

Devaraj Nayak vs the State of Karnataka

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Court : Karnataka Kalaburagi

Decided On : Apr-25-2024

Judge : Hemant Chandangoudar

Appeal No. : CRL.P/200125/2024

Appellant : Devaraj Nayak

Respondent : The State of Karnataka

Judgement :

-1- IN THE HIGH COURT OF KARNATAKA, KALABURAGI BENCH DATED THIS THE 25TH DAY OF APRIL, 2024 BEFORE THE HON'BLE MR. JUSTICE HEMANT CHANDANGOUDAR CRIMINAL PETITION NO. 200125 OF 2024 (482) BETWEEN:

1. DEVARAJ NAYAK S/O LATE LAXMAN NAYAK, AGED ABOUT 47 YEARS, RESIDENCE OF: ULLESUGUR TANDA, DISTRICT YADGIRI-585355.

2. PRIYANKA NAYAK S/O LATE LAXMAN NAYAK, AGED ABOUT 32 YEARS, RESIDENCE O: ULLESUGUR TANDA, DISTRICT: YADGIRI-585355.

3. RAVI

S/O DHANASING, AGED ABOUT 28 YEARS, Digitally signed OCCUPATION: BUSINESS, by R RESIDENCE OF:ULLESUGUR TANDA, HEMALATHA Location: HIGH TALUK: WADAGERA, COURT OF DISTRIC: YADGIRI, KARNATAKA NOW AT H.NO.112/2, LAXMI NAGAR, YADGIRI, DISTRICT: YADGIRI-585355.

4. PAPU @ LAXMAN S/O DHANASING, AGED ABOUT 30 YEARS, OCCUPATION : AGRICULTURE, RESIDENCE OF : ULLESUGUR TANDA, TALUKA WADAGERA, DISTRICT: YADGIRI-585 355.

5. CHANNAPPA S/O DEVAJI, AGED ABOUT 48 YEARS, -2- RESIDENCE OF : ULLESUGUR TANDA, DISTRICT: YADGIRI-585355. PETITIONERS (BY SRI. PRAKASH YELI, ADVOCATE) AND:

1. THE STATE OF KARNATAKA, THROUGH, WADAGERA POLICE STATION, REPRESENTED BY ADDL. SPP, HIGH COURT OF KARNATAKA, KALABURAGI BENCH, DISTRICT: KALABURAGI-585103.

2. RAVI PATIL S/O LATE SANGANAGOUDA MALIPATIL, AGED ABOUT 38 YEARS, OCCUPATIO: AGRICULTURE, RESIDENCE OF: HORATUR VILLAGE, DISTRICT: YADGIRI. RESPONDENTS (BY SRI. F.M. INAMDAR, HCGP FOR R1; V/O DATED 25.04.2024, NOTICE TO R2 IS D/W) THIS CRL.P. IS FILED U/S. 482 OF CR.P.C. PRAYING TO CALL FOR

THE RECORDS, ALLOW THE ABOVE CRIMINAL PETITION AND QUASH THE ENTIRE PROCEEDINGS IN CRIME NO.21/2021, WADIGERA P.S, DISTRICT YADAGIRI NOW PENDING ON THE FILE OF DISTRICT AND SESSIONS JUDGE AT YADGIRI IN SC NO.35/2022 IN SO FAR AS PETITIONERS ARE CONCERNED, REGISTERED FOR THE OFFENCES PUNISHABLE UNDER SECTION 143, 147, 148, 341, 323, 324, 326, 307, 308, 504, 427, 506, R/W 149 OF IPC.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

Petitioners -accused Nos.2, 4 to 7 who are prosecuted for the offences punishable under Sections, 143, 147, 148, 341, 323, 324, 326, 307, 308, 504, 427, 506 r/w 149 of IPC are before this Court. -3-

2. Heard the learned counsel for the petitioners and learned HCGP for the respondent-State.

3. The FIR was lodged by the 2nd respondent on 5.2.2021 alleging that the petitioners along with other accused pelted stones on C.W.1, and others due to which they sustained injuries.

4. Accused Nos. 3, 8,10 to 26 and accused Nos.36 to 50 had

approached this Court in CrI.P.No.201141/2023 and CrI.P.No.200349/2023, and this Court vide order dated 10.01.2024 and 7.06.2023 respectively quashed the impugned proceedings insofar it relates to the petitioners-accused therein for the following reason mentioned at para 8 which reads thus:

"8 The FIR was lodged by the respondent No.2 on 05.02.2021. The Police, during the course of investigation, recorded the statement of CW.1 and others on 07.08.2021 i.e., after the lapse of six months from the date of the alleged incident. In the said statements the witnesses have made general allegations that the petitioners-accused herein along with the other accused participated in the crime and pelted stones on the injured witnesses.

