



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF APRIL, 2025

BEFORE

THE HON'BLE MR JUSTICE MOHAMMAD NAWAZ

CRIMINAL PETITION NO. 6797 OF 2022

(482(Cr.PC) / 528(BNSS))

BETWEEN:

1. ATHAULLA JOKATTE,
S/O ABDUL RAHIMAN BAVA,
AGED ABOUT 45 YEARS,
R/AT NO.3/191/2,
ZAHARABAD HOUSE, M.P. ROAD,
JOKATTE, 62 THOKUR VILLAGE,
MANGALORE, D.K. DISTRICT - 575 030.
2. AFFAN ABDUL REHAMAN,
S/O ABDUL REHAMAN,
AGED ABOUT 34 YEARS,
R/AT S.A. MANZIL, SUNKADAKATTE,
KADABA TALUK, D.K. DISTRICT - 574 221.
3. NAWAZ ULLAL,
S/O LATE ISMAIL,
AGED ABOUT 44 YEARS,
R/AT MASTER COMPOUND,
MASTIKATE ULLAL, MANGALORE,
D.K. DISTRICT - 575 017.
4. ABDUL JALEEL. K @ JALEEL KRISHNAPURA,
S/O LATE CHEYYABBA,
AGED ABOUT 41 YEARS,
R/AT HOUSE NO.1/13/1,
ASHRAF COTTAGE,
YUSUF NAGAR, KANNUR, MANGALORE,
D.K. DISTRICT - 575 007,
NOW RESIDING AT: FLAT NO.201,
KAMALDEEPA APARTMENT,





OLD KENT ROAD, PANDESHWARA,
MANGALORE, D.K. DISTRICT - 575 001.

5. MOHAMMED SHARIEF @ SHARIEF PANDESHWARA,
S/O HAMEED MOIDEEN,
AGED ABOUT 39 YEARS,
R/AT HOUSE NO.19-5-321/1
H.M.S COMPOUND,
NEAR RAILWAY TRACK,
PANDESHWARA, MANGALORE,
D.K. DISTRICT - 575 001.
6. MUZAIR AHMED @ MUZAIR KUDROLI,
S/O LATE HAMZA,
R/AT HOUSE NO.8-4-1210,
C.P.C COMPOUND, KUDROLI,
MANGALORE, D.K. DISTRICT - 575 003.
7. ABDUL MAJEED @ MAJEED JOKATTE
S/O MOOSABBA,
AGED ABOUT 45 YEARS,
R/AT NEAR KBS, 62 THOKUR VILLAGE,
MANGALORE, D.K. DISTRICT - 575 030.
8. NOUFAL KUDROLI,
S/O HAMZA,
R/AT HOUSE NO.8-4-1210,
C.P.C COMPOUND, KUDROLI,
MANGALORE, D.K. DISTRICT - 575 003.

...PETITIONERS

(BY SRI. LETHIF B, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA,
BY MANGALORE SOUTH POLICE STATION,
D.K. DISTRICT, REP. BY SPP,
HIGH COURT BUILDING,
BANGALORE - 560 001.
2. SRI. SUDHAKAR GOWDA,
S/O MONNAPPA GOWDA,



AGED ABOUT 36 YEARS,
R/AT HOSA MANE,
KALLANJA VILLAGE,
KARYATHADKA POST,
BELTHANGADY TALUK - 574 216.

...RESPONDENTS

(BY MS. ASMA KOUSER, ADDL. SPP FOR R1;
R2 - SERVED BUT UNREPRESENTED)

THIS CRL.P IS FILED U/S 482 OF CR.PC PRAYING TO QUASH THE ENTIRE PROCEEDINGS IN C.C.NO.1063/2020 ON THE FILE OF THE J.M.F.C II COURT, MANGALURU FOR THE OFFENCE P/U/S 120(b), 109, 143, 147, 148, 341, 504, 290, 427 R/W 149 OF IPC AND SEC.2 (a)(b) OF KPDLP ACT OF MANGALURU SOUTH P.S., D.K. DISTRICT IN THE ABOVE CASE.

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

CORAM: HON'BLE MR JUSTICE MOHAMMAD NAWAZ

ORAL ORDER

Petitioners / accused Nos.9 to 16 have preferred this petition seeking to quash the entire proceedings in C.C.No.1063/2020 pending on the file of JMFC II Court, Mangaluru.

