

IN THE COURT OF THE CIVIL JUDGE AND ADDITIONAL J.M.F.C.,
AT TARIKERE

Present : SMT.PAVITHRA.M.D, B.A., LL.B.,
Civil Judge & Addl. JMFC. Tarikere.

C.C.No.682/2016

Dated: 05th October 2019

Complainant : State by Ajjampura P.S.
(Reptd. By : Asst. Public Prosecutor.)

-Vs.-

Accused : 1] Basavarajappa,
S/o. Mallappa,
Aged about 60 years.

2] Nataraja,
S/o Basavarajappa,
Aged about 32 years.

Both are R/o Malenahalli,
Tarikere Taluk.

3] S.B.Vedamurthy(**Died**)
S/o Basappa,
R/o Shanubhoganahalli,
Tarikere Taluk.

(Reptd. By :(-Sri.T.N.Mahadeva Swamy-Advocate.)

ORDER

Accused No.1 and 2 have filed this application U/Se.239 of Cr.P.C
to discharge them from the offences alleged against them.

2. It is the claim of accused No.1 and 2 that, the complainant has filed this complaint against the accused persons for the offences punishable U/Sec109, 114, 177, 181, 423, 465, 468, 419, 420, 426, 471 and 474 of IPC. The complainant has filed the complaint in PCR No.36/2013 and the same was referred to Tarikere police and Tarikere police has handed over the same to Ajjampura police. Ajjampura police without proper enquiry has filed charge sheet against the accused persons. The matter involved in the present case is purely Civil in nature, but Ajjampura police at the influence of the complainant has filed false charge sheet against the accused persons. Accused No.1 and 2 are agriculturalist and accused No.3 was Real Estate Agent. Accused No.3 stated that, Smt.Kalamma W/o Halagappa owned an agricultural land in Sy.No.32/1 measuring 3 acres 1 gunta at Sriramapura village and she deserved to sell the suit property. Accused No.1 agreed to purchase the said property and accused No.3 has shown the revenue records which reflects the name of Smt.Kalamma. Accused No.1 with bonafide belief has agreed to purchase the land of Smt.Kalamma and the date of registration was fixed on 28.12.2012. At the instructions of accused No.3, the stamp vendor drafted the sale deed in Kannada language and he introduced one lady as Smt.Kalamma W/o Halagappa in the office of the stamp vendor. The said Smt.Kalamma has executed a Registered Sale Deed on 28.12.2012. On the strength of the said

Registered Sale Deed, the jurisdictional revenue authorities have issued notice U/Rule 65 for change of khatha in the name of accused No.1. At that time it is noticed that, one Sri.Shivakumar (the complainant) has already submitted objection to the Tahsildar, Tarikere on 08.02.2012 for change of khatha in respect of land bearing Sy.No.32/2. Accused No.1 and 2 further claimed that, on 03.08.2013, one Drakshayanamma W/o Siddappa has filed Crl.Misc.No.390/2013 U/Sec.13(3) of Karnataka Birth & Death Registration Act 1970 on the file of Addl. JMFC, at Tarikere seeking direction to the respondent to enter the date of death of Smt.Kamma in the concern register. When the case was called before Lok-Adalath the petitioner and the respondent have filed a joint memo stating that, the petitioners' grandmother by name Smt.Kamma W/o Halagappa died on 15.12.1948 and on the basis of said memo, they obtained the death certificate of said Smt.Kamma. The death certificate was registered only after the registration of the sale deed. Smt.Drakshayanamma has not stated her relationship in the criminal misc. petition and till 14.11.2013, there was no registration of death certificate of Smt.Kamma. The complainant has filed PCR.No.36/2013 against the accused persons alleging that, Smt.Kamma died about 65 years back and accused No.1 and 2 in collusion with one lady impersonating Smt.Kamma registered the sale deed on 28.12.2012. In the present case, the said lady was not made as accused. The Chemical

Examiner send certificate on 23.03.2015 confirming the signature of accused No.1 and without expression any opinion on accused No.2. The investigation officer without tracing out the lady impersonating Smt.Kalamma has filed a false charge sheet against the present accused persons. The signature of accused No.2 in the sale deed dated 28.12.2012 and his signature in account opening form are totally different and hence, he was wrongly implicated in the present case. Accused No.1 and 2 submitted that, even if any impersonation is there and the same was done by one Smt.Kalamma who was brought by accused No.3 and accused No.1 and 2 cannot be blamed for sale of land in Sy.No.32/1. Hence, there is no prima-facie case against the accused persons and hence, they prayed to discharge them for the alleged offences. Hence, this application.

