

KAHS010037172022



**IN THE COURT OF II ADDITIONAL DISTRICT &
SESSIONS JUDGE AT HASSAN**

Dated on this the 05th day of June, 2024

PRESENT

**S.A.Hidayathulla Shariff, B.A., LL.M.,
II Addl.District & Sessions Judge, Hassan.**

S.C/188/2022

Complainant : Banavara Police Station
(Represented by –
Public Prosecutor)

Vs.

Accused : Dhanpal Naika and Others
(A-1 Rep.by – Sri. M.A.M.,
Advocate,
A-2 to 5 Rep. by Sri. H.J.R.,
Advocate)

Petitioner: Smt. Jyothi,
W/o Manja Naika,
Aged about 25 years,
R/o: Purle village,
Banavara Hobli,
Arasikere Taluk.

ORDERS ON APPLICATION FILED BY THE ACCUSED
NO.5 UNDER SECTION 227 OF CR.P.C.

The accused No.5 has filed this application under Section 227 of Cr.P.C. seeking an order to discharge her from the above case.

2. In the application, the accused No.5 has submitted that, the Banavara Police have filed charge sheet against her and others for the offences punishable under Section 504, 143, 147, 148, 149, 302, 307, 323, 324 of I.P.C. In the first information report, case was registered for the offence punishable under Section 307 of I.P.C. Later, due to the death of the deceased, Section 302 was added and charge sheet has been filed. She is innocent of the offences alleged against her. She is not involved in the commission of the alleged offences. The materials produced on record by the investigating agency do not reveals her involvement in the alleged offences. In the charge sheet, only vague allegations are made against her. She was implicated in the present case only on the ground that, she was the wife of accused No.2. There was no intention or preparation on her part to commit the alleged offences. No incriminating articles were seized from her by the police, which clearly goes to show that she is falsely implicated. If she is made to face the trial, she will be put to hardship and injury.

3. The prosecution has filed objections to the application filed by the accused No.5. In the objections, the prosecution has contended that, there are prima facie materials placed on record against the applicant/ accused No.5 for her involvement in the commission of the offences mentioned in the charge sheet. It is further contended that, the applicant/petitioner has filed the application only to drag on the proceedings.

4. Heard learned counsel for the applicant/accused No.5 and learned public prosecutor. Perused the materials placed on record.

5. The points that arise for determination are:

1. “Whether the applicant/accused No.5 shows that there are no sufficient grounds to proceed against her for the offences alleged against her?”
2. What Order?

6. My answer to the above points are as follows:

Point No.1 : In the Negative

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

REASONS

7. A perusal of the materials on record discloses that, the C.P.I. of Arasikere Rural Circle has filed charge sheet against the accused No.1 to 5 for the offences punishable under Section 143, 147, 148, 504, 323, 324, 307, 302 read with Section 149 of I.P.C. The case of prosecution in brief as stated in charge sheet is that, on 16.01.2022 at about 10.30 p.m. on the road, situated before the house of CW-4 – Shankar Naik at Purlehalli village within the jurisdiction of Banavara Police Station, accused No.1 to 5 formed an unlawful assembly, armed with clubs – deadly weapons and in prosecution of the common object of the unlawful assembly have picked up quarrel with deceased Sharath Naika and with an intention to cause his death have assaulted him with clubs and voluntarily caused injuries to him. When CW-1 – Manjula Bai, CW-2 – Pavithra Bai and CW-3 – Yogesh Naik tried to intervene to protect the injured Sharath Naika, accused have also assaulted CW-1 to 3 with clubs and hands and voluntarily caused injuries to them. The injured Sharath Naika and CW-1 to 3 were taken to Arasikere Government hospital for treatment. Injured Sharath Naika was shifted to Kanva hospital, Bengaluru for further treatment. On 17.01.2022, when Sharath Naika was brought for further treatment to Hassan Government hospital, he

succumbed to the injuries at about 7.30 p.m. on the way to Hassan City.

8. A perusal of the materials on record discloses that, in the first information statement, the applicant/accused No.5 is named as one of the member of an unlawful assembly, armed with deadly weapons. In the first information statement, the presence and participation of accused No.5 in the commission of the alleged offences was stated. Further, a perusal of materials on record discloses that, there are eye-witnesses pertaining to the commission of the alleged offences by the applicant/accused No.5. A perusal of materials on record discloses that, after commission of the alleged offences, applicant/accused No.5 has absconded and she was arrested and on the basis of the voluntary statement of applicant/accused No.5, spot mahazar was drawn at the place of occurrence. A perusal of materials on record discloses that, prima facie materials are placed on record against applicant/accused No.5 for the offences mentioned in the charge sheet. The contention of the applicant/accused No.5 that, she is innocent of the offences alleged against her and she has been falsely implicated is a matter for trial.

9. On the aspect of the discharge of the accused under Section 227 of Cr.P.C., the Apex Court of the land in the decision reported in **AIR 2010 SC 663 between P.Vijayan Vs State of Kerala**, wherein it is held that,

If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion or strong suspicion the Trial Judge will be empowered to discharge the accused and at this stage he is not to see whether the trial will end in conviction or acquittal. The judge is not a mere Post Office to frame the charge, but has to exercise his judicial mind to the facts of the case, the documents produced therein and the materials collected by the police in order to determine whether a case for trial has been made out by the prosecution. The sufficiency of ground would take within its fold the nature of the evidence recorded by the police or documents produced before the court which ex-facie disclosed that there was suspicious circumstance, which is strong enough to frame charges against the accused"

10. In light of the principles laid down by the Apex Court of the land in the above cited decision, a perusal of the materials on record discloses that, there are prima facie materials placed on record against the applicant/accused No.5 for the offences mentioned in the charge sheet and prosecution has made out a case for trial of accused No.5. Hence, this court is of the opinion that,

applicant/accused No.5 has not made out any grounds to discharge her from the present case. With these observations, I answer **Point No.1 in the Negative.**

POINT NO.2:-

11. In view of my findings on point No.1 in the ‘Negative’, and the reasons assigned thereon, I proceed to pass the following:

ORDER

The application filed by the applicant/accused No.5 under Section 227 of Cr.P.C. is dismissed.

No order as to cost.

(Dictated to the Stenographer, transcribed by her, transcription revised, corrected, signed and then pronounced by me in open Court on this the 05th day of June, 2024.)

(S.A.Hidayathulla Shariff)
II Addl. District & Sessions Judge,
Hassan.