

KAKB220014022019



Presented on : 03-09-2019

Registered on : 03-09-2019

Decided on : --

Duration :

**IN THE COURT OF THE PRL.CIVIL JUDGE & JMFC,  
AT ALAND**

**PRESENT**

**Sri. Yallappa Kallapur**, B.A,LL.B, LL.M.,  
PRL. CIVIL JUDGE & JMFC,  
ALAND

**DATED THIS THE 31<sup>st</sup> DAY OF OCTOBER - 2023**

**CRIMINAL CASE NO.402/2019**

**ACCUSED/APPLICANTS**

1. Shrishail Kottaraki,  
PDO of Gram Panchayat Office Hebli,  
Taluka Aland, District Kalaburagi.
2. Kavita Bai W/o. Mareppa Gayakwad,  
Aged: 42 years,  
R/o. Hebli village, Taluka Aland,  
District Kalaburagi.

**[By Sri. S.D. Bhosage, Advocate]**

**//Versus//**



**COMPLAINANT/OPPONENT**

The State through Aland Police Station.

**(By Asst. Public Prosecutor,)**

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**ORDER ON APPLICATION UNDER SECTION 239 OF CRPC  
FILED BY ACCUSED NO.1 AND 2.**

The accused No.1 and 2 have filed this application seeking discharge them from the offences punishable U/Sec.420 and 409 of IPC.

2. The applicants/accused have filed this application seeking discharge on the ground that, the CW4 – Assistant Statistical Officer, Planning Branch, Zilla Panchayat Kalaburagi as per the office order, CW4 inspected the toilets constructed under the Swacha Bharat Mission Scheme of Hebali village of Aland Talula has submitted the report and after submitting the report it was ordered that, the accused No.1 of his dereliction of duty without following the orders of his superiors and he has to be suspended with immediate



effect. Accordingly, the charge-sheet was executed on the allegations made against him and he was asked to submit a written explanation for the allegation made against him and he has submitted written explanation and denied the allegations levelled against him. The Executive Officer of Taluka Panchayat, Aland has appointed under KCS (CCA) Rule 1957 Rule 11(2) as Investigation Officer and 11(5) the Manager of Taluka Panchayat, Aland has appointed as Executive officer were ordered to conduct an inquiry into the case and submit an inquiry report. In relation to the case, the said officers have informed in the investigation report No.431 dated 03.08.2021 and submitted that the case may be closed with a warning as the allegations made against the accused have not been proved. On the basis of the said report, on 18.10.2021 the Chief Executive Officer, Zilla Panchayat, Kalaburagi that ordered that the case related tot he allegations leveled against the accused to be dismissed. Therefore, U/Sec.300 of the Code of Criminal Procedure, in a case where a person has been acquitted once, he cannot be



tried for the same offence. Hence, prayed to discharge them from the offence alleged against them.

3. The learned APP has filed objections to the petition contending that, in-between 01.10.2015 to 11.04.2016 in the Gram Panchayat of Hebli village, the construction of toilets under the scheme of Swach Bharat Mission, accused No.1 and 2 conspired to create false documents in the name of 15 beneficiaries without constructing toilets, Rs.2,01,000/- was sanctioned and paid. On 15.12.2015 and 21.12.2015 Rs.63,000/- were used for the personal expenses and misappropriated the government funds and defrauded to the Government. Hence, the Aland police have registered a case and filed charge-sheet against the accused persons U/Sec.420 and 409 of IPC. The application filed under Section 239 is not maintainable. The alleged offence against the accused is cognizable offences and non bailable offences. Accused persons are being the PDO and President of the said Panchayat mis utilized the funds which are ment for the



construction of the toilets. After proper investigation the investigation has filed the charge-sheet after verifying the ingredients of the alleged offences. Further contended that, the higher officials of the accused persons after inquiring to the matter and directed the accused persons to not to repeat the same. Further contended that, if the accused persons are discharged from the alleged offences then that will affect on the society and there may be a chances of repeat the same. They are mis-utilized the funds of the panchayat and they caused loss to the government. Further contended that if the accused persons are released there may be a chance of mis-utilizing the funds of the government under different scheme. After proper investigation, the investigation officer has filed the charge-sheet there are sufficient reasons are there to proceed against the accused. Hence prayed to dismiss the petition.

