

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 24<sup>th</sup> DAY OF MARCH, 2021

BEFORE

THE HON'BLE MR. JUSTICE H.P. SANDESH

CRIMINAL PETITION NO.6857/2020

**R**

BETWEEN:

UMMER FAROOQ  
S/O ABDUL KAREEM. K  
AGED ABOUT 28 YEARS  
R/AT 1/59/3, UKKADA DARBE  
ALIKE POST, ALIKE  
BANTWALA TALUK  
D.K. DISTRICT-574 235.

... PETITIONER

(BY SRI LETHIF B., ADVOCATE)

AND:

1 . THE STATE OF KARNATAKA  
BY VITTLA POLICE STATION  
D.K.DISTRICT  
REPRESENTED BY THE SPP  
HIGH COURT BUILDINGS  
BENGALURU-560 001

2 . SRI SELVARAJ  
S/O CHINNAPPA  
AGED ABOUT 50 YEARS  
R/AT UKKADA DARBE  
ALIKE POST, ALIKE  
BANTWALA TALUK  
D.K. DISTRICT-574 235

... RESPONDENTS

(BY SRI MAHESH SHETTY, HCGP FOR R1; R2-IS SERVED)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C PRAYING TO QUASH THE ENTIRE PROCEEDINGS AGAINST THE PETITIONER IN C.C.NO.1153/2018 IN CR.NO.207/2015 OF VITTAL POLICE STATION, D.K., DISTRICT, FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 143, 147, 341, 354, 504 AND 506 R/W SECTION 149 OF IPC ON THE FILE OF THE ADDITIONAL CIVIL JUDGE AND JMFC BANTWALA, DAKSHINA KANNADA, WHICH IS PRODUCED AT ANNEXURE-A.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 08.03.2021 THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

**ORDER**

This petition is filed under Section 482 of Cr.P.C, praying this Court to quash the entire proceedings against the petitioner in C.C.No.1153/2018 (Crime No.207/2015 of Vittla Police Station, D.K. District) for the offences punishable under Sections 143, 147, 341, 354, 504 and 506 read with Section 149 of IPC pending on the file of Additional Civil Judge and JMFC., Bantwal, Dakshina Kannada.

2. The factual matrix of the case is that this petitioner, who has been arraigned as accused No.2 along with other accused in the complaint dated 18.10.2015, P.W.1 made the allegation that the neighbour by name Mohammed had constructed a petty shop in a Government Land about two months back. It is further alleged that, after the construction

the persons who were sitting in the said petty shop were disturbing the residents i.e., women and children in this regard the complainant had orally informed the panchayath and revenue office and the revenue officer were removed the said petty shop about one month back. It is further alleged that, in this regard the said Mohammed, his relatives and friends were quarreled with the complainant and abused him in a filthy language. In the meantime, the Panchayath President and other leaders of the locality had agreed to resolve the dispute. That on 18.10.2015 at about 6:00 p.m, they called a meeting at Vishwakarma Community Hall in the presence of elders and leaders of the locality and in the said meeting the followers of the said Mohammed had abused the complainant in a filthy language and assaulted the complainant on all over the body. It is alleged that, the complainant had tried to escape from the place. At that time, other accused were caught hold of him and tried to press the neck of the complainant with an intention to commit the murder and pulled him on the floor. At that time, the persons who were gathered at the place were pacified them and the mother-in-law one Eshwari also tried to pacify the quarrel. At that time, one Razith and Farooq pulled her on the

floor and caused injuries, she took treatment in Aadarsha Hospital. Based on the complaint, the police have registered a case for the offences punishable under Sections 143, 147, 341, 323, 504, 354, 307 read with Section 149 of IPC in Crime No.207/2015. After the investigation, charge sheet is filed against 10 accused. The petitioner is the permanent resident of the above address and not aware of about filing of charge sheet against him and only when the Police came near the house with a warrant, he came to know about the pendency of the case. On Verification, he found that a case against him was split up from original C.C.No.1360/2016 by order dated 13.08.2018. The case against the other accused was tried in C.C.No.1360/2016. During the trial, the prosecution has examined two witnesses as PWs.1 and 2 and they were ultimately acquitted. Hence, the present petition is filed before this Court.

3. The grounds urged in the petition before this Court is that the learned Magistrate has framed common charge against all the accused and in the entire charge sheet there is no specific or separate charge made against the petitioner. In view of similar charge has been framed and other accused have been

acquitted after the trial, there is no specific overt acts against the present petitioner and there is no recovery from the present petitioner. Hence, he is entitled for the relief of quashing.

