

(2017) 01 KAR CK 0246
In the Karnataka High Court
Case No : 648 of 2016

THE STATE OF KARNATAKA BY BASAVESWARNAGAR POLICE
STATION BANGALORE REPRESENTED BY STATE PUBLIC
PROSECUTOR

APPELLANT

Vs

GOVINDA SON OF KANNAN

RESPONDENT

Date of Decision : 13-01-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 482](#), [Section 190](#), [Section 395](#), [Section 234](#), [Section 200](#), [Section 245](#)

Citation : (2017) 01 KAR CK 0246

Hon'ble Judges : Rathnakala

Bench : SINGLE BENCH

Advocate : NAGESHWARAPPA

Final Decision : Allowed

Judgement

1. Though matter is listed for admission, heard the learned High Court Government Pleader for final adjudication.

The State is challenging the order of the Sessions Court whereby the case of the respondent/A4 is disposed of as closed vide order dated 15.12.2015.

2. Facts relevant for the adjudication of this petition is the petitioner police charge sheeted respondent (absconding accused No.4) and 4 others in respect of the offence punishable under sections 399 and

402 of IPC. Since three of the accused absconded, their case was split up and the court proceeded with trial of A-1 and A-5, and they were acquitted vide judgment dated 15.6.2015. Subsequently, A-2 and A-3 were tried and acquitted of the charges vide judgment dated 16.2.2012. Thus, the case of the respondent-sole accused was split up and NBW was ordered, but he could not be traced. On 15.12.2015 after hearing the public prosecutor, the concerned Court passed the impugned order. The last para of the order reads thus:

"In the light of the above decisions of our Hon"ble High Court of Karnataka, case on hand to be closed instead of persuading to secure the appearance of A-4 as it is impossible to convict present accused for the offences for which above noted accused has been already acquitted. In the circumstances, present case to be disposed off as it is closed. Accordingly, this case is disposed off as closed."

3. The learned Trial Court to reach the above conclusion has placed reliance on the following decisions:

- 1) Hyder Vs. State of Karnataka, represented by Police Circle Inspector, Udupi (ILR 2015 Kar 970);
- 2) Deepak Rajak Vs. State of West Bengal (2007(15) SCC 305);
- 3) State of Karnataka Vs. K.C.Narasegowda (ILR 2005 KAR 1822);
- 4) State of Karnataka, by Sub-Inspector of Police, Bagepally Police Vs. Vadde Yerra Venkataramana @ Raju & others (ILR 2003 Kar 3958).

4. Before testing the legality of the order impugned, let us have a sojourn over the above judgments.

5. The case in Hyder (supra) was filed under Section 482 of the Code of Criminal Procedure ("the Code" for brevity) whereby the accused persons of a split up charge sheet sought to quash the criminal proceedings against him since the main case against co-accused had ended in acquittal. Though the Co-ordinate Bench of this Court observed that " the benefit of acquittal in the

case of co-accused can be extended to co-accused if he surrenders before the court ", directed the petitioner-accused therein to first surrender before the concerned court and then move petition under Section 482 of the Code.

6. In Deepak Rajak"s case (supra), the convicted accused was in appeal before the Apex Court while similarly placed co-accused were acquitted. Appreciating the position of law that as to what happens in case of acquittal of similarly placed co-accused on the same set of facts and on similar accusation, the benefit of acquittal of the co-accused on similar accusation was extended to the appellant/accused before the court.

7. In K.C.Narase Gowda "s case (supra), the matter that fell consideration for the Apex Court was, the accused who was on bail escaped after conviction was pronounced by the Sessions Court. Despite steps being taken, he could not be traced. The appeal against the judgment of conviction thereon by the convicted co-accused was allowed and they were acquitted. The Sessions Judge sought indulgence of this Court by way of reference under Section 395 of the Code. The Division Bench gave its due consideration to the predicament of the Sessions Judge to keep the file, waiting for the convicted absconding accused to impose sentence, and though reference was held not maintainable, in exercise of its jurisdiction under Section 482 of Code, set aside the judgment of conviction, since co-accused, who were convicted by Trial Court, were acquitted by this Court.

8. In the matter of Vadde Yerra Venkataramana

(supra), the Trial Court acquitted two accused persons, since they could not be secured and witnesses were also not available. Other two accused were discharged. The Division Bench declined to interfere on noticing that all necessary measures were taken to trace the accused. In that context, it was observed ".....it is neither desirable nor permissible to retain on record old cases where neither the accused nor witness are available".

9. It is clear from the above that, in none of the above four cases, which impressed the lower court to close the case, the absconding accused person of a split up charge sheet was the subject matter for consideration. The court below misread the judgments for its convenience to smoothly dispose of a docket from its file. The Code nowhere contemplates procedure " disposal of a case as closed ". Such concept is unknown to law. Section 258 of the Code contemplates stoppage of proceedings by the Magistrate for the reasons to be recorded by the Magistrate in a summons case instituted otherwise than on a complaint. Other than that, the circumstances in which an end can be brought to the criminal case are the below.

