

KAMD010037362019



**IN THE COURT OF THE V ADDL. DISTRICT &
SESSIONS JUDGE, AT MANDYA**

Dated this day the 17th December, 2022

P R E S E N T

SMT.K.NIRMALA, B.A., M.L.,
IV Addl. District & Sessions Judge &
C/c V Addl. District & Sessions Judge,
Mandya.

Spl. C. No.208/2019

Accused : 1. Javaregowda.K. S/o Late
Kalegowda, Aged about 66 years,

2. B.M.Rajamma W/o Javaregowda,
Aged about 53 years,
Both are R/o 3rd Stage,
Krishnanagara, Pandavapura Town,
Mandya District.
[Rep. by Sri.H.S.R. - Adv]

V/s

Complainant : State by;
K.R.Sagar Police Station.
[Rep. by Public Prosecutor]

ORDERS ON THE APPLICATION FILED U/Sec. 227 OF Cr.P.C.

Accused No.1 and 2 submit that, there is delay of 28 days

in filing the complaint. The provisions of SC & ST (POA) Act is deliberately mis-used. During the investigation, the place shown by complainant is entirely different to the place shown in survey documents. In spite of it, Investigating Officer has filed false charge-sheet against them. There are no materials to attract the provisions of sections 3(1)(f) and 3(1)(g) of SC & ST (POA) Act. No materials are produced to show that, complainant has sustained loss to the extent of Rs.20,000/-. Stating the same reason, nearly 13 complaints are filed in K.R.Sagar police station against accused persons only to harass them. It cannot be believed that, accused persons who are aged would destroy the stone-slab and board of all 13 persons at a time. Since complainant's husband is a retired police person, K.R.Sagar police have filed false case against the accused in order to help the complainant. There are no prima-facie materials to proceed against the accused persons, hence prays for discharge of the accused by allowing the application.

2. On the other hand, **learned Public Prosecutor filed objections** to the said application reiterating the complaint averments and further submit that, accused No.1 is a retired police personnel. Husband of complainant is also working in police department. Therefore, accused persons are very well aware of the caste of complainant, that she belongs to Scheduled Caste. It is an admitted fact that, accused No.1 has sold 02.25 gunta in Sy.No.50 to complainant. Soon after the sale-deed, possession was delivered to her. Accordingly, she

has applied for change of revenue records and khatha stood in her name, but accused persons knowingly well that complainant belongs to Scheduled Caste and even after sale of the property, they have illegally trespassed into her land and destroyed survey stones and board and caused loss to the complainant. Accused are making attempt to grab the property since there was prima-facie materials available against the accused persons. Charge-sheet came to be filed. There are no grounds for allowing the application, he relies upon the decisions **(1). SCC 2010 (2) 398 between Vijayan V/s State of Kerala, (2). SCC 2012 (9) 460 between Amith Kapoor V/s Rameshchandra, (3). AIR 2014 SC page 3502 between Dinesh Thivari V/s State of U.P., (4). 2014 C.L.J. 1444 between State of Tamil Nadu V/s N.Suresh Rajan, (5). AIR 1997 SC 1489 between State of Karnataka V/s Muniswamy and Others and (6). 2008 SAR (cri.) page 897 between Sangi brothers V/s Sanjay Chowdhari**, and he prays for rejecting the said application.

3. On the other hand, in pursuance of court notice, **victim appeared and filed her objections** stating that accused No.2 had purchased 5 acre 20 guntas of land in Sy.No.50 of Mogarahalli Village from one Singegowda under the sale-deed. Her husband Shivalingaiah is a retired police person. Accused No.2 is also belongs to police department. Prior to purchase of the land by accused No.1 about 17 – 18 years back, accused were known to her husband. Both the accused knew the caste of complainant. Several persons had joined together

contributed a sum of Rs.6,00,000/- and 5 acres 20 guntas of land was purchased in the name of Singregowda. Accused No.1 got 2 acre 30 guntas remaining 2 acre 30 guntas was registered in the name of Shivamallamma. Accordingly, all his friends had purchased 2¼th gunta from accused. Complainant has purchased 2.25 guntas from accused No.1 under the registered sale-deed dated 23.07.1995. After sale of the property, accused No.2 is not knowing as to how much property is left over and where exactly it is situated. Complainant after purchase of the land, she has surveyed the land and put survey stones around the boundary. Accused No.1 belongs to police department and he has made influence to the police and though accused No.3 to 6 have removed the stones, they are dropped in the charge-sheet.

