

KACB010011362023



**IN THE COURT OF THE I-ADDL. DISTRICT &
SESSIONS JUDGE AT CHIKKABALLAPUR**

Dated this the 16th day of January, 2024

:PRESENT:

Sri SHIVAPRASAD K.B. B.Com., LL.B,
I Additional District and Sessions Judge
Chikkaballapur

S.C.No.58/2023

Complainant: State of Karnataka,
Rep. by Bagepalli Police Station,
Chikkaballapur District
(By the learned Public Prosecutor)

- Versus -

Accused: Srinivasa and others

2. Venugopal
S/o Muniraju,
Aged about 20 years,
R/at Near Agricultural Department,
Tippunagar, 3rd Ward,
Bagepalli Town,
Chikkaballapur District
6. Hemanth Kumar
S/o Narasimhamurthy,

Aged about 19 years,
Ramaswamypalli,
Bagepalli Town,
Chikkaballapur District

(Rep. by Sri.J.B.K. Advocate)

**ORDER ON APPLICATION U/SEC. 227 OF CR.P.C. FILED
BY ACCUSED NO.2 AND 6 DATED 07.11.2023**

The accused No.2 and 6 have filed the application under Sec.227 of Cr.P.C. seeking to discharge them from this case.

2. The accused No.2 and 6 by filing the discharge application contended that, they are innocents of the alleged offences. The accused No.2 and 6 have not all present at the incident spot. There is no eyewitness except the first informant and the concocted case has been registered with an ulterior motive to harass the accused No.2 and 6. The accused No.2 is studying at Government college at NH-7, Hindupur-Hyderabad Road, Narepalli village. The accused No.2 is a resident of Tippunagar, 3rd ward, Bagepalli Town and he was not admitted in hostel. The accused No.6 is studying at Government polytechnic college at N.H.7, near Sunkalammadevi temple, Chikkaballapur-Bengaluru Road, but the incident took place near Baba Temple, near National College. The address of the accused no.6 changed during investigation stage and

there is difference in the father name of accused no.6. The injured is studying at National college at Bagepalli and accused no.2 and 6 are utter strangers to him. The incident place, where the CC TV fixed, but the complainant police have not produced any CC Tv footage. The voluntary statements of accused no.2 and 6 created by the police. The accused No.2 and 6 have not attempted to commit murder of the first informant. The accused No.2 and 6 are the students in the college and they need to attend the classes at their college. The first informant colluding with complainant police lodged a false case against them. Therefore, they prayed to discharge them from this case.

3. The prosecution has not filed the objection to the discharge application and by the order dated 20.11.2023, the objection of prosecution taken as not filed.

4. Heard learned counsel for the accused No.2 and 6, learned Public Prosecutor. The learned counsel for the accused No.2 and 6 filed memo along with the ID cards of accused No.2 and 6. The prosecution filed the requisition of PSI of complainant police.

5. Upon hearing the parties and perusal of the charge sheet materials, the points that arise for my consideration are as under;

“Whether the accused No.2 and 6 have made out ground to discharge them from this case?”

6. My findings on the above point is in the **negative**, for the following:

REASONS

7. The prosecution submitted the charge sheet for the offences punishable under Sec. 143, 147, 148, 323, 324, 307 r/w Sec.149 of IPC against the accused no.2-Venugopala, Accused No.6-Hemanth Kumar, Accused no.1-Srinivas, Accused No.4-Nandish, Accused No.9-Harish K.N, before the committal court and children-in-conflict with law no.3, 7, 8 before Juvenile Justice Board.

8. According to prosecution case, on 21.11.2022 at 2.00 p.m., near Sai Baba Temple at Bagepalli town, the accused No.1, 2, 4, 6, 9 and aforesaid children-in-conflict with law formed unlawful assembly, abused CW.2-Shyamasunder/injured in filthy language and accused No.1 assaulted on the head of CW.2 by club. Further, the accused No.2 stabbed on left side of abdomen of CW.2 with knife. The aforesaid children-in-conflict with law and accused No.6 and 9 have assaulted CW.2 with their hands and kicked him. Further, the accused No.4 assaulted on the legs of CW.2 by club. While the CW.3 intervened to rescue CW.2, the child-in-conflict with law No.3 assaulted him with

bamboo stick and accused no.1 assaulted him with hands. While the CW.4 and 5 attempted to carry the injured CW.2, the accused No.1, 2, and 4 have assaulted CW.4 with stick and hands and caused hurt to him. Thus, the prosecution alleged the commission of aforesaid offences.

9. During the stage of Hearing Before Charge, the accused no.2 and 6 have filed the present application under Sec.227 of Cr.P.C. to discharge from the case. At this stage, it is to be bear in mind that while considering the framing of charges under Section 227 of the Cr.P.C. the court has power to sift and weigh the evidence for the limited purpose of finding out whether there is prima facie case against the accused. If on the basis of the material on record, the Court could form an opinion that the accused might have committed offence, it can frame the charge. At the time of framing of the charges, the probative value of the material on record cannot be gone into and the Court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value discloses the existence of ingredients constituting the alleged offence.

