

KACM010007112021



**IN THE COURT OF II ADDITIONAL DISTRICT AND
SESSIONS JUDGE AT CHIKKAMAGALURU**

: PRESENT :

Sri. Guruprasad Kulkarni, B.A., LL.B (Hons)
II Addl. District and Sessions Judge
Chikkamagaluru

Dated this the 19th day of June, 2024

S. C No.59/2021

COMPLAINANT : The State by Kalasa Police,
(Rep/by Public Prosecutor)

VS

ACCUSED No.4 : Noor Ahmed,
S/o Late K.Abdul Ghani,
Aged about 65 years, Farmer,
R/at B.Kanaburu village,
Kelaginapete, Balehonnuru city,
N.R Pura Taluk,
Chikkamagaluru District.

(Rep/ by Sri H.B.V.K, Adv.,)

ORDER

This is a petition filed under Section 227 of
Cr.PC by the accused No.4 seeking discharge.

2. BRIEF FACTS:

It is the case of the prosecution that the accused No.1 and CW.12 are in inimical terms with each other pertaining to the landed property. Therefore, on 17.03.2019, the accused No.1 along with accused Nos.2 and 3 in furtherance of common intention in order to cause harassment to CW.12 conspired to plant explosives on the terrace of the house of CW.12.

3. On 21.03.2019 the accused No.3 procured explosives such as gelatin packets, detonators, safety fuse from accused No.4 and on the same day at 11.30 p.m, the accused Nos.2 and 3 took said explosives in a scooty bearing registration No.KA-18/EF-0133 belonging to accused No.1 and planted the same on the terrace of the house of CW.12. The accused No.4 is alleged to have held in his possession the said explosives without any licence and illegally sold them to accused No.3.

4. In pursuance to the information, case was registered for the offences punishable under Section

Section 9(B) (1) (b) of The Explosives Act, 1884, investigation was taken up and thereafter the Kalasa police having obtained the permission of the Deputy Commissioner, Chikkmagalur vide order dated 30/5/2020 and charge sheet was filed against the accused Nos.1 to 4 for the offences punishable under Section 9(B) (1) (b) of The Explosives Act, 1884 and Section 4 and 6 of The Explosive Substances Act, 1908.

5. The Hon'ble High Court of Karnataka in Criminal Petition No.2723/2021 dated 27.05.2022 has quashed the proceedings against accused No.1 in C.C No.268/2020 arising out of Crime No.14/2019 pending before the Additional Civil Judge and JMFC, Mudigere for not following the mandate under Section 155(2) of Cr.P.C, since the offences alleged under Section 9(B) (1) (b) of The Explosives Act, 1884 is non-cognizable. However, the police have filed charge sheet against accused No.1 also along with accused Nos.2 to 4. However, my predecessor-in-office taking note of the

order passed by the Hon'ble High Court in Criminal petition No.2723/2021 dated 27.05.2022 has dismissed the case against accused No.1.

6. Now the accused No.4 has filed this discharge application claiming parity in pursuance to the order passed by the Hon'ble High Court of Karnataka in Criminal Petition No.2723/2021 dated 27.05.2022 contending that there is procedural non-compliance with regard to Section 155(2) of Cr.P.C.

7. Per contra, the Ld., Public Prosecutor has filed objections to this application contending that the police have filed charge sheet against the accused Nos.1 to 4 for the offences punishable under Section 9B (1) (b) of The Explosives Act and Section 4 and 6 of The Explosive Substances Act. The charge sheet and the documents accompanied with it shows that there are sufficient grounds to proceed against the accused. It is further contended that in order to prove the case against accused No.4 full-fledged trial is necessary.