2. Heard both sides and perused the material on record.

3. On a complaint lodged by one Sudhakar Gouda S/o. Monappa Gowda, a case in Crime No.248/2019 was



registered at Mangaluru South Police Station, against 50 to 100 persons for offences Punishable under Section 143, 147, 148, 341, 268, 290, 427, 336 read with Section 149 of IPC and Section 2(A) of the Karnataka Prevention of Destruction and Loss of Property Act, 1981 (for brevity 'KPDLP Act).

4. It is alleged in the complaint that on 19.12.2019, at about 05:20 p.m., while the complainant was driving a bus bearing registration No.KA-19-AB-6845, near Highland hospital, Kankanady, Mangaluru City, about 50 to 100 persons blocked the road, stopped his bus, abused him and the conductor in filthy language and pelted stones, soda bottles etc. at the bus thereby causing damage to the tune of Rs.60,000/- etc.

5. FIR was registered against 50 to 100 unknown persons. Charge sheet came to be filed against 16 accused for the offence Punishable under Section 120-B, 109, 143, 147, 148, 341, 504, 290, 427 read with Section 149 of IPC and Section 2A and 2B of KPDLP Act.



6. According to the prosecution all the accused conspired to protest against implementation of CAA-NRC and assembled at the spot forming an unlawful assembly, inspite of restrictions imposed and pelted stones, soda bottles etc., at public properties.

7. It is the contention of the learned counsel for petitioners that in order to file a charge sheet under Section 143 of IPC, the ingredients of Section 141 of IPC have to be shown and mere presence in an unlawful assembly, cannot render a person liable, unless it is shown that there was a common object and that object is one of those set down under Section 141 of IPC. He contended that if the common object of an unlawful assembly is not proved, the accused persons cannot be convicted under the main offence with the aid of Section 143 or Section 149 of IPC.

8. In support of the above contention, the learned counsel has relied on a decision of the Hon'ble Apex Court in **CHARAN SINGH AND OTHERS V/S. STATE OF**



UTTAR PRADESH reported in **(2004) 4 SCC 205.**

Paragraph No.13 of the above judgment is extracted herein under:-

"13. Coming to the others who were armed with double-barrelled guns and country-made pistols, the question is regarding applicability of Section 149 IPC. Section 149 IPC has its foundation on constructive liability which is the sine qua non for its operation. The emphasis is on the common object and not on common intention. Mere presence in an unlawful assembly cannot render a person liable unless there was a common object and he was actuated by that common object and that object is one of those set out in Section 141. Where common object of an unlawful assembly is not proved, the accused persons cannot be convicted with the help of Section 149. The crucial question to determine is whether the assembly consisted of five or more persons and whether the said persons entertained one or more of the common objects, as specified in Section 141. It cannot be laid down as a general proposition of law that unless an overt act is proved against a person, who is alleged to be a member of an unlawful assembly, it cannot be said that he is a member



of an assembly. The only thing required is that he should have understood that the assembly was unlawful and was likely to commit any of the acts which fall within the purview of Section 141. The word "object" means the purpose or design and, in order to make it "common", it must be shared by all. In other words, the object should be common to the persons, who compose the assembly, that is to say, they should all be aware of it and concur in it. A common object may be formed by express agreement after mutual consultation, but that is by no means necessary. It may be formed at any stage by all or a few members of the assembly and the other members may just join and adopt it. Once formed, it need not continue to be the same. It may be modified or altered or abandoned at any stage. The expression "in prosecution of common object" as appearing in Section 149 has to be strictly construed as equivalent to "in order to attain the common object". It must be immediately connected with the common object by virtue of the nature of the object. There must be community of object and the object may exist only up to a particular stage, and not thereafter. Members of an unlawful assembly may have community of object up to a certain point beyond which they may differ in their objects



and the knowledge, possessed by each member of what is likely to be committed in prosecution of their common object may vary not only according to the information at his command, but also according to the extent to which he shares the community of object, and as a consequence of this the effect of Section 149 IPC may be different on different members of the same assembly.”

9. Admittedly, accused are strangers to the complainant. The descriptions of the accused who were among the mob and participated in pelting stones etc. are not mentioned in the complaint. Though the FIR was registered against 50 to 100 persons, charge sheet is filed only against 16 accused. Petitioners are alleged to have conspired to commit the offence and instigated other accused persons. The identification of the accused among the mob is doubtful. No reasons are assigned for not chargesheeting others. Hence, the following:-

ORDER

- i) Petition is ***allowed***.



ii) The entire proceedings against the petitioners in C.C.No.1063/2020 pending on the file of the JMFC II Court, Mangaluru are quashed.

**Sd/-
(MOHAMMAD NAWAZ)
JUDGE**

LDC
List No.: 1 SI No.: 22
CT: BHK