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 25th DAY OF FEBRUARY 2021

C.C.No.445/2018

Complainant: State of Karnataka
(By Assistant Public Prosecutor)

Vs.

Accused : Guddappa s/o Dilleppanavar,
R/o: Nagendranamatti, Haveri,
Haveri taluk and district.

(Sri.S.M.Katagi Advocate)

ORDER ON APPLICATION FILED UNDER SECTION 239 OF CODE OF CRIMINAL PROCEDURE, 1973.

Learned counsel for accused No.1 has filed this application under Section 239 of Code of Criminal Procedure, 1973 with a prayer to discharge the accused No.1 from the charges punishable under Sections 406, 420, 467, 468, 471 read with section 34 of Indian Penal Code, 1860 and under Section 3 and 4 of Essential Commodities Act.

2. It is stated in the application that Tahasildar-cum-Food Inspector, Haveri had lodged the information against the accused persons on the ground that accused No.1 is distributor and remaining accused person/s are franchisees and facilitators who linked the Aadhaar card with the system and generated the coupon. Accused No.1 colluding with other accused persons/s, in furtherance of their common intention, have connected Aadhaar card of somebody else, created false coupons, created false documents by forgery and committed breach of trust by mis-utilizing the food grains to be supplied under public distribution.

3. It is contended that accused No.1 is running a ration shop for pretty long time by following rules and regulations of the Government without any flaws. Hitherto, no individuals have lodged any complaint against accused No.1 alleging misappropriation of food grains. When accused obtained information under Right to Information Act, 2005 that by using coupon and bar code, are there any complaints, for which the authority has answered that still today, no complaints are received with regard to creation of unauthorized coupons and non- receipt of food grains by the beneficiaries. There are no allegations against

accused No.1 in the First Information Statement. The amount mentioned in the First Information Statement and the documents are not at all corresponding with each other. There is no prima-facie material against accused No.1.

4. In the information furnished under Right to Information Act, 2005, the authority has informed that the responsibility of card seeding is upon Food Inspector. Therefore, the bar code and the password are not at all within the knowledge of accused No.1. When the login and password are known to only Food Inspector and Tahasildar, question of creation of false coupons and linking Aadhaar card with fictitious personalities does not arise at all. In Samyuktha Karnataka Kannada daily newspaper dated 29.02.2020, Food and Civil Supplies Minister Ms.Shashikala Jolle has admitted that there is a mistake in server and data and ordered to issue ration manually. Franchise agency has lodged complaint against the concerned authority regarding fault in server and data, for which the authority has not at all taken any action.

5. Accused No.1 has challenged the order passed by the authorities before the appellate authority, which reached upto filing of Writ Petition

before the Hon'ble High Court of Karnataka Dharwad Bench. The said Writ Petition was disposed of on 14.12.2016 and directed the competent authority to dispose of the appeal within 10.01.2017. The competent authority has registered the Criminal Case No.16/2016-17 which was disposed of on 29.11.2018. Accordingly, Dr.M.V. Venkatesh, the then Deputy Commissioner, Haveri has imposed fine of ₹20,000/- and ordered to confiscate security deposit of ₹5,000/- and regularized the shop of accused No.1. Hence, present complaint is hit by double jeopardy. Bharat S.R. Police Inspector, CCB Section, Hubballi has filed 'B' summary report before 2nd JMFC., Court at Hubballi in the similar case, where he opined that the information was lodged under wrong notion. All these factors clearly establish that there is no material to proceed against accused No.1. Therefore, he prays to discharge the accused No.1 from the above said charges. On these grounds, he sought for allowing the application.

