

**IN THE COURT OF PRL SENIOR CIVIL JUDGE  
& CJM AT: HAVERI**

**Present: GUDI VASUDEV RADHAKANT,  
B.com., LL.M.  
PRL. SENIOR CIVIL JUDGE AND CJM  
HAVERI.**

**DATED: THIS THE 19<sup>th</sup> DAY OF JANUARY 2021**

**C.C.No.418/2018**

Complainant: State of Karnataka  
(By Assistant Public Prosecutor)

Vs.

Accused

- 3) Lokesh s/o Narasimhayya,  
Age: 48 years, Occ: Business.
- 4) Ramesh s/o Narashimayya,  
Age: 33 years, Occ: Business.
- 5) Narasimhayya s/o Ramesh,  
Age: 71 years, Occ: Pensioner.
- 6) Yashodha w/o Lokesh,  
Age: 40 years, Occ: Household.
- 7) Saraswati d/o Narashimayya  
Age: 37 years, Occ: Household.  
All are R/o: Bettadpalla Kundur,  
Ramanagar, Ramanagar taluk  
and district.

(Sri.G.N.Gowda Advocate)

**ORDER ON APPLICATION FILED UNDER  
SECTION 239 OF Cr.P.C.**

Learned counsel for accused No.3 o 7 has  
filed this application under Section 239 of Code of

Criminal Procedure, 1973 seeking their discharge from the offences punishable under section 420, 504, 506, 109 read with section 149 of Indian Penal Code, 1860.

2. It is stated in the application that Haveri Town Police have not at all produced any evidence against accused No.3 to 7 in their final report. Absolutely, there is no iota of evidence in respect of conspiracy and sharing of common object by accused No.3 to 7 with accused No.1 to 3. C.W.8 to 12 in their statement have not at all disclosed the phone numbers through which accused No.3 to 7 had allegedly gave life threats. The Investigating Officer has not at all produced any evidence in respect of giving threat by accused No.3 to 7 to the informant from which mobile number, to what mobile number, from which place to which place. The Investigating Officer under political influence has submitted the final report. Accused No.3, 4 and 7 are the brothers. Accused No.6 is the wife of accused No.3. Accused No.5 is the father of accused No.3, 4 and 7. As per the information lodged by accused No.3 against the informant of the present case with Kundur Police Station on 24.04.2015 requesting the police to arrest the cheated person, police arrested the informant on 19.02.2016 and produced before the court. On

23.02.2016, informant got released himself on bail. As a counter blast to the said information, the informant of the present case has lodged the information. Therefore, informant in collusion with C.W.8 has hatched the conspiracy against accused No.3 to 7 by creating false statement and got involved them in the present case. Accused No.5 is an old aged person, who is not in a position to walk independently. Accused No.6 is suffering from cancer and undergone surgery. Informant is in the habit of cheating persons by wearing priestly dress. He by using his political influence has lodged the information against accused No.3 to 7 who are innocent persons. On these grounds, they sought for allowing the application.

**3.** Learned Senior APP has filed objections to this application inter-alia denying the entire contents of the application. It is contended that, Investigating Officer after completion of thorough investigation, has filed the challan against accused persons for the offences punishable under section 420, 109, 504, 506 read with 149 of Indian Penal Code, 1860. There is sufficient evidence against accused No.3 to 7. Therefore, at this juncture, these accused persons cannot be discharged. Accused No.3 to 7 at the instance of accused No.1, gave life threat to the informant and colluded with

him in conspiracy. The Investigating Officer has collected all the necessary documents and evidence and submitted challan against accused persons. Ex-facie there is sufficient evidence against accused persons, who are liable to face the trial. At this juncture, Court has to consider only the prima-facie case to proceed against the accused as per the decisions of Hon'ble Supreme Court of India reported in 1999 (3) Crimes SC 204 and 2000 SCC (Crimes) 200. At this juncture, Court is to confine its attention only to consider whether there are sufficient material to proceed with the trial against accused or not. The Court cannot weigh the evidence so as to form an opinion that whether said material are sufficient to convict the accused as held by **Hon'ble Supreme Court of India in a decision reported in 2014 (1) Crimes SC 1 (State of Tamil Nadu Vs. Suresh Rajan)**. Therefore, it is necessary to proceed with the trial against accused persons. On these grounds, he sought for rejection of the application.

