

**IN THE COURT OF THE ADDITIONAL CIVIL JUDGE &
J.M.F.C., HIREKERUR**

**PRESENT: Sri. Janardhana. S.K. B.A,L.L.B.,
Addl. Civil Judge & J.M.F.C.,
Hirekerur.**

C.C. No.106 of 2016

DATED THIS THE 29th DAY OF FEBRUARY 2020

Complainant : State Represented by
Rattihalli Police Station
(By Learned A.P.P)

V/s

Accused : 1. Mahabubsab S/o Ayatsab Shiragambi
Age: 32 years, Occ: Tractor Driver.
2. Hasansab S/o Husensab Itagi,
Age: 40 years, Occ: Tractor Owner.
3. Subansab S/o Honnurasab
Badiyammanavar @ Bandammanavar,
Age: 32 years, Occ: Hamali.
4. Abdual @ Abdulsab S/o Babjansab Billalli,
Age: 27 years, Occ: Hamali.
5. Dadapeersab S/o Budansab Sannatayi,
Age: 29 years, Occ: Hamali.
All are R/o: Chikkakabbar village,
Tq: Hirekerur, Dist: Haveri.

(By Sri. G.S. Mattur., Adv.)

**(Sri. Janardhana. S.K.)
Addl. Civil Judge & JMFC.,
Hirekerur.**

Date of Commission of offence : 25-02-2016
Date of complaint : 25-02-2016
Name of the complainant : Devananda PSI
Offences complained of : 379 of IPC, 21 of MMRD
Act of 1957 and IV B,31(R)
13, 17 of Mines and Mineral
Concession Rules of 1994.
Date of commencement of Trial : 09-05-2018
Date of conclusion of Trail : 29-02-2020
Finding of the Court : Acquitted

(Sri. Janardhana. S.K.)
Addl. Civil Judge & JMFC.,
Hirekerur.

JUDGMENT

This is a charge sheet filed by the Rattihalli police station in crime No.40/2016 against the accused No.1 to 5 for the offences punishable under section 379 of IPC, 21 of MMRD Act of 1957 and IV B,31(R) 13, 17 of Mines and Mineral Concession Rules of 1994.

2. The brief facts of the prosecution case is as follows:-

That on 25-02-2016 at about 04-45am, upon the credible information that the accused No.1 to 5 were illegally transporting the sand, the CW-1 along with his staff members were conducted the raid at Sannagubbi

cross, thereby the accused No.1 to 5 persons were illegally transporting the sand taken from the bank of Tunga Bhadra river situated at Bairanapada village in a tractor its engine bearing No.SNSW4776, R.C. No.KA-27/TA-9034 and trailer No.CNU-9967 belongs to accused No.2 thereby conducted the raid and seized the sand measuring 2 cubic meters valued at Rs.1,800/- thereby the accused No.1 to 5 have committed the offence punishable under section 379 of IPC, 21 of MMRD Act of 1957 and IV B,31(R) 13, 17 of Mines and Mineral Concession Rules of 1994.

3. This court has secured presence of accused No.1 to 5 and they are enlarged on bail. The copy of charge sheet was served to accused No.1 to 5 as contemplated under section 207 of Cr.P.C.

4. As sufficient grounds and materials available on record to presume that the accused No.1 to 5 have committed the alleged offences, charges in writing framed against the accused No.1 to 5, same are read over and explained to them in Kannada language, they pleaded not guilty and claims to be tried. To bring home the charges leveled against the accused No.1 to 5, the prosecution has examined 6 witnesses as PW-1 to PW-6 and got marked the 12 documents as per Ex.P1 to Ex.P12 and closed their side.

5. As there are incriminating circumstances and evidence appeared against the accused No.1 to 5 during the prosecution evidence, statement of the accused No.1 to 5 under section 313 of Cr.P.C was recorded and same is read over and explained to the accused No.1 to 5 in their language. They denied all the incriminating circumstances but did not choose to lead any defense evidence on their behalf.

6. Heard both sides and carefully perused both the oral and documentary evidence lead by the prosecution.

7. The points that would arise for consideration of this court are as follows:-

POINTS

- 1. Whether prosecution proves beyond all reasonable doubts that on 25-02-2016 at about 04-45 pm., upon the raid by CW-1 and his staff members, the accused No.1 to 5 were illegally transporting sand in a Tractor belongs to the accused No.2 its bearing No.KA-27/T-9034 its Engine No.SNSW4776. Trailer No.CNU-9967 without obtaining any valid license or permit from the Government from the bank of Tunga Bhadra river situated at Bairanapada village thereby committed the offence punishable under section 379 of IPC?**
- 2. Whether prosecution further proves beyond all reasonable doubts that on above stated date, time and place the accused No.1 to 5 conspiring each other in order to cause loss**

to the State exchequer without having any valid license and permit were illegally transporting sand measuring 2 cubic meters valued at Rs.1,800/-, thereby committed the offence punishable under section 21 of MMRD Act of 1957 and IV B,31(R) 13, 17 of Mines and Mineral Concession Rules of 1994?