6. Learned Senior APP has filed objections to this application inter-alia denying the entire contents of the application. It is contended that, Tahasildar, Haveri had lodged information stating that accused have mis utilized the substantial amount by creating false documents for the

purpose of cheating. Accordingly, Investigating Officer has conducted the investigation and filed challan for the offences punishable under Sections 406, 420, 467, 468, 471 read with section 34 of Indian Penal Code, 1860 and under Section 3 and 4 of Essential Commodities Act. Accused have created false coupons, linked the Aadhaar cards with fictitious personalities and mis-utilized the food grains from their own profit which is amply supported by several documentary as well as oral evidence collected by Investigating Officer. 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)**. There are sufficient material to proceed against accused. On these grounds, he sought for rejection of the application.

7. Learned counsel for accused No.1 has also filed application under Section 91 of Code of Criminal Procedure, 1973 seeking leave of the court to produce the documents as set out in the list.

8. According to learned counsel for accused No.1, these documents are necessary for deciding the application filed by him under Section 239 of Code of Criminal Procedure, 1973.

9. Learned Senior APP has orally objected to this application.

10. Heard arguments of learned counsel for accused No.1 and Learned Senior APP at length on both the applications. Scrutinized the records of the case.

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

1. Whether accused No.1 has made out sufficient grounds for his discharge?
2. Whether accused No.1 has made out sufficient grounds for allowing him to produce the documents as set out in the list at this stage?

3. What order?

12. My findings to the above points as under:

Point No.1: In the Negative,

Point No.2: In the Negative,

Point No.3: As per final order, for the following:

R E A S O N S

13. REASONING ON POINT NO.1 AND 2:- Both these points are interrelated with each other. Finding on point No.1 will have bearing on another point. To avoid repetition of facts, both these points are taken together for common consideration.

14. As a prefatory note, it is necessary to consider some of the back ground facts in a nutshell. CPI of Haveri Town Police Circle has filed the challan against accused persons for the offences punishable under Sections 406, 420, 467, 468, 471 read with section 34 of Indian Penal Code, 1860 and under Section 3 and 4 of Essential Commodities Act.

15. The brief version of the prosecution necessary for exposition is that Food Inspector, Haveri has lodged the information against accused persons alleging that accused No.1 is the owner of public ration distribution shop, wherein essential items

like rice, sugar, salt, palm oil etc., are distributed. Accused No.1 in collusion and in conspiracy with remaining accused person/s, have tried to cheat the ration card holders by creating bogus coupon connecting with the Aadhaar card numbers with fictitious personalities, misused the food grains by selling them for personal gain between the period 01.07.2016 and 01.11.2016, caused loss to the Government and cheated the public.

16. After completion of investigation, the Investigating Officer has filed the challan against accused persons for the aforesaid offences.

17. According to accused No.1, none of the beneficiaries have lodged the information regarding mis-utlization of food grains to be distributed through public distribution system. According to him, he obtained several replies from the competent authorities under Right to Information Act, 2005, wherein they have informed that the shop owner is authorized only to distribute the food grains and issuance of ration card is completely vests with Food Sheristedar/Food Inspector. They have also informed that the responsibility of ration card seeding is also vests with Food Inspector. As per learned counsel for accused No.1, Deputy Commissioner, Haveri in

Criminal Case No.16/2016-17 has disposed of the case in respect of the same offences by imposing fine of ₹20,000/- and confiscating security deposit of ₹ 2,50,000/-. Therefore, the present case is hit by double jeopardy.

18. Learned counsel for accused No.1 has also relied upon several documents in support of his contention. He relied upon the order passed by Additional Chief Secretary and Revisional Authority, Food and Civil Supplies Ministry, Bengaluru dated 07.12.2019, through which the said authority had imposed penalty of ₹20,000/- to the shop owners and confiscated security deposit of ₹5,000/-. To the same effect, Deputy Commissioner, Dharwad by order dated 14.10.2017 has passed order by giving warning and also by confiscating security deposit of ₹5,000/-. On the same lines, Deputy Commissioner, Davanagere by order dated 24.04.2017 has also passed similar order. He has also produced 'B' Summary report filed by CPI, CCB Section Hubballi in respect of similar offences on the ground that there was a wrong notion in filing the information. He produced several computer generated documents to show that password and login I.D are exclusively lie with Food Inspector. He has also produced information furnished by Deputy Director of Food

