

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 26TH DAY OF FEBRUARY, 2021

BEFORE

THE HON'BLE MR.JUSTICE K.SOMASHEKAR

CRIMINAL PETITION NO. 9679 OF 2018

BETWEEN:

1. Ravindra Bhandary
Aged about 57 years
S/o late Govinda Bhandary,
R/at No.104, Bangre Kuloor,
Mangalore – 574142.
2. Ananda
Aged about 63 years
S/o E.D.Ananda,
R/at N.No.5-4-107,
Mission Compound,
Udupi - 574118.
3. K. Vishnumoorthy Rao
Aged about 56 years
S/o late B. Sundara Rao
R/at H.No.7/53-M-103,
Vishnumoorthy Nagar,
Udupi Taluk and District -574118.
4. H.Jayarama Shetty
Aged about 49 years,
S/o Muthayya Shetty,
R/at Bankers Colony,

T.T.Road, Kundapura,
Udupi Taluk - 574118.

... Petitioners

(By Sri. C.G. Sundar, Advocate (Absent))

AND:

The State by Dy.S.P.,
Special Enquires,
C.O.D., Bengaluru – 560001.

...Respondent

(By Smt. Rashmi Jadhav, HCGP)

This Criminal Petition is filed under Section 482 of the Code of Criminal Procedure praying to set aside the order passed by the Prl. Sessions Judge, Udupi district, Udupi in CrI.RP.Nos.87, 97 and 102/2017 dated 25.10.2018 and etc.,

This Criminal Petition coming on for Admission this day, the Court delivered the following:

ORDER

None appear for petitioners either physically or through video conferencing. But learned HCGP for the respondent is present before court physically.

2. Petitioners are arraigned as Accused Nos.3 to 6 in C.C.No.1674/2011 for offences punishable under Sections 465, 471, 409 read with Section 34 of the IPC. The aforesaid

petitioners had preferred CrI.RP.Nos.87, 97 & 102/2017 before the Prl. Sessions Judge, Udupi seeking to set aside the order passed by the Addl. Civil Judge & JMFC, Udupi on an application filed by the accused under Section 239 Cr.P.C. seeking discharge. The said criminal revision petition as well came to be dismissed by order dated 25.10.2018. The present petition has been filed by the petitioners seeking to set aside the order passed by the Revisional Court in the aforesaid Criminal Revision Petition and thereby to discharge the petitioners / accused from the alleged offences.

3. The case was registered in the year 2011 by recording an FIR for offences under Sections 465, 471, 409 read with Section 34 of the IPC. Subsequently, the Deputy Superintendent of Police, Special Enquiries, COD, Bangalore, has thoroughly investigated the case and filed the charge-sheet against Accused Nos.3 to 6 before the Judicial Magistrate having domain. Accordingly, the case in C.C.No.1674/2011 has been registered. Though the case pertains to the year 2011, there is no finality of the case for

having subjected to test the materials secured by the I.O. during the course of investigation. Accordingly, heard the arguments advanced by the learned HCGP for the State. Perused the grounds urged in this petition by the learned counsel for the petitioners and so also the materials secured by the I.O. in order to lay the charge-sheet against the accused. Thereafter, the matter is hereby taken up for disposal on merits.

The present petitioners are arraigned as Accused Nos.3 to 6 for offences punishable under Sections 465, 471 and 409 read with Section 34 of the IPC. The said case is pending before the Court of the Addl. Civil Judge & JMFC, Udupi. The said court has taken cognizance after going through the entire materials available on record considering the statement of witnesses and found that there are prima facie material against the accused in respect of the offences lugged against them. Consequently, issued summons against Accused Nos.1 to 6 as per the specific provision of the Cr.P.C. in order to secure the accused to participate in the charge-sheeted case.

But the petitioners who are arraigned as Accused Nos.3 to 6 had filed an application under Section 239 of the Cr.P.C. seeking discharge. But the said application was dismissed by the Court of the Addl. Civil Judge & JMFC, Udupi, by its order dated 16.10.2017. Aggrieved by the said order, the petitioners / Accused Nos.3 to 6 had preferred a Criminal Revision Petition Nos.87, 97 & 102/2017, which as well came to be dismissed by order dated 25.10.2018 confirming the order passed by the Trial Court.

4. The present petition is filed seeking to quash the charge-sheet laid against the accused and also to discharge the accused from the alleged offences and so also challenging the order passed by the Revisional Court in Cr1.RP.Nos.87, 97 and 102 of 2017 dated 25.10.2018. Both the orders have been challenged in this petition by urging various grounds.

5. But Section 295 of the Karnataka Municipalities Act, 1964 contemplates the Municipal Council to remedy the defects after report of the Auditor under Section 293 of the

said Act. Merely because the Director of Municipal Administration did not take any appropriate steps against the revision petitioners, they cannot take any shelter under the relevant provisions of Sections 293 to 296 of the Karnataka Municipalities Act, 1964. However, the accused are required to face a full-fledged trial and the material collected by the I.O. in order to lay the charge-sheet should be tested before the Trial Court in accordance with law and so also under the relevant provisions of the Indian Evidence Act, 1872. But the Revisional court had gone through the entire materials which finds place in the charge-sheet and even looked from any angle the materials collected against the accused by the Investigating Agency, *prima facie* it appears that the revision petitioners, in collusion with each other have created some sort of receipts and used the same as genuine to obtain amounts from the District Treasury, Udupi and thereby committed criminal breach of trust.

6. Therefore, there are sufficient material to frame charge against the accused relating to the offences lugged

against them. Consequently, the Revisional court has dismissed the CrI.RP Nos.87, 97 and 102/2017 confirming the order passed by the court of the Addl. Civil Judge & JMFC, Udupi in C.C.No.1674/2011 dated 16.10.2017. Therefore, at a cursory glance of the entire material available on record, it is said that there is no perversity or any error in the order passed by the Trial Court as well as the Revisional Court.

7. Consequently, this petition is dismissed on merits. The Trial Court in C.C.No.1674/2011 shall proceed against the accused / petitioners herein, in accordance with law.

8. Since it is a case of the year 2011 and it is almost completion of nine years since the filing of the complaint but finality not having been arrived in this matter, therefore, the Court of the Addl. Civil Judge & JMFC, Udupi, is directed to expedite the case by following the Standard Operating Procedure due to Covid-19 pandemic.

However, any observations made in this order shall not influence the mind of the Trial Court.

Ordered accordingly.

As a consequence, I.A.No.1/2018 is dismissed as it does not survive for consideration.

**Sd/-
JUDGE**

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