NC: 2025:KHC:7254
CRL.P No. 6149 of 2024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF FEBRUARY, 2025

BEFORE

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

CRIMINAL PETITION NO. 6149 OF 2024 (482(Cr.PC) / 528(BNSS)

BETWEEN:

BADRUDDIN
S/O MAYYADDI,
AGED ABOUT 43 YEARS,
R/AT NEERUMARGA, BANADASAALE,
SHANTHGURI, NEERUMARGA VILLAGE,
MANGALORE TALUK,
D.K -575 029.

...PETITIONER

(BY SRI. KETHAN KUMAR, ADVOCATE)

AND:

1. STATE OF KARNATAKA
MANGALORE RURAL POLICE STATION,
DAKSHINA KANNADA
REPRESENTED BY
STATE PUBLIC PORSECUTOR,
HIGH COURT OF KARNATAKA,
BANGALORE - 560 001.

2. B S NEMEGOWDA
FATHERS NAME NOT KNOWN
MAJOR,
POLICE SUB INSPECTOR,
MANGALORE RURAL POLICE STATION,
KULASHEKARA, KAIKAMBA
MANGALORE-575 005.

...RESPONDENTS

(BY SRI. RASHMI JADHAV, ADDL.SPP FOR R-1)

Digitally signed by
LEELAVATHI S R
Location: High
Court of Karnataka

THIS CRL.P IS FILED U/S 482 CR.PC PRAYING TO QUASH CRIMINAL PROCEEDINGS AGAINST THE PETITIONER IN C.C.NO.4516/2005 PENDING ON THE FILE OF JMFC - III COURT, MANGALORE D.K FOR THE OFFENCE P/U/S 505(B) OF IPC, 1860

(CR.NO.270/2004 REGISTERED BY THE MANGALORE RURAL POLICE STATION)

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 the proceedings in C.C.No.4516/2005 arising out of Crime No.270/2004 registered by the 1st respondent – police, pending on the file of JMFC-III Court, Mangalore, for an offence punishable under Section 505(B) of IPC.

2. Heard learned counsel for the petitioner and learned Addl.SPP for respondent No.1 and perused the material on record.

3. A perusal of the material on record will indicate that the petitioner – Badruddin was arraigned as accused No.1 in C.C.No.5904/2004 along with three others who were arraigned as accused Nos.2 to 4 in the charge sheet in C.C.No.5904/2004 pursuant to FIR in Crime No.270/2004. The offences alleged against the petitioner and other accused are under Section 505(B) of IPC.

4. In this context, learned counsel for the petitioner invited my attention to the judgment dated 12.09.2005 passed in C.C.No.5904/2004 as against accused Nos.2 to 4 in order to point out that in view of acquittal of the aforesaid accused, the petitioner who is accused No.1 in C.C.No.5904/2004 prior to the same being split up in C.C.No.4516/2004, would be entitled to seek parity as held by this Court in the case of ***Mohan Vs. State of Karnataka and Another - Crl.P.No.5376/2024 dated 19.09.2024***, in which it was held that acquittal of co-accused by the trial court would enure to the benefit of the petitioner as under:

> "*The petitioner - accused No.6 is knocking at the doors of this Court in the subject petition calling in question a split charge sheet drawn against him in S.C.No.96/2022 registered for offences punishable under Sections 399 and 402 of the IPC.*
>
> *2. Heard Sri. Lakshmikanth K., learned counsel appearing for the petitioner and Smt. Sowmya R., learned HCGP appearing for the respondents.*
>
> *3. Facts in brief, germane, are as follows:*
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> *On the night of 14.02.2015, an alleged incident leads the petitioner along with others for registration of a crime for offences punishable under Sections 399 and 402 of the IPC in Crime No.306/2015. The petitioner is arrayed as accused No.6. The police after investigation file a charge sheet in the*

said matter and the concerned Court registers S.C.No.423/2015. The petitioner - accused No.6 at the relevant point in time was not available for trial and therefore, the concerned Court tried the other accused and acquitted them on the score that the prosecution has failed to prove the guilt beyond all reasonable doubt. On account of non-availability of the petitioner, the concerned Court draws up a split charge sheet in S.C.No.96/2022 and now is wanting to continue the trial for the aforesaid offences.

4. Learned counsel appearing for the petitioner submits that the petitioner would also get acquitted, if trial is permitted in the case at hand and therefore, seeks quashment of the same on the score of parity.

5. Learned HCGP would however refute the submissions to contend that the petitioner has escaped trial and should not be shown any indulgence and he should come out clean in a full blown trial, as the other accused have come out clean. She would seek dismissal of the petition.