and Civil Supplies, Haveri on 27.01.2017 To Sri.Ramesh B. Shetteppanavar Advocate under Right to Information Act, 2005, wherein they have informed that generation of coupon, exclusively lies with the authority and not with the owner of the shop. He has also produced Samyuktha Karantaka Kannada daily newspaper dated 29.02.2020, wherein Food and Civil Supplies Minister Ms.Shashikala Jolle has given statement that if server became down, the ration is to be distributed manually. By relying on all these documents, learned counsel for accused No.1 has vehemently contended that proceeding with the trial is nothing but futile exercise.

19. What are the principles to be followed by the Court while framing of charge and deciding the application for 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 by 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."*

20. Learned Senior APP has relied upon the decision of **Hon'ble Supreme Court of India reported in 1999 (3) Crimes 204(Umar Abdul Sakoor Sorathia Vs. Intelligence Officer, Narcotic Control Bureau)** wherein it is held as under:

> *"15 It is well settled that at the stage of framing charge the court is not expected to go deep into the probative value of the materials on record. If on the basis of materials on record the court could come to the conclusion that the accused would have committed the offence the court is obliged to frame the charge and proceed to the trial.*
> *16 The present is certainly not a case where the aforesaid ration can justifiably be applied. A three-Judge Bench of this Court in State of Maharashtra & Ors V. Som Nath Thapa Ors. Has held thus:*

> *"If on the basis of materials on record a court could come to the conclusion that commission of the offence is probable consequence, a case for framing of charge exists. To put it definitely if the court were to think that accused might have committed the offence it can frame the charge, through fro conviction the conclusion is required to be that the accused has committed the offence. It is apparent that at the stage of framing of a charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution has to be accepted as true at that stage".*

21. In the present case, prosecution has alleged that accused persons have committed criminal breach of trust by mis utilizing the food grains which are meant for distribution to the card holders, by creating false documents, forgery, used the forged documents for the purpose of cheating and ultimately cheated the beneficiaries under public distribution system as well as the Government.

22. 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.

23. 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 34 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.

24. As noticed supra, the allegations contended in first information statement as well as from the statements of the witnesses recorded by the Investigating Officer, they are to the effect that accused persons by creating false documents, by linking Adhaar card to fictitious personalities, have created false coupons, which amounts to creation of false documents as contemplated under Section 464 of Indian Penal Code, 1860. These documents are to the further effect that accused persons used the forged documents as genuine documents for the purpose of cheating the beneficiaries as well as the Government and thereby committed the alleged offences.

25. It is also prime important to consider that accused persons are also charge sheeted under

sections 406, 420, 467, 468, 471 read with section 34 of Indian Penal Code, 1860. Under such circumstances, it is essential to consider what the impact of concept of vicarious liability is at this juncture as adumbrated under section 34 of Indian Penal Code, 1860. Section 34 of Indian Penal Code, 1860 has been enacted on the principle of joint liability in the doing of a criminal act. The section is only a rule of evidence and does not create a substantive offence. The distinctive feature of the Section is the element of participation in action. The liability of one person for an offence committed by another in the course of criminal act perpetrated by several persons arises under Section 34 if such criminal act is done in furtherance of a common intention of the persons who join in committing the crime. The true concept of section is that if two or more persons intentionally do an act jointly, the position in law is just the same as if each of them has done it individually by himself. The existence of a common intention amongst the participants in a crime is the essential element for application of this Section. It is not necessary that the acts of the several persons charged with commission of an offence jointly must be the same or identically similar. The acts may be different in character, but must have

been actuated by one and the same common intention in order to attract the provision. As a result of the application of the principles enunciated in Section 34 of Indian Penal Code, when the accused are tried and convicted for the principal Sections, both the accused are liable for the act of any one of the accused, as the principle of this Section lays down the joint liability. Act of the one accused binds other accused also.

