NC: 2024:KHC:50967
CRL.P No. 12758 of 2024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10TH DAY OF DECEMBER, 2024

BEFORE

THE HON'BLE MR JUSTICE M.NAGAPRASANNA

CRIMINAL PETITION NO. 12758 OF 2024

BETWEEN:

CHANDRA @ V.CHANDRASHEKARA BHAT,
S/O V. ESHWARA BHAT,
AGED 68 YEARS,
R/AT NO.17-1, PUNYAKOTY,
12TH H-MAIN, MUTHYALA NAGAR,
GOKULA POST,
BENGALURU – 560 054

…PETITIONER

(BY SRI. K.RAVISHANKAR, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
REP. BY SHO OF POLICE, UDUPI,
UDUPI DISTRICT – 574 118
AND ALSO REP. BY THE OFFICE OF THE SPP,
HIGH COURT OF KARNATAKA,
BENGALURU – 560 001.

2. NARAYANA NAIR P
S/O KUNHAMBU NAIR
AGED ABOUT 71 YEARS
UDYAVARA VILLAGE
UDUPI TALUK
UDUPI DISTRICT – 574 118.

…RESPONDENTS

(BY SMT.RASHMI PATIL, HCGP FOR R-1)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C.,(528 OF BNSS) PRAYING TO ALLOW THIS CRL.P AND CONSEQUENTLY QUASH THE ENTIRE PROCEEDINGS AS AGAINST THE PETITIONER IN RELATION TO CC.NO.430/1980 (LPC.NO.13/1980, CR.NO.66/1979) REGISTERED BY THE RESPONDENT UDUPI POLICE WHEREIN THE PETITIONER HAS BEEN IMPLICATED AS ACCUSED NO.3, FOR THE OFENCE U/S 143, 147, 148, 447, 307, 326, 302 R/W 149 OF IPC, PENDING ON THE FILE OF THE ADDITIONAL CIVIL JUDGE AND JMFC, UDUPI.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: **HON'BLE MR JUSTICE M.NAGAPRASANNA**

ORAL ORDER

The petitioner/accused No.3 in Crime No.66 of 1979 calls in question the proceedings in C.C.No.430 of 1980 in a petition preferred 44 years later.

2. Heard Sri K.Ravishankar, learned counsel appearing for the petitioner and Smt. Rashmi Patil, learned High Court Government Pleader appearing for respondent No.1.

3. Facts, in brief, germane are as follows:-

A crime comes to be registered on 08.06.1979 in Crime No.66 of 1979 alleging at about 9.00 p.m., the 2nd respondent and his father heard a noise in their courtyard. When he went out to see, one Seetharama Bhat and Kitta have criminally trespassed into the house, stabbed him on the chest and back and also stabbed another person Kunhirama on his neck. The said accused Kitta was holding an iron rod and Seetharama

Bhat wooden club. The further allegation is that neighbour by name William Pinto rushed to the spot and the accused persons fled from the scene. The injured Kunhirama when he was taken to the hospital succumbed to the injuries. The dispute was with regard to Seetharama Bhat being a tenant in respect of Sy.Nos.28/1 and 28/2 in a village coming under Sri Admar Mutt, Udupi. Based upon the said incident, as observed hereinabove, a crime comes to be registered in Crime No.66 of 1979 for offences punishable under Sections 143, 147, 148, 447, 307, 326 and 302 read with Section 149 of the IPC. The police after investigation filed a charge sheet in C.C.No.2972 of 1979. The matter was committed to the Court of Sessions and was numbered as S.C.No.42 of 1979.

