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

Crl.P. No.532 OF 2018

BETWEEN:

1. Sri.Nanjappa,
S/o late Basavaraju,
Aged: Major, Occ:Worker,
2. Sri.Nandeesha,
S/o Milana Mahadeva,
Age Major, Occ:Business,
3. Sri. Rangunaika S/o Nanjaiah,
Age:Major, Occ:Business,

All are R/at Alagudu Village,
T.Narasipura Taluk,
Mysuru District.

... Petitioners

(By Sri.Maruthi G.B., Advocate)

AND:

1. The State of Karnataka,
By T.Narasipura Police,
Deputy Superintendent of Police,
Nanjangud Sub-Division,
Nanjangud.
2. Sri. Nanjaiah
S/o late Marilingaiah,
Aged about 52 years,
Occ:Tempo Driver,

R/at Halanahalli Village,
T.N.Pura Taluk,
Mysuru (Dist)-570001. ... Respondents

(By Sri.Chetan Desai, HCGP for R1,
R2 notice dispensed with)

This Criminal Petition is filed under Section 482 of Cr.P.C., praying to quash the entire proceedings in Spl.C.No.35/2016 (Cr.No.93/2011) pending on the file of the VI Additional District and Sessions Judge, Mysuru for the alleged offences P/U/S 143, 147, 148, 341, 323, 324, 337, 504, 448, 427, 295 R/w 149 of IPC U/s 3(1)(X) of SC/ST (POA) Act, with respect of the petitioners herein (Accused Nos.A16, A33 and A77).

This Criminal petition is coming on for 'admission' this day, the Court made the following:

O R D E R

Heard learned counsel for the petitioners and learned HCGP for respondent No.1-State. Notice issued to respondent No.2 is dispensed with as the said person (defacto complainant) has not preferred any appeal against the judgment rendered by the VI Additional District and Special Judge, Mysuru in Spl.C.No.36/2012.

2. The petitioners are arrayed as accused Nos.16, 33 and 77 in original Cr.No.93/2011 on the file of T.Narasipura police, Mysuru District which case was registered totally against 89 accused persons for the offences punishable under Sections 143, 147, 148, 341, 323, 324, 337, 504, 448, 427, 295 R/w 149 of IPC U/s 3(1)(X) of SC/ST (Prevention of Atrocities) Act, 1989.

3. It is evident from the records that some of the accused persons who were available for trial and tried by the VI Additional District and Special Judge, Mysuru in Spl.C.No.36/2012, particularly accused Nos.16, 28, 31, 33, 47, 76, 77, 78 ,79, 80 were not available for trial as they were shown as absconding and it appears that a split up charge sheet was filed against those accused persons. The other tried accused here acquitted by the trial Court vide Judgment dated 17.07.2017, which has reached its finality as no appeal is preferred by the State. Petitioners who are arrayed as Accused Nos. 16, 33 and 77, against them split up charge sheet in Spl.C.No.35/2016 has been registered

and the same is pending before the trial Court. The petitioners have sought for quashing of the said criminal case registered in Spl.C.No.35/2012 by extending the benefit of judgment of acquittal already recorded by the trial Court, so far as other co-accused are concerned. It is worth to refer here, before going to the factual aspects of the case, a case of Apex Court and another by this Court reported in AIR 2005 SC 268 *between Central Bureau of Investigation Vs. Akhilesh Singh*, wherein it was held that:

“Quashing of charge and discharge of the accused when main accused who alleged to have hatched conspiracy and who had motive to kill the deceased were already discharged, that matter had attained finality, the discharge of co-accused by High Court by holding that no purpose would be served in further proceeding with case against co-accused held proper.”

In another decision reported in 2002(1) KCCR 1 in *the case of Muneer Ahmed Qureshi, Muneer @ Gaun Muneer Vs. State of Karnataka by Kumarswamy Layout Police*, wherein this Court has held that:

"Entire case of the prosecution as against six accused is practically inseparable and individual one and especially when the Judgment of acquittal is passed, when P.W.1 denies the entire incident or the role of the accused. This reasoning of acquittal would also definitely enure to the petitioner. Even if the petition is tried there cannot be any other material other than what is already produced and considered by Trial Court. In such circumstances it will be an exercise in futility to make the petitioner to undergo the ordeal of crime, and then to be acquitted.

Holding that the proceeding against accused person who was absconding and subsequently against whom a spite up charge sheet was quashed."

4. In view of the aforesaid decisions there is no legal impediment to quash the proceedings, if the Court is of the opinion that, the materials placed before the Court show that, the allegations made against the petitioners and acquitted accused persons are one and the same and they are indivisible and inseparable in nature and no useful purpose would be served, if prosecution is ordered to be continued.

5. The factual matrix of this case discloses that on 31.03.2011 in Alagudu Village of T.Narasipura Taluk there was festival of Village goddess and village people were celebrating festival near a tank situated at the outskirts of the village. At that time, CW7-Mr.Ravichandra was proceeding in the Scheduled Tribe street by wearing slippers. Some women folk objected him as to why he was proceeding by wearing slippers. In that context, it is alleged that CW7 abused those woman folk. Having grudge about it, accused Nos.1 to 89 formed into unlawful assembly holding deadly weapons like stones, bricks and clubs etc., went in search of CW7 and all the accused persons tress-passed into the house of CW2, asking the whereabouts of CW7 and picked up quarrel and abused the prosecution witnesses-CW-1 to 5 in a filthy language and also assaulted some of the victims and damaged and destroyed the properties of the prosecution witnesses, by pelting stones and bricks on the house of the SC and ST people and by setting ablaze, thereby they have committed the offences alleged against them.

6. In order to prove the aforesaid charge sheet allegations, prosecution examined as many as 46 witnesses as PW1 to PW46 and got marked Ex.P.108 documents.

7. Learned Special Judge after appreciating the oral and documentary evidence on record has specifically recorded its finding that the prosecution has failed to prove its case against the accused persons beyond all reasonable doubts and benefit of doubt comes to alleged accused persons who have already been acquitted by the trial Court. As could be seen from the aforesaid factual aspects, the allegations made against the petitioners and other accused persons are one and the same. They have formed into an unlawful assembly and jointly executed their intention and alleged to have committed such offences. Therefore it goes without saying that allegations are indivisible and inseparable in nature, common object has been pleaded by the prosecution and it has failed to prove the same before the Trial Court.

8. In the above circumstances and in view of the inseparable factual aspects and also dictum of the Hon'ble Apex Court and this Court as noted above, in my opinion, continuation of prosecution in Spl.C.No.35/2012 is a futile attempt and it would be waste of judicial time of the Court. Therefore, same benefit has to be extended to the petitioners. Hence, following:

ORDER

The petition is allowed. Consequently the case in Spl.C.No.35/2012 and all further proceedings therein pending on the file of VI Additional District and Sessions Judge, Mysuru stands hereby quashed, so far as the petitioners are concerned.

If any bail bonds and surety bonds executed by petitioners stand cancelled.

**Sd/-
JUDGE**