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Raja @ Cat Raja vs State of Karnataka

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Court : Karnataka

Decided On : Jul-09-2024

Judge : M.Nagaprasanna

Appeal No. : CRL.P/2398/2022

Appellant : Raja @ Cat Raja

Respondent : State of Karnataka

Judgement :

-1-

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 9TH DAY OF JULY, 2024 BEFORE THE HON'BLE MR JUSTICE M.NAGAPRASANNA CRIMINAL PETITION NO. 2398 OF 2022 BETWEEN: RAJA @ CAT RAJA S/O LATE ELUMALAI @ YELUMALAI AGED 25 YEARS R/AT HOLALU VILLAGE DUDDA HOBLI MANDYA DISTRICT PETITIONER (BY SRI. MOHAMMED PASHA C.,ADVOCATE)

AND: STATE OF KARNATAKA (THROUGH UPPAR PETE POLICE BANGALORE) REP BY ITS S P P HIGH COURT OF KARNATAKA Digitally signed BANGALORE-560 001 by NAGAVENI Location: HIGH RESPONDENT

COURT OF KARNATAKA (BY SRI.P.THEJESH, HCGP)

> THIS CRL.P IS FILED U/S.482 CR.P.C., PRAYING TO QUASH THE PROCEEDINGS IN S.C.NO.1127/2015 (WHICH IS PENDING ON THE FILE OF THE HONBLE LXII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE [CCH-63] AT BENGALURU AND THE COMPLAINT AND FIR NO.364/2013 REGISTERED BY UPPARPETE POLICE STATION FOR THE OFFENCE P/U/S 399 AND 402 OF IPC IN SO FAR AS IT RELATES TO THE PETITIONER HEREIN.

THIS PETITION, COMING ON FOR FINAL HEARING, THIS DAY, THE COURT MADE THE FOLLOWING: -2-

ORDER

Petitioner-accused No.1 is before this court calling in question the proceedings in S.C.No.1127/2015 registered for offences punishable under Sections 399 and 402 of IPC.

2. Petitioner gets embroiled in a crime for the afore-quoted

offences. The Police, after conduct of investigation, filed a charge sheet and the matter is tried by the concerned court in S.C.No.1127/2015. The petitioner-accused No.1 was not, at the relevant point of time, available for trial and therefore, a split charge sheet was drawn against the petitioner. The concerned court, in S.C.No.222/2014, acquits accused No.7. The reason for acquittal is as follows:

> "13. P.W.1 has not explained as to how he analyzed that accused No.1 to 7 had conceived the design of committing dacoity. The evidence of P.W.1 does not disclose the attempt made by the accused to escape from the spot or regarding any resistance by the accused during raid. It is not natural that seven persons armed with deadly weapons neither offered any resistance nor caused any injury to any of the police

personnel during the alleged raid.

14. As laid down in Agar v/s State of Rajasthan,

reported in 2003 Criminal Law Journal 1997 it is settled law that, "to constitute an offence under section 399 of IPC some act amounting to preparation must be proved". But in the present case as looking into evidence of Pws.1 and 2, the prosecution has not proved any act preparation for -3-

committing dacoity. Further as laid down in Joseph /vs/ State of Kerala reported in 1993 SCW 2900, the prosecution must show that there were persons who had conceived design of committing dacoity. But in the present case there is no cogent and material evidence to believe the case of the prosecution that the accused have designed the committing of dacoity.

15. In the instant case, since C.W.2 & C.W.3, who are

alleged witnesses to the raid and recovery, have not examined the alleged raid and recovery itself is not proved by the prosecution. In view of the various discrepancies in the case of the prosecution referred above and due to noncorroboration of evidence of P.W.1 & P.W.2 by the independent witnesses to the raid and recovery, the evidence of P.W.1 & P.W.2 does not inspire confidence.

16. At this juncture, I feel it necessary to quote following Judgments reported by the Hon'ble Apex Court and Hon'ble High Court of Karnataka pertaining to offence punishable under Sections 399 and 402 of IPC:- In Chaturi Yadav and others Vs. State of Bihar reported in AIR 1979 Supreme Court 1412, the Hon'ble Apex Court has held that

> "Penal Code (45 of 1860), Ss.399 and 402 Conviction under legality. Decision of Patna High Court, Reversed. Prosecution evidence merely showing that eight persons including the appellant were found in the school premises, which was quite close to the market at 1. a.m., and that some of them were armed with guns, some had cartridges and others ran away -

held that, conviction under Ss.399 and 402,

was not sustainable The mere fact that these persons were found at 1 a.m., did not by itself prove that they had assembled making preparations to accomplish that object The possibility that the appellants might have collected for the purpose of murdering -4- somebody or committing some other offence could not be safely eliminated Decision of Patna High Court, Reversed".

