



**IN THE COURT OF THE PRL.DISTRICT & SESSIONS JUDGE,
UTTARA KANNADA, KARWAR.**

DATED THIS THE 28th DAY OF JULY -2023

SPECIAL CASE NO:7/2015

PRESENT:

Sri. D.S.Vijaya Kumar,
B.Sc., LL.B.,
Prl. District and Sessions Judge,
Uttara Kannada, KARWAR.

**ACCUSED/
APPLICANT:**

Ganesh Anant Naik,
Assistant Director of Akshara Dasoha,
Taluk Panchayat, Kumta.

(By.Sri.N.V.Nayak, Advocate.)

Vs.

**COMPLAINANT/
RESPONDENTS:**

The State of Karnataka,
Represented by Special Public Prosecutor,
Uttara Kannada, Karwar.

ORDERS ON APPLICATION UNDER SECTION 91 R/W 319 OF CR.PC.

This is an application filed under Section 91 r/w 311 of Cr.P.C., by the applicant seeking direction to the Investigating Officer to produce the original agreement and the order to produce the milk powder to the school and the documents

establishing the competency of Sri.Veeranna Turamari before the Court before cross examining PW-1 to 3.

2) The brief averments made in the application are that, the accused has approached the Hon'ble High Court of Karnataka in Cri. Petition No.100719/2023 under Section 482 of Cr.P.C., and in the said petition he has contended that the complainant has not provided the copy of the order and agreement to supply the milk powder to the schools and the complainant is not the authorized contractor. The sanction for prosecution by the Additional Commissioner is without jurisdiction. Further contended that in para No.13 of the order of Hon'ble High Court it is mentioned that "It is in the realm of the trial Court in exercising the power under Section 311 of Cr.P.C., to allow the prosecution or defence to place the necessary evidence on record to meet the ends of justice". The accused has taken contention before the Hon'ble High Court of Karnataka that "supporting materials as to the competency of Sri. Veeranna Turamari in issuing the sanctioning order is also not placed on record by the Investigating Officer. The Hon'ble High Court of Karnataka in its order held that "Subject to condition that documents establishing the competency of Sri.Veeranna Turamari be provided to the accused before Sri.Veeranna Turamari is examined as witness." The copy of the order and

agreement to supply the milk powder to the schools and the document establishing the competency of Sri. Veeranna Turamari is very much required to the accused before cross examination of PW-1 to 3. The accused has decided to ask many questions on the agreement and order to supply the milk powder. If the application is not allowed great injustice and inconvenience will cause to the accused and on the other hand no injustice and inconvenience will cause to the other side. Hence, on these grounds he has prayed for allowing the application.

3) The learned Special Public Prosecutor representing the State has filed objections and also produced Gazetted Notification indicating the competency of the officer for granting sanction for prosecution and hence prayed to dismiss the application.

4) Heard arguments of both sides.

5) In the circumstances, following points arise for determination:-

(1) Whether the applicant is entitled for the relief as sought?

(2) What Order?

6) My findings to the above points are under:

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

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

REASONS

7) **Point No.1**: I have perused the application, objections filed by the learned Special Public Prosecutor and documents available on record. The prosecution has cited Sri.Veeranna Turamari as a witness and is proposing for issue of summons to the said witness. He is said to have accorded sanction for prosecution against the accused as the additional commissioner for public instruction Dharwad. The accused had preferred Criminal Petition No.100719 of 2023 before the High Court of the Karnataka for quashing the proceedings in this case. While disposing of the said petition by order dated 06-06-2023 a direction is issued that the prosecution is given liberty to cite the above person as additional witness and examine him before the court subject to establishing competency of the above person in that regard. The relevant observation is in the last para of the order on page No.15 which is as follows:

“The prosecution is at liberty to cite him as an additional witness and examine him before the trial court as an additional witness, subject to condition that documents establishing the competency of Sri.Veeranna Turamari be

provided to the accused, before Sri.Veeranna Turamari is examined as a witness in due compliance of Section 207 of Cr.P.C”

Now, the accused counsel has filed this application stating that as per the above direction, it is necessary that the IO should be directed to produce the original agreement pertaining to supply of milk powder to the schools for establishing the competency of Sri.Veeranna Turamari to be examined as witness. Learned the counsel for the accused further argues that Sri.Veeranna Turamari who is now cited as additional witness was not competent to issue sanction order for prosecution of the accused.

