



**IN THE COURT OF THE PRL.SESIONS JUDGE, KODAGU
AT MADIKERI.**

Present: Sri.H.C.Shamprasad, B.A., LL.B.,
Prl. District & Sessions Judge,
Kodagu-Madikeri.

Dated this the 7th day of September, 2023.

Sessions Case No.: 109/2021

Complainant:-

The State of Karnataka.
Rep.by P.S.I.,
Napoklu P.S.

(By Public Prosecutor,
Kodagu-Madikeri.)

.VS.

Accused:-

1. Hamsa K.A.,
S/o. Abdul Khader,
Aged 40 years, Coolie,
R/o.Indiranagara,
Napoklu Village.
2. Ashif P.M.,
S/o. Late.Mohammed,
Aged 39 years, Coolie,
R/o.Haletaluk,
Napoklu Village.
3. Narayana M.A.,
S/o. Late.Ithappa,
Aged 59 years, Coolie,
R/o.Kallumotte,
Napoklu Village.



4. Ketolira Chengappa,
S/o. Mandanna K.C.,
Aged 51 years,
Agriculturist,
R/o.Kolakeri Village,
Napoklu.
5. Viju T.J.,
S/o. Joseph,
Aged 54 years, Coolie,
R/o.Kalathmadu Village,
Gonikoppa.

(Sri.A.G.Giri, Advocate for
A-1 to A-3 and A-5 and
Sri.K.M.Krishna Bhat,
Advocate for A-4.)

ORDER ON APPLICATION UNDER SECTION
227 OF CR.P.C.,

The accused persons have filed the present applications in order to discharge them from the case, as the prosecution as the Investigating Agency have falsely implicated them in the present case, though there are no prima facie materials to proceed against them.

2. The present case has been registered with an allegation of using explosive substances at the Quarry belongs to the 4th accused without there being any permission or licence and the case is



registered for an offence punishable under Section 285 of IPC and Sections 9B(1)(b), 9B(2), 9B(3)(b) of the Explosives Act, 1884 and Section 5 of the Explosive Substances Act, 1908.

3. It is pleaded by the accused 1 to 3 and 5 as if they are innocents, they are not involved in any crime and the Investigating Officer has submitted the Charge Sheet without proper investigation and also not complied the mandatory provisions while filing the Charge Sheet and the same is bad under law, it cannot be accepted.

4. The 4th accused has made a separate application stating that he is no way concerned with the alleged incident. The alleged explosive substances were neither in his custody nor in his control and no any explosive substances being recovered from the property of this 4th accused. He never handling with any explosive substance in a rash and negligent manner and there are no materials to frame charge against this 4th accused. For all these reasons, it is prayed for allowing the applications in order to discharge the accused persons from the case.



5. The prosecution has filed objection to the said applications stating that, on a credible information the Investigating Agency rushed to the spot which the land of A-4 situated at Kolakeri Village on 17-03-2019 at about 10-00 a.m., By seeing the police, the accused 1 to 3 tried to escape from the spot which is the land bearing Sy.No.64/47 belongs to A-4. They have been apprehended and found that they were in possession of Detonator, Safety fuse wire, Ammonium nitrate, Iron rod, Hammer and Chopper. On enquiry, it was found that the 5th accused supplied all these explosive materials to A-1 to A-3 for the purpose of quarrying in the land of A-4.

b) Prosecution further contended that in the investigation it is also traced that with the consent of A-4 who is the owner of the land bearing Sy.No.64/47, they were doing quarry work by using explosive substances. So, prima facie there are materials to proceed against the accused persons and absolutely there are no grounds to allow the applications to discharge the accused persons from



this case. So, the prosecution has prayed for rejection of the applications. The prosecution has also relied on the reported decisions of our Hon'ble Apex Court which are as follows:-

- 1) (2014) 3 SCC (Cri) Page-529 between State of Tamil Nadu Vs. N.Suresh Rajan and Others.
- 2) 2015 (2) SCC (Cri) Page-265 between Sonu Gupta Vs. Deepak Gupta.
- 3) Crimes 2005 Part 1 SC Page-1
- 4) 2008 (2) Supreme Court 76
- 5) 2008 (3) KCCR 1364

6. Heard the arguments.

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

1. Whether the accused persons have made out that as there is no prima facie material to proceed against them in this case for framing the charge for the alleged offences, for that they are liable to be discharged ?

2. What order ?

8. My answers to the above points are as under:-

Point No.1: In the Negative.

