

**State of Karnataka Vs. K.C. Narasegowda**

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**SooperKanoon Citation :** [sooperkanoon.com/375693](http://sooperkanoon.com/375693)

**Court :** Karnataka

**Decided On :** Feb-08-2005

**Reported in :** ILR2005KAR1822; 2005(3)KarLJ76

**Judge :** S.R. Bannurmath and;A.C. Kabbin, JJ.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 148, 149, 307, 324 and 326;  
Code of Criminal Procedure (CrPC) - Sections 395, 395(2) and 482

**Appeal No. :** Criminal Referred Case No. 1 of 2005

**Appellant :** State of Karnataka

**Respondent :** K.C. Narasegowda

**Advocate for Pet/Ap. :** H.S. Chandramouli, State Public Prosecutor

**Judgement :**

ORDER

On a reference by the learned Principal District and Sessions Judge, Tumkur as to what should be done in respect of the absconding accused 1 in S.C. No. 57 of 1991 when the appeal preferred by the other accused against their conviction has been set aside by this Court, the case is preferred before us.

2. It is necessary to note that, in all nine accused were tried in S.C. No. 57 of 1991 on the file of the Principal Sessions Judge, Tumkur for the offences punishable

under Sections 148, 324, 326 and 307 read with Section 149 of the Indian Penal Code, 1860. After considering the entire evidence on record, the Trial Court convicted all the accused on all counts and sentenced them accordingly. It is to be noted that after conviction the accused 1-Narasegowda S/o. Channegowda, who was on bail escaped the arrest and suffering of the sentence awarded by the Trial Court. As per the note of the learned Sessions Judge, steps were taken in this regard but accused 1 remained untraced till date. In the meanwhile, the other convicted accused 2 to 9 approached this Court in Cri. A. No. 225 of 1998 and the learned Single Judge of this Court on reappreciation of the entire evidence, by the judgment dated 4-3-2003 held that the prosecution has failed to bring home the guilt of the appellants (accused 2 to 9) beyond reasonable doubt and as such, the eight accused stood acquitted. Now, as accused 1 alone remained untraced and since the file so far as he is concerned for sentence is kept pending, the learned Sessions Judge under Section 395(2) of the Cr. P.C. referred the matter to this Court.

3. At the outset, we would like to note that the reference under Section 395 of the Cr. P.C. is maintainable only in two situations as is clear from Sub-section (1) of Section 395 of the Cr. P.C., (i) where any Court is satisfied that a case pending before it involves a question as to the validity of any Act, Ordinance or Regulation or of any provision contained in an Act, Ordinance or Regulation, the determination of which is necessary for the disposal of the case, and (ii) as per Sub-section (2), a Court; of Session or a Metropolitan Magistrate may refer a case for the decision of the High Court on any question of law arising in the hearing of such case. No doubt, the sessions case before the learned Sessions Judge is not pending and as such, no question of law arises in hearing the case arising before him so as to make a reference under Section 395(2) of the Cr. P.C. and as such, prima facie, we feel that the reference is not maintainable.

4. However, we understand the predicament of the learned Sessions Judge in keeping the file so far as accused 1, who is absconding, is concerned. As this is not a pending case, he cannot keep the file any longer pending nor he can close the case as he has to await the appearance of the accused or his production by the State, for passing orders regarding undergoing sentence. As such, considering

this peculiar facts and circumstances, we deem it proper to exercise our inherent jurisdiction under Section 482 of the Cr. P.C. instead of jurisdiction under Section 395 of the Cr. P.C. in the interest of justice.

5. As is well-settled from the catena of decisions of the Apex Court including Suresh Chaudhary v State of Bihar, : 2003 CriLJ1717 , Bijoy Singh v. State of Bihar : 2002 CriLJ2623 , Raja Ram v State of Madhya Pradesh : [1994]2SCR114 , Anil Rai v State of Bihar AIR 2001 SC 3173, 2001 Cri LJ 3969, 2001 ( 3 ) Crimes 458 ( SC ), JT 2001 ( 6 ) SC 515, 2001 ( 5 ) SCALE 41, ( 2001 ) 7 SCC 318 and Pawan Kumar v. State of Haryana : 2003 CriLJ3552 , where on evaluation of a case, no conviction of any accused is possible, the benefit of doubt extended to the co-accused similarly situated is also available for the non-appealing accused. In the present case also, this Court has dealt in detail so far as the evidence against the accused 2 to 9 were concerned in the Cri. A. No. 225 of 1998 and found that the prosecution has miserably failed to bring home the guilt against any of the accused. On going through the facts and circumstances as well as the reasoning of this Court, we also hold that as the entire material evidence of the prosecution is one and the same as against all the accused including the non-appealing accused 1 who is said to be absconding, there is no second opinion that he is also entitled for the same benefit of doubt as is extended to his co-accused in the light of the law laid down by the Hon'ble Supreme Court in the case of Suresh Chaudhary and Ors. cases.

6. Hence, we deem it proper to set aside the judgment of conviction dated 26-2-1998 passed by the learned Sessions Judge, Tumkur, in S.C. No. 57 of 1991 so far as the non-appealing accused-Sri K. C. Narasegowda S/o. Channegowda is concerned and acquit him giving benefit of doubt.

The reference is answered accordingly.

The office is directed to send a copy of the Order to the learned Principle Sessions Judge Tumkur.