8) Countering the said arguments the learned special public prosecutor has produced a copy of notification No.DPAR 12 SDE 2017 Bangaluru dated 21-01-2008 to show that the Additional Commissioner for Public Instruction, Dharwad was empowered to accord sanction for prosecution of the accused. The said notification reads as follows:--

**“ PERSONNEL AND ADMINISTRATION REFORMS
SECRETARIAT**

NOTIFICATION

**No.DPAR 12 SDE 2007, Bangalore, Dated: 29th January
2008**

In exercise of the powers conferred by the provision to sub-rule(1) of rule 7 of the Karnataka Civil Services(Classification. Control and Appeal) Rules, 1957 and in suppression of the Notification No.DPAR 4 SDE 2005, dated 4th April 2005, the Government of Karnataka hereby specifies the Heads of the Departments mentioned in column (2) of the Table below to be the appointing authority in respect of the cadres specified in column (3) thereof, namely:-

TABLE

Sl.No.	Heads of Departments	Name of the Cadres
1	2	3
1	Commissioner of Public Instruction Bangalore	1) Head Master/Mistress of Government Boys/Girls High Schools: 2) Gazetted Assistant 3) Managers/ Assistant Directors (Non-Tutorial) 4) Assistant Director (Arts); 5) Divisional Superintendents (Music, Dance, Drama); 6) Subject Inspector (Vocational Education), District physical Education Superintendent and equivalent cadres- in Bangalore and Mysore Division.
2	Commissioner for public Instruction Gulbarga	Head Master/Mistress of Government Boys/Girls High Schools, Gazetted Assistants and Managers/Assistant Directors (Non-Tutorial) – In Gulbarga Division.
3.	Additional Commissioner for public Instruction, Dharwad	Head Master/Mistress of Government Boys/Girls High Schools. Gazetted Assistants and Managers/Assistant Directors (Non-Tutorial) – Dharwad Division.
4.	Commissioner/ Director of Pr-University Education, Bangalore	Lecturers in the Department of Pr-University Education.

Provided that the Government shall continue to be the disciplinary authority for the purpose of imposing any of the penalties in respect of the persons appointed to the posts in the cadres specified in column (3) of the Table above before the date of this notification subject to delegation of powers in this behalf.

By order in the name of the President of India.

P.MARKANDEYA
Under Secretary to Government
Department of Personnel and Administrative,
Reforms (Service Rules-2)."

9) The learned counsel for accused submits that the Additional Commissioner for Public Instruction was not competent to accord sanction for prosecution of the accused. The notification is dated 29-01-2008 and the offence in the case is allegedly committed on 16-09-2013. Therefore, the above notification was in force at the relevant time. Uttara Kannada district comes under the jurisdiction of the Additional Commissioner for Public Instruction, Dharwad. In respect of Bengaluru and Gulbarga the Commissioner for Public Instruction is notified as the competent authority. Whereas, in respect of Dharwad division the Additional Commissioner for Public Instruction is notified as the competent authority under the above notification. Therefore, under the above said notification

Sri.Veeranna Turamari who was the Additional Commissioner for Public Instruction, Dharwad was competent to issue sanction for prosecution of the accused. As the accused was an Assistant Director in Akshara Dasoha section of Taluk Panchayat, Kumta which is covered under the said notification whereby the Additional Commissioner for Public Instruction, Dharwad is notified as competent authority. Under the said notification the power is given to the Additional Commissioner for Public Instruction, Dharwad to impose any penalty on the accused who was Assistant Director (Non-Tutorial). Hence the contention of the accused counsel that the above said witness is not competent cannot be accepted.

10) So for as the prayer for direction to the IO to produce original agreement pertaining to supply of milk powder to this school is concerned. The same are not required for establishing the competency of the above witness to depose before the Court. It is an incidental aspect not required for establishing the competency of the above witness to depose before the Court. Hence, the contention on behalf of the accused that the IO should be directed to produce the original agreement and the order pertaining to supply of milk powder to the school is not required. Consequently, point No.1 is answered in Negative.

11) **Point No.2:** On the above findings, I proceed to pass the following:

:ORDER :

Application filed by the applicant/accused under Section 91 r/w 311 of Cr.P.C., seeking for direction to the Investigating Officer to produce the original agreement and the order to produce the milk powder to the school and the documents establishing the competency of Shri Veeranna Turamari before the Court before cross examining PW-1 to 3 is hereby rejected for the reasons discussed.

(Dictated to the Stenographer directly on computer, revised and corrected by me, signed and then pronounced in the Open Court on this the 28th Day of July-2023)

-