

**IN THE COURT OF THE I ADDL. CIVIL JUDGE & JMFC
NANJANGUD AT NANJANGUD**

Present : **Sri.Shrinath.A.** B.A.L, LLB.
I Addl.,Civil Judge & JMFC., Nanjangud

Dated 10th day of July, 2019

C.C. No.1070/2015

Complainant : State by Badanavalu Police
Accused : V/s Shekar and others
Accused No.7 : Shivu

**ORDERS ON APPLICATION UNDER SEC.239 R/W 258 OF
Cr.P.C**

1. This application is filed by one Shivanaga, S/o Puttaiah, aged about 31 years. Initially this application was filed under Sec.239 of Cr.P.C but later the advocate for accused has filed a memo to treat this application given under Sec.258 of Cr.P.C.

2. It is his contention that mistakenly he has been pulled into this case by the police without even reference of his name either in the FIR or in the charge sheet. The police have registered an FIR and has filed charge sheet against one accused No.7 for the offences punishable under Sec.341, 143, 144, 147, 149 and 353 of IPC.

3. The accused No.7 name is Shivu, S/o Nagaiah, aged about 28 years, r/o Kirugunda Village, Nanjangud. After the issuance of

summons by this court to the accused No.7, the police have served the said summons on the mother of this applicant on 16.06.2015. The police have wrongly served the summons on this applicant thinking that he is the accused No.7 in this case. In support of his contentions this applicant has produced SSLC Marks Card, Driving Licence, Aadhar Card, LIC Bond, Caste Certificate, Letter issued by the Education Department, Voter I.D and Ration Cards to prove that the person alleged as accused No.7 is not the present applicant. With the above contentions this applicant has prayed this Hon'ble Court to discharge him from the above case.

4. The learned APP has filed objections to the said application that the person to whom service of summons is made is the actual accused No.7 in this case. It is his contention that after the investigation by the police and finding sufficient materials against this accused the police have filed charge sheet against the accused and this court has taken cognizance over the said offences. At this stage, the filing of the application by the accused No.7 contending that he is not the person as stated in FIR and Charge Sheet is not sustainable in law. At this stage, it cannot be looked inot as to whether the person on whom the summons have been served is one Shivanagu S/o Puttaiah are that he is the accused No.7. In this case the complainant being the police and he having seen the accused person coming in the way of discharging his official duties has identified all the accused who have been involved in this case and based upon that this present charge

sheet has been filed. To see whether the applicant has been involved in the commission of the said offences is during the trial and hence this application is not maintainable at this stage.

5. Further he has taken the contention that at the time of the framing of charge the only aspect that has to be looked by the court is whether prima-facie the case is made by the prosecution against the accused regarding the commission of the said offences by them. And upon findings such materials and relying on the materials produced by the police in the charge sheet a trial has to be conducted and that it is only in the trial it can be seen whether there is any involvement of the accused person or not.

6. This person who has filed the application is the accused No.7 and despite service of summons on him, he has not obtained bail and if has to take any contentions firstly he has to obtain bail otherwise any amount of grounds in his favour for discharge is not maintainable. For the above said reasons the learned APP prays to dismiss the application as not sustainable at this stage of the proceedings.

7. Heard the learned advocate for the applicant and the learned APP, the following points arise for consideration.

Point No.1: Whether the applicant proves that he is not
the accused No.7 as arrayed in the FIR
and the charge sheet?

Point No.2: Whether the applicant has made a ground for dropping of proceedings against him?

Point No.3: What order?

8. This Court answers the above points as follows:

Point No.1 & 2: In the Affirmative

Point No.3: As per final order for the following:

REASONS

9. **POINT No.1 & 2**: In support of the contentions of the applicant on whom the police have executed the summons, has produced sufficient documents such as SSLC Marks Card, PUC Marks Card, PAN Card, the Voter and Rations Cards, the Voter List, Certificate issued by the Department of Education, his LIC Policies, his Caste Certificate, Aadhar Card, Driving Licence, Certificate of B.Ed, the admission Ticket of PUC and his passbook. From the perusal of the said documents, it clearly goes to show that this applicant is one by one Shivanaga.K.P, S/o Puttaiah. Further from the perusal of the Caster Certificate, it is seen that he belongs to the schedule caste [Adi Karnataka].

10. From the perusal of the FIR and the charge sheet, it is seen that the accused No.7 is one Shivu S/o Nanjaiah. Upon the issuance of the summons by this court, the police have executed the summons on this person.

11. The brief facts of the prosecution case is that on 02.11.2014 in the evening at 04:00 p.m an accident occurred between two vehicles. The driver of the two wheeler succumbed to the injuries and died on the spot. The allegations on all the accused are that when the police came to the spot they did not permit the police to take the dead body to the hospital for postmortem and they demanded for compensation to be awarded on the spot by the owner of the vehicle who is alleged to have committed an accident. Thus, these accused have deterred the public servant i.e. police from the discharging of their official duties and hence the police have suo-moto registered this case against these accused. Apart from the FIR and charge sheet the statements given by the eyewitness and the mahazar witness the name of the accused No.7 is stated as Shivu S/o Nanjaiah, aged about 28 years belonging to schedule community and that he is a farmer residing at Kirugunda Village.

12. No doubt from the documents produced by the applicant belongs to the schedule community and that even he is a resident of Kirugunda Village the very name of the applicant and the name of his father when compared with the prosecution papers goes to show that the applicant is not the person who is shown as accused No.7 in this case.