4. The concerned Court after full-fledged trial by its judgment dated 17.05.1980 convicts Seetharama Bhat and Kitta @ Krishnappa and acquitted two other accused Sanjeeva Handa and Basava Handa. The petitioner was similarly placed as Sanjeeva Handa and Basava Handa and there was no overact alleged against the petitioner both in the complaint or in the charge sheet material that was produced by the

prosecution. The petitioner at the time of alleged incident was 22 years old and was not available at the time of commission of the offence. The petitioner is said to be unaware of the developments and even registration of the case as he was one of the son-in-law of Sanjeeva Handa. The averment in the petition is that the petitioner was never arrested by the Police nor any summons was received by him. After trial in S.C.No.42 of 1979, as observed hereinabove, two of the accused get convicted and two get acquitted. Criminal Appeal was preferred by those convicted in Criminal Appeal No.254 of 1980 before this Court and on 24.11.1981 the appeal was partly allowed by acquitting Kitta, accused No.2 in the charge sheet and confirming the sentence against Seetharama Bhat, accused No.1. Thus, ended the legal battle insofar as it pertained to the one convicted. The acquittal of the two accused becomes final. The petitioner was still in the dark. Now, a 68 year old man /petitioner is hunted by the respondent/Police for the reason that he has to undergo trial in a split up case drawn against him showing him to be absconding at the time of trial. It is this that has driven the petitioner to this Court in the subject petition.

5. The learned counsel appearing for the petitioner would take this Court through the order of acquittal *qua* accused Nos. 3 and 4 Sanjeeva Handa and Basava Handa to demonstrate that the allegations against this petitioner were also identical to those two accused who were acquitted and would further demonstrate that the petitioner was employed from 1979 till 2022 in various capacities in Bangalore. Notwithstanding the petitioner being available all the time, neither summons, nor warrant was ever served upon him. When the petitioner comes to know about him being searched by the Police, apprehending his arrest, files a Criminal Miscellaneous No.285 of 2024 before the Principal District and Sessions Judge, Udupi seeking anticipatory bail. This comes to be rejected by the concerned Court on the ground that the petitioner was relative of accused No.1 in the original charge sheet and therefore, naturally he would be aware of the proceedings and since the offence was heinous bail was denied. It is this that has driven the petitioner to this Court in the subject petition.

6. The learned counsel submits that in the case at hand notwithstanding the fact that the allegations against the petitioner are identical to that of accused Nos.3 and 4, there would be no chance of conviction of the petitioner at this stage as securing witnesses of a 44 year old incident is unimaginable. He would submit that the reasons so rendered by the concerned Court acquitting others should be applied to him and he also be declared acquitted. He would seek quashment of entire proceedings to give a quietus to 44 year old case.

7. Per contra, the learned High Court Government Pleader would refute the submissions to contend that the petitioner was absconding throughout. Therefore, a split charge was drawn way back in 1980. Since 1980 he had not been traced. He is now traced after 44 years. Therefore, he must face trial and come out clean like other accused whose reference the learned counsel for the petitioner is wanting to make. She would seek dismissal of the petition.

8. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

9. The afore-narrated facts are all a matter of record. Out of the accused who were available for trial, two of them got convicted i.e., Seetharama Bhat and Kitta and two of them got acquitted viz., Sanjeeva Handa and Basava Handa. The dispute was with regard to the property. The petitioner was arrayed as accused No.3 in the charge sheet. At the relevant point in time, he was not available for trial. The concerned Court by recording reasons, acquits two and convicts two in terms of its judgment dated 17.05.1980. It becomes necessary to notice those reasons. They read as follows:

> "36. On a consideration of the evidence referred to hereinabove, and on a close scrutiny of the different submissions made by the learned Advocates for the accused,
> I am of the opinion that the prosecution has established that A4 Sitharama Bhatta, in the company of A1 Krishna Naika and **the absconding accused Chandrasekhara Bhatta** and two others, came to the scene of offence, and assaulted PW-1 Narayana and deceased Kunhiraman Nair. At the same time, I have to observe here that the evidence referred to hereinabove is not at all sufficient to establish the identity of A-2 Sanjiva Handa and A-3 Basava Handa. In this connection, it may be noted that PW-1 **Narayana Nair has stated in unequivocal terms that he had seen A-2 and A3 for the first time only on the date of the incident, i.e., at the time of the incident, and he had not seen them earlier at any point of time and that they were completely strangers to him before that time.** Similarly, PW-2 Kunhambu Nair has stated in para-4 of his evidence that he has not seen A2 and A3 at any time next before the date of incident. In the

