

(2024) 11 KAR CK 0017
In the Karnataka High Court
Case No : Criminal Petition No. 2947 Of 2023

Jayaprakash M.R.

APPELLANT

Vs

State Of Karnataka By Belur Police Station, Represented By
State Public Prosecutor, High Court Of Karnataka,
Bengaluru-560001 & Ors.

RESPONDENT

Date of Decision : 23-11-2024

Acts Referred:

Indian Penal Code, 1860 — Section 419, 420, 465, 468
Code Of Criminal Procedure, 1973 — Section 227, 228, 239, 482

Citation : (2024) 11 KAR CK 0017

Hon'ble Judges : H.P. Sandesh, J

Bench : Single Bench

Advocate : Sandesh J. Chouta, Devadas, Gopalkrishna Soodi, Sree Harsha A.K

Final Decision : Dismissed

Judgement

H.P. Sandesh, J

CAV ORDER

1. Heard the learned counsel for the petitioner, the learned AAG for respondent No.1 and the learned counsel for respondent No.2.
2. This criminal petition is filed praying this Court to set aside the impugned order dated 23.12.2022 passed by the learned Senior Civil Judge and JMFC at Belur, Hassan, in C.C.No.452/2019 rejecting the discharge application filed by this petitioner, who is arrayed as accused No.3, for the offences punishable under Sections 419, 420, 465 and 468 of IPC, registered by the respondent police.
3. The factual matrix of the case of the complainant/respondent No.2 is that, in the complaint he has made an allegation that this petitioner along with other accused persons have indulged in creation of documents. Based on the complaint dated 02.08.2019, the police have registered the FIR in Crime No.156/2019. The main allegation in the complaint is that one Siddegowda S/o Chandregowda, who

is the father of accused No.1 and grandfather of the complainant died on 25.04.1996. However, accused No.1, father of the complainant, after the death of his father by impersonation executed a relinquishment deed dated 06.02.2007 in favour of accused No.2, who happens to be the father of this petitioner in respect of the land bearing Sy.No.65/3 measuring 15 guntas. Accused No.2 based on the said relinquishment deed got the revenue records mutated in the name of this petitioner. The police based on the complaint allegations, investigated the matter and filed the charge sheet for the offences punishable under Sections 419, 420, 465 and 468 of IPC and the same is registered as C.C.No.452/2019.

4. The petitioner submits that he filed Crl.P.No.2717/2020 along with his father and other accused persons for quashing of the criminal proceedings and this Court was pleased to reject the same vide order dated 12.02.2021. The learned counsel for the petitioner submits that this petitioner had filed an application under Section 239 of Cr.P.C seeking for his discharge on the ground of alibi contending that the petitioner has been out of India and working as Engineer at Hamburg in Germany since 27.06.2005. It is contended that between 19.06.2006 to 01.12.2008, he never visited India. The Trial Judge has committed an error in dismissing the same without giving credence to the said contention.

5. The learned counsel for the petitioner reiterating the grounds which have been urged in the discharge application contend that as per the allegations made in the complaint, specific allegation is made that accused Nos.2 to 4 together have induced accused No.1 to commit the alleged offence of creating of relinquishment deed. The learned counsel contend that the petitioner was not in India and also produced the passport details and the Trial Court failed to appreciate the documents available on record. The learned counsel contend that O.S.No.102/2019 is pending in respect of the subject property instituted by respondent No.2/complainant against the petitioner and others. When a civil suit is pending, ought not to have initiated the criminal proceedings and the same is only with an ulterior motive to harass the petitioner and others for illegal demand. It is contended that the petitioner is innocent and has not involved in the alleged offence and hence it requires interference of this Court.

6. Per contra, the learned counsel for respondent No.2/complainant would contend that he has filed the statement of objections and in the statement of objections, in detail set out the factual aspects of the case. It is a clear case of fraud and with an intention to cheat the complainant/respondent No.2, all of them have indulged in creation of document of relinquishment deed and also produced topography of the property bearing Sy.Nos.65/3 and 58/2, copy of the sale deed dated 28.03.1987, encumbrance certificate, copy of mutation register, copy of RTC, copy of the death certificate of Siddegowda, copy of the registered release deed dated 06.02.2007, copy of the MR, copy of the RTC, copy of Crl.P.No.2717/2020, copy of the order dated 12.02.2021 dismissing Crl.P.No.2717/2020, copy of the RTCs, copy of the invitation of house warming

ceremony, copy of the bail order of the petitioner in Cri.Misc.No.844/2022 and copy of the order passed W.P.No.22015/2022. All these documents are referred in statement of objections.