3. The learned APP has resisted the application by filing his objection statement wherein he stated that, the present case is pending for consideration. He further contended that, the present application is not maintenance, since the investigation officer has filed the charge sheet only after his complete investigation. Since, there are prima-facie materials to frame charge against the accused persons. The present application is not maintainable. Accordingly, the learned APP has prayed to dismiss the application filed by accused No.1 and 2.

4. By taking note of the application and objection statement averments, the points which arise for my consideration are as follows:-

1. Whether accused No.1 and 2 has made out grounds to discharge them from the offences alleged against them?

2. What order?

5. Heard the arguments canvassed by the counsel for accused No.1 and 2 and the learned APP. Perused the case papers and now my findings on the above points are as follows:-

Point No.1: In the Negative.

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

REASONS

6. Point No.1:- The CPI Tarikere Circle, Tarikere police has charge sheet against the accused persons for the offences punishable U/Sec.109, 114, 177, 181, 465, 468, 419, 420, 423, 426, 474 and 471 of IPC. The prosecution has alleged that, accused No.1 to 3 by colluding with each other have created some forged documents and tried to alienate the property bearing Sy.No.32/1 measuring 3 acres 1 gunta situated at Beguru village, Tarikere Taluk as it is belonging to one Kamma W/o Halagappa, though the said Kamma was died on 15.12.1948. That, after filing charge sheet the presence of accused persons has been secured by issuing summons and they got enlarged on bail. When the case is set-down for hearing before charge, accused No.1

and 2 have come up with the instant application U/Sec.239 of Cr.P.C praying to discharge them from the offences alleged against them.

7. It is the claim of accused No.1 and 2 that, they are the bonafide purchasers of the land bearing Sy.No.32/1 measuring 3 acres 1 gunta. It is further stand of accused No.1 and 2 that, the revenue records shown by accused No.3 reflected that, the above said land stands in the name of one Smt.Kamma and accused No.3 only has introduced one lady as Smt.Kamma in the office of stamp vendor. They further claimed that, after registration of the sale deed dated 28.12.2012, one Smt.Drakshayanamma W/o Siddappa has obtained the death certificate of Smt.Kamma in Crl.Mis.No.390/2013. But, the I.O instead of tracing out the land who impersonated Smt.Kamma has filed a false charge sheet against accused No.1 and 2. They further contended that, the matter involved in the present case is purely civil in nature and at the influence of complainant, the present charge sheet is filed against accused No.1 and 2. Accordingly, they prayed to discharge them from the alleged offences.

8. With this background I have carefully analyzed the case papers available on record. The complainant in the complaint has alleged that, the accused persons in collusion with each other they forged some documents and got registered the sale deed dated 28.12.2012 by

impersonating one lady as Smt.Kalamma, though she died about 60 years back. Such being the case,it is the stand of the accused No.1 and 2 that, the present matter is purely civil in nature and they are bonafide purchasers of the land bearing Sy.No.32/1 measuring 3 acres 1 gunta. At the time of consideration of discharge, the Court can't act as a mouth piece of the prosecution or as a post office and may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an order of discharge. At this stage, I would like to refer decision reported in **2008(2) SCC 561** between **Onkarnath Mishra V/s State(NCT of Delhi)** wherein the **Hon'ble Apex Court** has observed as hereunder:-

It is trite that, at the stage of framing of charge the Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging there from, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the Court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that, the offence has been committed and not a ground for convicting accused has been made out. At that stage, even strong suspicion founded on material which leads the Court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against accused in respect of the commission of that offence.

9. The presumption of law observed in the above said decision is rightly applicable to the case on hand. Hence, at the stage of framing of charge the Court has to look into only the prima-facie evidence and charge can be framed even on the basis of strong suspicion founded upon materials before the Court. It is well settled law that, the defence

of accused can't be looked into at the time of framing of charge. At this stage, the Court need not pass a judgment of conviction or acquittal. The Court need not weigh the evidence. The Court has to satisfy itself as to the existence of prima-facie materials to go into the trial of the matter. The appreciation of evidence for the purpose of arriving at conclusion as to whether prosecution was able to bring home charge as against the accused or not, arises only after all evidences are brought on record at trial. The materials filed along with the charge sheet prima-facie goes to show that, there are sufficient materials to frame charges against them and for going into the trial of the matter. Thus, this Court is of the opinion that, accused No.1 and 2 have not made out any sufficient grounds for their discharge. Accordingly, this answer point No.1 in the Negative.

10. **Point No.2:** In the light of foregoing discussion, this Court proceed to pass the following:

ORDER

The application filed by accused No.1 and 2
U/Sec.239 of Cr.P.C is hereby dismissed.

(Direct Dictation given to the Stenographer, typed by him, corrected by me and then pronounced in the open Court on this the 05th day of October 2019.)

Sd/-

**(PAVITHRA.M.D)
CIVIL JUDGE AND
ADDL.J.M.F.C., TARIKERE.**