3. What order or sentence?

8. The findings of this court on afore said points are as follows:-

Point No.1: In the negative.

Point No.2: In the negative.

Point No.3: As per final order for following:-

REASONS

9. **Points No.1 & 2:-** As both these points are interlinked to each other they are take together for common discussion to avoide the repetition of facts and evidence. In order to bring home the alleged charges against the accused No.1 to 5, the prosecution has relied upon the evidence of PW-1 to PW-6 and further relied upon the Ex.P1 to Ex.P12 documents. As the material witnesses to the case of the prosecution turned hostile I will analyze the prosecution witnesses one by one.

10. The prosecution has examined the CW-2 one Sri. Jamalsab S/o Fakkirsab as PW-1 and CW-3 Sri. Husainsab S/o Hasansab as PW-2. The PW-1 and PW-2 are the material witnesses as they are independent

witnesses to the spot mahazer and the seizure of Tractor, Trailer and sand alleged to be illegally transported by the accused No.1 to 5 in contravention the provisions of MMRD Act and IPC. The PW-1 and PW-2 in their evidence has categorically deposed that they did not know the accused persons, the police have never conducted the panchanama in their presence and also deposed that, the police were never recovered anything much less tractor and sand alleged to be illegally transported by the accused persons. Even otherwise, the PW-1 and 2 has deposed that they were subscribed their signature on Ex.P1 at the police station. Except identifying their signature as per Ex.P1(a) and Ex.P1(b) the PW-1 and PW2 have pleaded complete ignorance with regard to the contents of the panchanama and thereby given complete go bye to the case of the prosecution. As the PW-1 and PW-2 turned hostile to the case of the prosecution, they were put to lengthy cross examination by the learned APP, but nothing has been elicited so as to prove their presence at the spot so as to establish the drawing of panchanama at the place of raid and recovery of alleged tractor in which accused persons alleged to had transported illegally the sand taken from the bank of Tunga Bhadra river situated at Bairanapada village. Accordingly, the evidence of PW-1 and 2 totally destroyed the case of the prosecution.

11. The prosecution has also examined the CW-1 Sri. Devananda S/o Shetteppa as PW-3. The PW-3 who is the PSI of Rattihally police station. The PW-3 is the person set to the criminal law into motion against the accused No.1 to 5 by compling the illegal act committed by the accused No.1 to 5. The PW-3 in his evidence has deposed that when he was at petrolling duty along with the CW-6 at Rattihalli was received the credible information on 25-02-2016 that, the accused persons have transporting the sand illegally without any permit or license and thereby conducted the raid at the Sannagubbi along with his staff members CW-4 and CW-5. He further deposed that, upon the raid he had recovered the tractor and sand, thereby conducted the panchanama as per the Ex.P1 and lodged the complaint as per the Ex.P2 by producing the alleged tractor and sand recovered from the possession of the accused No.1. It is the story of the prosecution that upon the successful raid, the CW-1 has recovered the alleged tractor and sand which was illegally transported by the accused No.1 to 5. But his evidence is not supported by the independent mahazer witnesses the PW-1 and PW-2 who categorically deposed that the police have never conducted the panchanama in their presence and even not recovered any tractor and sand and thereby categorically stated that they put subscribed their signature at the police station. As such, the evidence of PW-3 is contrary and not corroborated by the evidence of PW-1 and 2

independent witnesses with regard to conduct of raid, recovery of tractor and sand. Hence, without corroborative evidence of independent witnesses, it is not trust worthy to relay upon the uncorroborated testimony of the highly interested police witness.

