

KAKB220088762022



Presented on : 06-08-2022

Registered on : 08-08-2022

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 8th DAY OF NOVEMBER - 2023

CRIMINAL CASE NO.7660/2022

ACCUSED/APPLICANTS

4. Rajashekhar S/o. Shankarrao Desai,
Aged: 62 years, Occ: Retired Engineer,
R/o. Hire Jewargi, Taluka Afzalpur.

Now at Laxminaraya Colony, Near Ram Mandir,
Taluka and District Kalaburagi.
5. Amruta D/o. Ullas Patil,
Aged: 35 years, Occ: Housewife,
R/o. MIG 2nd Stage, Adarsh Nagar,
Kalaburagi, Taluka and District Kalaburagi.

[By Sri. P.V. Apte, 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.4 AND 5.**

The accused No.4 and 5 have filed this application seeking discharge them from the offences punishable U/Secs.201, 406, 409, 417, 419, 420, 465, 468, 471 R/w. Sec. 34 of IPC.

2. The applicants/accused No.4 and 5 have filed this application seeking discharge on the ground that, they have not involved in the alleged incident and they are innocent of the offences alleged against them and the allegations are false, frivolous, vexatious and lack in material substance to involve them in the said crime. Further contended that,



charge-sheet does not depict any cogent material against them only reason to implead them in this case that, they are family members of the accused No.1. Further contended that, entire misappropriation of the funds of the bank revolves around the accused No.1 as concerned. The complainant even states that the accused No.1 being the authority has misused his authority and ignorance of the officers under him for commission of the said offences. Further contended that, there is no any overt facts alleged against them, even in the FIR, complaint and in charge-sheet. Hence, impleading them as an accused persons does not arise at all. There is no any documentary evidence to show the involvement of them as alleged by the prosecution. Further contended that, the entire allegation is on the accused No.1 and even charge-sheet does not disclose any oral and documentary evidence that will bring home the guilt of them. As alleged by the prosecution there is no any documentary to show that they have neither approached the bank nor signed on the any documents /



slips for transferring the funds to their accounts. Further contended that, the investigating officer falsely implicated them as accused in this case only object of the IO and prosecution is that to harass the family members of the accused No.1 it amounts to the abuse of process of law. Further contended that accused No.1 himself contested before the police that without the knowledge of them transferred the amount to their account. Hence, they are innocent, they are not involved in the alleged offences. Further contended that, there is no any prima-facie offences made against them for framing the charge. Hence framing of charge is not proper. Hence, they prayed to discharge them from the offence alleged against them.

3. The learned APP has filed objections to the petition contending that, the Aland police have registered a case against the accused persons U/Secs.409, 420, 465, 467, 468, 471 of IPC. After proper investigation of the case, the investigating officer has filed the charge sheet against the



accused persons. Further contended that, the accused No.1 is being the bank employee has misappropriated the bank funds and transferred the amount to various accounts and even his relatives accounts. After proper investigation, the investigating officer has filed the charge-sheet against the accused persons. The applicants have also involved in this case and they are abated the accused No.1 to commit the alleged offences and even they are kept quite after amount was credited to their account. The accused No.1 is the son of the applicants even they have not advised him to not to do the alleged offences because, accused No.4 is being the father it is bounden duty to advise his son to not to do such type of commission of offences but, by advising him abated him to commit the alleged offences. After proper investigation, the investigating officer after involvement of the applicants filed the charge sheet if the application is allowed then that will cause injustice to the government the alleged offences itself is not maintainable and due to alleged commission of the



offences the customer of the bank lost the faith on the bank, this type of offences should be tried if the applicants are allowed then that will effect the faith on the customs of the bank. Hence, prayed to reject the application.

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.4 and 5/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 recoded 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 under Section 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 complainant specifically mentioned in his complaint that, all



the accused persons were involved each other and by cheating the bank, transferred to an extent of Rs.46,45,621/- to the various accounts and their relatives account and further contended that, by opening the duplicate loan accounts, imaginary/duplicate loan sanctioned and transferred the amount of Rs.21,06,633:31/- and by using the 3rd persons cheque transferred the amount of Rs.7,82,396/-, his relatives accounts hence he has cheated the bank being the accused No.1 is the bank employee. Hence, he has lodged the complainant and further after careful perusal of the entire charge-sheet it appears that after proper investigation, the investigation officer has filed charge-sheet by knowing there are sufficient grounds to proceed with the case.

9. The contention of the accused persons is that, they are innocent, they have not involved in the alleged offences, there is no any allegations made against them either in the FIR, complaint or in the charge-sheet. Only on the ground accused



being their family member falsely involved in this case. Neither they have approached the bank nor signed on any document / slip for transfer of the funds to their accounts. There is no any documentary evidence to show their involved of the alleged offences, without verifying the all documents the investigating officer involved them in this case by misutilizing the authority or possession. The entire alleged offences are on the accused No.1, there is no any allegation against them. Further contended that, the accused No.1 himself contest before the police that without their knowledge he has transferred amount to their accounts. Hence, the question of involving in this case does not arise at all and framing of the charge is not proper.

10. On the basis of investigation, the IO has filed the charge sheet and this court has taken the cognizance 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 have 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 committed the offences punishable U/Secs.201, 406, 409, 417, 419, 420, 465, 468, 471 R/w. Sec. 34 of IPC. Whether the applicants/accused No.4 and 5 have committed the offence U/Secs.201, 406, 409, 417, 419, 420, 465, 468, 471 R/w. Sec. 34 of IPC or not is to be decided after full pledged trial. It cannot be say that the accused person have not committed the alleged offences. 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 are also involved in this case and misappropriated the funds and caused loss to the bank and cheated to the bank and accused No.4 and 5 are abated the accused No.1 to committee the alleged offences. 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.4 and 5/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 8th day of November -2023).

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

Dictated on :08-11-2023.
Checked on :08-11-2023.
Signed on :08-11-2023.

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