8. In support of her contentions, the following authorities are relied upon by the Ld., Public Prosecutor.

i) *2022(2) KLJ 526 between Suresh and others V/s State of Karnataka through Banahatti police station*, wherein the ratio laid down is that while considering the application for discharge the court has to find out whether there is *prima facie* case against the accused to proceed against them. The court is not expected to go deep into the probative value of material on record.

ii) *2021(2) KLJ 563 in between Sunandamma V/s State by Malebennur police*, wherein the Hon'ble High Court has held that even at a cursory glance of materials secured by the Investigating Officer it cannot be arrived at a conclusion that there are no materials or strong materials against the accused in commission of the offences unless they are tested by the prosecution and also cross-examination by the defence counsel. Whatever the evidence facilitated by the prosecution has to be subjected to cross examination by the defence counsel then it is the domain vested with the Trial Court to appreciate the evidence to arrive at appropriate conclusion by tilting the balance for the offence lugged against the accused.

iii) *2021(2) Crimes 101(SC) between State of Rajasthan V/s Ashok Kumar Kashyap*, wherein the Hon'ble Supreme Court has held that at the stage of framing charge and/or considering discharge application, mini trial is not permissible. Defence on merits is not to be considered at the stage of framing of charge and/or at the stage of discharge application.

9. I have given thoughtful consideration to the authorities submitted by the prosecution and have considered entire materials placed on record.

10. The following points arises for my consideration:-

1. Whether the accused No.4 deserves to be discharged for the alleged offences?

2. What order ?

11 My finding on the above points is as under:

Point No.1: In the negative,

Point No.2: As per final order for the following:

REASONS

12. **Point No.1:-** On perusal of materials placed on record, the Kalasa Police have registered the case against the accused Nos.1 to 4 for the offences punishable under Section 9B(1)(b) of The Explosives Act and subsequent to the orders passed by the Deputy Commissioner, Chikkamagaluru dated 30.05.2020 Section 4 and 6 of The Explosive Substances Act is invoked and charge sheet is filed for the offences punishable under Section 9B(1)(b) of The Explosives Act and Section 4 and 6 of The Explosive Substances Act.

13. It is relevant to take note of Section 155 of Cr.PC which is reproduced below:-

“155. Information as to non-cognizable cases and investigation of such cases.—(1) When information is given to an officer in charge of a police station of the commission within the limits of such station of a non-cognizable offence, he shall enter or cause to be entered the substance of the information in a book to be kept by such officer in

such form as the State Government may prescribe in this behalf, and refer the informant to the Magistrate.

(2) No police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial.

(3) Any police officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police station may exercise in a cognizable case.

(4) Where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non-cognizable.”

14. The Hon'ble High Court of Karnataka in ***Prakash Raj vs State of Karnataka*** in ***Criminal Petition No.2394/2020*** has held as follows:

"6.2. Section 155(2) of the Code states that in case a police officer decides to investigate, he cannot do so without the order of the Magistrate having power to try such case or commit the

case for trial. That means the police officer has to approach the Magistrate for an order. Section 156 of the Code deals with power of the police officer to investigate any cognizable offence. He need not approach the Magistrate for an order as required in relation to a non-cognizable offence. To make it more clear, for investigating a non-cognizable offence, what is required is the order of the Magistrate (permission) and in respect of cognizable offence, the police officer has got every right to investigate without any kind of order or permission by the Magistrate. Since section 155(1) states that after entering the substance of the information in a book, the Station House Officer may refer the informant to the Magistrate, it is necessary to elucidate this aspect. And for this purpose section 190 of the Code needs to be referred to.

6.3. Section 190 of the Code deals with taking cognizance of the offences by the Magistrate. A Magistrate of the First Class and a Magistrate of the Second Class specially empowered by the Chief Judicial Magistrate can take cognizance of any offence under three circumstances, namely (a) upon receiving a complaint of facts

constituting an offence or offences, i.e., under section 200 of the Code (b) upon a police report under section 173 of the Code and, lastly (c) upon information received from any person other than a police officer or upon his (Magistrate's) own knowledge about commission of an offence. Now, if the purpose of referring the informant to the Magistrate as envisaged under section 155(1) is analyzed, it can be said that it is for the purpose of enabling the informant to make a complaint to the Magistrate according to section 200 of the Code if he so desires, and in that event the Magistrate may take cognizance of the offence according to section 190(a) of the Code if a case is made out. So it is clear that a person who reports to the police of an offence which is non-cognizable has every right to make a complaint according to section 200 of the Criminal Procedure Code of 1973. At the same time it may also be stated that nothing prevents a police officer from applying to the Magistrate for an order to register FIR and proceed further according to section 155(2) of the Code. This is what is discernible if sections 155 and 190 of the Code are read."