4. The learned counsel for the petitioner in support of his contention, he relied upon the recent Judgment of the Apex Court in the case of **Vishwas Bhandari v. State of Punjab and another** reported in **AIR 2021 SCC OnLine SC 56**, and brought to the notice of this Court that paragraph No.9 of the judgment, wherein, the Apex Court exercised the discretion invoking Section 482 of Cr.P.C, and coming to the conclusion that neither the prosecutrix nor the complainant have levelled an iota of allegation against the appellant in respect of abduction of the prosecutrix. It is also observed that the prosecutrix and the accused with the consent of both the families, they married and living together happily.

5. The learned counsel also relied upon the Division Bench judgment of this Court in the case of **The State of Karnataka v. K.C.Narasegowda** reported in **ILR 2005 KAR 1822**, and brought to the notice of this Court that paragraph Nos.4 and 6 of the judgment, wherein, this Court had discussed

considering the regular facts and circumstances of the case exercised the powers under Section 482 of Cr.P.C.

6. The learned counsel relied upon the judgment of the Apex Court in the case of **Central Bureau of Investigation v. Akhilesh Singh** reported in **AIR 2005 SC 268**, wherein, the Apex Court discussed with regard to exercising the powers under Section 482 of Cr.P.C, the main accused, who had alleged to have hatched conspiracy and who had motive to kill deceased was already discharged and the matter had attained finality and held that no purpose would be served in further proceeding with case against co-accused.

7. The learned counsel also relied upon the unreported judgment of this Court dated 14.10.2020 passed in **Crl.P.No.1422/2019 (Mohammed Shariff @ Khasim v. The State of Karnataka and another)** and brought to the notice of this Court paragraph No.7 of the Judgment, wherein, this Court observed that once there is an acquittal on merits after consideration of the evidence on record and the said evidence being equally applicable to the petitioner-accused No.6. Hence, Section 482 of Cr.P.C. can be invoked.

8. The learned counsel also relied upon the unreported judgment of this Court dated 05.07.2017 passed in **Crl.P.No.4796/2017 (Mr. Ravi @ Ravichandra P v. The State)** and brought to the notice of this Court paragraph No.17 of the Judgment, extending the benefit under Section 482 of Cr.P.C.

9. The learned counsel also relied upon the unreported judgment of this Court dated 02.02.2018 passed in **W.P.No.709/2018 (Shakeel Ahammada v. The State of Karnataka)** and brought to the notice of this Court paragraph No.7 of the Judgment, wherein, invoked Section 482 of Cr.P.C. on the ground that accused, who were tried and acquitted by the Court are one and the same and they are not separable in nature.

10. The learned counsel also relied upon the unreported judgment of this Court dated 03.01.2011 passed in **Crl.P.No.3849/2010 (Mr. Devaraju v. The State of Karnataka)** and brought to the notice of this Court paragraph No.4 of the Judgment, wherein, this Court observed that the Sessions Judge acquitted all the accused persons of the offences

mainly on the ground of material witnesses including the complainant having turned hostile and none of them have supported the prosecution case except the two doctors.

11. The learned counsel also relied upon the unreported judgment of this Court dated 29.06.2010 passed in **Crl.P.No.7261/2010 (Mr. Shekappa @ Chandrashekar v. The State of Karnataka)** and brought to the notice of this Court paragraph No.6 of the Judgment and also observed the two versions, one in favour of prosecution and one in favour of the accused and comes to a conclusion that if the trial is conducted, it is only a formal trial.

12. The learned counsel also relied upon the unreported judgment of this Court dated 20.01.2017 passed in **Crl.P.No.569/2017 (Mukkateera Sampath @ M.G. Kushalappa v. The State of Karnataka and another)** and brought to the notice of this Court paragraph No.5 of the Judgment, discussing the judgments of different High Courts and Hon'ble Supreme Court and found that it would be a futile exercise if he tried for the charges levelled against him.

13. The learned counsel also relied upon the unreported judgment of this Court dated 23.01.2015 passed in **Crl.P.No.200008/2015 (Saibanna v. The State of Karnataka and another)** and brought to the notice of this Court paragraph Nos.8, 11 and 15 of the Judgment, wherein, Section 482 of Cr.P.C. has been involved.

