



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF SEPTEMBER, 2022

BEFORE

THE HON'BLE MR JUSTICE M.NAGAPRASANNA

CRIMINAL PETITION NO. 7803 OF 2022

BETWEEN:

1. APPACCHU,
S/O KARIYAPPA,
AGED ABOUT 50 YEARS,
R/AT 16/2, 2ND CROSS,
BANGALORE – 560 008.
2. SANTHOSH SHETTY,
S/O HOOVAPPA,
AGED ABOUT 49 YEARS,
R/AT NO.5, PATALAMMA BEEDHI,
ADUGODI,
BANGALORE – 560 027.
3. NITHIN SINGH,
S/O MAHAVEER SINGH,
AGED ABOUT 28 YEARS,
R/AT NO.75, THANDA GRAMA,
HASANGAD, RODAGI TALUK,
HARIDWAR DIST., UTTARKHAND – 249 401.
4. PRINCE RATHOD,
S/O PRATHAP RATHOD,
AGED ABOUT 25 YEARS,
R/AT NO.26, 2ND FLOOR,
JEWELLERY MARKET,

Digitally signed by
PADMAVATHI B K
Location: HIGH
COURT OF
KARNATAKA



ANDHERI WEST,
MUMBAI – 400 053.

5. SOORAJ,
S/O SHASHIKANTAH M BANGERA,
AGED ABOUT 26 YEARS,
R/AT NO.3-171,
HOUSE OF RAJARAJESHWARI,
THENKANIDIYURU GRAMA,
VYASARAYA THOTA, KODANURU POST,
UDUPI TALUK AND DISTRICT – 576 102.

...PETITIONERS

(BY SRI. NISHIT KUMAR SHETTY., ADVOCATE)

AND:

1. THE STATE OF KARNATAKA,
BY ASHOK NAGAR STATION,
BANGALORE.
REPRESENTED BY
STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDINGS,
BANGALORE – 560 001.
2. DR. VENKATESH PRASANNA,
AGED ABOUT 50 YEARS,
ASSISTANT COMMISSIONER OF POLICE,
CCB, HOMESIDE AND BURGLARY SQUAD,
BANGALORE – 560 023.

...RESPONDENTS

(BY SRI.K.S.ABHIJITH, HCGP)

THIS CRL.P. IS FILED U/S.482 OF CR.P.C PRAYING TO
QUASH THE ENTIRE PROCEEDINGS AGAINST THE



PETITIONERS IN C.C.NO.2967/2021 (CR.NO.358/2018 OF ASHOK NAGAR P.S., BANGALORE) FOR THE OFFENCE P/U/S 103, 104, 105, 106 R/W 31 OF K.P ACT AND 20 PSAR ACT AND SEC.294, 370 OF IPC PENDING ON THE FILE OF THE I ACMM, BANGALORE.

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

ORDER

The petitioners call in question the proceedings in C.C.No.2967/2021 registered for offences punishable under Sections 103, 104, 105, 106 read with Section 31 of Karnataka Police Act, 1963 and Section 20 of the Private Security Agencies Regulation Act, 2005 and Sections 294 and 370 of the IPC.

2. Heard Sri. Nishit Kumar Shetty, learned counsel appearing for the petitioners and Sri. K.S. Abhijith, learned HCGP appearing for the respondents and have perused the material on record.

3. Learned counsel appearing for the petitioners submits that the issue in the *lis* stands covered by the judgment rendered by a Co-ordinate Bench of this Court in



Crl.P.No.8586/2018 dated 09.01.2020, wherein the C-ordinate Bench of this Court has held as follows:

"4. It is the case of the prosecution that the respondent-police have registered a case in Crime No.907/2014 against some of the accused persons for the offences punishable under Sections 370(3), 370(A), 109, 188, 294 of IPC r/w Section 35 of the Karnataka Excise Act and also under Sections 103 and 105 of the Karnataka Police Act. After investigation, a charge sheet has been filed in C.C.No.17461/2015 and the case has been committed to the Sessions Court which is pending in S.C.No.726/2016. It is alleged in the charge sheet that on 06.01.2014 at about 8 p.m., the respondent made a raid in the Club situated in 897-B. 80 ft road, 6th Block, Koramangala, Bengaluru, and there they found that the owner of the said Club has engaged some women as bar girls and they were violating the dress code in order to attract the people for sexual activity, thereby, the owner of the said club has violated the provisions of law and it is further alleged that he has indulged in misusing the women as call girls in the said club.

5. It is the contention of the learned counsel for the petitioner that petitioner (A9) is innocent and he was working as a supplier and he has been employed for his livelihood. Under such circumstances, the ingredients of charge sheet materials do not attract against him. It is his further submission that the women when they are dancing and used in the said club were not employed by the petitioner-accused. There is no violation of any Government Orders or Regulations by the petitioner-accused. It is his further submission that in



Crl.P.No.4469/2017, the co-ordinate Bench of this Court in respect of some of the accused has already quashed the proceedings and the petitioner-accused also stands on the same footing and initiation of the proceedings is nothing but an abuse of the process of the Court of law. On these grounds, he prays for allowing of the petition and to quash the proceedings.

6. Per contra, learned HCGP has vehemently argued and submitted that the petitioner-accused was having the knowledge of engaging the female employees for dancing and using them for illegal purposes and thereby, he has violated the rules and regulations for the purpose of establishment of the club and he has also joined along with accused No.1. There is sufficient material against the petitioner. On these grounds, he prays for dismissal of the petition.

7. I have carefully and cautiously gone through the submissions made by the learned counsel appearing for the parties and perused the records.