12. The PW-3 in his cross examination has categorically deposed that, the Ex.P2 panchanama was drawn by his police staff one Sri. Bullapura which are contrary to the evidence of PW-4 that Ex.P2 was drawn by the PW-3 himself. As such, said contradiction between the evidence of PW-3 and PW-4 create a doubts regarding the drew of panchanama at the place of incident. Further the PW-3 has categorically admitted during his cross examination that, there was sand found in the Ex.P4 and Ex.P5 photos in the alleged tractor recovered from the accused No.1 at the time of raid. If at all the PW-3 really conducted the raid and recovered or seized the tractor and trailer loaded with sand they would have taken the photo to that effect. In the absence of the same, the clear doubt arise in the mind of this court that the police have never recovered any sand and tractor on alleged date of incident. Even otherwise, the PW-3 in his cross examination has categorically stated that, at the time of raid, the accused No.1 to 4 were ran away towards western side, which is also contrary to the evidence of PW-4 that the accused No.1 to 4 were ran away towards eastern and southern

side. The PW-3 and PW-4 being the highly educated officials witnesses they would have stated correct direction to which the accused were ran away from the spot. The said contradiction is also creates doubts in the mind of this court that whether the CW-1 has conducted the raid at the alleged date of incident at Sannagubbi cross. Accordingly, the contrary evidence of PW-3 without corroborative evidence of independent mahazer witnesses, PW-1 and PW-2 it is not safe to relay upon the evidence of PW-3 to convict the accused No.1 to 5.

13. The prosecution has also examined the CW-5 Sri. Manjappa S/o Malleshappa Yalehole as PW-4. The PW-4 in his evidence has deposed that the PW-1 has received the credible information on 25-02-2016 at about 04-00 am when they are at patrolling duty at Rattihalli village, thereby they have conducted the raid at Sannagubbi cross, thereby the CW-1 has categorically deposed that, they have conducted the panchanama at the spot between 04-45 am to 05-45 am and seized the tractor and trailer and 2 cubic meters of sand along with 3 plastic baskets and 1 Slaka and thereby the CW-1 has lodged the complaint before the police and handed over the seized Tractor and Trailer and accused. I, do agree that the evidence of PW-4 is in accordance with evidence of PW-3. But the evidence of PW-3 and PW-4 regarding the alleged conduct of raid, seizure of tractor and sand is not supported by the

independent mahazer witnesses the PW-1 and PW-2. Accordingly in the absence of corroboration of evidence of highly interested police witness it is not safe to rely upon the evidence of PW-3 and PW-4 without adequate corroboration. As such the evidence of PW-4 cannot be relied upon to convict the accused.

14. The prosecution has also examined the CW-7 one Sri. Yallappa S/o Satyappa Abbigeri as PW-5. The PW-5 in his evidence has stated that, when he was working as S.H.O at Rattihally police station was received the complaint as per the Ex.P1 on 25-02-2016 at about 06-30 am from the CW-1 along with the tractor and trailer loaded with sand and also received the panchanama thereby registered the case in crime No.40/2016 and sent the FIR to the jurisdictional Magistrate Court police station. The PW-5 has further deposed that, he had recorded the voluntary statement of the accused No.1 and sent the P.F report to the jurisdictional Magistrate Court. The PW-5 has further deposed that during the investigation he found that the accused persons were transporting the sand illegally without any valid license and permit from the Government. In this regard, the PW-5 has identified his signature on Ex.P2 complaint and Ex.P3 F.I.R. It is relevant to mention that, the CW-5 investigation officer has conducted the investigation and filed the charge sheet. On perusal of the evidence of CW-5 it is disclosed that the

PW-5 has never conducted any further investigation and not visited spot which clearly creates the doubts in the mind of this court that the IO/PW-5 has never conducted the investigation in the proper manner. In his cross examination, the PW-5 has categorically admitted that though he had handed over the possession of the seized sand to the PWD department recovered from the accused, but not taken any endorsement to that effect and not produced any such endorsement for having hand over the alleged sand. The said categorical admission coupled with the Ex.P4 to Ex.P8 which clearly discloses that no sand was found in the alleged tractor and trailer which was alleged to be recovered from the accused. Though the PW-5 has denied the suggestion that the PWD department were not given any endorsement for having handed over the possession of the sand but not produced any such endorsement which clearly doubts the police have never recovered any sand from the possession of the accused. As such, evidence of PW-4 is doubtful and contrary regarding the recovery of tractor and trailer and sand from the possession of the accused persons.

15. The prosecution has also examined the CW-6 Sri. Mudarayappa S/o Rudrappa Bullapura as PW-6. The PW-6 in his evidence has deposed that, he had drawn the panchnama as per the Ex.P1 on 25-02-2016 panchanama at 04-45 am to 05-45 am in the presence of CW-2 and CW-

3 as per the statement of CW-1. But his evidence is contrary and not supported by the independent mahazer witness the PW-1 and PW-2 regarding the drawing of panchanama at the spot. Even otherwise, the PW-6 in his evidence has categorically admitted the he drew the panchanama at the Doddagubbi cross which is contrary to the version of the prosecution that mahazer was drawn at the Chikkagubbi cross. The said categorical admission is also doubts the very factum of conduct of the panchanama and alleged raid by the CW-1 and recovery of tractor and trailer loaded with the sand.

