

Mallikarjun and Ors vs the State and Anr

Mallikarjun and Ors vs the State and Anr

SooperKanoon Citation : sooperkanoon.com/1851285

Court : Karnataka Kalaburagi

Decided On : Mar-28-2024

Judge : V Srishananda

Appeal No. : CRL.P/201077/2022

Appellant : Mallikarjun and Ors

Respondent : The State and Anr

Judgement :

-1- IN THE HIGH COURT OF KARNATAKA KALABURAGI BENCH DATED THIS THE 28TH DAY OF MARCH, 2024 BEFORE THE HON'BLE MR. JUSTICE V SRISHANANDA CRIMINAL PETITION NO.201077/2022(482) BETWEEN:

1. MALLIKARJUN S/O BASANNA SHANTAPURA AGE: 51 YEARS, OCC: AGRICULTURE,
2. SHARANU @ SHARANAPPA S/O BASANNA SHANTAPURA AGE: 44 YEARS, OCC: AGRICULTURE,
3. NANDAPPA S/O BASANNA SHANTAPURA

AGE: 42 YEARS, OCC: AGRICULTURE, ALL ARE R/O KONAL VILLAGE, Digitally signed by RENUKA TQ: SHORAPUR, Location: High DIST: YADGIRI 584101 Court Of Karnataka PETITIONERS (BY SRI C.V. CHANDRASHEKAR, SR. COUNSEL FOR SRI AVINASH A. UPLAONKAR & SRI RAVI K. ANOOR, ADVOCATES) AND:

1. THE STATE THROUGH KODEKAL P.S., DIST: YADGIRI NOW REPRESENTED BY ADDL. SPP -2- HIGH COURT OF KARNATAKA AT KALABURAGI BENCH-585107

2. PARAMANNA S/O SABAWWA DODDAMANI AGE: 45 YEARS, OCC: AGRICULTURE, R/O HANDRAL S.D., TQ: SURPUR, DIST: YADGIRI-584101 RESPONDENTS (BY SMT. ANITA M. REDDY, HCGP, FOR R1; SRI HULEPPA HEROOR & SRI MILIND KUMAR KARANJE, ADVOCATES, FOR R2) THIS CRIMINAL PETITION IS FILED U/S.482 OF CR.P.C.,

PRAYING TO QUASH THE ENTIRE PROCEEDINGS IN SPL.CASE NO.18/2021 (CRIME NO.87/2018 KODEKAL P.S.) FOR THE OFFENCES PUNISHABLE U/SECS. 406, 409, 420, 167, 468, 120(B), 201, R/W SEC. 149 OF IPC AND U/SEC. 3(1)(V) OF SC/ST ACT, 1989, PENDING BEFORE THE DIST. AND SESSIONS JUDGE AT YADGIRI, AGAINST THE PETITIONERS, THIS CRIMINAL PETITION COMING ON FOR ADMISSION THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

Heard Sri Avinash A. Uplaonkar, learned counsel for the petitioner, learned High Court Government Pleader for respondent No.1 and learned Senior Counsel for the de facto - complainant.

2. The petition is filed under Section 482 of Cr.P.C., seeking the following prayer: -
3-

WHEREFORE, it is most humbly prayed, Honble Court by exercise of power U/S.482 Cr.P.C. be pleased to quash the entire proceedings in Spl.Case No.18/2021 (Crime No.87/2018 Kodekal P.S.) for the offence punishable U/Sec. 406, 409, 420, 167, 468, 120(B), 201 R/w. 149 of IPC and Sec.3(1)(5) SC/ST Act, 1989, pending before the District and Sessions Judge at Yadgiri, against the petitioners, in the interest of justice and equity.

3. Facts of the case in brief for disposal of the petition are as under: The 2nd respondent filed a complaint with Kodekal Police

Station, which was registered in Crime No.87/2018 on 26.04.2018 for the offences punishable under Sections 406 and 420 of IPC. The complaint averments reveal that in the year 2010-11 for the benefit of Schedule Caste and Schedule Tribe farmers, in the project of S.C.P. and T.S.P. water supply was to be made to their respective agricultural lands. Applications were called for from the office of the Engineer, Krishna Bhagya Jala Nigama Niyamitha, Kakkera (for short KBJNN). The complainant and others belonging to Scheduled -4- Caste/Scheduled Tribe community applied for the water supply facility under the said schemes. Complainant was intimated by the authorities that he is beneficiary. Therefore, he was very happy. When the matter stood thus, there was no water connection at all and therefore, they had to repeatedly contact Kakkera office. But for their dismay they were intimated by the Engineers - Sri Mahmada Shafiq Hammad Khureshi and one Sri Heerala that the Beneficiaries List has been cancelled by the Government.

