

KAMS010056562019



**IN THE COURT OF THE PRINCIPAL DISTRICT AND
SESSIONS JUDGE & SPECIAL JUDGE AT MYSURU**

Dated this the 12th day of August, 2024

PRESENT

Sri. Ravindra Hegde, M.A., LL.M.,
Prl. Sessions Judge & Special Judge,
Mysuru.

Spl.C/366/2019

Complainant:

State by Udupi Town Police
Station.

(By **learned Special Public Prosecutor**)

Vs.

Accused:

Rajendrakumar S.V. @ Bannanjje
Raja and 5 others

Accused No.2:

Shashi Poojari @ Shadow @
Shashikumar, aged about 28
years, S/o Vijaya A. Ameen, R/at
Ganesh Nivas, K.S.Rao Nagar,
Kolnadu, Mulki, Mangaluru Taluk.

Presently R/at J.P.Nagar 2nd Stage,
II Main Road, 9th Cross, Bengaluru.

(By **Sri. J.S., Advocate**)

Accused No.5:

Dhanaraj Salyan @ Dhanu Kola,
aged about 30 years, S/o Raghu
Salyan, R/at Umavathi Nilaya,
Near Yashaswini Ice Plant, Kola,
Malpe, Kodavooru Village, Udupi
Taluk.

(By **Sri. K.S.M.P., Advocate**)

**ORDER ON APPLICATION FILED FOR ACCUSED No.2 & ACCUSED
No.5 FOR DISCHARGE UNDER SECTION 227 OF Cr.P.C.**

The counsel for accused No.2 and accused No.5 have filed separate application for discharge under Section 227 of Cr.P.C.

2. In the application of accused No.2, it is stated that, the complaint came to be registered against an unknown person and further statement is allegedly recorded of complainant on 19.03.2021, wherein many of the things are stated which are not mentioned in the complaint and the allegations are about some transactions that had allegedly taken place between him and accused No.1. It is stated that, the allegations in the further statement that earlier accused No.1 had called and asked for money with humility and as such, complainant had given Rs.5 lakhs, show that there was no any kind of extortion as is now projected. It is stated that, the alleged asking of money by accused No.1 prior to lodging of the complaint seems to be completely false. If that was so true, complainant would not have registered the complaint against an unknown person. It is

stated that, the conduct of the complainant in not disclosing the name of accused No.1 at the earliest goes to the root of the matter and casts serious doubt on versions which are developed now, which are to suit the convenience of the case of the prosecution. It is stated that, delay in recording of such statement of the complainant on 07.05.2019 and versions that are belatedly introduced clearly show that the case is concocted and created. It is stated that, allegations levelled against accused No.2 that phone call made on 13.03.2019 is by him is completely baseless and false and even otherwise, role of this accused is not found in any of the earlier transactions. It is stated that, the participation of accused is not there in any context in any of the things that had allegedly taken place between the complainant and accused No.1. It is stated that, allegations pertaining to incident that is said to have taken place in August 2018 in respect of C.W.44 and another incident in respect of C.W.48 in January 2018 and of C.W.159 etc., cannot be clubbed with this case, as it is not connected to the facts of the present case. It is stated that, the clubbing of the incident which is not part of the transaction is impermissible in law. It is stated that, the offence under Section 364A and 397 of I.P.C. are alleged in the supplementary charge-sheet, which do not come within the ambit of the first F.I.R. and is only added to further harass the accused. It is stated that, the provisions of KCOCA are not applicable in the present set of facts and the said provisions are invoked without any basis, as none of the ingredients are satisfied in the present case. It is stated that,

this accused has no nexus whatsoever with anybody or any accused pertaining to commission of any offence and hence, accused No.2 is to be discharged from the case.