17. That the Hon'ble Karnataka High Court in a ruling eported in ILR 2016 KAR 1042 held that:

> Criminal Procedure Code, 1973 Section 374(2) Appeal against Judgment of conviction and order of sentence appreciation of evidence on record Re- Material contradictions in the evidence of the prosecution No independent witnesses to prove the theory of recovery The person who registered the First Information Report, himself has investigated the crime Legality of investigation - HELD, The credibility of the investigation is doubtful as Pw.3 having registered the crime, has himself investigated the case.

Further held,

> In view of the material contradictions in the evidence of Pws.1 to 3 and the recovery having not been proved by examination of the Independent mahazar witnesses, it has to be held that the seizure of chilly powder and the knives i.e, the M.Os. has not been proved- The prosecution has failed to bring home its case beyond reasonable doubt.

18. Thus it is clear from the above precedents that to

sustain conviction under Sections 399 and 402 of I.P.C., the prosecution must prove from some evidence directly or indirectly that the accused persons in conspiracy had assembled for no other purpose other than to make preparation for commission of dacoity. If the evidence falls short of it, the case must fail. The

prosecution must show some conduct to prove the factum of preparation by the assembly and that the persons assembled conceived any such designs for commission of dacoity and in fact they

intended to achieve the object for which they had -5-

> assembled. But in this case, there is no reliable and credible evidence to show that accused No.7 was making preparation to commit dacoity. In view of the fact and circumstances of the case and precedents referred above, this Court is of the considered opinion that the prosecution has not proved the case against accused No.7 beyond all reasonable doubt and as such accused No.7 is entitled for benefit of doubt. Hence, point No.1 is answered in the Negative.

19. POINT NO.2: In view of the reasons discussed as above the following:-

ORDER

Acting u/s 235 (1) of Cr.P.C, A.7- Narayana @ Kulla is acquitted in respect of the offences punishable under Sections 399 and 402 of Indian Penal Code. The articles marked as M.Os.1 to 7 shall be preserved for trial of split up accused No.1 to 6. (Dictated to the Judgment Writer, transcribed and computerised by him, corrected and then pronounced by me in the open court this the 9th day of November, 2017)."

Since the reason so rendered is concerning accused No.1 to 7 together. If the reasons rendered for accused No.7 is pitted to the contentions of the petitioner, it would become a case, where further proceedings should not be permitted to be continued as eventually, the petitioner/accused No.1 would also get acquitted for the very reasons rendered for accused No.7 as the reasons so rendered are applicable to all accused No.1 to 7. -6- In that light, I deem it appropriate to quash the proceedings qua the petitioner on the same reasons rendered to acquit accused No.7 in the case at hand.

3. The view of mine, in this regard, is fortified by the

judgment rendered by a Co-ordinate Bench of this Court in

Crl.P.No.4796/2017 wherein the Co-ordinate Bench considering identical set of facts has held as follows:

> 12. Having heard the learned Advocates appearing for parties and on perusal of records it would disclose that petitioner/accused was never traced and non-bailable warrant issued against him was never executed. Honble Apex Court in the case of CENTRAL BUREAU OF INVESTIGATION vs AKHILESH SINGH reported in AIR 2005 SCC 268 has held quashing of charge and order discharging co-accused can be passed, if the proceedings initiated against co-accused is on similar allegations and if said judgment had reached finality. It is also

held that discharge of a co-accused by the High

Court by holding that no purpose would be served in further proceeding with the case, is just and proper. In another ruling in MOHAMMED ILIAS vs. STATE OF KARNATAKA reported in (2001) 3 Kant LJ 551 this Court has held as under: The petitioner is the accused in the case and he is shown to be the absconding. Therefore, the case against the petitioner -7-

> was split up and charge-sheet was laid against other available accused Nos.1 and 3 for committing an offence punishable under Sections 498A and 307 IPC r/w 34 Indian Penal Code, 1860. After the trial, the Sessions Judge acquitted the accused Nos.1 to 3. The petitioner was arrested and proceedings were revived against him in the split charge sheet.... In the instant

case also, the full pledged trial was held

against accused Nos.1 to 3, in respect of the same offence. In the second round of trial against the petitioner, the evidence to be produced cannot be different from the one that was produced by the prosecution in the earlier case. Therefore, in that

view of the matter, the proceeding is quashed.

13. Yet, in another ruling THE STATE OF KARNATAKA vs. K.C.NARASEGOWDA reported in ILR 2005 Kar. 1822 this Court has held to the following effect:

> As the case before the Sessions Judge is not a pending case, he cannot keep the file any longer pending nor he can close the case as he has to await appearance of the accused or the production by the State, for passing orders regarding undergoing sentence. As such, considering these peculiar facts and circumstances, it is deemed proper to exercise the inherent jurisdiction under Section 482 of Cr.P.C. instead of jurisdiction under Section 385 of Cr.P.C. in the interest of justice. As the entire material evidence of the prosecutions is one and the same, as against all the accused including the non-appealing -8-

accused No.1, who is said to be absconding, there is no second opinion that he is also entitled for the same benefit of doubt as he is extended for his co-accused. Accused acquitted by giving benefit of doubt.

