

KABI410046172022



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

PRESENT

SRI. PRASHANTH NAGALAPUR

B.B.A., LL.B (Hon's)

Principal Civil Judge & JMFC., HOSAPETE

Dated this the 09th day of January, 2025

C.C.No.2434/2022

Complainant : State by Police Inspector, Town Police Station, Hosapete

(By A.P.P.)

- Versus -

Applicants :

1. Naganna M.P., son of late Manohar, Aged 50 years, Commissioner, City Municipal Council Office, Hosapete.
2. Nagamma wife of Shivappa, Aged 39 years, Senior Programmer, City Municipal Council, Hosapete.
3. Bhargava son of K.Neelakantappa, Aged 29 years, Data Entry Operator, CMC Office, Hosapete.
4. Neelakantaswamy son of Gundappa, Aged 43 years, I/c Bill Collector, CMC, Hosapete.
5. Pampapathi Naik son of Shekhar Naik G.D., Aged 34 years, Chief Officer, TMC, Kurugodu. I/c R.O. CMC, Hosapete.
6. Anil Kumar son of Mahabali K, Aged 34 years, SDC, CMC Office, Hosapete.
7. Shyam Sundar Mohan Shastri son of Mohan Shastri, Aged 52 years, FDC, CMC Office, Hosapete.
8. Pampapathi son of Pedda Nagappa, Aged 39 years, I/c Bill Collector, CMC Office, Hosapete.

9. Venugopal D son of D.Hanumanthappa, Aged 51 years, Social Worker, R/o 6th Ward, Ranipet, Hosapete.
10. Mallappa K son of K.Kumar, Aged 61 years, Social Worker, R/o Kanchigarapet, Hosapete.
11. Mohammed Hanif D son of Mabusab, Aged 41 years, R/o Srisinakallu area, Hosapete.
12. Mallikarjuna N son of Rudreshappa, Aged 38 years, Social Worker, R/o Srisinakallu area, Hosapete.
13. Mariankaleppa son of Gollar Ankalappa, Aged 48 years, Farmer, R/o Sirisinkallu area, Hosapete.

(By Sri T.R., Advocate for Accused No.1, 7 & 8)

(By Sri K.Y.S., Advocate for Accused No.10)

(By Sri H.R., Advocate for Accused No.2,4,5,6 & 9)

(By Sri A.B., Advocate for Accused No.3,11)

(By Sri K.Y., Advocate for Accused No.12 & 13)

(Accused No.6 - Dead)

ORDER

1. The applicants herein have filed separate applications seeking an order to rectify the order issuing summons to accused No.1 to 13 as accused No.1 to 4 by invoking Section 362 of Cr.P.C.
2. Since the contents of all the applications are one and the same, the learned APP has filed common objection to all the applications. For the purpose of convenience and to avoid repetition of facts, these applications are taken up together for discussion.
3. The applicants have contended that this court has taken cognizance of the offences under Section 408, 409, 420, 468, 471, 120-B of IPC against the accused No.1 to 4 vide its order dated 21.09.2022 upon

considering the report filed by the police. They have further contended that the cognizance of the aforesaid offences was not taken against the accused No.5 to 13 as per the said order. They have further contended that at the time of issuing summons there has been typographical error and summons has been issued to accused No.1 to 13 instead of accused No.1 to 4. They have further contended that this court has got power to make correction of the said typographical error so far as order issuing summons to accused No. 5 to 13. They have also cited the decision of the Hon'ble Supreme Court of India in ***Ganesh Patel versus Umakanth Rajoria***¹, which emphasises on law relating to procedural review. They have also contended that they are innocent and their names do not find place in the FIR and there is no case made out against them. They have also contended that at the time of taking cognizance they have been excluded from criminal proceedings. Therefore, they have sought an order to review of the said order and make correction in respect of issuance of process as against the accused No.5 to 13.