3. In the application of accused No.5 for discharge, it is stated that, the accused No.5 is innocent of the offences alleged and is falsely implicated and is no way connected to the allegations made by the complainant. It is stated that, the alleged calls at no point of time were made by accused No.5 and even the complainant did not take the name of this accused in any context and this accused had not met the complainant at any point of time. This accused is no way connected to the allegations that are made by the complainant. It is stated that, the complaint is registered against unknown person and the statement was recorded long after, with compilation of improvements and without explanation for such delay in recording the statements. It is stated that, accused No.5 is not connected with the allegations and role of accused No.5 is not spelt out in the statement of C.W.1 and role of accused No.5 is not found in any of the earlier transactions also. It is stated that, participation of accused No.5 is not found in any context and there are no allegations against him. It is stated that, apart from complainant's incident, 5 more incidents which are totally separate in nature and wholly unconnected, have been added and in such unconnected incidents, name of accused No.5 is found in two incidents. It is stated that, the statement of C.W.45 that accused No.5 was present when C.W.45 has given amount to accused No.3 and allegation that accused No.5 was

present when amount was given by C.W.47 to accused No.3 are the only incidents stated in the case, but they are unconnected to the present case and they are separate incidents. It is stated that, the allegation that accused No.5 accompanied accused No.3 to Hindalaga Jail and handed over SIM card to accused No.1 is also not found, as the SIM card is not seized from possession of the accused and accused No.5 in no way involved in the alleged crime committed by the other accused in the case. It is stated that, provisions of KCOCA are not applicable and there are no sufficient grounds for proceeding against accused No.5. Hence, accused No.5 is prayed to be discharged.

4. The learned Special Public Prosecutor has filed separate objections for both these applications. In the objections, learned Special Public Prosecutor has stated the facts which led to the registration of the case and filing Charge-sheet and stated that, accused No.2 and 5 cannot be discharged as the investigation has established the involvement of accused No.2 and 5 in the offences alleged. It is stated that, even by examining the CDR of the Mobile Phones of these accused, their participation in the crime is established. It is stated that, there are several cases against accused No.1 and in one case, accused No.1 is sentenced for life and the other accused are the companions of accused No.1 who are acting at his instructions. It is stated that, accused No.2 on 13.03.2019 has made a call to C.W.1 and abused him and asked him to pay the amount and threatened him and accused No.2 is the main accused. It is stated that, the C.Ws.2 to 5 have also stated about accused No.2 giving threat to

the complainant. It is stated that, as per the investigation, accused No.2 through mobile standing in the name of C.W.18, has made phone call to complainant and threatened him. Since the complainant was not aware as to who is the person who has called, the name of accused No.2 is not mentioned in the complaint. It is stated that, the witnesses are frightened by the acts of accused persons. It is stated that, in 2018 in the month of August and September, as per the instructions of accused No.1, accused No.2 accompanied accused No.3 to collect Rs.2 lakhs as 'Hafta' and in 2018 November, as per the investigation, accused No.2 has made phone call to C.W.48 and illegally asked for 'Hafta'. The involvement of other accused and the accused persons threatening the other witnesses like C.Ws.158, 159, C.Ws.48, 47 etc., are also stated in the objections. It is stated that, the case is for serious offences committed by the accused under KCOCA and it is found that accused No.2, along with accused No.3, 4 and 6, has committed the offence and a case is also registered in Udupi Court and there is also a case against him in Mangaluru. It is prayed that, the application of accused No.2 is to be dismissed.

5. In the objections filed to the application of accused No.5, facts of the case are stated and it is stated that, accused No.5 is also involved in the commission of the offence along with other accused and the investigation has revealed the participation of accused No.5 also. It is stated that, on 18.09.2017, as per the investigation, accused No.5 had visited Belagavi Jail and met accused No.1 and there is entry in the Jail Register and even on

some other dates, this accused No.5 had visited the Jail and met accused No.1. It is stated that, the accused No.5 is helping accused No.1 in implementing his criminal plans. It is stated that, in 2018 January, as per the instructions of accused No.1, 3rd accused had gone to extort money from C.W.47 and accused No.5 had accompanied him. Similarly, even in May 2018, accused No.5 accompanied accused No.3 to recover 'Hafta' from C.W.45 and even to recover 'Hafta' money from C.W.169, accused No.5 along with other accused i.e. accused No.3 and 6 had gone to the Office of C.W.169 which is seen in the CC Camera. It is stated that, the 5th accused is also a Rowdy Element and several cases are registered against him. It is stated that, the investigation has clearly revealed the participation of accused No.5 in commission of the offences alleged and as such, he cannot be discharged as prayed.