4. Thereafter, complainant has met their leader and all

of them approached the office of the KBJNN at Kakkera and filed applications under the RTI Act to find out the factual aspects. Then they came to know that instead of furnishing the water facilities for the Scheduled Caste/Scheduled Tribe Community, persons belonging to non-Scheduled Caste and non-Scheduled Tribe communities were made as beneficiaries and they have falsely given the Certificates as if they belong to Scheduled Castes and Scheduled Tribes and then

obtained water supply facilities. -5-

5. Thereafter, Dalitha Sangharsha Samithi said to have conducted an investigation and they made a report to the Superintendent Engineer, KBJNN, Circle-I, Narayanpura.

6. Based on the said report, the Executive Engineer,

KBJNN, directed that let a spot inspection be done with regard to the beneficiaries of the S.C.P. and T.S.P. and file a report. Based on such report, the complainant has sought for action against Sri Mohd. Shafiq Ahmed Khureshi and Sri Eeralal, therefore, they tried to contact the complainant and others and tried to lure them to withdraw the complaint. Thereafter, the complainant has approached the Police Inspector, Surpur Taluk,

to take necessary action against the persons, who are responsible for taking away the benefit which were given for the Scheduled Castes/Scheduled Tribes Community and a fraudulent list has been prepared, whereby the beneficiaries are the people who are not Scheduled Caste/Scheduled Tribe Community people, but belonging to the non-Scheduled Caste/Scheduled Tribe Community persons showing to be the Scheduled Caste/Scheduled Tribe Community persons. -6-

7. Based on said complaint a case came to be registered in Crime No.289/2019 by Surpur Police Station under Sections 406 and 420 of IPC and the matter was investigated.

8. After thorough investigation, the Investigating Officer filed charge-sheet against the 11 accused persons including the present petitioners.

9. Being aggrieved by the same, petitioners have filed the present petition seeking quashing of the charge-sheet insofar as the present petitioners are concerned on the following grounds: x That the petitioners are innocent of the alleged offences against them and they are falsely involved in the above case.

x That, the petitioners are falsely involved by respondent and there are no other evidences to state that the petitioners are involved in the above said offences,

which is bad in law. x That, the Government of Karnataka under the scheme of Suvarna Karnataka 2006 by letter dated 09/05/2006 has submitted annual report - 7- for providing regulation facilities to SC/ST and General Category. x That, the notification No. WRD 42 MBI 2006 dated 09/05/2006, it is noted that, the

Government of Karnataka had issued guidelines

to allot the pump sets and pipelines under the SCP/TSP Scheme. The reference rule 6 in notification No. WRD 42 MBI 2006 dated 09.05.2006 is extract as here under: x While preparing the action plan, scheme benefiting individuals should be given priority. Any scheme proposed as community based schemes should have SC/ST beneficiaries not less than 50%. x I am directed to request you to prepare and submit a tentative action plan duly indicating the physical and financial target/outlays against each of the proposed schemes by conducting preliminary survey of the Command area of each of the project in the broad perspective and submit the same on or before 10.05.2006 to the Government. x The criteria for selecting beneficiaries either individual or community based, guidelines and procedures to be followed for implementation will be communicated after getting the final clearances from the Social Welfare Department. -8- x That, after the case was registered on 16-08- 2017 the Engineer has given the detailed report of selection of the candidates as per the

guidelines.

x That, as per the executive report the list of SC/ST candidates and people of General Category has been confirmed. x It is submitted that on a bare perusal of FIR and Charge-sheet papers, there is not even an allegation let alone prima-facie material as against the petitioner under any of the penal provisions enumerated in the charge sheet. Hence, the criminal proceedings as against the petitioners is maliciously launched vexatious, illegal and unsustainable in law.

x That, even as per the prosecution case itself in the charge sheet their no material averred to make out any material of the involvement of the petitioners. x That, the petitioners have neither applied for the scheme for availing benefit but it is the Government which has chosen beneficiaries for which no criminal action be

fastened against them. x That, there is absolutely no cogent or reliable materials to connect the petitioners to this case -9-

based on the materials collected by the police as per the charge sheet and thus the above proceeding has resulted in gross abuse of the process of the court and hence the same has to be quashed. x Thus, looking towards the chain of circumstances, the allegation made prima facie no material is there in the case, initiated and continuation of criminal proceeding is nothing but abuse of process of law. x That, if the present petition is not allowed then there would be continuation of misuse of the provisions of law and harassment to the petitioner. Hence proceeding with the case will not served the purpose of any body. x That, the earlier these petitioners approached this Hon'ble court in Cri.Pet.No.201463/2018, the same came to be dismissed as withdrawn by

order dated 05-04-2021.

x The petitioner craves leaves to urge any other points that may be available at the time of arguments.