8. By looking to the factual circumstances, admittedly the petitioner-accused was working as a supplier and he has been employed by the accused No.1. Under the said circumstances, the provisions under which the accused has been charge sheeted are not attracted so as to constitute the offences against the accused persons. The co-ordinate Bench had an occasion to discuss the said factual matrix in Crl.P.No.4469/2017 and by order dated 04.01.2018 has already quashed the proceedings in respect of accused Nos.11, 15, 20, 21, 29, 30, 31 and 32.

9. Under the similar facts and circumstances, I am of the considered opinion that when the Court has already come to the conclusion that the provisions are not attracted insofar as the servers and customers are concerned and then under such



circumstances, the same benefit has to be extended to the petitioner-accused No.9. Even as could be seen from the charge sheet material there is some material as against accused No.1 is concerned.

*10. Taking into consideration the above facts and circumstances, the petition is allowed and the proceedings insofar as the petitioner-accused No.9 is concerned in S.C.No.726/2016 pending on the file of 66th Addl.City Civil and Sessions Judge, Bengaluru, for the offences punishable under Sections 370(3), 370(A), 109, 188, 294 of IPC r/w Section 35 of the Karnataka Excise Act and also under Sections 103 and 105 of the Karnataka Police Act are hereby **quashed.**"*

Following the aforesaid judgments another Co-ordinate Bench of this Court in Crl.P.No.2214/2019 dated 06.06.2019 and Crl.P.No.7553/2020 dated 22.03.2021, have quashed the proceedings by passing the following order:

"In Crl.P.No.2214/2019:

2. In this petition under Section 482 of the Code of Criminal Procedure, 1973, (hereinafter referred to as the 'Code' for short), the petitioner inter alia seeks quashment of the entire proceedings in FIR, Complaint and charge sheet in Crime No.907/2014 dated 07.12.2014 now renumbered as S.C.No.726/2016 pending on the file of XLV Additional City Civil and Sessions Judge, Bengaluru for the offence punishable under Sections 188, 294, 370(3), 370(A) and 109 of the Indian Penal Code, 1860, read with Section 35 of the Karnataka Excise



Act, 1965 and Sections 103 and 105 of the Karnataka Police Act, 1963.

3. *When the matter was taken up today, learned counsel for the parties jointly submitted that the controversy involved in the instant petition is squarely covered by an order dated 10.04.2017 passed by a Bench of this Court in Criminal Petition No.966/2017.*

4. *In view of the aforesaid submission and for the reasons assigned in the order dated 10.04.2017 in Criminal Petition No.966/2017 and taking into account the fact the petitioner was a waiter in the Bar, the proceedings against the petitioner in S.C.No.726/2016 pending on the file of XLV Additional City Civil and Sessions Judge, Bengaluru are hereby quashed. Accordingly, the petition is allowed.*

In Crl.P.No.7553/2020:

2. *The factual matrix of the case is that respondent-police have registered the case against this petitioner and also other accused persons. This petitioner being an employee, was working as a server in the Bar and Restaurant and hence, the offences under Sections 188, 294, 370(3), 370(A) and 109 of IPC and Section 35 of Karnataka Excise Act is invoked.*

3. *Learned counsel for the petitioner would vehemently contend that this petition is the male employee working as a supplier in the Bar and Restaurant and hence, the ingredients of the offence under Section 370A of IPC does not attract against him and so also the other offences. Learned counsel in support of his arguments would rely upon the judgment of this Court in Crl.P.No.8586/2019 and brought to the notice of this Court para Nos.8 and 9*



of the said order, wherein this Court in the similar circumstances invoked Section 482 of Cr.P.C.

4. *Learned counsel also relying upon the unreported judgment of this Court in Crl.P.No.2214/2019, would submit that as observed in Crime No.966/2017, the facts are aptly applicable to the case on hand.*

5. *Per contra, learned HCGP for State would submit that Sections 370A and 109 of IPC attract against the petitioner herein and hence, the powers under Section 482 of Cr.P.C. shall not be exercised.*

6. *Having heard the learned counsel for the petitioner and learned HCGP for State and so also on perusal of the materials placed on record by this petitioner, he has been arraigned as accused No.6. It is also found in the charge sheet material that he is working as a supplier in the Bar and Restaurant and he has not indulged in any such activity. He is only an employee of the Bar and Restaurant. When such being the facts and circumstances of the case and when this Court in the similar circumstances quashed the proceedings in Crl.P.No.8586/2019, the said facts also applicable to the case on hand. In view of the decision of this Court, wherein considered the similar issue involved between the parties, it is appropriate to invoke Section 482 of Cr.P.C.*

7. *In view of the discussion made above, I pass the following:-*

ORDER

- (i) *The petition is hereby allowed.*
- (ii) *The proceedings initiated against the petitioner herein in S.C.No.19/2017 on the file of the LXXI Additional City Civil and Sessions Judge, Bengaluru for the offences punishable under Sections 188, 294, 370(3), 370(A) and 109 of IPC and Section 35 of Karnataka Excise Act, are hereby quashed.*



In view of the disposal of the main petition, I.A.1/2020 for stay does not survive for consideration and the same stands disposed of.

4. It is not in dispute that in the case at hand the petitioners herein are Security Guard and their Captain who would not become liable for the offences so alleged against them in the light of the orders passed by the Co-ordinate Benches of this Court (*supra*). Therefore, the following:

ORDER

- I. Criminal Petition is allowed.
- II. Proceedings pending in C.C.No.2967/2021 before the I Additional C.M.M., Bangalore, stands quashed.

**Sd/-
JUDGE**

SJK
List No.: 1 Sl No.: 9