5. Hon'ble Supreme Court in the case of Muthu Naicker and

others -vs- State of Tamil Nadu, (1978) 4 SCC 385, has ruled that, "whenever in uneventful rural society something unusual occurs, more so where the local community is faction-ridden and a fight occurs amongst factions, a good number of people appear on the scene not with a view to participating the occurrence but as curious spectators. In such an event mere presence in the unlawful assembly should not be treated as leading to the conclusion that the person concerned was present in the unlawful assembly as a member of the unlawful assembly.

6. The issue involved in this petition was examined by the coordinate bench of this Court in Crl.P.No.3916/2018, wherein, at para nos. 8 and 9 it has held as follows:

"8. On perusal of records, it is the case of the prosecution that the petitioners/accused Nos.1 to 48 have assembled and were protesting against interference and dress code imposed by AIIMS exam and also have not obtained any permission from the concerned Authorities. But as could be seen from the Licensing and Controlling of Assemblies and Public Processions (Bangalore City) Order, 2009 assembly means a congregation of more than 250 persons assembling at one place with an intention of conducting meeting or protest, to hear a public speech including political, social, religious and cultural meetings to which the public have got free access, license is required only when more than 250 persons are there. Admittedly in the instant case, the contents of the complaint and other materials indicates that only 50 persons have assembled. In that light, a license said to have been is not necessary as per the Order of 2009. The only question which remains for consideration of this Court is that whether the assembly of petitioners/accused Nos.1 to 48 had constituted an unlawful assembly as per Section 141 of IPC? In order to attract the said provision, the assembly must satisfy five ingredients which have been stated therein but on close reading of the contents of the complaint, charge sheet material and other materials, it indicates that none of the ingredients are present as contemplated under Section 141 of IPC.

9. Be that as it may. If 50 persons have assembled at

a particular place, then under such circumstances, it cannot be held as an unlawful assembly. Mere presence of a person in an unlawful assembly cannot render a person liable unless there was a common object and he was actuated by that common object and that object is one

of those set out in Section 141 of IPC. This proposition of law has been laid down by the Honble Apex Court in the case of CHARAN SINGH (Quoted supra) at paragraph No.13, it has been observed as under: -5-

13. Coming to the others who were armed

with double-barrelled guns and country-made pistols, the question is regarding applicability of Section 149 IPC. Section 149 IPC has its foundation on constructive liability which is the sine qua non for its operation. The emphasis is on the common object and not on common intention. Mere presence in an unlawful assembly cannot render a person liable unless there was a common object and he was actuated by that common object and that object is one of those set out in Section 141. Where common object of an unlawful assembly is not proved, the accused persons cannot be convicted with the help of Section 149. The crucial question to determine is whether the assembly consisted of five or more persons and whether the said persons entertained one or more of the common objects, as specified in Section 141. It cannot be laid down as a general proposition of law that unless an overt act is proved against a person, who is alleged to be a member of an unlawful assembly, it cannot be said that he is a member of an assembly. The only thing required is that he should have understood that the assembly was unlawful and was likely to commit any of the acts which fall within the purview of Section 141. The word object means the purpose or design and, in

order to make it common, it must be shared by

all. In other words, the object should be common to the persons, who compose the assembly, that is to say, they should all be aware of it and concur in it. A common object may be formed by express agreement after mutual consultation, but that is by no means necessary. It may be formed at any stage by all or a few members of the assembly and the other members may just join and adopt it. Once formed, it need not continue to be the same. It may be modified or altered or abandoned at any stage. The expression in prosecution of common object as appearing in Section 149 has to be strictly construed as equivalent to in order to attain the

common object. It must be immediately connected with the common object by virtue of the nature of the object. There must be a community of object and the object may exist only up to a particular stage, and not thereafter. Members of an unlawful assembly may have community of object up to a certain point beyond which they may differ in their objects and the knowledge, possessed by each member of what is likely to be committed in prosecution of their common object may vary not only according to the information at his command, but also according to the extent to which he shares the community of object, and as a consequence of this the effect of Section 149 IPC may be different on different members of the same assembly.

7. In the present case, though the assembly was unlawful,

however, the charge sheet material does not establish that the Petitioners had a common object, and were actuated by that common object and that object was the one of those set out in Section 141 of IPC.

8. Therefore, this petition also requires to be disposed of in terms of the order passed in the aforementioned petitions. Accordingly, I pass the following:

ORDER

i) The Criminal petition is allowed ii) The impugned proceedings in S.C.No.35/2022, pending on the file of the District and Sessions Judge at Yadgir, arising out of Crime No.21/2021, registered by the respondent Wadigere Police Station, insofar it relates to the petitioners accused Nos. 2, 4 to 7 stands quashed.
Sd/- JUDGE HR

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