

KAMS010043352022



**IN THE COURT OF THE IV ADDITIONAL DISTRICT
AND SESSIONS JUDGE, MYSURU**

Dated this the 5th day of July, 2023

:: PRESENT ::

Sri Mallanagouda, B.Com., LL.M.,
IV Addl. District & Sessions Judge,
Mysuru.

SC/224/2022

Complainant :

The State by
Vijayanagar Police Station,
Mysuru.

(By **Public Prosecutor**)

Vs

Accused

1. Sri.Palaksha K M
S/o Marigowda,
Aged about 68 years,
Residing at
D.No.943, B.M.Road,
Periyapatna Town
and Taluk,
Mysuru District.
2. Sri Murali
S/o K.M.Palaksha
Aged about 36 years,
Residing at
D.No.943, B.M.Road,

Periyapatna Town
and Taluk,
Mysuru District.

3. Smt.Prema
W/o K.M.Palaksha,
Aged about 58 years,
Residing at
D.No.943, B.M.Road,
Periyapatna Town
and Taluk,
Mysuru District.

4. Sri Prasanna
S/o Late Muttanna,
Aged about 43 years,
Residing at
No.150, Doddamalthe
village,Hanakodu Post,
Somavarapet Taluk,
Kodagu District.

(By Sri C.Appaji Gowda- Adv.,)

:: ORDERS ON APPLICATION FILED
U/Sec.227 of Cr.P.C.::

This is the case in which on the basis of the complaint filed by the complainant namely B.Krishna, Vijayanagara Police have registered FIR in Cr.No.141/2017 for the offences punishable U/Sec.143, 147, 148, 397 and 506 R/w.Sec.149 of IPC., in which after the investigation the Investigating Officer has filed Charge-Sheet against Accused No.1 to 4 for the offences punishable U/Sec.323, 324, 341, 354 and 506 R/w.Sec.34 of IPC., and he has dropped Sec.397 of IPC.

2. After filing Charge-Sheet the learned Magistrate has taken cognizance and framed charges.

3. Thereafter, on the basis of the application filed by the prosecution U/Sec.323 of Cr.P.C., the learned Magistrate has committed the present case to this Court holding that there is material to attract Sec.397 of IPC.

4. Now the learned Counsel for the accused persons has filed present application U/Sec.227 of Cr.P.C for discharge of accused persons for all the offences contending that Accused No.2 is the husband of the complainant's daughter, Accused No.1 and 3 are the parents of Accused No.2 and Accused No.4 is their relative. There are some matrimonial dispute pending between the complainant's daughter and accused persons. The house in which the complainant and his family members were allegedly residing and accused persons have committed the offences alleged against them is belonging to Accused No.1 to 3 only. All the materials which were there in the house are also belonging to Accused No.1 to 3. Now, the complainant has filed false case about trespassing into the house, there is no material for the offence U/Sec. 397 of IPC. Therefore, the accused persons are entitled for discharge.

5. To this application the learned Public Prosecutor has filed objection stating that after considering the material available on record, the learned

Magistrate has allowed the application filed by the prosecution U/Sec. 323 of Cr.P.C. and committed the present case to this court. Therefore, the application is liable to be rejected.

6. Heard arguments of learned counsel for accused persons and learned Public Prosecutor.

7. Perused the records.

8. The only point that arise for my consideration is:

Whether the accused persons are entitled for discharge as claimed in application filed U/Sec.227 of Cr.P.C?

9. My finding on above point is in the **Negative** for the following ;

REASONS

10. On perusal of the records, it appears that though as per the complaint also originally the Accused No.1 to 3 were residing in the house wherein incident took place as per the complaint and statements of the witnesses subsequently CW1 to 3 were residing in the said house at that time the accused persons have allegedly trespassed into the house, assaulted the CW1 to 4 and taken away some articles from said house. After considering the statements of the witnesses filed along with Charge-Sheet, the learned Magistrate has formed an opinion that as the accused persons have allegedly taken

away the articles from the said house by causing injury to the persons residing in the said house, there is prima-facie materials to attract Sec.397 of IPC.

11. Therefore, by looking to the Charge-Sheet and other materials produced along with the Charge-Sheet, it clearly appears that there is prima-facie material to show that the accused persons have committed the offences punishable U/Sec. 394 R/w.Sec.397 of IPC. Therefore, there is no any valid grounds made out for discharge of the accused persons for any of the offences much less the offence punishable U/Sec. 394 R/w.Sec.397 of IPC. Therefore, it is decided to reject the application of the accused persons and frame charge for the offence punishable U/Sec.394 R/w.Sec.397 of IPC., and other offences. Hence, the above point is answered in the **Negative** and hence the following :-

ORDER

The application filed by the accused persons U/Sec.227 of Cr.P.C., is hereby **REJECTED.**

[Dictated to the Stenographer directly on computer, corrected, and signed by me and then pronounced in the Open Court, on this the **5th day of July, 2023**].

(MALLANAGOUDA)

IV Addl. District & Sessions Judge,
Mysuru.