26. Prosecution papers indicate that accused persons are also charged under Section 34 of Indian Penal Code, 1860 who are vicariously liable for alleged to have committed by any one of the accused persons, in the same manner as if they have committed such offences punishable under Sections 406, 420, 467, 468, 471 read with Section 34 of Indian Penal Code, 1860. Prosecution papers at this juncture clearly reveal the essential ingredients constituting these offences.

27. Under these facts and circumstances of the case, one more moot question arises for determination is whether accused has got right to produce the documents at this stage. Whether he can press into service the provision of Section 91 of Code of Criminal Procedure, 1973. This question is no longer res integra. **Hon'ble Three Judges**

Bench of Hon'ble Supreme Court of India in a decision reported in (2005) 1 SCC 568 (State of Orissa V. Ddebendra Nath Padhi), considering this question has proceeded to hold thus:

> *"8. What is the meaning of the expression "the record of the case" as used in Section 227 of the Code. Though the word "case" is not defined in the Code but Section 209 throws light on the interpretation to be placed on the said word. Section 209 which deals with the commitment of case to the Court of Session when office is triable exclusively by it, inter alia, provides that when it appears to the Magistrate that the offence is triable exclusively by the Court of Sessions, he shall commit "the case" to the Court of Session and send to that Court "the record of the case" and the document and articles, if any, which are to be produced in evidence and notify the Public Prosecutor of the commitment of the case to the Court of Session. It is evident that the record of the case and documents submitted therewith as postulated in Section 227 relate to the case to and the documents referred in Section 209 of the Code. No provision in the Code grants to the accused any right to file any material or document at the stage of framing of charge. The right is granted only at the stage of the trial.*
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> *23. As a result of the aforesaid discussion, in our view, clearly the law is that at the time of framing charge or taking cognizance the accused has no right to produce any material. Satish Mehra case[1] holding that the trial court has powers to*

consider even materials which the accused may produce at the stage of Section 227 of the Code has not been correctly decided.

24. On behalf of the accused a contention about production of documents relying upon Section 91 of the Code has also been made, Section 91 of the Code reds as under:

"91. Summons to produce document or other thing:- (1) Whenever any court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such court or officer, such court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place state in the summons or order.

25. Any document or other thing envisaged under the aforesaid provision can be ordered to be produced on finding that the same is "necessary or desirable for the purpose of investigation, inquiry, trial or other proceedings under the Code". The first and foremost requirement of the section is about the document being necessary or desirable. The necessity or desirability would have to be seen with reference to the stage when a prayer is made for the production. If any document simple injuries necessary or desirable for the defence of the accused, the question of invoking Section 91 of the initial stage of framing of a

charge would not arise since defence of the accused is not relevant at that stage. When the section refers to investigation, inquiry, trial or other proceedings, it is to be borne in mind that under the section a police officer may move the court for summoning and production of a document as may be necessary at any of the stages mentioned in the section. Insofar as the accused is concerned, his entitlement to seek order under Section 91 would ordinarily not come till the stage of defence. When the section talks of the document being necessary and desirable, it is implicit that necessity and desirability is to be examined considering the stage when such a prayer for summoning and production is made and the party who makes it, whether police or accused. If under Section 227, what is necessary and relevant is only the record produced in terms of Section 173 of the Code, the accused cannot at that stage invoke Section 91 to seek production of any document to show his innocence. Under Section 91 summons for production of document can be issued by court and under a written order an officer in charge of a police station can also direct production thereof. Section 91 does not confer any right on the accused to produce document in his possession to prove the defence. Section 91 presupposes that when the document is not produced process may be initiated to compel production thereof.