same way, pW-3 Thaniyappa has stated in para-2 of his deposition that he did not know A2 and A3 before the date of the incident. In the same way, PW-5 Kumaran has stated in para-15 of his deposition that he had not seen A2 and A3 before the date of incident and he saw them only at the time of the incident. In the same way, PW-6 Kumara has stated in para-2 of his deposition that he had not seen A2 and A3 prior to the time of incident. The evidence of PW-7 Lingappa and PW-13 John Crasta is also equally vague in this behalf. It needs to be noted that an identification parade was held on 26-06-1979 by PW-11 J.Ashwath with respect to A2 and A3. The evidence of PW-11 J.Ashwath is briefly referred to hereinabove. It will suffice if it is noted at this juncture that there are so many infirmities in the identification parade conducted by PW-11 J.Ashwath. In this connection, PW-11's evidence at para 20 deserves to be noted. In the course of his cross-examination, he has stated that he has not noted down the dress worn by different persons standing in identification parade or by A2 Sanjiva Handa and A3 Basava Handa. He has further admitted that he has not noted any particulars with respect to those persons and the accused as regard height, age etc., and other descriptive particulars. He has further stated that he has noted down in the different exhibits from Exs.P10 to P23 whatever he has done. He has admitted that it is mentioned in different memorandums at Exs.P10 to P23 that the Sub-Inspector of Police produced the accused persons i.e., A2 and A3. Further, it is seen from the memorandums maintained by PW-11 Ashwath at Exs.P10 to P23 that the identification parade was held at C.I.'s office. As seen above, the Sub-Inspector of Police produced A2 and A3. The identification parade was held at the C.I's office. Further, the total number of persons, who were made to stand with the accused persons i.e., A2 and A3 were ten. Further, the descriptive particulars were also not given. The ratio is also alarmingly less. In this connection, the decision of our Hon'ble High Court in Pemya and others -V- The State, reported in 1978(2) Karnataka Law Journal, at page 87 can be looked into with advantage. In the said case, it was observed that prudence requires that people with similar height and features should be mixed up with the accused in the proportion of not less than 1 to 9, and the Executive Magistrate should also take care

> that there is no occasion for any Police Officer to be present at the parade to prompt the witnesses. In the light of the said observation, I am of the opinion that the test identification conducted in this case is wholly unsatisfactory and that the same does not afford any assistance to the Court to lend assurance to the identification made by the different witnesses of A2 and A3, before the Court. **Having regard to the fact that the witnesses, who are alleged to have seen these two accused persons on the date of the incident were strangers to A2 and A3 prior to that date, and having regard to the infirmities in the identification test conducted by PW-11 and having regard to the fact that the witnesses were observing the persons during night time though there was moon-light, I am of the opinion that it is not safe to rely on the evidence of the witnesses on the question of identification. Shri B.G. Das who argued the case on behalf of the State, as pointed out above, has also fairly submitted before the Court that the identification of A2 and A3 is not satisfactory and that they deserve to be acquitted."**
>
> (Emphasis added)

It is on the basis of the aforesaid evidence, the two get acquitted for not being identified by eye witnesses. The Court holds that there is no evidence to hold Sanjeeva Handa and Basava Handa to be involved in the case. While so saying, the concerned Court was of the opinion that the prosecution had established that A4 - Seetharama Bhat in the company of A1 Krishna Naika and Kitta and the absconding accused, the petitioner had come to the scene of offence. Like it is said that there is no sufficient evidence to establish Sanjeeva Handa and

Basava Handa, there was evidence to establish the presence of the petitioner nor any individual overt act alleged against the petitioner. Therefore, the two get acquitted and two get convicted.