14. The learned counsel also relied upon the unreported judgment of this Court dated 10.11.2020 passed in **Crl.P.No.770/2017 (Althaf Hussain Sareef v. The State of Karnataka and another)** and brought to the notice of this Court paragraph Nos.22, 23, 24 and 25 of the Judgment, wherein, the benefit of Section 482 of Cr.P.C. is extended to the co-accused.

15. Per contra, learned High Court Government Pleader appearing for respondent No.1/State would vehemently contend that the benefit of Section 482 of Cr.P.C. cannot be invoked for the reason that this accused was absconded, as a result, in 2016 itself, a split up case is registered against this accused and after four years of passing an order of split up case against this accused, the petitioner has approached this Court.

16. The learned High Court Government Pleader would contend that the Trial Court in paragraph No.7 of the Judgment held that in spite of issuance of NBW, this petitioner has not been secured before the Court. The petitioner has waited till the disposal of the case and has approached this Court after the acquittal order knowing fully well the proceedings was taken place against the other accused persons. Hence, the benefit of Section 482 of Cr.P.C. cannot be invoked.

17. The learned High Court Government Pleader in support of her contention she relied upon the Judgment in the case of **Umesh v. State of Kerala** reported in **(2017) 3 SCC 112**, wherein, the Apex Court discussing the scope of Sections 482, 227 and 239 of Cr.P.C. held that, proper forum - an application has to be filed before the Trial Court under Section 239. It is for the Magistrate to consider the contentions regarding discharge therein. The High Court has refused to quash the criminal proceedings and upheld the Full Bench judgment of Kerala High Court in the case of **Moosa v. Sub Inspector of Police** reported in **(2006) 2 CCR 445**. Further

observed that, it is for the Magistrate concerned to consider the contentions in an application filed under Section 239.

18. The learned High Court Government Pleader referring to these judgments would contend that the judgments which have been canvassed by the learned counsel for the petitioner, all the judgments are passed by this Court and some of the judgments are unreported judgments and the subsequent judgment of the Apex Court has to be considered, wherein, the Apex Court has upheld the Full Bench judgment of Kerala High Court in **Moosa's** case (supra), refusing to quash the proceedings on the ground that co-accused was acquitted. Hence, the recent judgment of the Apex Court is applicable.

19. Having heard the learned counsel for the petitioner and the learned High Court Government Pleader for respondent No.1/State, this Court has to examine whether this Court can exercise the powers under Section 482 of Cr.P.C. in view of the principles laid down in the judgments referred supra.

20. Having perused the allegations made in the complaint against this petitioner and other accused, the

allegation is specific that in view of the prior enmity between the complainant and one Mohammed in connection with removal of petty shop which was put up in the Government land was removed, they were having ill will against the complainant and specific allegation is made against each of the accused including this petitioner that they assaulted not only the complainant and also CW.2-mother-in-law, who came to rescue the complainant; with an intention to take away the life an assault was made and tried to take away the life by pressing her neck. On perusal of the records, no doubt, two witnesses are examined i.e., CWs.1 and 2 as PWs.1 and 2 and both of them have not supported the case of the prosecution. On perusal of the charge sheet, CWs.2 to 12, are the eye witnesses to the incident and other witnesses have not been examined before the Trial Court. The Doctor, who has been cited as CW.16 also, has not been examined. It is also important to note that Section 164 statement was also recorded before CW.17.

21. On perusal of the acquittal order also, the trial Judge not allowed the prosecution to examine the other witnesses i.e., who are the eyewitnesses to the incident and the Doctor, who

treated the injured persons, so also, not examined the Magistrate, who recorded the statement under Section 164 of Cr.P.C. The Court has to distinguish the facts and circumstances of each case. No doubt, the Apex Court in **Vishwas Bhandari's** case (supra), held that neither the prosecutrix nor the complainant have levelled an iota of allegation against the appellant in respect of abduction of the prosecutrix. It is also observed that the prosecutrix and the accused with the consent of both the families, they married and living together happily and they are having the children. The said principle laid down in the judgment is not come to the aid of the petitioner and in the said case there was no allegation against the appellant, who have approached the Apex Court. In the case on hand, a specific allegation is made against the petitioner herein and the Apex Court also taken note of the complainant/prosecutrix married the accused and both of them married with the consent of their families. The other judgments are relied upon by the learned counsel for the petitioner is prior to the judgment of the Apex Court passed in **Umesh's** case (supra). In view of the judgment of the Apex Court in **Moosa's** case (supra), those judgments are also will not come to the aid of the petitioner herein.