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

7. The afore-narrated facts are not in dispute. The petitioner not being available for trial at the relevant point in time is a matter of record. Therefore, it becomes necessary to notice what is the finding qua the acquittal of other accused by the Court of Sessions in terms of its

judgment dated 08.08.2022. The reason so rendered are as follows:

> *"17. No doubt, as submitted by the learned Public Prosecutor, during the course of cross examination of PW-1 to 3, except denial, nothing is elicited whether there is any enmity between these accused and PW-1 to 3 to incriminate in this case. But, this proceeding came to be initiated at suomoto at their own instant. Even, according to the case of the prosecution, these accused were preparing for committing dacoity in the public place at about 9-15 pm. When such being the case, in the absence of corroborative evidence, by any one of the independent panch witness or eyewitnesses, solely based on the evidence of these police officers PW-1 to 3, who are the interested witnesses, it cannot be held that the prosecution has proved the guilt of the accused beyond reasonable doubt. Therefore, the prosecution has not placed any consisting and corroborative evidence to prove any of the alleged charges levelled against this accused No.4. Hence, it creates a serious doubt about the involvement of this accused in the alleged incident. Under all these circumstances, in my considered view, the prosecution has utterly failed to prove the guilt of the accused No.4 by producing consisting and corroborative evidence beyond reasonable doubt. Therefore, without any alternative, the benefit of doubt should be extended to these accused No.4 and he is entitled for acquittal. In view of the aforesaid reasons, I answer point Nos. 1 and 2 in the "Negative"*
>
> *18.* ***POINT NO.3:****- In the result, for the reasons stated above, I proceed to pass the following:-*
>
> ***ORDER***
>
> *The accused No.4 is found not guilty. Hence, by acting under section 235(1) of Cr.P.C., the accused No.4 is hereby acquitted for the offences punishable under sections 399 and 402 of Indian Penal Code.*
>
> *The bail bond of the accused No.4 and his surety stand canceled.*

> *The original record and also M.O.1 to 5 may be retained till disposal of the split up case registered against accused Nos.1 to 3, 5 and 6."*

8. The offence alleged is preparation for commission of a dacoity, it is a collective act of all the accused as is alleged. Therefore, the acquittal of accused Nos.1 to 5 would undoubtedly enure to the benefit of the petitioner, as eventually he would get acquitted. Therefore, permitting further trial against the petitioner for the eventuality of getting acquitted in the light of the acquittal of accused Nos.1 to 5 would only be a waste of precious judicial time. Therefore, I deem it appropriate to obliterate the proceedings against the petitioner.

9. 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. In another ruling in **MOHAMMED ILIAS vs. STATE OF KARNATAKA** reported **in (2001) 3 Kant LJ 551** this Court has held as under:*

> *"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."*

13. Yet, in another ruling ***THE STATE OF KARNATAKA vs. K.C.NARASEGOWDA*** *reported in* ***ILR 2005 Kar. 1822*** *this Court has held to the following effect:*

> *"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 the inherent 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 co-accused. 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 cross-examination 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 were examined 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 ultimately would 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.

17. In view of the afore stated facts and the law laid down, as discussed hereinabove, it would emerge that there would be no harm or injustice that would be caused to prosecution if benefit of acquittal order is passed in favour of accused – petitioner, since accused Nos.1 to 23 and 25 to 33 against whom similar allegation had been made is already acquitted. Though, it is contended by Sri. Rachaiah, learned HCGP appearing for the State that petitioner should not be extended said benefit, since he is an absconder, by relying upon judgment of Coordinate Bench this Court is not inclined to accept said contention for single reason that said judgment had been rendered based on the judgment of Apex Court in the case of ***DEEPAK RAJAK vs. STATE OF WEST BENGAL*** *reported in* ***(2007) 15 SCC 305*** *where under Apex Court after noticing the facts obtained in the said case, had held that benefit of acquittal, should be extended to the appellant, since co-accused had been acquitted and held that a departure can be made in cases where accused has not surrendered* ***"after conviction"*** *in addition to not filing an appeal against the conviction. As such, noticing earlier position of law laid down it was held by the Apex Court that in case of acquittal of a accused for same offence on same set of facts and on similar accusations, if considered, it would entile for acquittal of co-accused also.*

18.In that view of the matter, present proceedings initiated against petitioner is liable to be quashed.

Hence, I proceed to pass the following:

ORDER

(i) Criminal petition is hereby allowed.

(ii) Proceedings in C.C.No.1170/2007 pending on the file of Addl. Civil Judge & JMFC, Bantwal, in Cr.No.130/2006 registered by Bantwal Rural Police Station, is hereby quashed insofar petitioner is concerned.

In view of criminal petition having been disposed of on merits, I.A.No.1/2017 for stay does not survive for consideration and same stands rejected."

The Co-ordinate Bench was considering a case where the co-accused who had escaped trial had not surrendered or was not arrested by the police.

10. In the light of there being no evidence against any of the accused and the split up charge against the petitioner being tried now before the learned Sessions Judge would become an exercise in futility. In the teeth of there being no evidence or a specific charge against this petitioner, that was not charged against others, I deem it appropriate to obliterate the proceedings against the petitioner.

11. For the aforesaid reasons, I pass the following:

ORDER

i. Criminal Petition is allowed.

ii. Proceedings in S.C.No.96/2022 pending before the LVIII Additional City Civil and Sessions Judge, Bangalore (CCH-59), stand quashed, qua the petitioner."

5. In the instant case, it is undisputed fact that accused Nos.2 to 4 have been acquitted by the trial Court and consequently,

by applying the doctrine of parity, proceedings against the petitioner - accused No.1 also deserve to be quashed.

6. In the result, I pass the following:

ORDER

(i) Petition is hereby allowed.

(ii) The proceedings in C.C.No.4516/2005 (Main case in C.C.No.5904/2004) arising out of FIR in Crime No.270/2004 registered by the 1st respondent – Police, pending on the file of JMFC – III Court, Mangalore, D.K., for an offence punishable under Section 505(B) of IPC insofar as the petitioner is concerned are hereby quashed.

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

Srl.
List No.: 2 Sl No.: 35

Retyped and replaced vide Chamber order dated 20.03.2025