

IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH

DATED THIS THE 28TH DAY OF APRIL 2021

BEFORE

THE HON'BLE MR. JUSTICE ASHOK G NIJAGANNAVAR

CRIMINAL PETITION NO.100887/2021

BETWEEN:

MAHESH, S/O APPASAB BHATE
AGE 54 YEARS, OCC: BUSINESS
R/O KAROSHI, TQ. CHIKODI,
DIST. BELAGAVI 591 226

PETITIONER

(BY SRI. SHIVARAJ S. BALLOLI, ADVOCATE)

AND:

STATE OF KARNATAKA,
THROUGH SADALGA POLICE STATION,
REPRESENTED BY STATE PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA, DHARWAD 580 001

...RESPONDENT

(BY SRI. RAMESH CHIGARI, HCGP)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C. SEEKING TO QUASH THE IMPUGND ORDER DATED 11.7.2017 PASSED BY THE LEARNED PRINCIPAL CIVIL JUDGE AND JMFC COURT, CHIKODI IN CC NO.1923/2017 THEREBY TAKING COGNIZANCE AGAINST THE PETITIONER FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 32 AND 34 OF THE KARNATAKA EXCISE ACT AND SEC. 188 OF THE IPC, 1860 AND QUASH THE ENTIRE PROCEEDINGS IN CC NO.1923/2017 ON THE FILE OF THE PRL. CIVIL JUDGE AND JMFC COURT CHIKODI INSOFAR AS THE PETITIONER IS CONCERNED FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 32

AND 34x OF THE KARNATAKA EXCISE ACT AND SEC. 188 OF IPC, 1860.

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

ORDER

The petitioner is arrayed as accused No.3 in C.C.No.1923/2017 on the file of Principal Civil Judge and JMFC, Chikkodi for the offences punishable under Section 32 and 34 of the Karnataka Excise Act, 1965 and Section 188 of the Indian Penal Code, 1860.

2. The petitioner has sought for quashing the entire criminal proceedings initiated against him on the following grounds :

(a)The petitioner is falsely implicated and the charge sheet has been filed against the petitioner merely on the information said to have been disclosed by the other accused persons who have been apprehended while conducting the raid.

(b)The petitioner has been accused of committing the alleged offences punishable under Sections 32 and 34 of the Karnataka Excise Act, but he was not caught/arrested while selling the liquor at the spot.

(c)The allegations made in the complaint and FIR are vague and there are no sufficient grounds for proceeding against the petitioner.

(d)The complainant/respondent has not at all followed the mandatory provisions under Section 154 of Cr.P.C. The initiation of criminal proceedings against the petitioner suffers from serious infirmities.

(e)In the event of continuation of proceedings, the petitioner will be put to great hardship and injustice.

3. Heard the learned counsel for the petitioner and learned HCGP-State.

4. In support of the said contentions, the learned counsel for the petitioner has cited the decision in the case of ***K. Ramachandra Reddy Vs. State of Karnataka by Station House officer and another*** reported in ***(2013) 1 KCCR 334***.

5. *Per Contra*, the learned H.C.G.P. submitted that the defects pointed out by the learned counsel are not glaring on material defects. Thus, there are no valid grounds for quashing the proceedings.

6. It is well settled that, the power under Section 482 of Cr.P.C. has to be exercised by the High Court, *inter alia* to prevent the abuse of process of any Court or otherwise secure the ends of justice. When the Criminal proceedings are initiated based on the illicit material collected on search and arrest which are *per se* illegal and vitiated not only a conviction and sentence passed on such material but also the trial itself. The

proceedings cannot be allowed to go on as it amounts to abuse of process of the Court. In such a case not quashing the proceedings would perpetuate the abuse of process of the Court resulting in great hardship and injustice to the accused.

7. In a decision reported in **(2013) 1 KCCR 334** case of ***K.Ramachandra Reddy Vs. State of Karnataka by the Station House Officer & Another***, it is observed as under :

“23. The position in law will have to be referred to at this juncture. This Court, in the case M/s. Vijaya Bank Vs. State by the Labour Enforcement Officer, reported in ILR 2000 Karnataka 4773, has held that taking cognizance of an offence being a judicial act after application of kind, the Magistrate should not use “printed Proforma” in which even the words “Cognizance is taken, are also printed or typed.”

8. Having regard to the submission made by the learned counsel for the petitioner, this Court

has gone through the entire charge sheet records and orders passed by the Magistrate for taking cognizance and others. In the criminal case, wherein the petitioner is arrayed as accused, the orders passed by the Magistrate for taking cognizance are in a printed proforma. In view of the decisions reported in ***ILR 2000 Kar. 4773*** and ***(2013) 1 KCCR 334*** taking cognizance of an offence being a judicial act after application of mind the Magistrate should not pass the order mechanically in a printed proforma. In present case, it is evident that the order of cognizance is in printed proforma as such they are not in accordance with law.

9. The next ground is that regarding the procedure to be followed under Section 154 of Cr.P.C. The main contention of the learned counsel for the petitioner is that the excise officials have conducted the raid without registering the FIR, hence, the proceedings initiated against the petitioner cannot be sustained in law.

10. In a decision of Division Bench of this Court in Criminal Petition No.15941 of 2012 in the case of ***Sri.Girishchandra S/o. Veerabhadrayya Hiremath and another Vs. The State by Lokayuktha Police, Yadri***, it is observed as under:

“10. With regard to the question whether registration of FIR should precede the investigation or that FIR could be registered under the midst of the process of investigation would always depend upon the facts and circumstances of each case. In a situation where an offence is committed right in the presence of a police officer, it would be imprudent to insist that he should rush to the police station to record the FIR. The police officer should immediately act, like apprehending the accused, sending the victim to medical treatment etc., and thereafter registration of FIR would be an ideal investigation procedure. Otherwise, in all other type of cases, registration of FIR is mandatory since an FIR is to be sent to the Court at the earliest stage, so that no manipulating and tampering of facts would be possible. If the FIR is sent to the Court, all further

investigation should necessary be consistent with the FIR.”

11. In the instant case, the excise officials have conducted the raid without registering the FIR on the basis of the credible information received by them. Thus, it is apparent on the face of the record that the procedure prescribed under Section 154 of Cr.P.C. is not followed as such FIR is untenable.

12. In the context of facts of this case that the conduct of investigation by surprise raid in the absence of FIR is untenable and the same would be illegal.

13. For the aforesaid reasons, this Court is of the view that there are valid grounds for quashing the proceedings. Accordingly, I pass the following :

ORDER

The petition is allowed.

The proceedings in C.C.No.1923/2017 on the file of Principal Civil Judge and JMFC, Chikkodi for

the offences punishable under Section 32 and 34 of the Karnataka Excise Act, 1965 and Section 188 of the Indian Penal Code, 1860 initiated against the petitioner-accused No.3 are quashed.

Sd/-
JUDGE

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