22. This Court would like to refer to the judgment of the Apex Court in the case of **Yanob Sheikh alias Gagu v. State of West Bengal** reported in **(2013) 6 SCC 428**, and extract paragraph Nos.23 and 26, which read as follows:

**23.** *Nazrul has been acquitted by the trial court. His acquittal was not challenged by the State before the High Court. In other words, the acquittal of Nazrul has attained finality. While recording the acquittal of the accused Nazrul, the trial court recorded the following reasoning:*

*"PW 1 and PW 5 at the first blush did not say that accused Yanob threw the bomb at Samim taking the same from the bag of Nazrul and PW 1 stated that Yanob came along with Nazrul with bomb in his hand. He did not say that Nazrul was carrying any cloth bag (tholey).*

*It also transpired from the evidence of PW 5 that the house of Yanob is about 200/250 cubits away from the bank of the tank while that of Nazrul is at a further distance of 25/30 cubits from Yanob's house.*

*It might be that Nazrul was in the house of Yanob or hearing shouts from the bank of the tank seeing Yanob rushing back towards the bank of the tank with bombs in his hand he came close behind him to see what was going on and at that point of time he might have had a cloth bag in his hand but that itself will not prove that he shared the common intention with Yanob to kill Samim*

*specially when no such cloth bag containing bombs was recovered from his possession.*

*I, therefore, on an appreciation of the entire evidence on record feel no hesitation to hold and find accused Yanob guilty of the charge under Section 302 IPC and convict him thereunder and hold and find accused Nazrul not guilty of the charge under Section 302 read with Section 34 of the Penal Code and he is acquitted of that charge under Section 235(1) CrPC. So far as the charge under Section 324 IPC against accused Yanob for causing voluntary hurt to Mahasin (PW 9) and Basir (CS Witness 10) is concerned there is no evidence that the aforesaid persons sustained and/or received any injury from the splinters of the exploded bomb thrown by accused Yanob. Mahasin when tendered by the prosecution even during cross-examination did not say that he sustained any such injury. Basir as already observed had not been examined on the plea that he has been gained over and the defence did not examine him as its witness to prove that the prosecution narrative was not correct and the incident took place in a different manner.*

*I, therefore, hold and find accused Yanob not guilty of the charge under Section 324 IPC and he is acquitted of that charge.*

**26.** *The cumulative effect of the above discussion is that the acquittal of a co-accused per se is not sufficient to result in acquittal of the other accused. The Court has to screen the entire evidence and does not*

*extend the threat of falsity to universal acquittal. The court must examine the entire prosecution evidence in its correct perspective before it can conclude the effect of acquittal of one accused on the other in the facts and circumstances of a given case.”*

23. This Court would like to refer to the Full Bench judgment of the Kerala High Court in the case of **Moosa v. Sub Inspector of Police** reported in **(2006) 2 CCR 445**, a similar view was taken in this judgment and held that the Judgment of acquittal of co-accused in a criminal trial is not admissible under Sections 40 to 43 of the Evidence Act to bar the subsequent trial of absconding co-accused and cannot be reckoned as a relevant document while considering the prayer to quash the proceedings under Section 482 of Cr.P.C. Such judgment would be admissible only to show who were the parties in the earlier proceedings and the factum of acquittal. The Apex Court in its Judgment in the case of **Rajan Rai v. State of Bihar** reported in **(2006) 1 SCC (Cri) 209**, held that the trial of co-accused tried separately is only an irrelevant in subsequent trial of accused, who are not tried earlier. The Judgment of acquittal of co-accused will not be admissible within the meaning of Section 40 to 44 of the Evidence Act.

24. This Court would like to refer to Sections 40 to 44 of the Evidence Act, which read as follows:

**"40. Previous judgments relevant to bar a second suit or trial.**—The existence of any judgment, order or decree which by law prevents any Courts from taking cognizance of a suit or holding a trial is a relevant fact when the question is whether such Court ought to take cognizance of such suit, or to hold such trial.

