

(2015) 02 KAR CK 0341
In the Karnataka High Court
Case No : Criminal Petition No. 15250/2013

Marchappa

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 20-02-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 143, 147, 148, 149, 302
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(1)(x), 3(2)(v)

Citation : (2015) 02 KAR CK 0341

Hon'ble Judges : K.N. Phaneendra, J.

Bench : Single Bench

Advocate : Avinash Uplaonkar, for the Appellant; Maqbool Ahmed, H.C.G.P.,
Advocates for the Respondent

Final Decision : Allowed

Judgement

K.N. Phaneendra, J.—I have heard the arguments of learned counsel for the petitioner and also learned High Court Government Pleader. Perused the records.

2. The present petitioner is a juvenile offender in J.C. No. 11/2012 on the file of Chief Judicial Magistrate Yadgir.

3. The petition is filed seeking quashing of the said proceedings in J.C. No. 11/2012 for the offences punishable U/Sec. 143, 147, 148, 341 and 302 R/w Sec. 149 of Indian Penal Code and U/Sec. 3(1)(x) and 3(2)(v) of Schedule Caste and Schedule Tribe (Prevention of Atrocities) Act 1989.

4. Petitioner is arrayed as one of the accused in Crime No. 100/2010 of Shorapur police station for the above said offences alongwith other nine accused persons. The accused/petitioner was a juvenile offender as on the date of commission of the offence, this case was lodged before the Juvenile Justice Board headed by Chief Judicial Magistrate, Yadgir.

5. The learned counsel for the petitioner contended that all the other accused Nos. 1 to 9 except present juvenile offender were tried before the Special Court/Sessions Judge, Yadgir in Spl. Case No. 89/2010 (SC/ST) (P.A.) Act and the learned Special Judge has acquitted all the accused persons vide its Judgment dated: 07-04-2012. It is contended that as the other accused persons on the same allegations have already been acquitted, no purpose would be served even if this juvenile offender is tried before the Juvenile Justice Board. Therefore it is just and reasonable to quash the entire proceedings before the Juvenile Justice Board, by extending the same benefit in favour of juvenile offender (present petitioner) as extended by the Special Court/Sessions Court, Yadgir so far as other accused persons are concerned.

6. I have enquired with the learned High Court Government Pleader whether any appeal is preferred against the Judgment passed by Special/Sessions Judge Yadgir, in Special Case No. 89/2010, it was brought to my notice that State has preferred an appeal against the said Judgment of acquittal in Criminal Appeal No. 3627/2012 and this Court has dismissed the said Criminal Appeal vide Judgment dated: 08-07-2013. Therefore the Judgment of acquittal rendered by the Special/Sessions Judge, Yadgir in the above said case has reached its finality. The judgment in the Criminal Appeal is also made available.

7. The allegations made against the petitioner and the accused Nos. 1 to 9 in Special Case No. 89/2010 are that a person by name Venkatesh S/o. Bhimanna Guddakai lodged complaint before the Shorapur Police on 19-04-2010 making allegations that about two years ago prior to the lodgment of the F.I.R., a person by name Mallappa S/o. Gopal a villager of the complainant died by consuming poison and a case was being filed against the brother of the complainant by name Hanamanth, on the allegation that the said Mallappa committed suicide due to the harassment given by Hanamanth and the said case was ended in acquittal, in this backdrop one Shivappa S/o. Shannashivappa and his associates were grudging ill-will against the brother of the complainant Hanamanth. In this back-ground on 19-04-2010 in the evening at 5.30 p.m., the complainant having heard the news of murder of his brother Hanamanth, went near the land of one Ilager situated near Shellagi cross and found his brother's dead body lying with grievous injuries on the head, neck, hands, legs, etc. It is alleged that Shivappa S/o. Sannashivappa Bover and his associates by name Ningappa, Hayalappa, Lachamanna, Bhimanna, Marcha, Yankappa, Dharma, Honnappa, Mallappa who are the residents of Kumbarpeth have committed the murder of Hanamanth by assaulting him with talwars, choppers, axe, etc. On these allegations the police have investigated the matter and submitted the charge sheet against accused Nos. 1 to 9 before the learned Special/Sessions Judge Yadgir and submitted final report before the Juvenile Justice Board so far as the present petitioner is concerned.

8. In order to prove the guilt of the above said, accused Nos. 1 to 9 in Special Case No. 89/2010 the prosecution has examined as many as 19 witnesses as

P.W. 1 to 19 and got marked Ex. P. 1 to Ex. P. 19 and M.O. 1 to 12.

