
(2014) 12 KAR CK 0001
In the Karnataka High Court
Case No : Crl. P. No. 2963/2011

Hyder

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 12-12-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 209 482
Penal Code, 1860 (IPC) — Section 201 302 34 364 392

Citation : (2015) ILR 970

Hon'ble Judges : A.N. Venugopal Gowda, J

Bench : Single Bench

Advocate : Nishit Kumar Shetty for Nataraja Ballal, Advocate for the Appellant;
Y.D. Harsha, A.G.A., Advocate for the Respondent;

Final Decision : Disposed off

Judgement

A.N. Venugopal Gowda, J.

1. Inspector of Udupi Police Circle, having submitted a charge-sheet against the petitioner and others to the Prl. Chief Judicial Magistrate, Udupi for the offences punishable under Sections 364, 302, 392 and 201 read with Section 34 of I.P.C., in Crime No. 71/2007 of Udupi Town Police Station, the Chief Judicial Magistrate, having taken cognizance of the said offences, committed the case registered thereon to the Court of Sessions, Udupi District, under Section 209 of Cr.P.C. for trial, by splitting up accused No. 2 from the case, as he was absconding. The petitioner herein, shown as accused No. 3, having jumped the bail and as he could not be secured, case was split against him on 31.12.2007. Trial of the case as against the accused No. 1 was conducted and by a Judgment dated 22.01.2009, was acquitted of the offences punishable under Sections 364, 302, 201 read with Section 34 of I.P.C. Since he was in judicial custody, was ordered to be released, if not detained in any other crime/case.

2. Case having been split up against the petitioner, this petition was filed invoking Section 482 of Cr.P.C., to quash the entire proceeding in Sessions Case

No. 3/2008 (in Crime No. 71/2007 of Udupi Town Police Station) on the file of Fast Track Court, Udupi District, in so far as petitioner is concerned i.e., for the offences punishable under Sections 364, 302, 392 and 201 read with Section 34 of I.P.C.

3. Sri Nishit Kumar Shetty, Learned Advocate, contended that the benefit of acquittal in the Judgment dated 22.01.2009 passed in Sessions Case No. 41/2007 by the Fast Track Court, Udupi could be extended to the petitioner.

4. Sri Y.D. Harsha, Learned Government Advocate, on the other hand submitted, that the petitioner having not surrendered before the Court below, is not entitled to seek any relief, much less, benefit of the acquittal extended to accused No. 1 in Sessions Case No. 41/2007 by the Presiding Officer, Fast Track Court, Udupi, vide Judgment dated 22.01.2009.

5. The position of law, as to what happens in a case of acquittal of similarly placed co-accused on the same set of facts and similar accusations, has been considered by the Apex Court, in catena of cases. In Deepak Rajak Vs. State of West Bengal, , it was held as follows:-

"6. A departure may be made in cases where the accused had not surrendered after the conviction in addition to not filing an appeal against the conviction. But, as in the present case, after surrender, the benefit of acquittal in the case of co-accused on similar accusations can be extended."

(emphasis supplied)

Since the petitioner has not surrendered before the Court below, this petition is disposed of by permitting the petitioner to surrender before the Trial Court and then seek the remedy.

If an application is made at the time of surrender , the Court below shall consider the same and pass order without any delay, as the accused No. 1 was acquitted in S.C. No. 41/2007 on 22.01.2009.

All contentions raised in this petition are left open and the petition is disposed of in the above terms. Crl. Misc. No. 3057/2011 filed for stay of all further proceedings in S.C. No. 3/2008, on the file of Fast Track Court, Udupi, Udupi District, does not survive for consideration.