13. From the perusal of the documents produced by this applicant also clearly goes to show that he is working as a Head Master in Moulana Azad Residential School and that he is not a

farmer. Further he is aged about 35 years old. Hence, it is clear that this applicant is not the accused No.7 upon whom the police have executed the summons issued by the court.

14. The another question that has to be decided is that, whether the question of discharge or dropping of proceedings is applicable in the summons case. The offences alleged punishable under Sec.341, 143, 144, 147, 149 and 353 of IPC. All the offences are punishable less than two years and up to two years. Hence, this is a summons case. The application filed by this applicant under Sec.239 of Cr.P.C. As seen supra, the person upon whom the summons has been executed as accused No.7 is not the actual accused No.7. This applicant is not the accused in this case as seen from the documents. The learned APP in his objections has stated that upon sufficient material after completing of investigation the charge sheet has filed against the accused. It is not the case of the prosecution that there has been mistake of mentioning of the accused No.7's name, his father's name, his age, his occupation. It is the argument of the learned APP that the applicant is the accused No.7. But the prosecution has not made any attempt to make corrections in the charge sheet with the leave of the court.

15. Further it is the contention of the prosecution that at this stage the materials produced by the applicant cannot be looked into, to see whether this person is a accused or not. This argument is not acceptable for the reason that here the question has arisen whether the

applicant is at the first instant is an accused or not. The application of the discharge question arises when the person who is seeking for discharge is an accused. Here in this case the applicant has provided sufficient documents to prove that he is not the accused as alleged in this case. Hence, the question of invoking the power of this court to discharge this applicant does not arise.

16. Hence for the said reason, this court can very well look into the documents produced by the applicant to come to a conclusion that he is not the accused as alleged by the prosecution. Further there is no allegations of any kind against this applicant. The burden is more upon the prosecution to prove that this applicant is the person who is referred to as accused No.7 in this case. Keeping silent on the aspect of proving by the prosecution that the summons executed on the correct person and at least by saying that the applicant and the accused are one and the same, there would have been some case of the prosecution. As mentioned supra, this aspect has not been answered by the prosecution.

17. Further it is the case of the prosecution that this applicant is the accused No.7 and has not obtained bail. For the above said reasons, it is clear that this applicant is not the accused No.7 and there is no any kind of allegation to show that this person has been involved in the commission of the offences. There has been a difference of name, father's name, the age and also the occupation when compared with the applicant and accused No.7. In this regard the applicant has

also issued notice to the Station House Officer / Sub-Inspector of Police, Biligere Police Station to narrating the above facts on 07.05.2019. The notice have been duly served on the said Inspector. Despite service of such a notice the police or the prosecution has not taken any steps either to show that the person who has been arrayed as accused No.7 is this very applicant and also not made any arrangements for the correction of the charge sheet in this regard.

18. The learned advocate for accused has relied on decisions reported in *2006 CRI.L.J.1447 Kerala High Court, 2000(4) Crimes 113 (SC), (2012)5 Supreme Court Cases 424, ILR 1986 Kar 2970, 2011(4) AIR Kar R 297, 1996(3) Crimes 85 (SC), 1992 CRI.L.J 3779, 2018 CRI.L.J.1160, 2005 CRI.L.J 3805, 2007 CRI.L.J 827, 2010(4) Crimes 611 (Ker.)*. All the decisions clearly goes to show that there can be discharged of the accused in the summons case under Sec.258 of Cr.P.C. Also it is shown that there can be the dropping of proceddings against the accused. But here in this case the applicant at the first instance is not the accused at all.

19. The learned APP has also relied on one decision reported in *2013(3) Crimes 291 (Karnt.)* of the *Hon'ble High Court of Karnataka* which holds that while considering the case at the stage of charge, court cannot take into consideration any document or material produced by the accused before the court. Here in this case this applicant is not the accused. Hence, this decision is not applicable to the present facts of the case.

20. The Hon'ble Supreme Court in Amit Sibal V/s Arvind Kejriwal reported in 2016 SCC Online SC 1516 wherein it has held that the magistrate has the power to hear the accused at the time of explanation of substance of accusation, and if no offences is made out, the magistrate has the power to drop the proceedings against him at that stage itself, and the court need not, in all cases, take the matter to a full blown trial. Here in this case the applicant at the first instance being not the accused as sufficiently proved by him. When it is applicable to the accused himself for discharge or dropping of proceedings the same is very well applicable even to the person who proves before the court that he is not the accused who is said to have been alleged in the charge sheet. Upon the prosecution failing to prove so, there can be a discharge or dropping of proceedings even in a summons case as held by the Ruling of the Hon'ble Supreme Court as mentioned supra.

21. If the prosecution later proves that or makes any corrections in the charge sheet to show that this applicant is the very accused No.7 as shwon in the charge sheet, there is no bar to once again to issue summons against this applicant. Hence, for the above reasons the Points No.1 and 2 are answered in the Affirmative.

22. **POINT No.3:** For the foregoing reasons, this Court proceeds to pass the following:

ORDER

The application filed by the applicant under Sec.239 r/w 258 of Cr.P.C is hereby allowed.

The summons issued against this applicant is hereby recalled.

(Dictated to the Stenographer directly on the computer, typed by him, corrected and then pronounced by me in the Open Court on this 10th day of July, 2019).

(Shrinath.A)
I Addl., Civil Judge & JMFC
Nanjangud