



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF JANUARY, 2025

BEFORE

THE HON'BLE MR JUSTICE S.R.KRISHNA KUMAR

CRIMINAL PETITION NO. 14164 OF 2024 (482(Cr.PC) / 528(BNSS))

BETWEEN:

SRI UDAYA KUMAR SHETTY @ SHANU SHETTY
S/O SRI.SADASHIVA SHETTY,
AGED ABOUT 43 YEARS,
PERMANENT R/AT FLAT NO.307
3RD FLOOR, "ANANTHA KRUPA APARTMENT",
BHARATHI NAGARA,
MANGALURU
PERMANENT R/O TALAPADI NARLA HOUSE,
NEAR SRIRAMA BHAJANA MANDIRA,
TALAPADI VILLAGE,
ULLALA,
MANGALURU 575017

...PETITIONER

(BY SMT. HALEEMA AMEEN FOR SRI. ASHOK KUMAR SHETTY K.,
ADVOCATES)

AND:

STATE OF KARNATAKA BY
BARKE POLICE STATION,
MANGALURU,
REPRESENTED BY STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDINGS,
BENGALURU.

...RESPONDENT

(BY SMT. WAHEEDA M.M. HCGP)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482
CR.P.C (U/S 528 BNSS) PRAYING TO QUASH THE ENTIRE
CRIMINAL PROCEEDINGS INITIATED AGAINST THE PETITIONER IN
CC.NO.1004/2024 IN CR.NO.108/2023 OF BARKE P.S., PENDING ON
THE FILE OF JMFC (VI COURT), MANGALURU, REGISTERED FOR
THE OFFENCE P/U/S 216 OF IPC.





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

CORAM: HON'BLE MR JUSTICE S.R.KRISHNA KUMAR

ORAL ORDER

In this petition, petitioner seeks quashing of the impugned proceedings initiated against the petitioner in C.C.No.1004/2024 on the file of JMFC (VI Court), Mangaluru for the offence punishable under Section 216 of IPC, and for other reliefs.

2. Heard learned counsel for the petitioner and learned counsel for respondent and perused the material on record.

3. A perusal of the material on record will indicate that the FIR in Crime No.108/2023 was registered against the petitioner for the alleged offence punishable under Section 216 of IPC. A perusal of the same will indicate that it is the specific allegation of the respondent that Sri.Sharan @ Sharan Poojary @ Rohidas @ Sharan Akashbhavan was convicted in S.C.No.152/2011 by the V Addl. District and Sessions Judge, Mangaluru, D.K. for the offences punishable under Sections 120B, 109 and 302 IPC and he was sentenced to life imprisonment. The conviction of said Sharan was confirmed by this Court in CrI.A.No.807/2017 dated 27.09.2023,



pursuant to which, the respondent-Police attempted to arrest the convicted person, who was absconding and not found, as a result of which, they came to the house of the petitioner and arrested the said accused, who was at that time present in the house of the petitioner. It was alleged that the petitioner was guilty of harbouring the accused within the meaning of Section 216 of IPC and as such, respondent initiated the impugned proceedings against the petitioner.

4. Learned counsel for the petitioner submits that when the aforesaid accused/convicted person came to the house of the petitioner, the petitioner was not aware of the conviction of said Sharan. It is also contended that in the absence of any material to establish that the petitioner had knowledge of conviction or that he had *mens rea* of harbouring the convicted person, petitioner cannot be said to be guilty of the offence punishable under Section 216 of IPC and consequently, the impugned proceedings against the petitioner deserves to be quashed.

5. Per contra, learned HCGP submits that there is no merit in the petition and the same is liable to be dismissed.



6. Before advertng to the rival contentions, it would be necessary to extract Section 216 of IPC, which reads as follows:

“Section 216 of IPC:

Whenever any person convicted of or charged with an offence, being in lawful custody for that offence, escapes from such custody, or whenever a public servant, in the exercise of the lawful powers of such public servant, orders a certain person to be apprehended for an offence, whoever, knowing of such escape or order for apprehension, harbours or conceals that person with the intention of preventing him from being apprehended, shall be punished in the manner following, that is to say:

***if a capital offence** — if the offence for which the person was in custody or is ordered to be apprehended is punishable with death, he shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;*

***if punishable with imprisonment for life, or with imprisonment** — if the offence is punishable with imprisonment for life or imprisonment for ten years, he shall be punished with imprisonment of either description for a term which may extend to three years, with or without fine; and if the offence is punishable with imprisonment which may extend to one year and not to ten years, he shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of the imprisonment provided for such offence or with fine, or with both.*

“Offence” in this section includes also any act or omission of which a person is alleged to have been guilty out of India, which, if he had been guilty of it in India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise liable to be apprehended or detained in custody in India, and every such act or omission shall, for the purposes of this section, be deemed to be punishable as if the accused person had been guilty of it in India.



7. As rightly contended by learned counsel for the petitioner, before alleging any offence punishable under Section 216 of IPC, it is necessary to establish that accused person had knowledge about conviction of the offender and that the petitioner had intentionally and willfully harboured him so as to attract Section 216 of IPC.

8. In the instant case, apart from the fact that the aforesaid convicted person Sharan was merely arrested and taken into custody from the house of the petitioner, in the absence of any material to establish that the petitioner had knowledge of the offender's conviction and that he intentionally harboured the offender, petitioner cannot be said to be guilty under Section 216 of IPC and consequently, continuation of proceedings against the petitioner for offence punishable under Section 216 of IPC would amount to abuse of process of law warranting interference by this Court in the present petition.

9. Though learned HCGP would invite my attention to the call records of mobile number of the petitioner, a perusal of the same would indicate that there are no text messages or transcripts which would indicate that the petitioner was aware of the offender's



conviction and that he intentionally harboured the convicted person and in the absence of the same, the said contention of learned HCGP cannot be accepted.

10. In the result, I pass the following:

ORDER

- i) The petition is hereby allowed.
- ii) The proceedings in C.C.No.1004/2024 on the file of JMFC (VI Court), Mangaluru for the offence punishable under Section 216 of IPC *qua* the petitioner are hereby quashed.

**Sd/-
(S.R.KRISHNA KUMAR)
JUDGE**

MDS
List No.: 1 SI No.: 57