10. Re-iterating the grounds urged in the petition, Sri Avinash A. Uplaonkar, learned counsel for the petitioner contended that these petitioners never gave any application for - 10 -

the benefit of the S.C.P./T.S.P. Schemes nor gave any affidavit stating that they are belonging to Scheduled Castes/Scheduled Tribes community and therefore they have no role whatsoever in availing the alleged benefit which was meant for the Scheduled Castes/Scheduled Tribes persons, and as such, they cannot be held responsible for the offences punishable under Sections 406, 409, 420, 167, 468, 120B, 201 read with Section 149 of IPC and Sections 3(i)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1980.

11. He further contended that names of the accused persons have been wrongly included in the charge-sheet without there being any supporting material whatsoever and

therefore continuation of the criminal case against the petitioners are nothing but abuse of process of law and therefore, sought for quashing the charge-sheet.

12. Per contra, Smt. Anita Reddy, learned High Court

Government Pleader supports the action of the Investigating Officer in filing the charge-sheet against the petitioner by contending that prosecution has invoked Section 120B of IPC, - 11 - therefore, the charge-sheet is perfectly valid in respect of all accused including petitioners.

13. She further contended that for invoking Section

120-B of IPC, no direct evidence can be collected by Investigating Officer in every case. As such, the material in the charge sheet on conclusive consideration would establish case against petitioners.

14. On behalf of de facto - complainant learned Senior

Counsel Sri G.V. Chandrashekhar contended that the Investigating Officer has filed an affidavit, wherein, he has enclosed the report of the Engineer of KBJNN dated 05.07.2016 where under it has been specifically mentioned that the petitioners though belonging to General Community, have shown themselves as Schedule Tribe Community and obtained the benefit under this aforesaid schemes and therefore they are equally liable for the offences alleged against them along with the main accused persons and sought for dismissal of the petition.

- 12 -

15. He further pointed out that it is neither the case of

the complaint nor the prosecution that the petitioners have wrongly shown themselves as Scheduled Tribe persons and obtained the benefit, but there is conspiracy in denying water facilities for the Scheduled Castes/Scheduled Tribes Community in the aforesaid scheme and petitioners have actively involved in denying the said benefit to the complainant and similarly placed persons in Konal and Handral Villages.

16. Having heard the learned counsel for the parties in detail, this Court perused the material on record meticulously.

17. In fact, this Court directed the Investigating Officer

to be present before the Court during the course of hearing so as to substantiate as to what are the documents he has collected to roping in the present petitioners in the present case, especially having invoked Section 120B of IPC.

18. The Investigating Officer did not appear before the

Court for long on the ground that he was not keeping well and subsequently he was permitted to appear through video conference and he appeared through video conference and - 13 - submitted that necessary documents to support the arraigning of the present petitioners as accused persons is already furnished with a copy to the counsel for the petitioners.

19. In fact, the said synopsis is filed by the learned

High Court Government Pleader on 07.03.2024 before the Court. Perusal of the synopsis makes it clear that there is not even a single document that has been placed on record by the prosecution other than what has already been furnished in the charge-sheet.

20. Be it what it may. It is for the prosecution to explain why additional documents are not placed on record to substantiate the arraigning of the present petitioners as accused. Thus, in the light of the rival contentions of the parties, this Court perused the charge-sheet material.

21. On such perusal, admittedly, petitioners have not

filed any application before the concerned authorities seeking water connection to their land in the aforesaid schemes. Nor any affidavit has been filed by the petitioners herein stating - 14 - that they belong to Scheduled Caste/Tribe Community and they are also entitled for the benefit under the said scheme.

22. Therefore, there is no direct evidence available on record collected by the Investigating Agency to rope-in the present petitioners in the charge-sheet pursuant to the complaint given by the 2nd respondent.