5. Now, the points that arise for my consideration are:

1. Whether there are no sufficient grounds for proceeding against accused No.2 and 5 and that they are entitle for discharge as prayed ?

2. What order ?

6. Heard both counsels. Perused the records.

7. My answer to the above points are:

Point No.1 :: In the **negative**

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

REASONS

8. Point No.1:

On the complaint given by the complainant about he receiving a threat call from a particular mobile number for extortion on 15.03.2019, case was registered for the offences punishable under Section 507, 385, 504 of I.P.C. against unknown person and subsequently during the investigation, the involvement of all the accused was found according to the prosecution and then case was registered for the offences punishable under Section 384, 387, 504, 506, 507, 120(B), 109, 201 r/w Section 34 of I.P.C. and Section 3(1)(ii), 3(2), 3(4), 3(5) of KCOC Act against accused No.1 to 6. Accused No.1 and 2 are in judicial custody and other accused are on bail.

9. Now, the application under Section 227 of Cr.P.C. is filed for accused No.2 and 5 stating that there is no case made out against the accused No.2 and 5 and they are entitle for discharge. In the application filed for accused No.2, it is stated that, on the basis of the further statement of the complainant, several other provisions are included and in the further statement, the complainant has stated about the incident of 4 months back in which, accused No.1 is stated to have called the complainant and asked for Rs.5,00,000/- and inspite of that, the complaint is given against unknown person, which shows that, the complaint averments are false and the Police have developed the case by taking further statement, by belatedly introducing new facts and that the statement of C.Ws.44, 48, C.W.159 which

was recorded by stating that they also had received such threat calls for extortion and have paid amount etc., is not connected to the present case. It is contended that in the discharge application of accused No.5 also, similar contentions are taken and it is stated that, the participation of accused No.5 in any context in any of the things of the case between accused No.1 and the complainant is not found and there is no allegation levelled against accused No.5 regarding the phone calls that were allegedly made. It is stated that, the allegation against accused No.5 is that, he had accompanied accused No.3 to Hindalaga Jail at Belagavi and handed over a SIM Card to accused No.1. It is stated that, it is not the case of the prosecution in any other way that, the accused No.5 is involved in the alleged crime committed by other accused persons in the present case and the alleged SIM Card is not seized from the possession of the accused. It is stated that, the provisions of KCOCA are not applicable in the present set of facts and there are no case made out against accused No.5. Both these applications are opposed by the learned Special Public Prosecutor.

10. For both these accused and also the prosecution, arguments are addressed. Learned counsel for accused 2 and 5 argued in line with application filed. The learned Special Public Prosecutor has argued that, the accused No.2 and 5 are also members of the Organized Crime Syndicate which is defined in the Karnataka Control of Organized Crimes Act, 2000 and more than one case need not be against all the accused and as there are more than one case against accused No.1, the provisions of

KCOCA is applicable and all the accused not committing more than one offence is not the ground for the discharge. It is also argued that, under this Act, even the confession recorded by S.P. is admissible and there is Confession Statement of the accused.

11. On looking to the Charge-sheet, though the F.I.R. was lodged for the offence punishable under Section 507, 504, 384, 506 of I.P.C. against unknown persons as per the complaint of the complainant, during the investigation, it was found that, there is an Organized Crime Syndicate headed by accused No.1 and accused are doing continuing unlawful activity, singly or jointly as members of Organized Crime Syndicate and in respect of such offence more than one charge-sheet has been filed within the period of 10 years and the Court has taken cognizance of the same. In the course of investigation, it is found that, the accused as members of Organized Crime Syndicate, were committing organized crime and therefore the provisions of KCOCA has been included and the Charge-sheet has been filed for different offences under the I.P.C. and also KCOCA.

