

**IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS,
AT KUDLIGI**

PRESENT: SMT. SHANTAMMA MALLIKARJUNAGOUDA.P

B.A. LL.B.

JUDICIAL MAGISTRATE FIRST CLASS, KUDLIGI

DATED THIS 18TH DAY OF DECEMBER, 2018

CRIMINAL CASE NO. 186/2016

Between:-

COMPLAINANT:-

State of Karnataka represented by Police Sub Inspector,
Hosahalli police station.

(By learned **Asst. Public Prosecutor**)

// Vs. //

ACCUSED No.4 :-

H. Galeppa S/o H. Mylappa, aged about 51 years,
Forest Guard, R/o Chirabi village, Kudligi Taluk, Ballari
District

(By **Sri. A.R.** Advocate, Kudligi)

**ORDER ON APPLICATION U/s: 239 OF Cr.P.C. FILED
ON BEHAOF OF THE ACCUSED No.4**

The accused No.4 has filed this application for discharge
in this case. It is his contention that, he has been falsely
charge sheeted for the alleged offences punishable U/Sec.

420, 468, 409 and 471 of IPC. There are no materials against the accused No.4 to show that he has committed any offences alleged by the prosecution police.

02. The accused No.4 is a peace loving and law abiding citizen, he has not committed any offence much less than the offences alleged against him in the above case. Accused No.4 is a Government servant working in Forest Department as Forest Guard in Chiribi Village, Kudligi Taluk. The respondent police have complained of and official duty of accused No.4/petitioner without reasonable connection between act of petitioner and filed charge sheet against the petitioner / accused No.4 for the alleged offences and alleged committed the above said offences while acting or purporting to act in the discharge of his official duty. The Hosahalli police before filing charge sheet against the petitioner / accused No.4 shall comply with the section 197 of Code of Criminal Procedure. According to section 197 of Code of Criminal Procedure no court shall take cognizance of such offence except the previous sanction by the State Government, it means the appropriate competent authority have to give sanction to prosecute the petitioner. There is no such previous sanction to take the cognizance against the petitioner / accused No.4, as such on this count alone the accused No.4 may be discharged from the above said charges made against him as there is no ground to frame the charge against this petitioner. It is the case of the prosecution that

as per the directions given by Chief Secretary, Zilla Panchayath, Ballari to set the criminal law into motion against the petitioner on the basis of Chief Planning Officer, Zilla Panchayath, Ballari and the Nodal Officer by name Chandrashekar Gudi submitted a report on the basis of physical enquiry and spot inspection came to know the illegal misappropriation done by the officials, MGNREG scheme in the year 2010-11 on 15.03.2013.

03. The prosecution without mentioning the names of the officials in the FIR got registered by complainant, so prosecution ab intio, prima-facie case not made out at the time of FIR and after fore-thought existence of design has manipulated against the petitioner to criminate him in a criminal case to depress his official work to demote from the present position of the petitioner. Further in the charge sheet and the report submitted by the Nodal Officer and Planning Officer in their report nowhere mentioned that, the petitioner / accused No.4 has committed criminal breach of trust and cheated the Government and misused the public money by violating rules and regulations and failed to discharge the official duty what he ought to do as per the proposal work. Further the petitioner / accused No.4 being the Forest Guard have to estimate the work i.e, Cattle Proof Trench (CPT) to avoid cattle trespass in the reserve forest and that work have to done by the coolie workers, and the payments was made by the concerned Secretary and PDO of Gramapanchayat to the

coolies to direct to their bank accounts after passing resolution in the said Gramapanchayat and payment was not made by the petitioner. Hence, the question of misappropriation, criminal breach of trust and question of cheating does not arise. Further the allegations made in the report submitted by the Planning Officer and Nodal Officer is that, criminal breach of trust, misappropriation and cheating done in the road work, provided the petitioner is not deputed to any road work in the reserve forest, hence the charges made against the petitioner / accused No.4 are groundless as petitioner / accused No.4 carried out only Cattle Proof Trench i.e. (CPT), the Gramapanchayat had made payments to the coolie workers through direct account and payment did not made by the petitioner / accused No.4. Further as per the report submitted by Planning Officer, Zilla Panchayath to the Chief Executive Officer, Zilla Panchayath dated 22.01.2013 in Sl. No.2 and mentioned that, the road work carried out from the land of Cheluvadi Kenchappa to the road of Sooladahalli Village, of CPT work for the year 2009-10 under MGNRGA scheme and payment made thereon Rs. 2,99,300/- towards labour payment and towards payment of instruments, total Rs. 1,99,200/- and further clearly mentioned regarding misappropriation that there is no evidence to show, as per the work order to be carried out and in enquiry conducted by the Chief Planning Officer, Zilla Panchayath, Ballari and as per the say of vicinity people there is no work done by them