23. It is also pertinent to note that the names of the petitioners are not forthcoming in the complaint itself. Further,

the complaint averments itself shows that it is Dalith Sangharsha Samithi which has investigated the matter and furnished the report to the Engineer and that has been made as

basis for further action. Complainants grievance in the complaint itself shows that it is the Engineers, namely, Mohd. Shafiq Ahmed Khureshi and one Eeralal who are mischief mongers in not providing the benefit to the Scheduled Castes/Scheduled Tribes Community persons and providing the said facility to the persons who are non SC/ST community. The document that has been relied upon by the Investigating Officer for the purpose of arraigning the petitioners as accused persons in the case is the letter addressed by the Executive

- 15 - Engineer, KBJNN, Narayanpura dated 05.07.2016 to the Superintendent Engineer.

24. At the most the said letter can be construed as a correspondence between the Executive Engineer and the

Superintendent Engineer. On close reading of the complaint averments itself, it is crystal clear that it is the Dalitha Sangharsha Samithi which has investigated the matter and gave the report to the Executive Engineer, which was forwarded in verbatim to the Superintendent Engineer, KBJNN. Pertinently, no separate investigation is conducted by the Officers/Engineers of KBJNN in regard to the alleged misuse of the scheme. Who authorized Dalitha Sangharsha Samithi to investigate the matter privately is a question that remains unanswered. Further, there is no other material on record either by the Engineers of KBJNN or any other Governmental Agency to prima facie form an opinion that there was a misuse of the scheme.

25. Without verifying the veracity of the contents of the letter dated 05.07.2016 independently, the Investigating Officer has simply accepted the contents of the said letter as - 16 - gospel truth and treated it as evidence to arraign the present petitioners as accused persons resulting in miscarriage of

justice. Except the said letter dated 05.07.2016 no other material is collected by the Investigating Officer for arraigning the present petitioners as accused persons.

26. It is also pertinent to note that the word investigation is defined in Section 2(h) of the Code of Criminal Procedure. Under Section 156(1) a Station House Officer or Officer in charge of a Police Station has got power to

investigate a cognizable offence. Under Section 157(1) on receipt of an FIR, Police Officer can commence investigation if he has reason to believe that a cognizable offence has been committed. Investigation includes collection of evidence and recording of statements of witnesses. Under Section 151 of Cr.P.C, the Investigation Officer has got power to enquire any person who is aware of the facts in issue and record the statement.

27. In an ordinary course, the investigation should restrict itself to the commission of offence. Duty of an Investigation Officer includes to investigate the matter fairly, - 17 -

independently and in an unbiased manner. Honble Apex Court in the case of Kishore Chand vs. State of Himachal Pradesh reported in 1991(1) SCC 286 has cautioned that investigation shall be conducted on the proper lines and all relevant evidence must be collected by the Investigation Officer.

28. Further, in the case of State of Bihar vs.

P.P.Sharma, reported in AIR 1991 SC 1260 Honble Apex Court ruled that investigation officer is not to act on a preconceived idea of guilt of the accused and must investigate justly and fairly.

29. In the yardstick of aforesaid principles enunciated

by the Honble Apex Court, when the material on record in the case on hand is analysed, the Investigation Officer not only failed to conduct the investigation in a just and unbiased manner but also failed to furnish any other materials while filing any other additional materials/affidavit before this Court. The Investigating Officer has thus clearly erred in his duty in independently investigating the matter before arraigning the

present persons as accused in the case on hand. Thus, - 18 - invariably, the role of the Investigation Officer in the case on hand must be termed as perfunctory.

30. What is a charge sheet is defined in good number of

decisions by the Honble Apex Court. A charge sheet is a final report of the Investigating Officer to be filed before the Court in pursuance of an FIR as per the provisions of Section 173(2) Cr PC, as is held in K.Veeraswami vs. Union of India reported in 1991 SCC (3) 655.

31. Further, in the case of Dinesh Dalmia vs. CBI

reported in (2007)8 SCC 770, a charge sheet is referred to as a final report filed u/S 173(2) of Cr.P.C so as to enable the Court to decide on the point of taking cognizance of offences alleged against accused person/s.

32. Charge sheet is an important stage in the criminal

case where a complaint is investigated by investigating agency and after collection of necessary evidence the investigating agency would form a definite opinion that a particular person/s has believed to have committed an offence punishable under any penal statute. - 19 -

33. If there is no sufficient evidence against the alleged accused person/s then, the investigation agency cannot file a charge sheet against such person/s and should file closure report. While so filing the charge sheet, the investigation agency must satisfy itself that the material collected by such agency is sufficient enough to proceed against accused person/s.