4. The learned APP has filed objection to all the applications. He has narrated five incidents which led to the investigation and filing of the chargesheet as against all the accused. He has contended that there are specific allegations made against each of the accused in the chargesheet. He has further stated that there have been statements recorded and panchanama drawn in relation to commission of offence. He has further contended that it requires trial to determine whether the allegations are true or not. He has further contended that there has been error in mentioning the ranks of the accused at the time of

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taking cognizance of the offences which is sheer accidental slip. Therefore, he has sought an order to reject the applications filed by the applicants.

5. I have heard the Sri HR Advocate, Sri TR Advocate, Sri KYS Advocate and Sri AB Advocate for applicants and learned APP. I have perused the charge sheet and other material available on record.

6. The following points arise for determination.

1) Whether the order issuing summons to accused No.1 to 13 is a clerical or arithmetical error ?

2) Whether the said order can be reviewed ?

3) What Order ?

7. My answers to the above points are as under :-

Point No.1 .. In the Negative

Point No.2 . In the Negative

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

REASONS

8. **POINT No.1** :- The applicants have contended that this Court has issued summons to them as outcome of an erroneous order. The applicants are seeking the review of order dated 21.09.2022 for making corrections. The applicants have contended that the cognizance of the offence was taken only against the accused No.1 to 4 and therefore, the summons ought to have been issued only against the accused No.5 to 13. They have contended that there has been arithmetic error in passing the said order. The learned APP has

contended that the accused No.1 to 13 have been charge sheeted in the present case and therefore, issuance of summons to all the accused is justified. He has contended that there has been no arithmetical or clerical error in passing the said order.

- 9.** In order to understand whether there has been any error in passing the order, it is necessary to extract the said order. The order dated 21.09.2022 reads as under :-

Case is taken on board. Perused the charge sheet materials documents on record, there are prima facie materials against the accused No.1 to 4 for taking cognizance exercising power conferred under Section 190(1)(b) of Code of Criminal Procedure cognizance is taken for the offence punishable under Section 120B, 408, 409, 468, 471, 420, 114 R/w 34 of IPC.

Hence, office is directed to register the criminal case against the Accused No.1 to 4 in Register No.III. Issue summons to A1 to 13.

Call on 23.12.2022.

Sd/- 21/9/22
Pr.C.J., & JMFC.,
Hosapete.

- 10.** It is glaringly conspicuous that the Court has issued summons to accused No.1 to 13 after going through the contents of the charge sheet filed by the police. Such being the case, it is very much necessary to see whether names of the accused No.5 to 13 are appearing in column No.12 of the charge sheet or not. The column No.12 of the gives details of the accused against whom charges are

leveled by the police. In the present case the following names are appearing in column No.12 of the charge sheet :-

- 1) Naganna M.P. son of late Manohar
- 2) Nagamma wife of Shivappa,
- 3) Bhargava son of K.Neelakantappa,
- 4) Neelakantaswamy son of Gundappa,
- 5) Pampapathi Naik son of Shekar Naik G.D.,
- 6) Anil Kumar son of Mahabali K,
- 7) Shamsundar Mohan Shasthri son of Mohan Shasthri,
- 8) Pampapathi son of Pedda Nagappa,
- 9) Venugopal D son of D.Hanumanthappa,
- 10) Mallappa K son of K.Kumar,
- 11) Mohammad Hanif son of Mabu Sab,
- 12) Mallikarjuna N son of Rudreshappa,
- 13) Mariyankalappa son of Gollar Ankalappa,

11. The contents of the column No.12 of the charge sheet clearly disclose that the accused No.1 to 13 have been named as offenders. The column No.13 of the charge sheet does not disclose any person's name in it, which implies that no person has been non-charge sheeted in the present case. That apart, the column No.17 of the charge sheet discloses commission of offences by the accused No.1 to 13. This being the case, this Court could not have made any mistakes in issuing summons to all the accused.

