

KABI410019162022



**IN THE COURT OF THE PRINCIPAL CIVIL JUDGE & JMFC.,
HOSAPETE**

PRESENT

Sri. Prashanth Nagalapur,

B.B.A., LL.B.,

Principal Civil Judge & JMFC., Hosapete

Dated this the 23rd day of September, 2024

C.C.No.1041 of 2022

Complainant : State by PSI, Town Police Station, Hosapete

(By learned A.P.P.)

- V e r s u s -

Accused :

1. Kiran Kumar @ Chummi, son of Kappa, Aged 22 years, Labourer, R/o Gowlerahatti, near Vasavi School, 10th Ward, Hosapete, Vijayanagara District.
2. Nagaraja @ Gobi Naga son of Krishna Naik, Aged 35 years, Driver, R/o Kondanayakanahalli village, Hosapete taluk, Vijayanagara District.

(By Sri L.C.M., Advocate)

:: ORDER ::

The accused have filed this application under Section 239 of Code of Criminal Procedure seeking an order to discharge them for the offence punishable under Section 323, 504, 506, 354A, 354D R/w 34 of Indian Penal Code .

2. The accused have contended that there are no grounds to proceed against them going through the report filed by the police under Section 173 of Code of Criminal Procedure and the documents sent along with it. They have further contended that the first information report does not disclose complicity of the accused in commission of the offences. They have further contended that the complainant and the accused No.2 are not related to each other and therefore the very allegations made in the report that the accused have committed the offences is false. They have further contended that the police have filed charge sheet against the accused No.1 & 2 for the same offences before the Special Court i.e., Court of Hon'ble First Additional District and Sessions Judge, Ballari and therefore proceeding against them in the present case would amount to double jeopardy. They have alleged that the police have falsely implicated them in the present case. They have further contended that they will be

put to hardship if they are not discharged. Therefore, they have sought an order to allow the application.

3. The learned APP filed has filed his objection stating that the accused have committed the sexual offences against women. He has further contended that the material available on record disclose commission of offence by the accused. He has further contended that there are victims and eye witnesses, who would give evidence against the accused in the present case. He has further contended that the accused No.1 & 2 have committed heinous offences against women and facing prosecution for the offences under POCSO Act also. He has specifically contended that the accused cannot be discharged for the alleged offences. Therefore, he has sought an order to dismiss the application.

4. I have heard the counsel for accused Sri LCM Advocate and learned APP. I have perused the material available on record.

5. The following points arise for determination.

1) Whether the charges leveled against accused are groundless ?

2) What order?

6. My answer to the above points are as under:

Point No.1 : In the Negative,

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

:: REASONS ::

7. **Point No.1** :: The Investigating Officer has filed this charge sheet alleging that the accused have committed the offences punishable under Section 323, 504, 506, 354A, 354D read with 34 of Indian Penal Code. The first information statement was originally given by Smt. Hasangi Durgamma on 09.10.2021 in Cr. No.125/2021. The Investigating Officer has prepared two charge sheets in relation to the said crime. The other charge sheet is filed before the Special Court i.e., Court of Hon'ble First Additional District and Sessions Judge, Ballari for the offence punishable under Section 323, 506 of Indian Penal Code and Section 8, 11 & 12 of POCSO Act. The accused are contending that the allegations in both the cases are one and the same and therefore, prosecution of the accused in both the cases amounts to double jeopardy. In order to understand whether the allegations made in the charge sheet of this case and the allegations made in the charge sheet presented before the Hon'ble Special Court, I deem it proper to go through the charge sheet.

8. The column No.17 of the charge sheet discloses that the accused herein abused the CW 1 Durgamma and CW 4 Kanakamma in foul language on 16.08.2021 at 10.00 a.m. It further discloses that the accused No.1 & 2 abused the CW 1 and 4, outraged their modesty and

stalked them on 07.09.2021 at 10.00 a.m., near Basava Kaluve of Hosapete town. These two incidents are alleged to be connected to the charge sheet filed in the present case. It is pertinent to note that the Investigating Officer has put a note at the end of the column No.17 as under :-

“ ನೋಟ್:- ದಿನಾಂಕ 16/08/2021 ಮತ್ತು ದಿನಾಂಕ: 08/10/2021 ರ ಆರೋಪಣೆಗಳ ಬಗ್ಗೆ ಆರೋಪಿ-1 ಕಿರಣ್ ಕುಮಾರ್ @ ಚುಮ್ಮಿಮೇಲೆ ಕಲಂ: 323, 506 ಮತ್ತು ಕಲಂ: 8, 11, 12 ಪೋಕ್ಸೋ ಯಾಕ್ಟ ಅಡಿಯಲ್ಲಿ ಮಾನ್ಯ 1 ನೇ ಜಿಲ್ಲಾ ಸತ್ರ ನ್ಯಾಯಾಲಯದಲ್ಲಿ ಪ್ರತ್ಯೇಕವಾದ ದೋಷಾರೋಪಣೆ ಪತ್ರವನ್ನು ಸಲ್ಲಿಸಿಕೊಳ್ಳಲಾಗಿದೆ.”

9. The incidents dated 16.08.2021 and 08.10.2021 relate to commission of offences under Section 323, 506 of Indian Penal Code and Section 8, 11 & 12 of POCSO Act. The incidents of abusing the CW 1 & 4, outraging their modesty, stalking them are different from the allegations of commission of offences under POCSO Act. Another child of Hosapete town (name not disclosed for the purpose of confidentiality) is the victim in the case involving offences under POCSO Act. Therefore, the contention of the accused that proceeding against them in the present case amounts to double jeopardy cannot be accepted. If at all the incidents were same, allegations are same and the offences involved are the same, then the question of double jeopardy comes into play. When

the special case No.1391/2021, which is pending before the Court of Hon'ble First Additional District and Sessions Judge, Ballari is related to some other allegations and this case is related to allegations shown in the column No.17 of the charge sheet, the accused cannot contend that both the cases are one and the same.

10. Going through the contents of the column NO.17 of the charge sheet and the documents submitted along with it by the Investigating Officer, I am of the considered opinion that there are sufficient allegations made against the accused to constitute offences punishable under Section 323, 504, 506, 354A, 354D read with 34 of Indian Penal Code. The contention taken by the accused that they are falsely implicated in the case, they are the bread winners of the family, they will be put to hardship are all their defences in the present case. On these grounds the accused cannot be discharged. The material available on record is sufficient to hold that the charges leveled against the accused are not groundless. There is sufficient material to frame charge for the offence punishable under Section 323, 504, 506, 354A, 354D read with 34 of Indian Penal Code. The application filed by the accused is liable to be dismissed. Hence, I answer Point No.1 in the Negative.

11. **Point No.2** :: In view of the above discussion, I pass the following:

:: ORDER ::

The application filed by the accused No.1 & 2 under Section 239 of Code of Criminal Procedure is dismissed.

There is sufficient material to frame charge against the accused No.1 & 2 for the offence punishable under Section 323, 504, 506, 354A, 354D read with 34 of Indian Penal Code .

[Dictated to the stenographer directly to the computer, corrected by me and then, pronounced by me in the open Court this the 23rd **day of September, 2024**].

**[Sri. Prashanth Nagalapur]
Principal Civil Judge & JMFC.,
Hosapete.**