10. The learned counsel for the accused No.2 and 6 mainly adverted that the accused No.2 and 6 are not the persons involved in the alleged incident and they have been falsely implicated in the case. The learned counsel for

the accused no.2 and 6 taking through the statement of injured Shamsunder contended that 'Venu' is a student of National college, however, in fact, the accused no.2 Venugopal is a student of Government First grade college, so, the accused no.2-Venugopala is not the assailant and he is different person. Thus, the accused No.2 and 6 disputed the identity of accused no.2 before the Court. The charge sheet materials reveal that the CW.2-injured Shamsundar is studying his II year B.Com at National College, Bagepalli and on 21.11.2022 at 2.00 p.m. the students of said college, the accused no.4-Nandish and child-in-conflict with law no.7 asked him to come near Sai Baba Temple, Bagepalli on the pretext of talking and accordingly, CW.2 and his co-students CW.3-Gagan, CW.4-Hemanth, CW.5-Dhananjay came to the spot and the alleged incident occurred. The CW.3 and CW.4 also injured victims in the incident and CW.5 is an eye witness to the incident.

11. On perusal of the statement of CW.2 injured Shamsunder, while the CW.2 to 5 came near the Sai Baba temple, Bagepalli, 'Venu', Bondala Seenappa, Vamshi, Nikhil and others picked up quarrel and 'Venu' stabbed on the left side of abdomen of CW.2 with knife. It appears from the record that, during investigation, Venugopal S/o Muniraju has been arrested on 21.11.2022 and after arrest of accused no.2-Venugopal S/o Muniraju the knife has been

seized on his disclosure statement. In the charge sheet Venugopal @ Venu S/o Muniraju, Tippuagar, 3rd Ward, Bagepalli town/Taluk is arraigned as accused No.2. There is no discrepancy regarding the father name and address of the accused No.2. Further, on perusal of statement of CW.2, it does not show that said 'Venu' shown therein is a student of National College as contended by the learned counsel for the accused no.2 and 6. Apart from that as per the statements of CW.3, 4-injured and CW.5-eyewitness, Venugopal stabbed CW.2 with knife. Thus, there is prima facie material to connect the accused no.2 Venugopal in the alleged assault with knife to CW.2. So, merely the name of accused No.2 is shown as 'Venu' in the statement of CW.2 Shamsunder-injured, it would not be a ground to discharge the accused No.2 at this stage.

12. Further, according to learned counsel for the accused no.2 and 6, the accused no.6-Hemanth Kumar @ Hemanth S/o Basavaraju B.A. 13th ward, Bagepalli town/taluk has been arraigned as accused No.6 and he is different person than the accused no.6 before the court. So, he disputes the identity of accused no.6 also. On perusal of the charge sheet, the father name and address of accused No.6 mentioned therein is different from the father name and address shown in the remand application. In the remand application, the accused no.6 shown as 'Hemanth Kumar S/o Narasimhamurthy, Aged 19 years, Adi Karnataka

caste, Student, R/o Ramaswamypalli, Bagepalli Taluk'. However, it is not the case of accused No.6 that the name mentioned in the remand application is not of accused No.6 present before this court and he is not the person arrested on 21.11.2022 by the police and produced before the court under the said remand application dated 22.11.2022. After investigation, the investigating authority laid the charge sheet against the accused no.6 Hemanth Kumar who arrested on 21.11.2022 also. During the stage of hearing the discharge application, the prosecution submitted the requisition stating that during submission of the charge sheet, the father name of accused no.6 is mistakenly mentioned as 'Baravaraju B.A.' and correct name of the father of accused no.6 is 'Narasimhamurthy'. The prosecution also produced the copy of Aadhar card of accused No.6 which shows the name and address 'Hemanth Kumar S/o A.Narasimhamurthy, 13th ward, A.K.Colony, Bagepalli, Chikkaballapur, Karnataka-561207'. The accused no.6 has not disputed his said Adhar card and address shown therein. At this stage, there is no material to show the accused no.6 is different person than the accused no.6 shown in the charge sheet. Apart from that, the statements of CW.2 to 5 reveals that the accused no.6 was a member of unlawful assembly. Therefore, the accused No.6 before this Court is a different person as contended by learned counsel for the accused No.2 and 6 cannot be

accepted and on that ground the accused No.6 cannot be discharged.

13. Further, the learned counsel for the accused no.2 and 6 contended that 'Hemanth' shown in the statement of CW.2 injured is a student of National college, however, the accused no.6 is a student of Government Polytechnic, Bagepalli. On perusal of the statement of injured CW.2 Shamsunder, it appears that he came near the Saibaba Temple along with his co-student Hemanth. The record reveal that said Hemanth is CW.4 an injured in the incident. CW.2 and 4 are the students of National college. The accused no.6 attempted to take advantage of the similar name of accused no.6 and CW.4 and contends that the statement of CW.2 shows accused no.6 is a student of National college, which is unacceptable. On perusal of the entire charge sheet materials, thus, it prima-facie appears that the accused no.2 and 6 alongwith other accused and children-in-conflict with law formed unlawful assembly, the accused no.2 caused hurt, which is dangerous to the life of CW.2 with seized dangerous weapon, and other accused caused hurt to CW.3 and 4 also. Therefore, the accused No.2 and 6 have not made out the ground to discharge them from the case. The learned counsel for the accused no.2 and 6 contended that there is discrepancy in the motive alleged in the complaint lodged by CW.1 and statement of CW.2. The CW.1 is not the direct witness to

the incident. There is prima facie material to show the alleged incident and there is direct materials against the accused no.2 and 6. So, the discrepancy in the motive suggested can not be a ground to discharge the accused. Hence, I hold the above point is in the **negative**, and I proceed to pass the following:

ORDER

The application filed by the accused No.2 and 6 under Sec.227 of Cr.P.C. dated 07.11.2023 is **dismissed**.

(Dictated to the Stenographer directly on computer, computerized by him, after corrections, pronounced by me in the Open Court on this the 16th day of January 2024.)

Sd/-
(SHIVAPRASAD K.B.)
I Addl. District And Sessions Judge,
Chikkaballapur.