

**ORDERS ON APPLICATION FILED BY THE PROSECUTION**  
**UNDER SECTION 323 OF Cr.P.C**

The prosecution has filed the instant application under Section 323 of Cr.P.C with a prayer to transfer the case to the Hon'ble Sessions Court.

2. In the application, it is contended that the F.I.R has been registered and the charge-sheet has been submitted by RFO, Sringeri Range for the offences under Sections 9(B) of the Explosives Act and Sections 3 & 25 of Arms Act; the CW-1 shown in the charge-sheet has been examined as PW-1 but when the case records being F.I.R, Complaint, Mahazar and materials were examined, it is found out that the said materials are explosive substances and hence, this Court has no jurisdiction to try the offences and the same has to be transferred to the Hon'ble Sessions Court; if the application is rejected, serious loss would be caused to the prosecution whereas, if the application is allowed, no loss would be caused to the Accused persons. Hence, the prayer is to transfer the case to the Hon'ble Sessions Court.

3. Resisting the application, the Accused persons have filed their objections with the contention that there are no grounds made out in the application and hence, the application should be dismissed in the *limine*; as against what has been contended in the application, the charge-sheet is actually submitted by the Sringeri Police and not the forest officials; though the trial has already commenced and complainant witness has been examined, the application is filed only to harass the Accused persons; the offences which found place in the F.I.R have been

given up and only after scrutiny by the office of Learned A.P.P, the present charge-sheet with the offences cited therein has been submitted; the materials would not indicate serious offence which requires to be tried by the Hon'ble Sessions Court; if the application is allowed, serious loss and hardship would be caused to the Accused persons. Hence, the prayer is to reject the application.

4. Heard the Learned A.P.P for the State and Learned Counsel for the Accused persons.

5. Having heard and after perusal of materials placed on record, the sole point that would now arise for my consideration is as under;

***“Whether the Prosecution has made out sufficient grounds to allow the application filed under Section 323 of Cr.P.C?”***

6. My answer to it is in the '***Negative***' for the following reasons -

7. On perusal of the case records, it is seen that the FIR was initially registered by the Sringeri Police on 03.03.2020 for the offences under Sections 4 & 5 of the Explosives Act, Sections 9(B) of the Explosive Substances Act and Sections 3 & 25 of Arms Act on the basis of the complaint lodged by RFO, Sringeri Range. On completion of the investigation, the investigating officer has filed the detailed charge-sheet under Sections 9(B) the Explosives Act and Sections 3 & 25 of Arms Act. The offences under the provisions of the Explosive Substances Act which initially found

place in the F.I.R have been dropped while filing the charge-sheet. The column No. 5 of the charge-sheet would give a clear indication that the investigating officer was convinced that offence under the provisions of the Explosive Substances Act is not at all applicable to the facts of this case and hence were given up while filing the charge-sheet. The charge-sheet commonly would go through the scrutiny by the office of the Learned A.P.P before the same is allowed to be filed in the Court. This would show that both the investigating officer and the Learned A.P.P have applied their mind and being convinced that the offence under the provisions of the Explosive Substances Act is not made out, it is seemed to have been given-up while filing the charge-sheet. It is also necessary to notice that there has been some mix-up in mentioning the offences while registering the F.I.R in the sense that the penal provision being Section 9(B) of Explosives Act is shown with the Explosive Substances Act and Sections 4 & 5 Explosive Substances Act is shown with the Explosives Act. Though, there has been mix-up of penal provisions as aforesaid, while filing the charge-sheet, the penal of Section 9(B) of Explosives Act is rightly mentioned and the penal provisions under the provisions of the Explosive Substances Act has been completely given-up.

8. On filing of the charge-sheet under Sections 9(B) the Explosives Act and Sections 3 & 25 of Arms Act, cognizance of the alleged offences was taken, summons were issued to the Accused persons, at their consent and in the presence of the Learned A.P.P, the charges were framed for the offences as shown

in the charge-sheet on 14.12.2022 and the case was set-down for trial. The trial has commenced and the CW-1 has also been examined as PW-1 on 19.04.2023. Till this time, the prosecution has kept complete silence and now, has come up with this application.

9. I have perused the application and it is observed that the application is wrong on various fronts. The application first of all is very vaguely worded without pointing out how the offence under the provisions of the Explosive Substances Act is made out from the materials. No specific provision under the Explosive Substances Act as would be applicable is stated in the application. There appears to be willful silence as to why the offence which was initially mentioned in the F.I.R was given-up at the time of filing of the charge-sheet. Though the F.I.R was registered and the charge-sheet is filed both by the Sringeri Police, the application mentions that the F.I.R and the charge-sheet has been laid by the RFO, Sringeri Range. Most importantly, the prayer that is sought in the application is for transfer of the case to the Hon'ble Court of Sessions which is not at all permissible to be done by the Magistrate under Section 323 of Cr.P.C. In fact, Magistrate has no powers whatsoever to transfer any case to the Hon'ble Court of Sessions. With these observations, it can be safely held that the application which is totally faulty itself is one which is can be dismissed in *limine* without there being any need to the look at the objections filed by the Accused persons. But, as objections are filed and

submissions are made, it becomes necessary to consider and give a finding on the merits of the application.

10. Though the application is totally silent about the materials which point towards an offence under provisions of the Explosive Substances Act, Learned A.P.P during the course of hearing pointed out towards one document which is the FSL Test Report dated 26.10.2021 issued by CW-20, the Scientific Officer attached to FSL and submitted that in the opinion portion at Sl.No.1 and 4, it is stated that presence of gunpowder composition such as potassium nitrate, sulphur, carbon were detected in Article No.1 and 4 and that explosive substances found in Article No.1 and 4 can cause damage to human life and property on explosion. This contention is apparently missing in the application that has been filed. The said report dated 26.10.2021 was very well part of the charge-sheet that was laid in the case by the investigating officer. Hence, it can very well be inferred that the same was taken into consideration while filing the charge-sheet and it cannot be disputed that the charge sheet has been scrutinized by the office of Learned A.P.P. Despite which, the offence under provisions of the Explosive Substances Act have been given-up. Now, at this belated stage, after examination of the material witness i.e PW-1 and without pointing out in the application or in the course of hearing, as to how the said opinion alone is sufficient to make out an offence under the the provisions of the Explosive Substances Act which as observed above has been willfully dropped while filing the charge-sheet, this submission is made which in my opinion is

liable to be rejected.

11. That apart, it is not to be forgotten that merely because an Accused is implicated and facing trial, his fundamental rights would not cease to exist. Fair trial is recognized to be a facet of Article 21 of the Constitution of India and the Accused has the right to know for which offence, he is being prosecuted and facing trial. It is not permissible to the prosecution to go on changing the penal provisions of the case every now and then right from the date of registering the F.I.R up to the date of filing of the charge-sheet and also during the trial as it has happened in this case. There is no explanation given in the application as to the delay in filing the application more particularly at this stage where the Complainant witness has already been examined which goes against the *bonafides* in filing the application. The application appears to have been filed without making out any grounds for allowing the application and the same is devoid of any merits which in my opinion is liable to be rejected. With these observations, the point which has arisen for my consideration is answered in the ***Negative***. In the result, the following-

**ORDER**

Application filed by the  
Prosecution under Section 323 of Cr.P.C  
is hereby rejected.

Issue Witness Summons to CW-2,  
5 & 7. R/by 07.06.2024.

CC.No. 447/2022

Sd/-

**(Rahul Shettigar)**  
Civil Judge and JMFC:  
Sringeri.