4. After she got information from one D.V.Nagaraju, retired PSI, she went near her land and saw that accused No.1 and 2 along with accused No.3 to 6 were destroying the stones and board. After she has purchased the property, she obtained khatha in her name and she is in possession. She has given applications to survey department and got the land surveyed. She has put stones in all the four sides and put her name in the cement board in the middle of the land. But accused have broken the same and caused loss to the extent of Rs.20,000/-. Since she is in possession of the property which she has purchased, she need not file any civil case. She has not filed the complaint to recover the land from the accused. Since accused No.1 and 2 along with other accused persons have joined together and broken the stones and board, there are

sufficient materials available against them to proceed further and hence the applications are not maintainable.

5. Heard the arguments on both sides and perused the record.

6. On hearing and on perusal of the materials on record, the following **points arise for my consideration are:**

1. Whether the application filed by the accused No.1 and 2 under Section 227 of Cr.P.C. is deserves to be allowed?
2. What order or decree?

7. 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

8. **Point No.1:** Complainant submit that, her husband Shivalingaiah had purchased the land under registered sale-deed dated 23.07.1995. She further submit that though accused has executed sale-deed to other persons and delivered the possession still they managed to collude with the revenue authorities and created false document. On 13.01.2019, at 11.00 a.m., accused No.1 and 2 belonging to Vokkaliga community knowingly well that complainant belongs to Scheduled Caste, they illegally trespassed upon her land and removed stones and board put by her inside her land and caused loss to the extent of Rs.20,000/-. Some eyewitnesses like Nagalingappa, Rajahalaiah, Prasad, P.Hosahalli

Rajanna, Manti Painter Mahadeva have witnessed the incident. After the incident, accused No.2 assured that he would set-right the things and he will make good, loss to the complainant. Therefore, he waited for some times since he has not come forward to pay the damages, atleast complainant came and lodged complaint belatedly. Therefore, she submit that all the members have contributed Rs.6,000/- each and got 2¼ guntas property in their names and so, money is not entirely contributed by accused No.1. When Shivamallamma has formed sites had distributed it to the members in all 1.10 guntas which was registered in her name, but accused No.1 in order to deprive the valuable right of the other members, she has given 32 guntas to her children which shows her ill-motive. Hence accused No.1 and 2 are charge-sheeted for the offences punishable under Sections 447, 427 r/w 149 of IPC and section 3(1) (f) of SC & ST (POA) Act.

9. On perusal of order-sheet, it is noticed that after filing of charge-sheet, both the accused appeared in pursuance of summons and they are on bail. FIR was registered as against the accused No.1 to 5. At the time of charge-sheet, accused No.3 to 6 are dropped and charge-sheet came to be filed only against the accused No.1 and 2. Matter was posted for recording charge and at this stage the present application is filed.

10. Accused submit that there is 28 days delay in filing the complaint. Though initially FIR was registered subsequently in order to take benefit under the special enactment provisions of

SC & ST (POA) Act was included. Complainant has not produced any materials to show that, she has sustained loss to the extent of Rs.20,000/-. Accused No.1 and 2 being aged persons, it is very hard to believe that, both of them have removed stones and cement board of all the 13 persons. Since complainant's husband was working in police department, he has made use of his influence and filed false case against the accused persons. Since, there are no prima-facie materials available against them, they are liable to be discharged from the above said offences.

11. With regard to the first and foremost ground is concerned, I am of the opinion that, this is not the proper stage to consider the delay in lodging the complaint. It is only during the trial, the reason for the delay can be elicited. Therefore, this cannot be a ground to claim discharge.

12. Further accused alleges that the property shown by complainant during the course of investigation is entirely different to the property which is mentioned in the revenue records. So, there is dispute regarding the identity of the property. But complainant in her objections has stated that, she has not filed the complaint alleging recovery of the possession. In fact, after accused No.2 has sold the property to her, accused do not know how much property is left over and where exactly her property is situated. Complainant has got the land surveyed and fixed the boundaries. Therefore, accused does not have any locus-standi to remove the stones. Considering the rival contentions of both the parties, I am of the opinion that the

questions regarding identity of the property does not fall within the purview of this case. It is for the parties to agitate the matter before competent civil court. The allegations involved in the present complaint is criminal trespass and damage to the property. Therefore, merely because, the accused disputes identity of the complainant's property that itself is not a ground to claim discharge.

13. On the other hand, prosecution papers reveal that caste certificates are produced which prima-facie shows that complainant belongs to Scheduled Caste. Survey sketch mahazars and revenue documents are produced which clearly shows that properties stands in the name of complainant to the extent of 2¼ guntas in Sy.No.50. The statement of witnesses recorded by the Investigating Officer clearly reveals about the occurrence of the alleged incident. They all state about accused damaging the complainant's stone and board. Photographs are also produced. Just because there is no document to show the exact damage of Rs.20,000/-, the case of complainant cannot be disbelieved. Therefore, records, at this stage reveal that, there are sufficient prima-facie materials available against the accused persons. Therefore, the ground urged by the accused that, there are no materials against them cannot be believed.