7. The learned counsel for respondent No.2 would contend that this petitioner has suppressed the true facts. The petitioner has falsely contended that he was not in India, but in Germany from the year 2005 till 2022. But the petitioner built a home for himself and his family in Bengaluru in the year 2019 and performed house warming ceremony and the contention that he was permanently staying in Germany is erroneous. It is contended that this petitioner is instrumentally instigating his brother and sister-in-law in filing a false complaint and the police are harassing at the instance of this petitioner. The Trial Court has given reasons for rejection of the application on the ground that alibi has to be proved in the trial and not while considering the discharge application. The discharge application will be considered based on the material available on record and the material clearly discloses that this petitioner is the beneficiary and got changed the property in his name on the strength of the alleged relinquishment deed and hence the matter requires trial.

8. The learned AAG appearing for respondent No.1 State would contend that this petitioner is a beneficiary and he has to explain what made him to get transferred the property in 2013 and the property stands in his name based on the created document of relinquishment deed and while getting the property relinquished, the person relinquished is impersonated as the original owner Siddegowda though Siddegowda died in the year 1996 itself and the matter requires full fledged trial.

9. Having heard the learned counsel for the petitioner, the learned AAG for respondent No.1 State and the learned counsel for respondent No.2, the points that arise for the consideration of this Court are:

(i) Whether the Trial Court committed an error in dismissing the discharge application and whether it requires interference of this Court by exercising the review jurisdiction?

(ii) What order?

10. Having considered the grounds which have been urged in the petition as well as the statement of objections filed by the complainant/respondent No.2 and also the submissions of the respective learned counsel, it is not in dispute that one Siddegowda was the original owner of the property. The petitioner also not disputes the fact that Siddegowda died in the year 1996 and to evidence the said fact, respondent No.2 also placed on record the death certificate of Siddegowda, who passed away on 25.04.1996. The material discloses that a relinquishment deed was executed in favour of accused No.2 in the name of Siddegowda, allegedly executed by the father of this petitioner and the same is executed in the name of Siddegowda on 06.02.2007 and on that day, the said Siddegowda was no more. It is the specific case of the complainant that they took his father

i.e., accused No.1 and got the relinquishment deed registered in the name of accused No.2 by impersonation. The registered document is evident that the person who was no more has signed the document and specific allegation is made that they took accused No.1 and got released the property by impersonation. It is important to note that respondent No.2 relies upon Annexure-R8, wherein the property is mutated in favour of this petitioner and the date of mutation is 01.01.2013 in respect of Sy.No.65/3 to an extent of 15 guntas.

11. The learned counsel for the petitioner relied upon the memo along with the documents of entire copy of the passport along with the details of visa stamping. The learned counsel submits that as on the date of creation of the document of relinquishment deed, the petitioner was not in India. But the fact is that on 01.01.2013, the property was mutated in favour of this petitioner. On the date of mutation, this petitioner was very much present in India and also the passport details discloses that he had traveled from Germany to Bengaluru on 15.12.2012 and he had traveled back from Bengaluru to Germany on 07.01.2013 and as on the date of mutation i.e., 01.01.2013, he was very much present. It is important to note that in document Annexure-R8 mutation, a reference is made that a personal letter was given for mutating the property and on perusal of the mutation there was a reference of partition among the family members of accused Nos.2 to 4 and accused No.2 gave the consent for transfer of mutation. This Court having noticed the mutation, called for the records from the Taluk Office of Belur through the Investigating Officer and the Investigating Officer was not able to get the records and it was mentioned that the same was missing.

12. Having taken note of the said submission and noticed the sorry state of affairs in the State that when fraud has been alleged, the files are missing and unable to get the records from the concerned department. Under the Karnataka State Public Records Act, 2010, for missing of Government records, a penal provision has been made and punishment is also severe in view of the missing of the records. Hence, directed to initiate appropriate action against the concerned officials.

13. This Court summoned the Tahsildar as well as the Deputy Commissioner of Hassan District, under whose custody the revenue records are there and they appeared before the Court and expressed their inability to produce the same. On the intervention of the Court about the missing of the records, criminal case was also registered and the police have investigated the matter and filed the charge sheet against some of the officials of Belur Taluk. It is also reported by the Deputy Commissioner that already they have enquired the matter and submitted the report that though explanation is called from 23 officials, material is found against only 4 persons. To that effect, a report is also filed before this Court by the learned AAG along with affidavit of the Under Secretary to Government, DPAR, wherein it is specifically stated that report submitted by the Deputy Commissioner only points out the role of Sri B.K. Nagaraj-Shirastedar; Sri Ravi-

SDA; Sri Nagarajappa N.M.– Attender; and Sri Manjunatha B.M.–‘D’ group employee and action was taken against them and Annexure-R4 produced before the Court by the Deputy Commissioner discloses the role of those persons. The learned AAG submits that the matter is pending before the DPAR for taking decision on the report of the Deputy Commissioner, which is marked as Annexure-R4. It is made clear that if no such material is found against other officials, they cannot be penalized and decision has to be taken forthwith and no need of keeping hanging sword on these officials.