15. Therefore, the analysis of Section 155(2) of Cr.P.C and the ratio of the decision as cited supra, mandates that no police officer shall investigate a non-cognizable case without prior permission/order of the jurisdictional Magistrate. It is apparent that initially the case has been registered for the offence punishable under Section 9B(1)(b) of The Explosives Act in contravention of Section 155(2) of Cr.P.C. Therefore, the Hon'ble High Court in Criminal Petition No.2723/2021 dated 27.05.2022 has quashed the proceedings against the accused No.1 for not following the mandate of Section 155(2) of Cr.P.C.

16. However, it is apparent from the material placed on record that subsequently by virtue of the order passed by the Deputy Commissioner, Chikkamagaluru dated 30.05.2020 Section 4 and 6 of The Explosive Substances Act is invoked and charge sheet is filed for the offences punishable under Section 9B(1)(b) of The Explosives Act and Section 4 and 6 of The Explosive

Substances Act against accused Nos.1 to 4.

17. It is useful to refer to Section 4 and 6 of The Explosive Substances Act which is reproduced below:-

“Section-4 Punishment for attempt to cause explosion, or for making or keeping explosive with intent to endanger life or property.-Any person who unlawfully and maliciously-

(a) does any act with intent to cause by an explosive substance or special category explosive substance, or conspires to cause by an explosive substance or special category explosive substance, an explosion of a nature likely to endanger life or to cause serious injury to property; or

(b) makes or has in his possession or under his control any explosive substance or special category explosive substance with intent by means thereof to endanger life, or cause serious injury to property, or to enable any other person by means thereof to endanger life or cause serious injury to property in India,

shall, whether any explosion does or does not take place and whether any injury to person or property has been actually caused or not, be punished,

(i) in the case of any explosive substance, with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine;

(ii) in the case of any special category explosive substance, with rigorous imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

6. Punishment of abettors.- *Any person who by the supply or solicitation for money, the providing of premises, the supply of materials, or in any manner whatsoever, procures, counsels, aids, abets, or is accessory to, the commission of any offence under this Act shall be punished with the punishment provided for the offence.”*

18. The plain reading of Section 4 and 6 of The Explosive Substances Act discloses that the said offences are non-cognizable in nature. The police have sought for permission from the Deputy Commissioner, Chikkamagaluru to file the charge sheet in respect of the offences punishable under Section 9B(1)(b) of The Explosives Act and Section 4 and 6 of The Explosive

Substances Act against accused Nos.1 to 4 and accordingly, the permission is granted by the Deputy Commissioner, Chikkamagaluru vide order dated 30.05.2020 by invoking Section 7 of The Explosive Substances Act, 1908.

19. On perusal of the entire material placed on record by the prosecution, there are sufficient materials which prima facie discloses the involvement of accused No.4 for having committed the alleged offences punishable under Section 9B(1)(b) of The Explosives Act and Section 4 and 6 of The Explosive Substances Act.

20. On considering the rationale of the authorities cited by the prosecution, it is explicit that while considering the application for discharge the court has to find out whether there is *prima facie* case against the accused to proceed against him and the court is not expected to go deep into the probative value of material on record.

21. Therefore, having considered the entire material placed on record there are prima facie materials to show the active involvement of accused No.4 for having committed the offences charge sheeted. Whether the prosecution is able to establish its case or not is a matter of trial. At this stage, there are sufficient materials to proceed against the accused No.4.

22. Therefore, the grounds urged by the Ld. Counsel for the accused No.4 seeking his discharge on the ground of non-compliance of Section 155(2) of Cr.PC holds no substance since the provisions of Section 4 and 6 of The Explosive Substances Act which have been subsequently inserted during the investigation clearly disclose that they are non-cognizable offences in respect of which mandatory compliance of Section 155(2) of Cr.PC is not warranted. Therefore, the accused No.4 is not entitled for the benefit of discharge. Hence, I answer Point No.1 in the **Negative**.

23. **Point No.2:** In view of the above findings, I proceed to pass the following:

ORDER

The application under Section 227 of Cr.P.C filed by accused No.4 is hereby **DISMISSED**.

[Dictated to the Stenographer Grade-I, typed by him, corrected and pronounced by me in the open court on this 19th day of June, 2024]

Sd/-
Guruprasad Kulkarni
II Addl. District and Sessions Judge
Chikkamagaluru