under the proposal of MGNREG. As per that report no work proposal by the Government to do in the reserve forest, but the petitioner did the work of CPT, but not the road work. And report submitted by concerned authority on 22.01.2013 whereas the CPT work done by the petitioner in the year 2009 after lapse of 4 years, hence there is no documents to show that petitioner / accused No.4 committed the offences as alleged in the charge sheet. Hence, prays to discharge the accused No.4 in the above case by allowing the application.

04. The prosecution has filed objection to this application and contended that, the Hosahalli police have filed charge sheet against the accused persons for the offences punishable under section 420, 468, 409, 471 of Indian Penal Code. The case is posted for framing of charge on previous dates of hearing meanwhile accused No.4 has filed this present application for discharge. Further the accused No.4 is a Government servant working in forest department as forest guard of Kudligi Taluk and during the course of his employment the above said offences has been committed by the accused No.4. The accused No.4 has committed above said offences during the course of his employment and misused the public money with intent to cheat and criminal breach of trust and there is sufficient evidence against the accused persons. Hence, need not to get sanction by the Government as per section 197 of Code of

Criminal Procedure. Further there is a name has been mentioned in the FIR and some other independent witnesses also given statement before Investigation officer regarding commission of his offence. Further the accused No.4 did not made out prima-facie case at this juncture to show that there is no sufficient ground to frame the charge, on the other hand there is sufficient ground to concrete proof against the accused No.4 for commission of his offence. Hence, prays to dismiss the application of the accused No.4 in the interests of justice.

05. Heard the arguments and perused the written arguments filed by learned Counsel for the accused No.4 and perused the records.

06. The following points arise for my consideration is as follows:

1. Whether there are sufficient grounds made out by the accused No.4 for his discharge?
2. What order?

07. My answer to the above points are as follows:-

Point No.1: - In the Affirmative

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

REASONS

08. **Point No.1:** - The case of prosecution is that, in between 01.01.2009 to 30.12.2011 i.e, for the period 2010-11 within the limits of Hosahalli police station, near Mangapura village within the limits of Nimbhalagere Gramapanchayat, near the land of CW-11, in Mangapura forest there exists a small Gokatte and it has been again under the working scheme converted as a construction of Gokatte under the Center Rural Employment Scheme in order to increase the height of the said Gokatte. Under the said scheme accused No.1 to 3 have undertaken rebuilt of said Gokatte without using the employees i.e. coolie workers accused No.1 to 3 have used the machinery JCB and increased the height of the Gokatte in the middle 16 feet with mud and both sides 6 feet height with mud and increased the height of the said Gokatte about 145 meters. But the accused No.1 to 3 have not at all used stone construction only by using mud they increased the height of the said Gokatte and they have given false information to the Government and claimed Rs. 1,62,000/- being coolie wages and Rs. 1,69,975/- being material costs and totally Rs. 4,99,220/- and created false documents and misappropriate the said Government amount and cheated the Government.

09. The accused No.4 to 6 have undertaken the CPT road formation from land of CW-11 upto Suladahalli road

under the said scheme and formed the road and claimed Rs. 1,69,975/- being wages paid to coolie workers and Rs. 98,560/- being purchase of materials, totally Rs. 2,68,535/- has been granted. Both the said works has been not completed with the help of coolie workers, the accused persons have created documents stating that the said work undertake through coolie workers, but accused have completed the work by using JCB machinery by creating false documents they have misappropriated the Government amount and thereby cheated the Government. On the basis of report submitted by the Chief Engineer, Zilla Panchayath and Taluka Nodal Officer, Chandrashekar Gudi that the accused have misused the fund allotted under Center Rural Employment Scheme for the year 2010-11 to the village of Nimbalegere. Thereby accused No.1 to 6 have committed the offences punishable under section 420, 468, 409 and 471 of Indian Penal Code.