12. When the names of accused No.1 to 13 are appearing in the charge sheet and specific allegations are made against them, the

contention of the applicants that the summons has been issued against them as outcome of an arithmetical error is not sustainable. As rightly pointed out by the learned APP, there has been accidental slip while passing the order dated 21.09.2022. The accused No.5 to 13 cannot contend that the said order has caused injustice to them as their names find place in the charge sheet. The contention of the applicants that there has been violation of their rights guaranteed under Article 21 of the Constitution of India cannot be sustained in the facts and circumstances. In my considered opinion, no prejudice has been caused to the accused and the said order has not resulted in miscarriage of justice. Therefore, the claim of the applicants that there has been error in issuance of summons as against them in the order dated 21.09.2022 cannot be sustained. **Hence, I answer Point No.1 in the Negative.**

- 13. POINT No.2 :-** The applicants have contended that this Court can review its order dated 21.09.2022 in order to make necessary corrections. In order to understand the scope of review as provided under Section 362 of Code of Criminal Procedure, it is necessary to go through the said provision. Section 362 of Code of Criminal Procedure reads as under :-

362. Court not to alter judgment.

- Save as otherwise provided by this Code or by any other law for the time being in force, no Court, when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error.

- 14.** Bare reading of the above provision makes it clear that this Court cannot alter or review its judgment or final order, except to correct a clerical or arithmetical error. In the present case, I have already given my findings that there has been no clerical or arithmetical error while issuing summons to the accused No.1 to 13. Such being the case, the question of invoking provisions under Section 362 of Code of Criminal Procedure does not arise at all.
- 15.** The counsel for applicants placed their reliance on the decision of the Hon'ble Supreme Court of India in ***Ganesh Patel versus Umakanth Rajoria*** and argued that the Section 362 of Code of Criminal Procedure would be attracted in the present case as the review sought under the application is a procedural review. I have gone through the decision of the Hon'ble Supreme Court. In the said case, there was an application seeking procedural review of an ex parte judgment dated 13.10.2017. The Hon'ble Supreme Court has held the application was maintainable as the judgment or final order was called in question. In the present case, the order dated 21.09.2022 was not a final order disposing of a case. Therefore, the ratio laid down by the Hon'ble Supreme Court in Ganesh Patel cannot be made applicable to the case on hand.
- 16.** The counsel for applicants has relied on the decision of the Hon'ble Supreme Court of India in ***Grindlays Bank Limited versus Central Government Industrial Tribunal and others***² and argued that the present application seeking procedural review of the order is maintainable. The Hon'ble Supreme Court was dealing with the

2 1980 Supp SCC 420

Section 11 of Industrial Disputes Act 1956 in the said case. The ratio laid down in the said case was in respect of expression "review" used in Section 11 of the said Act. The ratio laid down by the Hon'ble Supreme Court of India cannot be made applicable to the case on hand as the present application is filed under Section 362 of Code of Criminal Procedure. When there is no clerical or arithmetical error in order issuing summons to the accused No.1 to 13 as per the findings given by me, I do not see any reason to review the said order.

17. The accused No.5 to 13 have failed to explain how the issuance of summons was outcome of an erroneous order. It is well settled law that cognizance of offence is taken, not an offender. The Hon'ble Supreme Court of India has reiterated the said ratio in ***Sonu Gupta versus Deepak Gupta***³. Applying the settled principle of law and the law laid down by the Hon'ble Supreme Court, I am of the considered opinion that in the present case the cognizance of the offences punishable under Section 408, 409, 420, 468, 471, 120-B of IPC was taken and summons were issued against all the accused shown in the charge sheet. Therefore, I do not see any grounds made out to review order dated 21.09.2022. **Hence, I answer Point No.2 in the Negative.**

18. POINT No.3 :- In view of the foregoing reasons, I proceed to pass the following :

³ (2015) 3 SCC 424

ORDER

The applications filed by the applicants/accused under Section 362 of Code of Criminal Procedure are rejected.

[Dictated to the stenographer directly on the computer, corrected by me in computer, and then, pronounced by me in the open Court this the 09th day of January, 2025]

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