14. Having considered the material available on record, it is not in dispute that earlier this petitioner along with accused No.2 and 4 approached this Court by filing Crl.P.No.2717/2020 and this Court after filing of the charge sheet, comes to the conclusion that when material is available before the Court to invoke the offence against the petitioner, it is not a fit case to exercise the powers under Section 482 of Cr.P.C. The disputed question has to be answered only after the trial and this Court cannot ascertain the truthfulness of the statement of the witnesses sitting under Section 482 of Cr.P.C. It is important to note that admittedly the document of relinquishment deed was created on 06.02.2007 and the same was registered document and apparently it was a deed of relinquishment of impersonation and specific allegation is made by the complainant against his own father, who has been arraigned as accused No.2. It is important to note that accused No.2, who is father of the petitioner and who is the beneficiary under the relinquishment deed is no more and accused Nos.3 and 4, who have also got the very same property by mutating the same are facing the criminal trial. This Court has already pointed out that as on the date of creation of the relinquishment deed, the petitioner was not in India, but on the date of mutating the property in his favour on 01.01.2013, he was very much present in India. Apart from that, when the mutation records are called for to prove before this Court, this Court also taken note of the fact that mutation proceedings was taken place based on the personal letter and this Court also wanted to know whether the petitioner has given personal letter, called the records and in a suspicious manner the record was missing and hence the proceedings was initiated against the concerned officials in a criminal proceedings as well as departmental enquiry. When such material is available on record, the very contention of the petitioner that he is innocent and he is not involved in such transfer cannot be accepted, since the very property stands in the name of the petitioner based on MR proceedings and the very MR proceedings are missing and all steps have been taken to secure the same and till date the same has not been secured and proceedings are initiated against the concerned officials and the role of this petitioner in missing of records also to be ascertained since the property is transferred in his favour.

15. It is important to note that law is settled that while exercising the power under Section 239 of Cr.P.C for discharge, the Court has to take note of the material on record. In the case on hand, in the complaint specific allegations are made against all the accused persons that all of them have joined hands together

in getting the relinquishment deed and the complainant's father was taken to Sub-Registrar office, who was not having any worldly knowledge as alleged and also specific allegation is made that khatha was transferred in the name of this petitioner and also his other brother and all of them have allegedly joined hands together with an intention to knock off the property. Based on the complaint, case has been registered and police have investigated the matter and filed the charge sheet and column No.17 of the charge sheet is clear that accused Nos.1 to 4 all of them joined together in order to cheat the complainant and inspite of original owner passed away on 25.04.1996, obtained the signature of the complainant's father on impersonation in the name of Siddegowda on 06.02.2007 and accused Nos.2 to 4 with an intention to defeat the right of the complainant got transferred the land in the name of accused No.2 and thereafter got transferred in the name of this petitioner and the same is evident from the records. When specific accusation is made, the Trial Court has to see whether there is material or not. If no material, can discharge invoking Section 239 of Cr.P.C. The Trial Court also having taken note of the material on record and the principles laid down in the judgments which have been referred, comes to the conclusion that plea of alibi put forth by the petitioner has to be proved during the trial. It is important to note that when the plea of alibi is taken, the same has to be proved by the accused during the trial and burden shifts on him to prove the defence of alibi. This petitioner has to prove his alibi defence before the Trial Court only. The Trial Court cannot consider the defence while considering the discharge application. The Trial Court has to only consider whether there is material against the petitioner or not.

16. The main contention of the learned counsel for the petitioner is that offences of Sections 465 and 468 of IPC does not attract against the petitioner. Specific allegations are made that all the accused persons have joined together and with an intention to knock off the property indulged in such a act and offence under Sections 419 and 420 of IPC, ingredients of cheating and intentional cheating is made out and prima facie record also discloses that property at the first instance was standing in the name of the father of this petitioner after relinquishment deed, who is accused No.2 and also a document was created among themselves that there was a partition and on the strength of the said partition, property was transferred in the name of the petitioner. This Court has already observed that the records were missing and other criminal prosecution and department enquiry are also held against the concerned officials. All these disputed facts are to be considered only during the full-fledged trial. The Trial Court having perused the material on record comes to the conclusion that final report discloses an allegation that accused Nos.1 to 4 have committed the offence and comes to the conclusion that different contentions raised by this petitioner can be appreciated only after conclusion of the trial. The Investigating Officer found the material to file the charge sheet and when the Trial Court comes to the conclusion that prima facie case is made out against the petitioner, grounds which have been urged before the Trial Court that he was in Germany and not in India, cannot be a