14. Further more, accused had stated that, since accused No.1 and 2 are old age, in that age it is not possible to remove the stones and cement board, but complainant state that both the accused along with other accused persons had removed it. The objections of complainant reveals that, other accused

persons are also involved in the alleged act and she may intend to file necessary application for including them as accused persons in the course of trial. As of now, this court cannot fold a mini trial to consider whether accused persons had capacity to remove the stones. This court while considering the present application will have to look into the prima-facie. As said earlier, there are sufficient prima-facie materials available against the accused persons and because of this, Investigating Officer has filed the charge-sheet or else, 'B' report would have been filed. Therefore, I am of the opinion that no valid grounds are urged to discharge the accused.

15. At this stage it is relevant to consider provisions of section 227 of Cr.P.C. which reads as follows;

“ If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.”

As per the provisions, if there are sufficient grounds to proceed with the case against the accused, he cannot be discharged. So, the court will have to see whether there are prima-facie materials which are sufficient to frame the charge against the accused, whether those materials are sufficient to come to the conclusion that, accused have committed the

offence cannot be considered at this stage.

16. Learned Public Prosecutor has relied upon the decisions reported in **(1). SCC 2010 (2) 398 between Vijayan V/s State of Kerala, (2). SCC 2012 (9) 460 between Amith Kapoor V/s Rameshchandra, (3). AIR 2014 SC page 3502 between Dinesh Thivari V/s State of U.P., (4). 2014 C.L.J. 1444 between State of Tamil Nadu V/s N.Suresh Rajan, (5). AIR 1997 SC 1489 between State of Karnataka V/s Muniswamy and Others and (6). 2008 SAR (cri.) page 897 between Sangi brothers V/s Sanjay Chowdhari.** The principles laid down under the above decisions can be taken into consideration.

17. Further the Hon'ble Supreme Court has held in the decision reported in **2005 (Crimes) (1) page 1 (SC) and 2014 (2) SCC page 709** it is held that, **“court has to consider only the charge-sheet allegations and point out whether there are sufficient prima-facie materials available on record, which is sufficient to frame charge against the accused”.**

18. Further in **State Anti-Corruption Bureau, Hyderabad and another V.P.Suryaprakasam (1999 SCC (Cri.) 373)**, it is held that, **“at the time of framing of charge, what the trial court is required to and can consider are only the police report referred to under Section 173 of the code and the documents sent with it. The only right the accused has at that stage is of being heard and nothing beyond that.”**

19. Further at the stage of framing of charge roving and fishing inquiry is impermissible. If the contention of the accused is accepted, there would be a mini trial at the stage of framing of charge. That would defeat the very object of the Code. It is well-settled that, at the stage of framing of charge the defence of the accused cannot be put-forth. The acceptance of the contention of the learned counsel for the accused would mean permitting the accused to adduce his defence at the stage of framing of charge and for examination thereof at that stage which is against the criminal jurisprudence. It only means hearing the submissions of the accused on record of the case as filed by the prosecution and documents submitted therewith and nothing more. The expression hearing the submission of the accused cannot mean opportunity to file material by accused and thereby changing the settled law. At the stage of framing of charge, hearing the submission of the accused has to be confined to the material produced by the police.

20. I have bestowed my consideration to the rival submissions of both the counsels on records. It is true that, at the time of consideration of the applications for discharge, the court cannot act as a mouthpiece of the prosecution or act as a post office and may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an order of discharge. It is trite that, at the stage of consideration of an application for discharge, the court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging

there from taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In my opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence beyond all reasonable doubt. The law does not permit a mini trial at this stage. Reference in this connection can be made to a recent decision of this Court in **Shearaj Singh Ahlawat V/s State of U.P. reported in (2012) 4 SCC (cri.) 21.**

21. Therefore, taking into consideration the entire facts and circumstances of the case and considering the dictum laid down by Hon'ble Apex Court, I am of the opinion that since sufficient prima-facie materials are available to proceed against the accused, they have not made out any grounds to allow the application. Hence, I find no merit in the said application and the same is liable to be dismissed, directing the accused to face the trial. Accordingly the point No.1 is answered in **Negative.**

22. **Point No.2:** In the view of my finding on point No.1 in the Negative, I proceed to pass the following:

ORDER

Application filed by accused No.1 and 2 under Section 227 of Cr.P.C. is hereby rejected.

[Dictated to the Stenographer, computerized by her, corrected and then pronounced by me in the open Court dated this day the 17th December, 2022]

[NIRMALA.K.]

IV Addl. Dist. & Sessions Judge &
C/c V Addl. Dist. & Sessions Judge,
Mandya.

Order pronounced in open court
(Vide separate order)

ORDER

**Application filed by accused No.1 and 2
under Section 227 of Cr.P.C. is hereby
rejected.**

IV ASJ &
C/c V ASJ,
Mandya.