

KAVP500008572018



Presented on : 25-09-2018
Registered on : 25-09-2018
Decided on : --
Duration :

**IN THE COURT OF ADDL. SR. CIVIL JUDGE & J.M.F.C.,
SINDAGI, AT: SINDAGI**

Present: Mr. PRASAD.K.B,
B.A.(Law); LL.B;PGDPM&IR,

Addl. Sr. Civil Judge & JMFC,
Sindagi.

Dated this the 28th day of December-2021

Criminal Case No.374/2018

(CR. No.11/2014)

Complainant: The State – by Kalakeri P.S.
(Learned APP)

- Versus -

Accused: Padmaraj S/o Nagendra Tanga,
Age: 38 years, Occ: Agriculture & Doctor,
R/o: Tamba, Tq: Indi.

(Sri H.J.C., Advocate)

**ORDER ON APPLICATION FILED BY THE ACCUSED
U/SEC. 239 OF CR.P.C.**

IN terms of the application the accused sought to discharge him from prosecution contending that, the Police attached to Kalakeri Police Station registered the case in Crime No.11/2014 alleging the offences punishable U/Secs. 465, 468, 471, 420, 201 of I.P.C and R/w Section 19 of K.P.M.E.Act and Section 34 and 38 of K.A.U.P. Act on the basis of complaint lodged by the complainant-DHO, Vijayapura. He said to have submitted an application on 13-2-2014 to register his hospital under K.P.M.E.Act being the doctor with BAMS degree at Golageri on 19-2-2014. On verification of the application along with the documents so furnished by him they were created. Upon necessary enquiry with Bhadravati college pertaining to the documents so issued it is noticed that they were created and as such the complainant issued a notice on 18-2-2014 not to commence the hospital.

2. HE sought to discharge from prosecution on the ground that, the documents submitted along with final report do not belong to him. During the course of investigation the

accused claimed and contended that he completed his BAMS (TM) Course at Maharashtra and was ready and willing to furnish those documents. The investigating officer has not verified the documents in proper manner. Investigation is not properly done. He has not collected necessary documents only to support the allegation directed against him. The statements of the witnesses recorded are contradictory to each other and also suffer from improvements no evidence available to proceed against the accused on the final report filed. He has been falsely implicated into the case through concocted documents on account of personal vengeance of some claimed to be the members of Karnataka Rakshana Vedike. The documents furnished by the accused have not been verified by obtaining necessary report from FSL and thus, the offences U/Sec. 420, 465 and 468 of IPC are not attracted. There is no evidence of impersonation. No medical equipments were seized by the investigating officer during the course of investigation.

3. Therefore, in the absence of any specific allegations directed against the accused the charges are groundless,

therefore, sought to discharge the above accused.

4. THE prosecution resisted the application inter alia contending that the application is false, meritless and groundless to discharge the accused as claimed. According to the prosecution the law is set into motion in terms of the First Information lodged by the complainant – District Health and Family Welfare Officer, Vijayapura. After investigation the investigating officer-CW-24 filed final report along with documents collected during with investigation and the statements of the witnesses. The cognizance for the said offences were taken by this court. Section 239 of Cr.P.c. provides that, the accused shall be discharged were the charges made against him are groundless and not for any other reasons. The materials produced along with final report evidence that the accused started a hospital representing as doctor in such capacity on the strength of forged documents and cheated the public thus, the materials produced along with final report prima facie the evidence the commission of the alleged offences. There are sufficient materials produced by the prosecution to go for trial. It is also contended that, the materials collected and

secured through investigation disclose grave suspicion against the accused that would be sufficient enough to proceed to frame the charge and thus, the application being meritless sought to dismiss it.

5. HEARD on application. Perused the materials on record.

6. WHETHER the accused has made out grounds to discharge him from prosecution is the point that arises for consideration of this Court.

7. THE answer to the above point is in Negative; for the reasons below;

REASONS

8. **POINT NO.1:** THIS case emanates from the Final Report filed by the Investigating Officer/The Sub-Inspector of Police – Kalakeri Police Station, against the accused in Crime No.11/2014 for the commission of the alleged offences

punishable U/Secs. 465, 468, 471, 420, 201 of I.P.C and R/w Section 19 of K.P.M.E.Act and Section 34 and 38 of K.A.U.P. Act.