10. The first circumstance is, while the Court takes cognizance of an offence on a complaint/Police report or on the information received by it directly, under Section 190 of the Code. The Magistrate taking the cognizance is required to apply his mind, as to in respect of which offence he is issuing summons and the materials before him, whether or not make out a prima facie case of criminal offence of which he can decline to take

cognizance (Reference (1) Pepsi Food Limited Vs. Judicial Magistrate reported in 1998(5) SCC 749; (2) M/s.GHCL Employees Stock Option Trust -vs- M/s.India Infoline Limited ((2013) 4 SCC 505); (3) Sunil Bharti Mittal -vs- Central Bureau of Investigation reported in (2015) 4 SCC 609 and (4) Mehmood Ul Rehman vs. Khazir Mohammad Tunda and Others reported in (2015) 12 SCC 420)).

11. Another circumstance is, when a Magistrate on receiving complaint under Section 200 of the Code holds enquiry under sub-section (2) of Section 202 and records evidence of the complainant and witnesses, thereafter finds that there is no sufficient ground for proceeding with issue of summons to the accused. Then he will dismiss the complaint under Section 303 of the Code. This is prior to commencement of the trial.

12. In a warrant case, Magistrate would discharge a person before framing the charges after giving audience to the defence and the prosecution, if charge is found to be groundless. This is under Section 239 of the Code.

13. Next stage is, after recording the prosecution evidence, if no case is made out by the prosecution, acting under Section 245 of the Code after giving audience to both parties, he will dismiss the case.

14. In a sessions trial before framing the charge if there is no sufficient ground to proceed with the case, the accused will be discharged under Section 227 of the Code and after recording the statement of the prosecution case, if no case is made out by the prosecution, the accused will be acquitted under Section 232 of the Code. Excepting the above, the Code does not contemplate any

other mode to close a criminal trial. The judgment of acquittal or conviction will be returned after calling upon accused to enter upon defence and after hearing both parties under Section 234 of the Code.

15. Now coming to the question of an absconding accused, Section 299 of the Code is of relevance, which reads thus:

"299. Record of evidence in absence of accused - (1) If it is proved that an accused person has absconded, and that there is no immediate prospect of arresting him, the Court competent to try (or commit for trial) such person for the offence complained of may, in his absence, examine the witnesses (if any) produced on behalf of the prosecution, and record their depositions and any such deposition may, on the arrest of such person, be given in evidence against him on the inquiry into, or trial for, the offence with which he is charged, if the deponent is dead or incapable of giving evidence or cannot be found or his presence cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable.

(2) If it appears that an offence punishable with death or imprisonment for life has been committed by some person or persons unknown, the High Court or the Sessions Judge may direct that any Magistrate of the first class shall hold an inquiry and examine any witnesses who can give evidence concerning the offence and any depositions so taken may be given in evidence against any person who is subsequently accused of the offence, if the deponent is dead or incapable of giving evidence or beyond the limits of India."

16. The procedure to be followed in respect of an accused, who remains absconding for six months, is enumerated in Chapter-IV of the Karnataka Criminal Rules of Practice, 1968. The Sessions Court with the previous permission of High Court, the Magistrate with the previous permission of Sessions Judge, shall direct that the case against absentee accused be removed to the Register of Long Pending Cases (Register XIII). Prior to that, action under Sections 82 and 83 (Proclamation for person absconding and attachment of property of person

absconding) shall have been exhausted and Bond executed by surety must have been enforced. If required, procedure contemplated by Section 446 of the Code, for recovery of Bond amount must be invoked.

17. The Apex Court in Chief Information

Commissioner and Another -vs- State of Manipur and Another [(2011) 15 SCC 1) observed thus:

"When a procedure is laid down statutorily and there is no challenge to the said statutory procedure, the Court should not, in the name of interpretation, lay down a procedure which is contrary to the express statutory provision. Where a statute provides for something to be done in a particular manner it can be done in that manner alone and all other modes of performance are necessarily forbidden."

18. It is not a straightjacket formula that the result of split up charge sheet shall follow the result of the main case. There may be circumstances that even after acquitting the accused in the main case, still there is incriminating evidence against the accused person of a split up charge sheet. The facts and circumstances in each case differ and the result of the main case cannot be applied to a split up charge sheet unmindful of the quality of evidence brought in the main case. There is no discussion by the trial court how the evidence recorded in the main case is sufficient to bail out the accused person of the split up charge sheet.

19. In view of the discussion made supra, the order of the court below cannot be sustained.

The revision petition is allowed. The order dated 15.12.2015 passed in S.C.No.94/2013 by the LVI Addl.City Civil and Sessions Judge, Bengaluru City, is set aside. The Trial Court shall restore the case on its file and proceed in accordance with the procedure contemplated in the Code in respect of the absconding accused and also in the light of the discussion supra. In the last two months, this Revision Petition is third of its kind preferred by prosecution. That explains the casual approach some of our Courts are adopting in their hurry to wind up cases before them. Mark a copy of this order to the Director, Karnataka Judicial Academy.