9. The trial Court after framing charges against the accused persons dealt with the accused persons and after analysis of the entire materials on record, ultimately came to the conclusion that the prosecution has not established the case against accused Nos. 1 to 9 beyond all reasonable doubt resulting in acquittal of the accused.

10. The point that would arise for consideration of this Court is:

"Whether on the basis of same evidence, the juvenile offender can be convicted or whether there is any necessity of any trial against the juvenile offender in view of the acquittal of the co-accused persons in the above Special Case and that the said Judgment of acquittal being confirmed by this Court in Criminal Appeal No. 3627/2012". The trial Court in fact while framing of the charges has framed charges not only against accused Nos. 1 to 9 but as the allegations were indivisible and inseparable in nature, he also joined the juvenile offender and included the act of juvenile offender at the time of framing of charges. In this context the charges framed reveal that:

"Whether the prosecution proves beyond reasonable doubt that all the accused together with juvenile offender in furtherance of their common object wrongfully restrained the deceased Hanamanth, brother of the complainant and assaulted him with deadly weapons knowing fully well that the said person belonged to Beddar by community declared as schedule caste and thereby committed the offences U/Sec. 143, 147, 148, 341 and 302 R/w Sec. 149 of Indian Penal Code and U/Sec. 3(1)(x) and 3(2)(v) of SC/ST (P.A.) Act, 1989?" The trial Court considering the evidence of the interested witnesses as well as other circumstantial witnesses has come to conclusion that the prosecution has not proved the case beyond reasonable doubt. Though there are some independent eye-witnesses to the incident i.e., P.Ws. 5 to 7, the trial Court has come to conclusion that they are planted and tutored witnesses. Therefore their evidence cannot be believed at all. Ultimately the Court after relying upon the witnesses of the prosecution and several rulings of the Hon'ble Apex Court has drawn an inference that the accused Nos. 1 to 9 have not at all committed any offences as alleged against them.

11. It is worth to note here, this Court while dealing with the matter in the appeal in CrI. Appeal No. 3627/2012 observed at para 5, though the case of the prosecution mainly rests on the evidence of eyewitnesses P.Ws. 5 to 7, though they have supported the case of the prosecution, their evidence cannot be believed on the ground that their testimonies are not recorded within reasonable time, but recorded after one month by the Investigating Officer without assigning any reasons, though they are from the same place. It is further observed that the trial Court on evaluation of the evidence of P.Ws. 5 to 7 has on fact concluded that the evidence of these witnesses, they are planted and tutored witnesses. P.Ws. 5 to 7 have also not stated about the incident. Considering the

circumstance, this Court has affirmed the acquittal so far as accused Nos. 1 to 9 are concerned.

12. As I have already referred to the allegations made against accused Nos. 1 to 9 and the juvenile offender (present petitioner) are one and the same, they are joint offenders and jointly committed such offences, there is no individual and separate allegations made against the juvenile offender, it can safely be said that the allegations made against the accused Nos. 1 to 9 and juvenile offender are inseparable and indivisible in nature. Therefore even if it is allowed to prove the case against the juvenile offender (present petitioner) the prosecution may not be in a position to place better evidence than the one already placed before the trial Court, so far as accused Nos. 1 to 9 are concerned. Therefore I am of the opinion that no purpose will be served in continuing case against the present petitioner.

13. It is worth to note here decision of Hon''ble Apex Court reported in Central Bureau of Investigation Vs. Akhilesh Singh, the Hon''ble Supreme Court of India has held that:

"While exercising the power U/Sec. 482 of Cr.P.C., for quashing of the charges and discharging co-accused it is said that when the offences of criminal conspiracy and murder alleged, once the main accused who was alleged to have hatched the conspiracy and who had motive to kill deceased, already discharged and that matter attaining finality, the learned Single Judge was fully justified in holding that no purpose will be served in further proceeding with the case against the co-accused and consequently the proceeding against co-accused has been quashed U/Sec. 482 of Cr.P.C. 14. This Court in a case reported in 2014 CRR 770 (Karnataka) between Velu and State of Karnataka, relying upon the said decision of the Hon''ble Apex Court, has quashed the proceedings against the co-accused wherein the allegations are inseparable and indivisible in nature. Applying the above said principles of this Court also, I do not find any strong reason to refuse to grant the relief as prayed in the petition.

15. With these observations I proceed to pass the following:

ORDER

The petition is allowed.

Consequently the entire proceedings in J.C. No. 11/2012 against the petitioner pending on the file of Juvenile Justice Board/Chief Judicial Magistrate, Yadgir is hereby quashed.