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



REASONS

9. In this case the specific allegations are made against the accused persons for having collected credible information and rushed to the spot which is the land bearing Sy.No.64/47 belongs to A-4 where they found that accused 1 to 3 holding bags in their hands, by observing the police they tried to flee from the spot, by surrounding them they are taken to the custody of the police and checked their bags and found the explosive substance materials. On enquiry, it was informed that they are doing quarry work in the land of A-4, with his consent they are using the explosives supplied by A-5.

10. The allegations are very specific regarding involvement of A-1 to A-5. So, A-1 to A-3 and A-5 pleading their innocence to the incident. But, the 4th accused has taken contention as if he was no knowledge at all and no explosive substances have been seized from his custody. It is true that the explosive substances are not seized from the custody of the 4th accused. Whether he permitted the other accused persons for quarrying in his land by using explosives, is the crux of the case. Mere because the



explosive substances are not seized from the custody of the 4th accused, that itself is not a ground to draw any presumption at this pre-trial stage as if he no knowledge of using the explosive substances in his land for quarrying.

11. On perusal of the Charge Sheet, the Investigating Agency have collected the required materials to establish the charges levelled against the accused persons. There are Eighteen witnesses are cited as the prosecution intending to examine those witnesses to prove the guilt of the accused persons. There are Eight articles are seized from the custody of A-1 to A-3 and A-5 by drawing the Mahazar vide P.F. No.32/2019 and other Ten items are seized vide P.F. No.93/2019 by drawing the Mahazar. Further, Seven items are seized from the house of A-5 vide P.F.No.33/2019 by drawing the Mahazar. Recorded the 161 Cr.P.C., statement of the material witnesses. RTC extracts collected by the police are stading in the name of K.M.Chengappa who is none other than the accused No.4 in this case. When all such materials are collected by the Investigating Agency, mere because the 4th accused stated that nothing has been



seized from his custody, at this pre-trial stage the same cannot be accepted. The 4th accused is at liberty to take the said contention in the trial and not at this stage. Even the other accused persons except pleading their innocence to the incident, absolutely there are no special grounds made in their application.

12. The accused persons have relied on the decisions of our Hon'ble Apex Court rendered in ***Criminal Appeal No.472 of 2021*** between ***Sanjay Kumar Rai Vs. State of Uttar Pradesh and Another*** where the observations made by our Hon'ble Apex Court that,

“The trial court cannot act as a mere post office, it needs to consider whether there are sufficient grounds to try the suspect. The Court has to consider the broad probabilities, total effect of evidence and documents produced and the basic infirmities appearing in the case and so on” [Union of India Vs. Prafulla Kumar Samal].

13. On the other hand, the prosecution has cited many decisions of our Hon'ble Apex Court where there is a clear observation that,



“No mini trial is conducted at stage of considering discharge application, only probative value of materials has to be gone into to see if there is a prima facie case for proceeding against the accused. If the materials available on record are absolutely sufficient for framing the charge against the accused, then the question of allowing the application does not arise.” There is also an observation by our Hon'ble High Court in the afore cited decision referred to by the learned Public Prosecutor that *“At the stage of framing of charge Court cannot weigh the evidence to consider the 227 Cr.P.C., application”*.

14. As observed by our Hon'ble Apex Court, this Court has perused the materials available and collected by the Investigating Agency. Material objects are seized by drawing three Mahazars from the custody of A-1 to A-3 and A-5 and A-4 is the owner of the land. At this stage, he cannot escape from the clutches by expressing his innocence. Whether he authorized the other accused persons for quarrying in his land, if it is so, the terms and conditions that he needs to be explained in the full-fledged trial. If there are any document to show



any terms and conditions of the authorization given to the other accused persons for doing quarry work, the same could have placed before the Investigating Agency to accept that, he was innocent. So, without placing any material, taking only a bald contention will not be sufficient to discharge either 4th accused or accused 1 to 3 and 5 without framing charges in this case. Absolutely, there are no merits in the applications and this Court cannot accept whatever pleaded by them for discharging from the case. Accordingly, I answer Point No.1 in the “**Negative**”.

15. **Point No.2:-** In view of my findings to Point No.1, I proceed to pass the following:-

ORDER

The applications U/sec.227 of Cr.P.C., filed by the accused Nos.1 to 3 and 5 and also the accused No.4 stand rejected.

Dictated to the Judgment Writer, transcribed by her, then corrected and pronounced by me in Open Court on this the 7th day of September, 2023.

*Bkr.

(H.C.SHAMPRASAD)
PRL.SESIONS JUDGE,
KODAGU, MADIKERI.

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