14. In this background, when the facts on

hand are examined, it would clearly indicate that not only complainant but also other witnesses including the inmates of ambulance in which they were travelling on the date of incident, had turned hostile in the proceedings which was continued against coaccused. Though, P.W.1 - complainant had admitted that he has lodged a compliant as per Ex.P-1 and had also admitted that he has given a statement identifying the accused before the Investigation Officer, he did not identify the accused persons present before Court. In fact, statements given by him as per Exs.P-2 to P-4 when confronted, he denied the same and had also denied the suggestion put by the public prosecutor that he had furnished the statements as per Exs.P-2 to P-4 as false. P.W.2 to P.W.8 had not identified the accused persons

present before the jurisdictional Sessions Court. In fact, they have not even identified the statements made by them before the Investigating Officer and

nothing worthwhile has been elicited in their crossexamination to disbelieve their evidence. Thus, taking into consideration said evidence available on

record Sessions Court had arrived at a conclusion

that evidence of the witnesses examined by prosecution would not come to their assistance. In -9- fact, witnesses to the seizure panchnama - Ex.P-40,

who were examined as P.W.16 and P.W.17, have also turned hostile and they have stated that police had called them a year back to the police station and when they went to the police station, they had not seen any accused persons in police station. However, they admit police having taken their signatures on the papers and contents of it were not known to them.

15. It is in this background, trial Court on

appreciation of entire evidence had acquitted all the accused persons by holding that prosecution had failed to prove the offence alleging accused persons beyond reasonable doubt attracting the ingredients of provisions of the offence alleged against them. In fact, Sessions Court has observed that there was certain communal disturbance in Dakshina Kannada district and other places at Bantwal Taluk and to please on community of people, the Investigating Officer might have falsely implicated the accused persons in a false case or to avoid the blame to be received from the public or other community people and such possibilities cannot be ruled out. In this background, when prayer of petitioner sought for in the present petition is examined, it can be noticed that contents of supplementary charge sheet filed against the petitioner is similar, identical and in fact, it is replica of charge made against accused Nos.1 to

23 and 25 to 33, who15 were tried in S.C.No.12/2007, 94/2007 and 26/2008 and had been acquitted. - 10 -

16. In that view of the matter, this Court is of

the firm view that judgment rendered by trial Court insofar as it relates to accused Nos.1 to 23 and 25 to 33 is similar and identical to the charge made against the

present petitioner. This Court does not find any independent or separate material having been placed by the prosecution against present petitioner to put

him on trial once again and directing the petitioneraccused to undergo the order of trial, which ultimately would fetch same result as that of accused Nos.1 to 23 and 25 to 33. When allegation made against accused Nos.1 to 23 and 25 to 33 is compared with the allegation made against present petitioner, it has to be necessarily held that they are identical, similar and inseparable in nature and no independent decision can be taken against the present petitioner. Therefore, no purpose would be served even if the present petitioner is ordered to be tried by the trial Court.

17. In view of the afore stated facts and the law laid down, as discussed hereinabove, it would emerge that there would be no harm or injustice that would be caused to prosecution if benefit of acquittal

order is passed in favour of accused - petitioner,

since accused Nos.1 to 23 and 25 to 33 against whom similar allegation had been made is already acquitted. Though, it is contended by Sri. Rachaiah, learned HCGP appearing for the State that petitioner should not be extended said benefit, since he is an absconder, by relying upon judgment of Coordinate Bench this Court is not inclined to accept said

- 11 - contention for single reason that said judgment had been rendered based on the judgment of Apex Court in the case of DEEPAK RAJAK vs. STATE OF WEST BENGAL reported in (2007) 15 SCC 305 where under Apex Court after noticing the facts obtained in the said case, had held that benefit of acquittal, should be extended to the appellant, since coaccused had been acquitted and held that a departure can be made in cases where accused has not surrendered after conviction in addition to not filing an appeal against the conviction. As such,

noticing earlier position of law laid down it was held

by the Apex Court that in case of acquittal of a accused for same offence on same set of facts and on similar accusations, if considered, it would entile for acquittal of co-accused also.

18. In that view of the matter, present proceedings initiated against petitioner is liable to be quashed. Hence, I proceed to pass the following:

ORDER

(i) Criminal petition is hereby allowed.

(ii) Proceedings in C.C.No.1170/2007 pending on the file of Addl. Civil Judge & JMFC, Bantwal, in Cr.No.130/2006 registered by Bantwal Rural Police Station, is hereby quashed insofar petitioner is concerned. In view of criminal petition having been disposed of on merits, I.A.No.1/2017 for stay does not survive for consideration and same stands rejected. - 12 -

4. For the aforesaid reasons, the following:

ORDER

(i) Criminal petition is allowed;

(ii) Impugned proceedings in S.C.No.1127/2015 on the file of LXII Additional City Civil and Sessions Judge [CCH-63], Bengaluru, are quashed. Sd/- JUDGE AV List No.: 1 Sl No.: 2

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