**41. Relevancy of certain judgments in probate, etc., jurisdiction.**—A final judgment, order or decree of a competent Court, in the exercise of probate, matrimonial admiralty or insolvency jurisdiction which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely, is relevant when the existence of any such legal character, or the title of any such person to any such thing, is relevant. Such judgment, order or decree is conclusive proof—

*that any legal character, which it confers accrued at the time when such judgment, order or decree came into operation;*

*that any legal character, to which it declares any such person to be entitled, accrued to that person at the time when such judgment, [order or decree] declares it to have accrued to that person; [order or decree] declares it to have accrued to that person;*

*that any legal character which it takes away from any such person ceased at the time from which such judgment, [order or decree] declared that it had ceased or should cease;*

*and that anything to which it declares any person to be so entitled was the property of that person at the time from which such judgment, [order or decree] declares that it had been or should be his property.*

**42. Relevancy and effect of judgments, orders or decrees, other than those mentioned in section 41.**—*Judgments, orders or decrees other than those mentioned in section 41, are relevant if they relate to matters of a public nature relevant to the enquiry; but such judgments, orders or decrees are not conclusive proof of that which they state.*

**43. Judgments, etc., other than those mentioned in sections 40 to 42, when relevant.**—*Judgments, orders or decrees, other than those mentioned in sections 40, 41 and 42, are irrelevant, unless the existence of such judgment, order or decree, is a fact in issue, or is relevant under some other provisions of this Act.*

**44. Fraud or collusion in obtaining judgment, or incompetency of Court, may be proved.**—*Any party to a suit or other proceeding may show that any judgment, order or decree which is relevant under section 40, 41 or 42 and which has been proved by the adverse*

*party, was delivered by a Court not competent to deliver it, or was obtained by fraud or collusion.*

25. Having perused Sections 40 to 44, the acquittal of co-accused in a criminal trial is not admissible and Sections 40 to 43 of the Evidence Act not bar the subsequent trial of absconding co-accused.

26. This Court also would like to refer to the judgment of the Apex Court in the case of **State Rep. by the CBI v. Anil Sharma** reported in **1997 SCC (Cri) 1039**, wherein, the Apex Court held that the petitioner never associated with the investigation. Thus, investigating agency may have been handicapped in collecting the evidence and further observed that custodial interrogation is more elicitation-oriented. However, the petitioner never associated with the investigation. The Investigating Agency, thus, never got an opportunity either to seek their custodial information or record their statements. In case such accused, who have scant respect for law are given benefit of their own wrong, it would be travesty of justice.

27. Having perused the principles laid down in the judgments referred supra, it is clear that the judgment of

acquittal of co-accused would not be admissible within the meaning of Sections 40 to 44 of the Evidence Act. It is also important to note that in the present case on hand, the complainant in the complaint, a specific allegation is made against the petitioner herein not only in the complaint and also in his statement under Section 164 of Cr.P.C. However, this petitioner was absconded, he waited for the trial of co-accused to be over and thereafter he preferred the instant petition seeking quashing on the basis of their acquittal. Hence, it is clear that the very conduct of the accused that he is not having any scant respect for law and if he has given benefit of their own wrong it would be travesty of justice as held by the Apex Court in the judgments referred supra.

28. The learned counsel appearing for the petitioner also relied upon the judgment of the Apex Court in the case of **Siddharam Satlingappa Mhetre v. State of Maharashtra and others** reported in **(2011) 1 SCC 694**, and brought to the notice of this Court paragraph No.136 with regard to, if this court comes to any other conclusion in view of the other co-ordinate benches have extended the benefit of the matter has to

be referred to the larger bench. The said contention also cannot be accepted for the reason that the Apex Court in the judgment referred supra in **Yanob Sheikh's** case (supra) and in **Umesh's** case (supra), categorically held that the judgment of acquittal of co-accused would not be admissible within meaning of Sections 40 to 44 of the Evidence Act. When the same is not admissible under the Evidence Act and also the Apex Court dealt with the matter in detail referring to Sections 40 to 43 of the Evidence Act and the Full Bench judgment of the Kerala High Court in **Moosa's** case (supra), held that the Judgment of acquittal is not admissible under Sections 40 to 43 of the Evidence Act and the benefit cannot be extended. This Court has already pointed out that each case facts and circumstances has to be considered and the Court has to obey the dictums of the Apex Court held in **Yanob Sheikh's** case (supra) and **Umesh's** case (supra). Hence, I do not find any merit in the petition.

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

ORDER

- (i) The petition is dismissed.

- (ii) However, the petitioner/accused is directed to appear before the Trial Court and he may be enlarged on bail subject to executing a personal bond for a sum of Rs.50,000/- with one surety for the like sum to the satisfaction of the Trial Court. He is given liberty to file necessary application for discharge before the Trial Court and the same shall be considered in accordance with law.

**Sd/-  
JUDGE**

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