

KAMD010007282019



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

Dated this day the 20th August 2024

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.387/2018

Accused : Umesha s/o Kempegowda, aged 35
years, r/o Hangarahalli village,
Arakere hobli, Srirangapatna taluk,
Mandya district (**Accused No.2**)

[Rep. by Sri. KNN - Adv]
V/s

Complainant : State by; Arakere Police Station.
[Rep. by Public Prosecutor]

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

This is an application filed by accused No.2 praying the Hon'ble court to discharge him in respect of the offences punishable u/sec.341, 504, 302 r/w sec.34 IPC and Sec.3 (2) (va) of SC & ST (Prevention of Atrocities) Amendment Act, 2015.

2. Accused No.2 submit that, there are different allegations made in the charge-sheet and also in the complaint averments. There are no overt act leveled against Accused No.2. He was intact not at all present as on the date of the offence. There is inordinate delay in filing the complaint. On perusal of the complaint averments, it seems there is some other person behind the said complaint. All the averments made in the complaint are all concocted one. Cw1 has not disclosed the name of any persons when she gave statement in Government hospital. The FSL report indicate that, the deceased was drunk on that day. Cr.No.1/2018 is registered against Accused No.2 only in order to falsely implicate him in the present case. All the witnesses are interested witnesses. No prima facie materials exist as against Accused No.2. Hence, prays for discharging accused No.2 from the above case.

3. On the other hand, Public prosecutor has submitted objections reiterating its case as per the charge-sheet and further submit that, Accused No.2 belonging to vokkaliga community and deceased & Cw1 belonging to Schedule caste. It is seen from the records that, accused had made caste allegation instigating the deceased to commit suicide. Accused No.2 is running illegal mining without taking any license from the Department in Hangarahalli village Sy.No.185 and case is registered against him. He has provided temporary shed to the workers and making them to work in the place without allowing them to go out anywhere else. There are sufficient materials available against Accused No.2 in the charge-sheet. Therefore, he submit that, there are no valid grounds for allowing the said application. Hence, prays for rejecting the said application and

directing the accused No.2 to face the trial.

5. On the other hand, in pursuance of court notice, **victim appeared and filed her objections** stating that the application is not maintainable under law. Further contended that, during the investigation, a lot of evidence was collected about the 2nd accused in the case illegally operating the SLV crusher, and the 1st accused along with two people working under him. On the pretext of advance money, forced them not to go to work elsewhere. The application of the accused is liable to be rejected as sufficient evidence is available regarding the cause of her husband's death and necessary evidence is available in the investigation file i.e. in the charge sheet to frame the charges against the accused. Hence, she prays for rejecting the said application.

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

7. 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.2 under Section 227 of Cr.P.C. is deserves to be allowed?
2. What order or decree?

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. **Point No.1:** It is the case of prosecution that, on 09.10.2018 at 2:00 p.m. accused No.1 was distributing salary to the workers at SLV crusher, Hangarahalli village and when deceased Kariyappa Madar, his wife Cw1 and his brother went and asked his coolie amount for which accused No.1 told that, out of advanced amount which they had received, still there is balance of Rs.50,000/-. Until the said amount is cleared, he asked to work there and abused him in filthy language and assaulted him. He instigated to go and die anywhere if he is unable to return the money. As a result of which, deceased went to dilapidated house belonging to Chamundeshwari crusher in Sy.No.185 and hanged to iron pipe with plastic wire around 4:00 p.m. and died. It is alleged that, about 11 months back, Accused No.2 had given Rs.70,000/- advance amount to Kariyappa Madar, Cw1 & 2 through mestri. Accused No.1 had made them to work in the quarry as bonded labourers by providing them temporary sheds without allowing them to go out anywhere else.

10. The grounds urged in the said application is that, allegations made in the complaint is totally different to the charge-sheet contents. Accused No.2 was not at all in the place and he is not involved in any such offence. There are no allegations found in the complaint regarding Accused No.2. There is inordinate delay in filing the complaint. Whomever the witnesses are examined, they are interested witnesses. Complainant has not made any allegations against anyone when she gave statement in the hospital. FSL report indicate that, deceased was drunk. As per the report of the Tahasildar and RTC, the said land is Government gomala land and the name of one Ningamma wife of late Dasegowda is seen in the

RTC. Though Accused No.2 is no where connected to the offence, he is falsely involved. The materials stored in the SLV and Anikeshwara crush was seized and Cr.No.1/2018 was registered against him. Therefore, he submit that, no materials are available against Accused No.2.

11. On perusal of the FIR and complaint, it is seen that, alleged incident said to have taken place on 9.10.2018 and complaint is lodged on very next day on 10.10.2018. So at the outset the contention taken by learned counsel for the accused that, there is inordinate delay in filing the complaint cannot be accepted. However, delay has to be explained at the time of the trial. Therefore, at this stage, this cannot be a ground to discharge the accused.

12. Further in the complaint and also in the charge-sheet it is seen that, accused No.2 Umesh who is the owner of Stone quarry had given advance amount of Rs.70,000/- to deceased Cw1 & 2 through quarry mestri Accused No.1. In the course of investigation, it was found that, accused No.2 has provided temporary sheds to the deceased Cw1 & 2 and made them to stay there and work in quarry until the said amount is cleared. They were not allowed to go out anywhere else. Therefore, the said allegation clearly indicate the role of Accused No.2. The charges are leveled under Bonded Labour Abolition Act. When such being the case, the contention of accused that, there are no allegations against Accused No.2 cannot be accepted. Moreover there is no much changes in the contents of FIR and the investigation papers. Though it is mentioned that, accused persons had assaulted deceased and took him to another place which is not found in the form No.17 of charge-sheet, but at the most it may amount to contradiction and this has to be elucidated at the

time of trial. Therefore, the contention of Accused No.2 that, complaint allegations are concocted cannot be prima facie accepted.

13. Furthermore, accused contend that, in order to implicate the accused No.2 in the present case, his quarry was raided and materials were seized and Cr.No.1/2018 was registered. But this cannot be believed to say that, Accused No.2 is falsely implicated in the above case.

14. Therefore, taking into consideration whatever the grounds urged by accused No.2 in the instant petition, I am of the opinion that, there are not valid grounds to discharge the accused. It is pertinent to note here that, charge-sheet materials like spot mahazar, seizure mahazar, inquest report, PM report, statement of witnesses, FSL report clearly indicate that, there are sufficient prima facie materials available against the accused persons. It is seen that, they are charge-sheeted under Special Enactments like SC & SC (POA) Act and also Bonded Labour Prohibition Act. The alleged offences are having serious social consequences under the Special Enactment. Therefore, merely on the basis of some flimsy grounds, accused cannot be discharged. At this stage, courts are expected to see only the prima facie materials from the charge-sheet and it cannot be go into mini trial. Therefore, whatever the contention urged by accused has to be decided at the time of full-fledged trial and they are not sufficient enough at this stage to be considered so as to discharge the accused. Hence, the objections raised by prosecution is tenable. Hence, I am of the opinion that, no valid grounds are made out for allowing the said application. **Accordingly, answered in Negative.**

15. 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.2 under Section 227 of Cr.P.C.
is hereby rejected.**

[Dictated to the Stenographer, computerized by him, corrected and then pronounced by me in the open Court dated this day the 20th day of August 2024]

[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.2 under Section 227 of Cr.P.C.
is hereby rejected.**

IV ASJ &
C/c V ASJ,
Mandya.