ground. This Court already pointed out that as on the date of mutating the property in favour of the petitioner, he was very much in India and whether he has played the role to invoke offences in getting the property transferred also to be considered at the time of trial. The Trial Court cannot discharge him on the ground that he was not present at the time of execution of relinquishment deed and this petitioner has played a role in getting the property transferred in his name has to be considered only in trial.

17. This Court would like to refer to the judgment of the Apex Court with regard to scope of discharge in the case of *STATE OF RAJASTHAN V. ASHOK KUMAR KASHYAP* reported in (2021) 11 SCC 191, wherein it is held that duty of the Court is to find out whether there is sufficient material or not. In other words, the sufficiency of grounds would take within its fold the nature of the evidence recorded by the police or the documents produced before the Court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him. It is further observed that if the Judge comes to a conclusion that there is sufficient ground to proceed, he will frame a charge under Section 228 Cr.P.C., if not, he will discharge the accused. It is further observed that while exercising its judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution, it is not necessary for the Court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really the function of the Court, after the trial starts. It is also held that while framing of charge and/or discharge application, consideration of defence of the accused on merits impermissible and defence on merits is not to be considered at the stage of framing of charge.

18. This Court would also like to refer to the judgment of the Apex Court in the case of *STATE OF GUJARAT V. DILIPSINH KISHORSINH RAO* reported in 2023 SCC ONLINE SC 1294 regarding exercise of discharge as well as review jurisdiction and so also Section 482 of Cr.P.C. In paragraph No.14 it is held that the High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge. Only to see whether there is sufficient material on the basis of which the case would end in a conviction; the Court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice. The Revisional Court cannot sit as an Appellate Court and start appreciating the evidence by finding out inconsistency in the statement of witnesses and it is not legally permissible.

19. This Court would like to rely upon the judgment of the Apex Court in the case of *STATE OF TAMIL NADU V. N. SURESH RAJAN AND OTHERS* reported in (2014) 11 SCC 709, wherein in paragraph No.32.4 it held that while passing the impugned orders, The court has not sifted the materials for the purpose of finding out whether or not there is sufficient ground for proceeding against the

accused but whether that would warrant a conviction. This was not the stage where the Court should have appraised the evidence and discharged the accused as if it was passing an order of acquittal.

20. The Apex Court in the judgment in the case of STATE OF TAMIL NADU V. R. SOUNDIRARASU AND OTHERS reported in (2023) 6 SCC 768 has held that Cr.P.C. contemplates discharge of the accused by the Court of Session under Section 227 of Cr.P.C and the Trial Judge is required to discharge the accused if the Judge considers that there is no sufficient ground for proceeding against the accused and obligation to discharge the accused under Section 239 arises when the Magistrate consider the charge against the accused to be groundless. Whether the charge has to be framed or not is required to be made on the basis of the record of the case, including the document and oral hearing of the accused. The scope of framing of charge or refusal of discharge also clarified in the judgment that revisional power cannot be exercised in a casual or mechanical manner and it can be exercised to correct manifest error of law or procedure which would occasion injustice, if it is not corrected.

21. Having considered the scope of revision and also the reasons assigned by the Trial Court, the Trial Court has taken note of the material on record, particularly there is a document of relinquishment deed and also subsequently the properties are transferred in the name of this petitioner and also he has taken the plea of alibi and plea of alibi is a matter of trial and on the ground of alibi, he cannot be discharged and the defence cannot be considered at the stage of considering the material on record. Hence, I do not find any error committed by the Trial Court in rejecting the application filed for discharge and this Court has already taken note of the material for filing of the charge sheet against him in the earlier petition and rejected the petition filed under Section 482 of Cr.P.C. Hence, I do not find any ground to interfere with the findings of the Trial Court.

22. In view of the discussions made above, I pass the following:

ORDER

(i) The criminal petition is dismissed.

(ii) In view of the submission of the learned AAG that the matter is pending before the DPAR for consideration of report submitted by the Deputy Commissioner for initiating the proceedings against the concerned employees for missing of the records and that the report will be submitted within four weeks, the learned AAG is directed to submit the report to that effect before this Court within four weeks from today. It is made clear that if no such material is found against other officials, they cannot be penalized and decision has to be taken forthwith and no need of keeping hanging sword on these officials.