4. Heard arguments of learned counsel for accused No.3 to 7 and Learned Senior APP on application at length. Scrutinized the records of the case.

5. On scrutiny of records of the case and having heard arguments, following points arise for consideration.

1. Whether accused No.3 to 7 have made out sufficient grounds for their discharge?

2. What order?

6. My findings to the above points as under:

Point No.1: In the Negative.

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

### **REASONS**

7. **REASONING ON POINT NO.1:-** As a prelude, it is necessary to mention that CPI of Haveri Town Police Circle has filed challan against accused No.1 to 7 for the offences punishable under section 420, 109, 504, 506 read with 149 of Indian Penal Code, 1860. The brief case of prosecution necessary for disposal of this application are that informant by name Dattatreya Avadhutha Swamiji had lodged the information alleging that he is the priest. He was in search of suitable place for construction of mutt and cow shed in around Haveri. For this purpose, he collected cash of ₹1,00,00,000/- from devotees. At that time, accused No.2 approached him,

introduced him to accused No.1 and others. The informant and his brother on 17.11.2016 went to Byadagi and met the accused No.1 and others. Thereafter, accused No.1 showed his properties and demanded financial help of ₹1,00,00,000/- from the informant by promising that he will return the said amount within 2 to 3 days. Accused No.1 has gained confidence of informant by showing his properties. He further promised the informant that he will get the suitable place for construction of mutt and cow shed or he will sell his agricultural land or his another property. The informant has believed his words. On 18.11.2016, accused No.1 and 2 came to the house of informant at Haveri along with other accused persons in presence of witnesses. Informant had handed over cash of ₹1,00,00,000/- to accused No.1 and on the same day he remitted ₹15,00,000/- to the account of his brother. Afterwards, when informant approached the accused No.1 seeking repayment of ₹1,00,00,000/-, at that time accused No.1 threatened the informant to kill him, if he demands his money. The remaining accused persons being members of unlawful assembly threatened him. Therefore, he lodged the information with the police on 11.12.2016.

**8.** First information statement lodged by the informant further discloses that accused No.3 to 7 by using their cell phone numbers 9611490750 and 9886260286 have threatened him with an intention to dupe his money. The records further reveal that, on 12.12.2016, the Investigating Officer has recorded the further statement of the informant, wherein he has collected the cell phone numbers of accused No.3 to 7 as 9611490750 and 743366573.

**9.** What are the principles to be followed by the Court while framing of charge and discharge of accused have been succinctly laid down by **Hon'ble Supreme Court of India in a decision reported in (2020) 2 SCC 290 ( STATE (INCT OF DELHI) Vs. SHIV CHARAN BANSAL AND OTHERS)**, in which it is held as under:

*“39 The Court while considering the question of framing charges under section 227 CrPC has the power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case would depend upon the facts of each case. If the material placed before the Court discloses grave suspicion against the accused, which has not been properly explained, the Court will be fully justified in framing charges and proceeding with the trial. The probative value of the evidence brought on record cannot be gone into at the stage of framing charges. 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 disclose the ingredients constituting the alleged offence. At this stage, there cannot be a roving enquiry into the pros and cons of the matter, the evidence is not to be weighed as if a trial is being conducted. Reliance is placed on the judgment of this Court in state of Bihar V Ramesh Singh where it has been held that at the stage of framing charges under sections 227 or 228 CrPC, if there is a strong suspicion which leads the court to think that there is ground for presuming that the accused had committed the offence, then the court should proceed with the trial.*