27. Insofar as Section 91 is concerned, it was rightly held that the width of the powers of that section was unlimited but there were inbuilt, inherent limitations as

to the stage or point of time of its exercise, commensurate with the nature of proceedings as also the compulsions of necessity and desirability, to fulfill the task or achieve the object. Before the trial court the stage was to find out whether there was sufficient ground for proceeding to the next stage against the accused. The application fled by the accused under Section 91 of the Code for summoning and production of document was dismissed and order was upheld by the High Court and this Court. But observations were made in para 6 to the effect that if the accused could produce any reliable material even at that stage which might totally affect even the very sustainability of the case, a refusal to look into the material so produced may result in injustice, apart from averting an exercise in futility at the expense of valuable judicial/public time, these observations are clearly obiter dicta and in any case of no consequence in view of conclusion reached by us hereinbefore. Further, the observations cannot be understood to mean that the accused has a right to produce any document at the stage of framing of charge having regard to the clear mandate of Sections 227 and 228 in Chapter 18 and Sections 239 and 240 in Chapter 19.

28. We are of the view that jurisdiction under Section 91 of the Code when invoked by the accused, the necessity and desirability would have to be seen by the court in the context of the purpose – investigation, inquiry, trial or other proceedings under the Code. It would also

have to be borne in mind that law does not permit a roving or fishing inquiry."

28. Again this principle is cited with approval by **Hon'ble Supreme Court of India in recent decision reported in (2020) 2 SCC 768, M.E.Shivalingamurth Vs Central Bureau of Investigation**, wherein legal principles applicable in regard to an application seeking discharge have been summarized as under:

"17. This is an area covered by a large body of case law. We refer to a recent judgment which has referred to the earlier decisions viz. P.Vajayan V. State of Kerala and discern the following principles:

17.1 If two views are possible and one of them gives rise to suspicion only as distinguished from grave suspicion, the trial judge would be empowered to discharge the accused.

17.2. The trial judge is not a mere post office to frame the charge at the instance of the prosecution.

17.3. The Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding. Evidence would consist of the statements recorded by the police or the documents produced before the Court.

17.4 If the evidence, which the Prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, "cannot show that the accused committed offence, then,

there will be no sufficient ground for proceeding with the trial".

18. The defence of the accused is not to be looked into at the stage when the accused seeks to be discharged under Section 227 CrPC (see State of J & K V. Sudershan Chakkar). The expression, "the record of the case", used in Section 227 CrPC, is to be understood as the documents and the articles, if any, produced by the prosecution. The Code does not give any right to the accused to produce any document at the stage of framing of the charge. At the stage of framing of the charge, the submission of the accused is to be confined to the material produced by the police.

28. It is here that again it becomes necessary that we remind ourselves of the contours of the jurisdiction under Section 277 CrPC. The principle established is to take the materials produced by the prosecution, both in the form of oral statements and also documentary material, and act upon it without it been subjected to questioning through cross-examination and everything assumed in favour of the prosecution. If a scenario emerges where no offence, as alleged, is made out against the accused, it, undoubtedly, would enure to the benefit of the accused warranting the trial court to discharge the accused.

29. It is not open to the accused to rely on the material by way of defence and persuade the court to discharge him".

29. In the light of principles emanating from these decisions, accused cannot produce the documents at this juncture. He can produce the documents at

the appropriate stage. The documents produced by the accused cannot be looked into at this stage. Therefore, considering all these aspects and totality of the circumstances I answer the point No.1 and 2 in the **Negative**.

30. **ON POINT NO.3:**- For the reasons stated above, I proceed to pass the following:

ORDER

Application filed by the accused No.1 under Section 239 of Code of Criminal Procedure, 1973 is hereby rejected.

Application filed by the accused under Section 91 of Code of Criminal Procedure, 1973 is kept in abeyance till conclusion of trial.

(Dictated to the stenographer, transcribed and typed by him, then script corrected, signed and then pronounced by me in Open Court on this the 25th day of February, 2021)

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