34. Pertinently, like an FIR filed under section 154 of Cr.P.C, a charge sheet filed under Section 173 of Cr.P.C is not

substantive evidence. It is only indicative in nature whereunder the investigation agency is of the opinion that there exists a strong and triable case against accused person/s.

35. If the material collected by the investigating agency

is not sufficient enough to proceed with the case, then filing of the charge sheet would effect the right of a citizen of this Country as is enshrined under Article 21 of the Constitution of India and trial of such cases would necessarily result in abuse of process of law warranting the exercise of inherent power in quashing such charge sheets by resorting to Section 482 Cr.P.C by the High Court.

- 20 -

36. In the back ground of above legal requirements,

when we analyze the material evidence on record, it is seen that, arraigning a petitioners as an accused has got wider ramification that too for the offences under Sections 406, 409, 420, 167, 466 and Section 120-B of IPC. It is also to be noted that when the prosecution has invoked the provision of 120-B,

invoking Section 149 of IPC is a surplusage. What was the common object that has been shared by the present petitioners in the incident is not even forthcoming from Column No.17 of the charge-sheet. Even for invoking the offence under Section 120-B of IPC, hardly there is sufficient material in the charge- sheet. What is the sketch or the design that has been prepared by the present petitioners along with the other accused persons in diverting the benefit under the aforesaid schemes that was meant for SC/ST is not even whispered in the charge-sheet.

37. Further, in order to attract the offences under

Sections 406, 409, 420, 167, 466 and 120-B of IPC, following ingredients are to be available in the form either statements of witnesses or by collection of documentary evidence.

38. The ingredients to attract the aforesaid offences are culled out hereunder: - 21
- Section 406

(i) Entrusting any person with property or with any dominion

over property; (ii) The person entrusted (a) dishonestly misappropriating or converting to his own use that property; or (b) dishonestly using or disposing of that property or wilfully suffering any other person so to do in violation.

(i) of any direction of law prescribing the mode in which such trust is to be discharged, or

(ii) of any legal contract made touching the discharge of such trust. Section 409

(i) That the accused was entrusted property in

any manner; or That such property was in his dominion in his capacity of a public servant, or as banker, merchant, factor, broker, attorney or agent, in the way of his business in such capacity;

(ii) That the accused committed breach of trust in respect of that property. Section 420

(i) There must be deception i.e., the accused must have deceived someone;

(ii) That by the said deception, the accused must induce a person,

(a) to deliver any property; or - 22 -

(b) to make, alter or destroy the whole or part of the valuable security or any thing which is signed or sealed and which is capable of being converted into a valuable property.

(iii) That the accused did so dishonestly. Section 167:

(i) accused must be public servant;

(ii) he must be charged with the preparation or translation of any document qua such public servant;

(iii) he has framed or translated that document incorrectly knowing and believing that to be so;

(iv) he must intend thereby to cause or knowing it to be likely that in the process some injury will be caused to any person. Section 468:

(i) That the accused committed forgery;

(ii) That he did so intending that the document or electronic record forged shall be used for the purpose of cheating. Section 120-B:

(i) an agreement between two or more persons;

(ii) The agreement should be to do or cause to be done some illegal act or some act which is not illegal, by illegal means, provided that where - 23 - the agreement is other than one to commit an offence, the prosecution must further prove;

(iii) That some act besides the agreement was done by or more of the parties in pursuance of it.

39. On careful consideration of charge sheet material including column No.17, this Court is unable to find any such material on record which would prima facie satisfy the aforesaid ingredients.

40. Learned High Court Government Pleader and learned counsel for defacto complainant are also unable to point out any such clinching material on record to attract aforesaid offences.

41. Under such circumstances, proceedings against the petitioners in the pending criminal case and continuation thereof is nothing but abuse of process of law.

42. Therefore, a case is made out by the petitioners to quash the pending charge-sheet as against the petitioners are concerned. - 24 -

43. Accordingly, the following:

ORDER

i) The Criminal Petition is allowed. ii) The charge-sheet insofar as the present petitioners are concerned, pending in Spl. Case No.18/2021 (Crime No.87/2018 Kodekal Police Station) pending on the file of the District and Sessions Judge, Yadgiri, is quashed. iii) In view of disposal of main matter, the pending I.As., are consigned to the records. Sd/- JUDGE SBS CT:SI LIST NO.: 2 SL NO.: 5

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com