*40 In a recent judgment delivered in Dipakhbai Jagdishchandra Patel V. State of Gujarat decided on 24.4.2019, this Court has laid down the law relating to framing of charges and discharge, and held that all that is required is that the Court must be satisfied with the material available, that a case is made out for the accused to stand trial. A strong suspicion is sufficient for framing charges, which must be founded on some material. The material must be such which can be translated into evidence at the stage of trial. The veracity and effect of the evidence which the prosecutor proposes to adduce are not to be meticulously judged at this stage, nor is any weight*

*to be attached to the probable defence of the accused at the stage of framing charges. The court is not to consider whether there is sufficient ground for conviction of the accused, or whether the trial is sure to end in the conviction."*

**10.** In the present case, prosecution has alleged that there was a criminal conspiracy to cheat the informant by all the accused. The crime was not alleged to be committed on the spur of the moment. It was purportedly preceded by meticulous planning, where each of the accused have played a separate role to achieve common illegal object of carrying out the informant.

**11.** The essential ingredients of criminal conspiracy as per principles laid down in judicial decisions are as under:

*(I) an agreement between two or more persons.*

*(ii) agreement must be related to doing or causing to be done either*

*(a) an illegal act or:*

*(b) an act which is not illegal in itself but is done by illegal means.*

**12.** The quintessence of cheating is deceiving any person fraudulently or dishonestly inducing the said person so deceived to deliver any property to

any person, or to consent that any person shall retain any property. Explanation appended to section 415 of Indian Penal Code, 1860 makes it lucid that dishonest concealment of facts is a deception.

**13.** In the light of the principles laid down in the above referred decisions and in the backdrop of essential ingredients constituting the offences punishable under section 420 and 109 of Indian Penal Code, 1860, let me proceed to consider whether or not a prima-facie case has been made out against all the accused.

**14.** As already adverted hereinabove, the averments of first information statement are to the effect that accused No.1 in conspiracy with remaining accused persons, fraudulently and dishonestly induced the informant to deliver ₹1,00,00,000/- to accused No.1. These acts as narrated in first information statement, if remain un-rebutted, clearly reveal the commission of offences punishable under section 420 of Indian Penal Code, 1860. Further, it is important to consider that Investigating Officer has collected certificate as well as statement of accounts from Corporation Bank, Byadagi pertaining to accused No.1, in which deposit of ₹15,00,000/- on

18.11.2016 by Lingaraj N Angadi who is stated to be the brother of informant can be seen.

**15.** The role attributed to accused No.3 to 7 is that, they threatened the informant through their cell phone numbers 9611490750 and 743366573 that if he further demands money from the informant, they will do away with his life. Further, it is discernible from the final report filed by the Investigating Officer that C.W.8 to 12 have given statement before the Investigating Officer who have also bolstered the version put forth by the informant that accused No.3 to 7 gave life threat to the informant.

**16.** It is trite that criminal conspiracy is hidden in the mind of accused persons. It can be unraveled only during the course of trial. In the present case also, prosecution has alleged criminal conspiracy against all the accused. Unless the Court proceeds with the trial, it is very difficult to unravel the purported criminal conspiracy which is stated to be hidden in the mind of accused persons.

**17.** The learned counsel for accused No.3 to 7 has vehemently argued that, absolutely there is no iota of evidence against accused No.3 to 7 to link with the alleged crime. According to him, the only

allegations against accused No.3 to 7 are in respect of offences punishable under section 506 of Indian Penal Code, 1860. Therefore, he prayed to discharge them for the remaining offences.

**18.** It is also prime important to consider that accused persons are also charge sheeted under section 420, 109, 504, 506 read with section 149 of Indian Penal Code, 1860. Under such circumstances, it is essential to consider what the impact of concept of unlawful assembly is at this juncture as adumbrated under section 149 of Indian Penal Code, 1860. **Hon'ble Supreme Court of India** in a decision reported in **(2018) 7 SCC 743 (Vinubhai Ranchhodbhai Patel v. Rajivbhai Dudabhai Patel & Ors.)**, has dealt with the concept of vicarious liability, as a result of which a large number of accused constituting an unlawful assembly can be held guilty, has been discussed, to hold that it is not necessary that each of the accused inflict fatal injury or any injury at all; the mere presence of an accused in such an assembly is sufficient to render him vicariously liable under Section 149 of the Indian Penal Code, 1860, for causing the death of the victim of the attack, provided that the accused are told that they are to face the charge, rendering them so

vicariously liable. The principle of this vicarious liability, under Section 149 of the Indian Penal Code, 1860 has been set out in para 28 of the judgment and reads as under:

*“Section 149 propounds a vicarious liability [Shambhu Nath Singh v. State of Bihar, AIR 1960 SC 725: 1960 CrLJ 1144] in two contingencies by declaring that (i) if a member of an unlawful assembly commits an offence in prosecution of the common object of that assembly, then every member of such unlawful assembly is guilty of the offence committed by the other members of the unlawful assembly, and (ii) even in cases where all the members of the unlawful assembly do not share the same common object to commit a particular offence, if they had the knowledge of the fact that some of the other members of the assembly are likely to commit that particular offence in prosecution of the common object.”*

**19.** Section 149 of Indian Penal Code, 1860 envisages the concept of vicarious liability. It has two elements. The assembly should consist of at least five persons and they should have a common object to commit an offence or achieve any one of the objects enumerated therein. Section 149 of Indian Penal Code, 1860 also propounds a vicarious liability in two contingencies by declaring that if a member of an unlawful assembly commits an offence in prosecution of the common object of that

assembly, then every member of such unlawful assembly is guilty of the offence committed by the other members of the unlawful assembly and even in cases where all the members of the unlawful assembly do not share the common object to commit a particular offence, if they had the knowledge of the fact that some of the other members of the assembly are likely to commit that particular offence in prosecution of the common object.

**20.** By judging the factual matrix of the present case in the light of principles laid down in the above referred decision, by virtue of operation of Section 149 of Indian Penal Code, 1860, at this juncture, the prosecution papers indicate that accused No.3 to 7 who are also charge sheeted for the offences punishable under Section 149 of Indian Penal Code, 1860, are vicariously liable for the criminal acts alleged to have been committed by accused No.1 to 3, in the same manner as if they have committed such offences punishable under Section 420, 109 and 504 of Indian Penal Code, 1860. At this juncture, on careful and meticulous perusal of the prosecution papers, they clearly indicate the essential ingredients constituting the alleged offences namely offences punishable under

Section 420, 109, 504, 506 read with Section 149 of Indian Penal Code, 1860. The prosecution has made out prima-facie case at this juncture to proceed with the trial.

**21.** Even though accused No.3 to 7 have made allegations against the informant that he has lodged the information as a counter blast to the information lodged by the accused No.3, nothing is placed on record at this juncture. Even otherwise at the time of framing of charge or considering the application for discharge of the accused, Court has to confine its attention only towards prosecution papers as can be seen from phraseology used in Section 239 and 240 of Code of Criminal Procedure, 1973.

**22.** Learned counsel for accused No.3 to 7 has pointed out certain flaws in the case of prosecution, that Investigating Officer has not at all collected the call details of phone numbers pertaining to 9611490750 and 9743366573. How far these deficiencies in the investigation have bearing on the merits of the case can be looked into only after full-fledged trial. At this juncture, it is too premature sift and weigh the evidence. Therefore, this aspect may not loom large at this stage.

**23.** Assessed from any angle, it becomes crystal clear that application filed by accused No.3 to 7 is sans merits. Therefore, considering all these aspects of the case and totality of the circumstances I answer the point No.1 in the **Negative.**

**24. ON POINT NO.2:-** For the reasons stated above, I proceed to pass the following:

**ORDER**

**Application filed by the accused  
No.3 to 7 under Section 239 of Code  
of Criminal Procedure, 1973 is  
hereby rejected.**

(Dictated to the stenographer, transcribed and typed by him, then script corrected, signed and then pronounced by me in Open Court on this the 19<sup>th</sup> day of January, 2021)

**(GUDI VASUDEV RADHAKANT)  
PRL. SENIOR CIVIL JUDGE AND CJM  
HAVERI.**