

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31ST DAY OF JANUARY, 2019

BEFORE

THE HON'BLE MR.JUSTICE ARAVIND KUMAR

CRIMINAL PETITION NO.9682/2018

BETWEEN:

KRISHNAPPA @ KOTI
AGED ABOUT 48 YEARS
S/O. LATE MADDURAPPA,
R/AT MARASURU VILLAGE,
KASABA HOBLI, ANEKAL TALUK-562106

... PETITIONER

(BY SRI.MANIVANNAN G, ADVOCATE)

AND:

1. STATE OF KARNATAKA
BY SARJAPURA POLICE
REP. BY SPP
HIGH COURT BUILDING,
BANGALORE RURAL-560009

2. PRAKASH G
POLICE SUB INSPECTOR
SARJAPURA POLICE STATION,
SARJAPURA, ANEKAL TALUK-562109

... RESPONDENTS

(BY SRI.S.RACHAIAH, HCGP FOR R-1)

THIS PETITION IS FILED UNDER SECTION 482
CR.P.C. PRAYING TO QUASH THE ISSUANCE OF NON-
BAILABLE WARRANT AND ORDER OF REGISTRATION OF
SPLIT OF CASE AS AGAINST THE PETITIONER IN
S.C.NO.5019/2014 ON 18.06.2018 BEFORE THE HON'BLE

III ADDITIONAL DISTRICT AND SESSIONS JUDGE,
BANGALORE RURAL DISTRICT, SITTING AT ANEKAL.

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

O R D E R

Petitioner has challenged the order passed by learned Sessions Judge in S.C.No.5019/2014 dated 18.06.2018 whereunder it was noticed by the learned Sessions Judge that on the said date accused Nos.2 to 4 and 6 were present and accused Nos.1 and 5 were absent and as such case should be split up. However, perusal of records would disclose exemption application came to be filed on behalf of accused No.5 and on previous days of hearing i.e., on 13.06.2018 and 15.06.2018 exemption petitions were filed on behalf of accused No.1 also and they were allowed. However, on 18.06.2018 exemption petition was filed only on behalf of accused No.5 and it came to be rejected by observing that accused had been preventing the Court from reading over the charge to them by remaining absent one after the other continuously. Hence, trial Court was

perforced to order for splitting for the cases against accused Nos.1 and 5. Insofar as, order passed on 18.06.2018 for filing split up case against accused No.5, he had approached this Court in Cr1.P.No.4776/2018 and Coordinate Bench by order dated 03.07.2018 had allowed the petition by observing as under:

"3. On careful perusal of the order sheet of the trial Court, accused No.5, except on some occasion, has been regularly attending the court. Particularly, the order sheet of the trial Court itself discloses that on 12.4.2018 and on 13/6, 14/6 and 15/6 accused No.5 was present, just before three days, but on 18.6.2018, the accused was present. Therefore, taking serious view of the absence of the accused No.5, the trial Court has passed such order. For the reasons noted in the exemption petition, the accused No.5 remained absent. But the learned Sessions Judge, did not look into the contents of the exemption petition at all. Of course, the learned Sessions Judge can exercise the discretion to reject the exemption petition under rare circumstances, when the accused deliberately avoid the court to proceed with the matter. But the order sheet itself discloses that continuously on three occasions, the accused No.5 was very much present before the court. On the other hand, the contents of the exemption petition was not seen by the learned

Sessions Judge before passing such an order."

2. In the light of aforesaid facts and taking into consideration that order dated 18.06.2016 passed by trial Court for filing split up case against accused No.5 having been set aside by this Court, order dated 18.06.2018 for filing split up case against present petitioner i.e., accused No.1 also requires to be set aside for same reason as assigned in order dated 03.07.2018 passed in Crl.P No.4776/2018. Accordingly, order dated 18.06.2018 is hereby set aside and non bailable warrant issued against Petitioner-Accused No.1 as well as consequential registration of split up case against accused No.1, deserves to be set aside and also order directing investigating officer to register the split up case and charge sheet deserves to be set aside. Hence, I proceed to pass the following:

ORDER

- (i) Criminal petition is hereby allowed.
- (ii) Order dated 18.06.2018 passed by learned Sessions Judge in

S.C.No.5019/2014 insofar as issuance of NBW and consequential registration of split up case against petitioner and directing Investigating officer to register separate split up case and charge sheet, is hereby set aside.

(iii) However, it is made clear that petitioner shall without fail appear before the jurisdictional Sessions Court on **27.02.2019** and cooperate with the learned Sessions Judge in framing of charge and shall also cooperate for expeditious disposal of the case.

**SD/-
JUDGE**

DR