10. The two who get convicted approach this Court in criminal appeal in Crl.A.No.254/1980 and out of the two, in the said criminal appeal, one gets acquitted and conviction is affirmed only against one *i.e.,* Seetharama Bhat, in terms of the judgment of this Court on 24.11.1981. The one who was convicted has completed his sentence and is also out of prison. But, who remains in a crime of 44 years old, is the present petitioner whom the concerned Court had declared absconding as he was not traceable. The petitioner has produced abundant material to demonstrate that he was employed in Bangalore and returned back to his Village. It is then, he comes to know that Police are on a hunt for him in a 44 year old case, which is split up in S.C.No.42 of 1979.

11. The issue is, whether trial against the petitioner should be permitted at this juncture only for an eventuality that

he would get acquitted and walk away or whether the petitioner should be allowed to face the rigmarole of the procedure of criminal law in a case where there cannot be a conviction at all. Reasons are manifold. The witnesses who deposed then i.e., 44 years back are impossible to be secured to-day and the reasons rendered by the concerned Court qua other accused who are acquitted are straight away applicable to the petitioner as his identification for driving home the presence of the petitioner in the alleged scene of crime is extremely doubtful. It would only be a waste of judicial time which is too precious today, if the petitioner is permitted to be tried 44 years after the crime. To save such precious judicial time, I deem it appropriate to obliterate the crime against the petitioner.

12. The view of mine, in this regard, is fortified by the judgment rendered by a Co-ordinate Bench of this Court in Crl.P.4796/2017, wherein the Co-ordinate Bench considering identical set of facts has held as follows:

> "12. Having heard the learned Advocates appearing for parties and on perusal of records it would disclose that petitioner/accused was never traced and non bailable warrant issued against him was never executed. Hon'ble Apex Court in the case of CENTRAL BUREAU OF INVESTIGATION vs AKHILESH SINGH reported in AIR

> 2005 SCC 268 has held quashing of charge and order discharging co-accused can be passed, **if the proceedings initiated against co-accused is on similar allegations and if said judgment had reached finality. It is also held that discharge of a co-accused by the High Court by holding that no purpose would be served in further proceeding with the case, is just and proper.**
>
> (Emphasis supplied)

Later, in the case of MOHAMMED ILIAS vs. STATE OF KARNATAKA reported in (2001) 3 Kant LJ 551, a coordinate bench has held as follows:

> "The petitioner is the accused in the case and he is shown to be the absconding. Therefore, the case against the petitioner was split up and charge-sheet was laid against other available accused Nos.1 and 3 for committing an offence punishable under Sections 498A and 307 IPC r/w 34 Indian Penal Code, 1860. After the trial, the Sessions Judge acquitted the accused Nos.1 to 3. The petitioner was arrested and proceedings were revived against him in the split charge sheet.... In the instant case also, the full pledged trial was held against accused Nos.1 to 3, in respect of the same offence. In the second round of trial against the petitioner, **the evidence to be produced cannot be different from the one that was produced by the prosecution in the earlier case. Therefore, in that view of the matter, the proceeding is quashed."**
>
> (Emphasis supplied)

Yet in another case, THE STATE OF KARNATAKA vs. K.C.NARASEGOWDA reported in ILR 2005 Kar. 1822, a coordinate bench has held as follows:

"As the case before the Sessions Judge is not a pending case, he cannot keep the file any longer pending nor he can close the case as he has to await appearance of the accused or the production by the State, for passing orders regarding undergoing sentence. As such, considering these peculiar facts and circumstances, it is deemed proper to exercise theinherent jurisdiction under Section 482 of Cr.P.C. instead of jurisdiction under Section 385 of Cr.P.C. in the interest of justice. As the entire material evidence of the prosecutions is one and the same, as against all the accused including the non-appealing accused No.1, who is said to be absconding, there is no second opinion that he is also entitled for the same benefit of doubt as he is extended for his coaccused. Accused acquitted by giving benefit of doubt."