9. NARRATING the facts which culminated into the offences alleged, the complainant Dr. Gundappa-DHO & Family Welfare Officer, Vijayapura lodged first information alleging that, on 13-2-2014 the accused said to have given representation to commence hospital at Golageri on 19-2-2014 claiming that he is the doctor with BAMS Degree issued by Bhadravati Medical College and such other documents concerning his qualification. However, on verification noticed that they were concocted and as such issued notice on 18-2-2014 not to commence the hospital and as such sought to taken necessary action against him.

10. The investigating officer laid final report alongn with the statement of witnesses, scene mahazar and also the documents issued by the concerned medical colleges. The materials also indicate that the registration number regarding

his professional degree so furnished relate to Dr. Deepa D/o Shivanand Hallakeri of Belgaon. Further the letter regarding verification of the documents issued by Rajiv Gandhi University of Health Sciences, Bengaluru dated 22-8-2014 indicate that, the documents furnished are found to be fake and forged. With these allegations, the final report is relied for the offences stated supra against the accused.

11. THE accused sought to discharge him on the ground that, the documents submitted along with final report do not belong to him. During the course of investigation the accused claimed and contended that he completed his BAMS (TM) Course at Maharashtra and was ready and willing to furnish those documents. The investigating officer has not verified the documents in proper manner. Investigation is not properly done. He has not collected necessary documents only to support the allegation directed against him. The statements of the witnesses recorded are contradictory to each other and also suffer from improvements no evidence available to proceed against the accused on the final report filed. He has been falsely

implicated into the case through concocted documents on account of personal vengeance of some claimed to be the members of Karnataka Rakshana Vedike. The documents furnished by the accused have not been verified by obtaining necessary report from FSL and thus, the offences U/Sec. 420, 465 and 468 of IPC are not attracted.

12. IN a case Tulasiram Vs. State (2015(4) KCCR page 2878) it is held that if the materials relied upon by the accused which are in the nature of public documents or materials which are beyond suspicion or doubt, the trial Court cannot refuse to take a look at the uncontroverted facts and therefore, the trial Court be directed to consider the prayer of the petitioner for discharge. Further, relied the decision to contend that, there may be circumstances where the defence material would convince the Court that the prosecution witnesses is talk to be preserve preposterous and concocted, unless such rare and exceptional cases, the defence could be permitted to place the materials.

13. THE Hon'ble Supreme Court in a case P Vijayan Vs. State of Kerala and another (2010 Criminal Law Journal 1427) held that, the Court empowers to discharge the accused if two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion.

14. IN terms of Sec. 239 of Cr.P.C. this Court can resort to discharge all the accused where the allegations directed are groundless, without any basis or foundation and there is absence of strong suspicion against the accused. The obligation to discharge the accused u/Sec. 239 of Cr.P.C. arises when the Magistrate considers the charge against the accused to be groundless and as such no detailed evaluation of the materials or meticulous consideration of possible defences need be undertaken at this stage. This Court has to decide the same after considering the Police Report, documents sent along with it u/Sec. 173 of Cr.P.C.

15. THE accused seek his discharge on the ground that, he obtained degree in BAMS from Maharashtra. Further he

claims that there are documents produced along with memo to prove the said fact. His documents were not considered by the I.O. during the investigation. There are no equipments seized from his hospital regarding his practice as doctor at the given point of time. However, on perusal of the materials placed on record along with the statement of the witnesses it prima facie indicate the commission of offence to go for trial and suspicion is made out against the accused. The documents furnished along with the final report to be appreciated at this stage. The statements recorded u/Sec. 161 of Cr.P.C., of the witnesses also prima facie indicate the participation of the accused into the commission of the alleged offences directed against him. Thus, the materials on record forwarded to this Court along with Sec. 173 of Cr.P.C. indicate that, there are materials to proceed against the accused. Therefore, no grounds are made out by the accused to discharge him for the offence stated supra. Hence, the point under consideration is answered in negative.

16. IN view of the praefatus reasons and in the result, the following;

ORDER

THE application filed by the accused U/Sec.
239 of Cr.P.C. is hereby dismissed.

(Dictated to the Stenographer directly, corrected, signed by me and then pronounced in the open Court on this the: **28th day of December -2021.**)

(Mr. Prasad K.B.)
Addl. Sr. Civil Judge & JMFC,
Sindagi.

Gpk/*

