

**IN THE COURT OF THE I ADDL. DISTRICT AND
SESSIONS JUDGE, RAMANAGARA**

:Present:

Sri.Umesh Moolimani., B.Com., L.L.M.,
I Addl. District and Sessions Judge,
Ramanagara.

Dated this the 8th day of February 2018

Spl.C.94/2015

Complainant:

State by Magadi Police Station.
(Reptd. by Spl.Public Prosecutor, Ramanagara.)

-Vs-

Accused :

1. Nanjunda @ Prakash,
S/o. Lakkaiah,
27 years,
R/a. 27th Cross,
Janatha Badavane,
Yashavanthapura Hobli,
Bengaluru North Taluk,
Bengaluru City.

3. Kumar.G.
S/o. Ganganarasaiah,
Aged 27 years,
R/at Muddinapalya,
Vishwanidam Post,

Yashavanthapura Hobli,
Bengaluru North Taluk,
Bengaluru City.

4. Gowramma,
W/o. Gangadasappa,
40 years,
R/at Gidadakonenahalli Village,
Chilahala,
Vishwaneedam Post,
Yashavanthapura Hobli,
Bengaluru North Taluk,
Bengaluru City.

5. Nagaraja.V. @ Raqvi,
S/o. Venkateshappa,
33 years,
R/at No.15, Gidadakonenahalli,
Janata Badavane,
Yashawanthapura Hobli,
Bengaluru North Taluk.

(Represented by Sri. K.T.V., Advocate)

* * *

ORDER ON APPLICATION FILED U/S. 239 of CR.P.C

The accused 1, 3 to 5 have come up with this application U/sec.239 of Cr.P.C. praying this Court to discharge them from the alleged offence.

2. The brief facts of the case are:

In the complaint it is averred that, on 04.08.2014 at 8.30 p.m. in the night he was waiting for bus in Magadi bus stand in order to go to Kunigal. Till 9.30 night he did not get the bus and he telephoned to his brother who was in Thirumale of Magadi who was auto driver. His phone was switched off. Therefore, he was walking towards Thirumale. On the way, one India car came and stated that, they are CCB police and made him to sit in the car. They made him to sit in the Indica Car and stopped the vehicle near Thippagondahahalli road side, covered the cloth near the nose and made him to take tablet contending that he will be set at liberty if 25 lakhs is paid. When he refused, they took him to Anjananagar and stopped the car there. There he saw one. She too also boarded the car and apart from Kavitha four other persons were in the car. In the pulsar vehicle two others were followed them. His eyes were closed and they were talking like Vidyaranya. Thereafter stop the car, he was taken made him to climb staircase and there they removed his clothes and put gown.

3. There is no material to show all the accused persons connived together and hatched a plan with common intention as alleged in the charge sheet. Even in the complainant statement nothing is mentioned about the above accused persons and their names, no material is collected to show all the ingredients of the offences alleged. It is also submitted that, the complainant belongs to SC and the above accused persons are related to him. Hence, sec.3(2)(5) SC Act is not applicable. The complainant already neglected and deserted his first wife 2 years back. He has got number of enemies in the locality. As the offence took place in the night time and identification of each accused is not established by conducting identification parade. Hence, prayed to discharge the above accused persons.

4. This application is opposed by the prosecution by filing objection.

5. Heard both sides. The counsel for the accused 1, 3 to 5 has submitted the written arguments, whereas the Spl.P.P. has orally argued.

6. The following points that would arise for my consideration:

1. Whether the applicants prove that, they are entitled for the relief?
2. What order?

7. My findings to the above noted 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:** The gist of the written argument of the accused side is that, there is no any clear evidence prima-facie against these persons with regard to, they have participated in committing the alleged offence; the complainant initially has stated that, two persons have kidnapped him by dragging him to the car; he has not identified other persons not discloses their names; in

spite of it, the IO has included these four persona also who are innocent, not committed any offence; further these accused Nos.1, 3 to 5 are also belongs to the same caste of the complainant; under such circumstances, the provisions and the offence u/s SC/ST Act doesn't attract; further there is posity of evidence prima-facie against these accused. Therefore they may be discharged for the alleged offences.