4. Heard the arguments of both sides.



5. On going through the facts and circumstances, the following points arose for my determination:

**P O I N T S**

1. Whether the application filed by the accused No.1 and 2/petitioners under Section 239 of Cr.PC deserves to be allowed?
  2. What order?
6. My findings to the above Points are as under:

**POINT NO.1** : In Negative,

**POINT NO.2:** As per final order,

For the following: -

**R E A S O N S**

7. **POINT NO.1:** - At this stage it is necessary to see whether the ground for presuming commission of offence exists or whether the charge is ground less; whether a prima-facie case pertaining to the commission of offence is made out or not. The term charge used in Section 239 is only in the sense of allegation or accusation. Elaborate examination of statement recorded during police investigation or statement recorded at the time of enquiry conducted by the court is not



warranted. The standard of proof which is required at the stage of decision making for conviction is not requisite for decision as to framing of charge. At the time of framing of a charge, what this court has to consider is only the police report or the evidence adduced by the complainant before framing of charge and documents produced by complainant or sent with final report U/Sec.173 of Cr.P.C. In this case the court has taken the cognizance of the offences alleged against the accused only on the satisfaction of prima-facie case to proceed against the accused.

8. It is the specific case of the prosecution that, the accused persons mis-utilized the funds under the Swatch Bharat Mission to an extent of Rs.2,01,000/- and further alleged that, the accused persons on 21.12.2015 mis-utilized Rs.63,000/- of the government personally and being the government servant cheated to the government and mis-utilized the government scheme fund.



9. The contention of the accused persons is that, to verifying and enquired the matter into the allegation made by the accused persons, EO Taluka Panchayat Aland and inquiring the matter and submitted the report that there is no any sufficient reasons are there for that discharge from the alleged allegations. Further contended that, the Chief Executive Officer of Zilla Panchayat, Kalaburagi on 18.10.2020 discharged the accused No.1 and disposed the matter in accordance with the report. Further contended that as per the provision U/Sec.300 of Cr.PC person once convicted or acquitted not to be tried for same offences.

10. On the basis of investigation, the investigation officer has filed the charge sheet and this court has taken the cognizance and on the basis of the papers submitted by the prosecution along with the charge sheet. If cognizance taken against the accused, then that not amounts to they are committed the offences. Only on the basis of the police papers prima-facie grounds are urged to proceed against the



accused. The complainant himself clearly written in the compliant that, the accused persons have cheated to the Government and mis-utilized the Government funds under Swatch Bharat Mission to an extent of Rs.2,01,000/- and Rs.63,000/- personally. Whether the Section 420 and 409 R/w. Section 34 of IPC is attracts or not is to be decide after full pledged trial. It cannot be say that, the accused persons are mis-utilized the Government fund at this stage without trial. It requires trial to decide whether they have committed the alleged offences or not.

11. The Hon'ble Apex Court held in these two judgments reported in 2020 (1) SCC Cril. 811 and 2020 (2) SCC 768 that;

12. In these two cases Hon'ble Apex Court laid down the principle that while discharging the accused court must without making a roving inquiry into the pros and cons, consider the broad probabilities, the total affect of the material before it, any basic infirmities appearing in this case



etc. Probability value of material on record cannot be gone into material brought on record by the prosecution has to be accepted as true. Existence of some materials to entertain strong suspicion is essential to draw of a charge and refuse to discharge the accused.

13. Further after careful perusal of the Final Report, prosecution allegation is that the accused persons have misutilized the government fund and cheated to the Government. Once the police have considered the prima-facie material, filed a chargesheet, then that is to be decided by the Court after full pledged trial. A prima-facie case pertaining to the commission of offence is made out, it can be decide after full pledged trial whether they are committed the offences or not. Hence, for all these reasons answer to point No.1 is in Negative.

14. **POINT NO. 2**: - In the above result, I proceed to pass the following:



**ORDER**

The application filed by the accused  
No.1 and 2/applicants under Section 239  
of Cr.PC is hereby rejected.

(Directly dictated to the Stenographer directly on computer, typed by him, corrected, signed and then order pronounced by me in the open court, on this 31<sup>st</sup> day of October -2023).

**(YALLAPPA KALLAPUR)**  
**PRL. CIVIL JUDGE & JMFC,**  
**ALAND**

Dictated on :31-10-2023.  
Checked on :31-10-2023.  
Signed on :31-10-2023.

**(YALLAPPA KALLAPUR)**  
**PRL. CIVIL JUDGE & JMFC,**  
**ALAND**

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