14. In this background, when the facts on hand are examined, it would clearly indicate that not only complainant but also other witnesses including the inmates of ambulance in which they were travelling on the date of incident, had turned hostile in the proceedings which was continued against co-accused. Though, P.W.1 – complainant had admitted that he has lodged a compliant as per Ex.P-1 and had also admitted that he has given a statement identifying the accused before the Investigation Officer, he did not identify the accused persons present before Court. In fact, statements given by him as per Exs.P-2 to P-4 when confronted, he denied the same and had also denied the suggestion put by the public prosecutor that he had furnished the statements as per Exs.P-2 to P-4 as false. P.W.2 to P.W.8 had not identified the accused persons present before the jurisdictional Sessions Court. In fact, they have not even identified the statements made by them before the Investigating Officer and nothing worthwhile has been elicited in their crossexamination to disbelieve their evidence. Thus, taking into consideration said evidence available on record Sessions Court had arrived at a conclusion that evidence of the witnesses examined by prosecution would not come to their assistance. In fact, witnesses to the seizure

panchnama - Ex.P-40, who wereexamined as P.W.16 and P.W.17, have also turned hostile and they have stated that police had called them a year back to the police station and when they went to the police station, they had not seen any accused persons in police station. However, they admit police having taken their signatures on the papers and contents of it were not known to them.

15. It is in this background, trial Court on appreciation of entire evidence had acquitted all the accused persons by holding that prosecution had failed to prove the offence alleging accused persons beyond reasonable doubt attracting the ingredients of provisions of the offence alleged against them. In fact, Sessions Court has observed that there was certain communal disturbance in Dakshina Kannada district and other places at Bantwal Taluk and to please on community of people, the Investigating Officer might have falsely implicated the accused persons in a false case or to avoid the blame to be received from the public or other community people and such possibilities cannot be ruled out. In this background, when prayer of petitioner sought for in the present petition is examined, it can be noticed that contents of supplementary charge sheet filed against the petitioner is similar, identical and in fact, it is replica of charge made against accused Nos.1 to 23 and 25 to 33, who15 were tried in S.C.No.12/2007, 94/2007 and 26/2008 and had been acquitted.

16. In that view of the matter, this Court is of the firm view that judgment rendered by trial Court insofar as it relates to accused Nos.1 to 23 and 25 to 33 is similar and identical to the charge made against the present petitioner. This Court does not find any independent or separate material having been placed by the prosecution against present petitioner to put him on trial once again and directing the petitioner-accused to undergo the order of trial, which ultimatelywould fetch same result as that of accused Nos.1 to 23 and 25 to 33. When allegation made against accused Nos.1 to 23 and 25 to 33 is compared with the allegation made

against present petitioner, it has to be necessarily held that they are identical, similar and inseparable in nature and no independent decision can be taken against the present petitioner. Therefore, no purpose would be served even if the present petitioner is ordered to be tried by the trial Court.

(Emphasis supplied)

If the afore-narrated facts are noticed, the impossibility of conviction of the petitioner looms large. Therefore, if acquittal is eminent in a trial, permitting such trial against the accused would be nothing but waste of precious judicial time as is observed hereinabove. Therefore, in the considered view of this Court, **permitting a trial, which would be of no utility would only be an exercise in futility.** Thus, ends the oldest case, in criminal justice system, of the State, perhaps, which is 44 years old.

13. For the aforesaid reasons, the following:

O R D E R

(i) Criminal petition is allowed; and

(ii) Proceedings in C.C.No.430 of 1980 (LPC No.13/1980/ Crime No.66 of 1979) pending before the Additional Civil Judge and

JMFC, Udupi, *qua* the petitioner, stand quashed.

Sd/-
(M.NAGAPRASANNA)
JUDGE

KG
List No.: 2 Sl No.: 15