9. In support of their arguments, they also relied upon the decision reported in *2003 CRL.L.J.1517*, rendered by the Hon'ble Supreme Court of India.

10. To refute this argument, learned Spl.P.P. has argued that, at this juncture only the materials placed before the Court by the IO shall be taken into consideration; nothing else; however the statements of the witnesses consistently supporting and corroborating the complaint; to frame the charge there is ample evidence against these accused also; if these accused are also belongs to the Caste of complainant only they are not to be tried for the offence punishable u/s SC/ST Act; however these accused have also participated in committing the other

offence who are belongs to Vokkaliga and Lingayath communities accused; therefore, now only the case against these accused persons cannot be split up and decide so also there is ample evidence prima-facie to frame the charge against these accused along with other accused; hence, looking to the nature of offence and the material submitted before the Court by the IO against these accused are sufficient to frame the charges; there is no merits in the application filed by the accused 1, 3 to 5. Further submitted that, the decision relied by the accused and their counsel not applicable to the present facts of the case; however the proposition laid down therein is also clear that, the Court need not insist to produce material or evidence to disprove the material placed before the Court by the IO; however, only the materials produced by the IO shall be taken into consideration either to discharge or to frame charge. Hence, prayed to reject the application.

11. Perused the records. The statements of the witnessed cited in the charge sheet are prima-facie speaks against these accused also. Only because these four accused 1, 3 to 5 are belongs to the Community or Caste of the complainant, that would not relieve these

accused persons from other offence. Of course, these accused cannot be tried for the offence under SC/ST prevention of Atrocities Act 1989 and amended Act 2015. But with regard to other offences are taken into consideration, these accused have also joined the hands with other accused who are belongs to other Communities i.e. others SC/ST. Therefore, the IO has also mentioned sec. 149 IPC. That means these accused have also participated in conspiracy and execute the offence against the complainant. Therefore, in the charge sheet there is ample evidence against these accused apart from SC/ST Act, which are punishable under IPC. Therefore, these accused cannot be discharged as in the charge sheet there is ample material against these accused also to show that, they have committed the alleged offence along with other accused. Further the decision relied by the accused 1, 3 to 5 referred supra is taken into consideration, I do not have any confrontation to the proposition laid down by their lordships of the Apex Court of India. But the proposition is also quite similar that, the Court while dealing with the application for discharge or while framing the charge, it has to consider only the material placed before it by the IO and nothing else. So also accused shall not be compelled to produce rebuttal evidence while deciding the application

for discharge. Hence, considering all these aspects, I am of the clear opinion that, there is ample material against these accused also along with others in respect of the alleged offence. Therefore, they are to be tried for that offence while framing the charge. The aspect of accused Nos.1, 3 to 5 are also belongs to SC Community has to be looked into and also while trial, that should be taken into consideration at the time of disposing the matter finally.

12. The application is filed u/s239 Cr.P.C. However, this being the Special Court headed by District and Sessions Judge, all the proceedings for trying the case are followed by Chapter 18 of Cr.P.C., however the application filed u/s 239 is in respect of warrant trial. Therefore, the application is considered to have been filed u/s 227 Cr.P.C. Thus, I answer Point No.1 in the “Negative”.

13. Point No.2: In the result, I proceed to pass the following:

ORDER

The application filed U/s.239 of Cr.P.C. for discharge of accused Nos.1, 3, 4 and 5 is hereby rejected.

(Dictated to the Judgment Writer from the reasoning, thereof transcribed and computerized by her, corrected, signed and then pronounced by me in the open court on this the 8th d day of February 2018)

(Umesh Moolimani)

I Addl. District & Sessions Judge
Ramanagara.

08.02.2018

State by : P.P.
A.3 to 5 - KTV
A.2- AG
A.6,7 - T.G.
A.8,9 - V.S.P.
A.10, 11 - NCM

For orders

Order pronounced in the open court and the following order is passed:

ORDER

The application filed U/s.239 of Cr.P.C. for discharge of accused Nos.1, 3, 4 and 5 is hereby rejected.

**I Addl. District & Sessions Judge
Ramanagara.**