10. The learned Counsel for the accused No.4 has relied upon a judgement of Hon'ble Supreme Court of India in Criminal Appeal No. 1590-1591 of 2013 in between Anil Kumar and others Vs. M.K. Aiyappa and another wherein it is held as under :

“Thus in view of the above, the law on the issue of sanction can be summarized to the effect that the question of sanction is of paramount importance for protecting a public servant who has acted in good faith while performing his duty. In order that the

public servant may not be unnecessarily harassed on complaint of an unscrupulous person, it is obligatory on the part of the executive authority to protect him if the law requires sanction, and the court proceeds against a public servant without sanction, the public servant has a right to raise the issue of jurisdiction as the entire action may be rendered void ab-initio.

11. On perusal of the records and materials on record discloses that, I.O. of Hosahalli police station has filed the charge sheet after completion of investigation. In the charge sheet it is clearly mentioned that “ ಆರೋಪಿ 4, 5, 6 ರವರು ಸೇರಿಕೊಂಡು ರಸ್ತೆ ಕಾಮಗಾರಿಗೆ ಕೆಲಸವನ್ನು ಉದ್ಯೋಗ ಖಾತ್ರಿಯಡಿಯಲ್ಲಿ ಮಾಡಿಸಿದ್ದು” In the FIR also it is mentioned that “ಅರಣ್ಯ ಇಲಾಖೆಯ ಎ4 ರವರು ಬಿಲ್ಲು ನೀಡಿದ್ದು ನೋಡಲ್ ಅಧಿಕಾರಿಗಳು ಸ್ಥಳ ಪರಿಶೀಲಿಸಿದಾಗ ಅಲ್ಲಿ ಗ್ರಾಮಸ್ಥರು ಜೆಸಿಬಿ ಯಂತದಿಂದ ಕಾಮಗಾರಿಯನ್ನು ಮಾಡಿರುತ್ತಾರೆಂದು ತಿಳಿಸಿದ್ದು ಈ ಬಗ್ಗೆ ಎ4 ರವರು ಮಾರ್ಗಸೂಚಿ ಉಲ್ಲಂಘನೆ ಮಾಡಿದ್ದು”. This court perused the estimation for excavation of CPT under NREGS during 2009-10 prepared by accused No.4. produced by the prosecution. A perusal of the same which clearly goes to show that accused No.4 prepared the estimation for Rs. 5,00,000/- during period 2009-10. As per the prosecution the said offences are committed period 2010-11 in Mangapura forest there exists a small Gokatte and it has been again under the working scheme converted as a construction of Gokatte under the Center Rural Employment Scheme in order to increase the height of the said Gokatte. Under the said scheme accused

No.1 to 3 have undertaken rebuilt of said Gokatte without using the employees i.e. coolie workers accused No.1 to 3 have used the machinery JCB and increased the height of the Gokatte in the middle 16 feet with mud and both sides 6 feet height with mud and increased the height of the said Gokatte about 145 meters. But the accused No.1 to 3 have not at all used stone construction only by using mud they increased the height of the said Gokatte and they have given false information to the Government and claimed Rs. 1,62,000/- being coolie wages and Rs. 1,69,975/- being material costs and totally Rs. 4,99,220/- and created false documents and misappropriate the said Government amount and cheated the Government. The prosecution has not alleged the estimation is false document and misappropriates the government. Hence the Accused No.4 is not committed under the alleged offences. Moreover the Accused No.4 is the public servant, he has prepared the estimation for excavation of CPT under NREGS during 2009-10. He has prepared the estimation as on his duty, so the prosecution have to sanction letter before concern authority. The prosecution failed to the same, the above produced citation by the petitioner is relevant to the facts and circumstance of the present case, Hence the Accused No.4 have made out ground to allow the application, Hence Point No.1 is hereby affirmative.

12. **Point No.2** :- In view of my findings on Point No.1, I proceed to pass the following:

ORDER

Application filed by the accused
U/s 239 of Cr.P.C. is hereby allowed.

Accused No.4 is hereby
discharged the present case.

(Dictated to the Stenographer directly on the computer, typed by him, corrected by me and then pronounced in the open court on this **18th day of December 2018.**)

(Smt. Shantamma Mallikarjunagouda.P)
Judicial Magistrate First Class Kudligi

(Order pronounced in the open court
vide separate judgment)

:- O R D E R :-

Application filed by the accused
U/s 239 of Cr.P.C. is hereby allowed.

Accused No.4 is hereby
discharged the present case.

**Judicial Magistrate First Class
Kudligi**