16. The evidence of PW-6 regarding the drew of panchanama is also contrary to the evidence of PW-4 that, the Ex.P1 panchanama was prepared by the CW-1 himself. Such contrary evidence is highly doubts the case of the prosecution regarding the alleged offence committed by the accused persons.

17. Over all consideration of prosecution evidence clearly discloses that the very conduct of raid, seizure of tractor & trailer loaded with the sand is highly doubtful and same is not established beyond all reasonable doubt. Even otherwise, the prosecution has not produced any proof regarding the recovery of alleged sand from the possession of the accused persons. Accordingly, the prosecution has miserably fails to prove the charges leveled against the accused for the offence punishable

under section 379 of IPC, 21 of MMRD Act of 1957 and IV B,31(R) 13, 17 of Mines and Mineral Concession Rules of 1994. Accordingly, point No.1 and 2 are answered in the negative.

18. **Point No.2**:- For aforesaid reasons and discussions this court is proceed to pass following:-

ORDER

Acting under section 255(1) of Cr.P.C, the accused No.1 to 5 are not found guilty of alleged charges and acquitted for the offences punishable under sections 379 of IPC, 21 of MMRD Act of 1957 and IV B,31(R) 13, 17 of Mines and Mineral Concession Rules of 1994.

Bail bonds executed by the accused No.1 to 5 and their surety are hereby canceled.

The bond for appearance executed under section 437-A of Cr.P.C will remain in force for the period of six months from the date of this order.

The interim custody of the Tractor No.KA-27/T-9034 & engine No.SNSW4776, Trailer No.CNU-9967 made in favour of the applicant is hereby made absolute.

(Dictated to Stenographer, typed by him, corrected and initialed by me and then pronounced by me in the open court on this the 29th day of February 2020)

(Sri. Janardhana. S.K.)
Addl. Civil Judge & JMFC.,
Hirekerur.

:-ANNEXURE:-

LIST OF WITNESSES EXAMINED ON BEHALF OF THE PROSECUTION:

PW-1 : Jamalsab S/o Fakkirsab
PW-2 : Husensab S/o Hasansab
PW-3 : Devananda S/o Shetteppa
PW-4 : Manjappa S/o Mallesahppa Yalehole
PW-5 : Yallappa S/o Satyappa Abbigeri
PW-6 : Mudarayappa S/o Rudrappa Bullapura

LIST OF DOCUMENTS MARKED ON BEHALF OF THE PROSECUTION:

Ex.P1 : Seizure Panchanama, Ex.P1(a) to (d) signatures
Ex.P2 : Complaint, Ex.P2(a) & Ex.P(b) signatures
Ex.P3 : FIR , Ex.P3(a) & Ex.P3(b) signatures
Ex.P4 to 7 : Photos
Ex.P8 : Compact Dist
Ex.P9 : Certified copy of RC of Tractor
Ex.P10 : Certified copy of RC of Trailer
Ex.P11 : Statement of accused No.1, Ex.P11(a) & (b)Signatures
Ex.P12 : Letter to PWD for hand overing the sand

LIST OF WITNESSES EXAMINED ON BEHALF OF THE ACCUSED:

----- Nil -----

LIST OF DOCUMENTS MARKED ON BEHALF OF THE ACCUSED:

----- Nil -----

**(Sri. Janardhana. S.K.)
Addl. Civil Judge & JMFC.,
Hirekerur.**

Judgment pronounced in the
open court (vide separate judgment)

ORDER

Acting under section 255(1) of Cr.P.C, the accused are not found guilty of alleged charges and the accused No.1 to 5 acquitted for the offences punishable under sections 379 of IPC, 21 of MMRD Act of 1957 and IV B,31(R) 13, 17 of Mines and Mineral Concession Rules of 1994.

Bail bonds executed by the accused No.1 to 5 and their surety are hereby canceled.

The bond for appearance executed under section 437-A of Cr.P.C will remain in force for the period of six months from the date of this order.

The interim custody of the Tractor No.KA-27/T-9034 and Engine No.SNSW4776, Trailer No.CNU-9967 made in favour of the applicant is hereby made absolute.

Addl. Civil Judge & JMFC.,
Hirekerur.