12. If on consideration of the records submitted for the prosecution and on hearing, if it is found that there are no sufficient ground for proceeding against the accused, accused can be discharged under Section 227 of Cr.P.C . Therefore, the charge-sheet materials and the submissions for accused and the prosecution can only be considered for discharging the accused and if there is some material for proceeding against the accused and on prima facie perusal of the records it is found that it is not

frivolous and there are some material for proceeding with the case, the accused cannot be discharged. The Court have to see whether there is no sufficient ground for proceeding with the case, to discharge the accused. If the evidence, which the prosecution intends to place, if fully accepted, still if the commission of the offence cannot be established, then there will be no sufficient grounds for proceeding with the trial, as held in different decisions of the Hon'ble Supreme Court and in such case, accused are entitle for discharge.

13. On looking to the present case, as far as accused No.2 is concerned, he is stated to have met accused No.1 in Hindalaga Jail to take instructions and to make a plan and is stated to have made phone call 3 times from the mobile to the complainant and has given threat for extortion in Tulu language and has also given life threat. Even some previous incidents of giving such threat to other witnesses are also found against accused No.2 in the Charge-sheet. There are statements recorded in support of the allegations against accused No.2. Since on the basis of the phone calls made to complainant for extortion and by giving life threat, the case has been registered and as per the prosecution case it is the accused No.2 who has made such calls on behalf of the Crime Syndicate. Hence, it cannot be said at this stage that, there are no sufficient ground for proceeding against accused No.2.

14. As far as accused No.5 is concerned, he is stated to have met the accused No.1 as member of the Organized Crime Syndicate in Hindalaga Jail in 2017 and along with the accused

No.1, has made conspiracy for extortion from rich people and along with accused No.3, he has met the accused No.1 in the Hindalaga Jail and gave SIM Card and has also stated to have met some other witnesses as mentioned in the Charge-sheet like C.W.47 for collecting the money by visiting his office along with accused No.3 and also accompanied accused No.3 for receiving amount from C.W.45, for which, the prosecution intends to prove the allegations through the statement of witnesses mentioned in the Charge-sheet and also CDR of mobile number and also the Voluntary statement of accused No.3 and 5, which according to the prosecution is admissible in evidence under the KCOCA.

15. The learned Special Public Prosecutor has referred to the decision of our Hon'ble High Court in **Criminal Appeal No.293/2018 dated 08.02.2019** between **S.Narayan Vs. State of Karnataka**, wherein the Hon'ble High Court has confirmed the rejection of the application under Section 227 of Cr.P.C. by the Special Court. In this decision, the Hon'ble High Court has considered various decisions and observed that, "**even if a person may not have any direct role to play as regards the commission of an organized crime, if a nexus either with an accused who is a member of an Organized Crime Syndicate or with the offence in the nature of an organized crime is established, that would attract the invocation of Section 3(2) of MCOCA**", as held by Hon'ble Supreme Court in **Prasad Shrikant Purohit's Case**. In the present case, the direct contact between accused No.2 and accused No.5 with accused No.1 is alleged by the prosecution in

the Charge-sheet, which is stated to have been supported by the statements of witnesses and including Voluntary Statement. Therefore, the assistance and abetment by these accused in the commission of the crime by the Organized Crime Syndicate has been placed before this Court by the prosecution along with materials, which at this stage, appears to be relevant and makes out a case against these accused. The Hon'ble High Court has held in this decision that, "***the question of mens rea can only be ascertained during the course of the trial***".

16. On looking to the above said decision and also the facts of the present case and prosecution materials placed before the court, at this stage, accused No.2 and 5 have failed to establish that there is no prima facie material to proceed against them and that they are entitle for discharge. Accordingly, **point No.1** is answered in the **negative**.

17. **Point No.2:** For the discussions made on above point, the following order is passed:

ORDER

Both the applications filed for accused No.2 and accused No.5 under Section 227 of Cr.P.C. are dismissed.

(Dictated to the Stenographer Grade-1, transcribed by her on Computer and after corrections, signed and then pronounced by me in open Court on this the **12th day of August, 2024.**)

(Ravindra Hegde)

Prl. Sessions Judge & Special Judge,
Mysuru.

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