NC: 2025:KHC:26724
CRL.P No. 8848 of 2025

HC-KAR

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF JULY, 2025

BEFORE

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

CRIMINAL PETITION NO.8848 OF 2025

BETWEEN:

MOHAMMED SINAN
S/O MOHAMMED ASIF,
AGED ABOUT 24 YEARS,
R/AT NEAR SUBRAMANYA TEMPLE,
10TH THOKUR GRAMA,
NEAR POST OFFICE,
MANGALORE TALUK,
D.K. DISTRICT - 574146

NOW WORKING AT
AL QASSIM BURAIDA,
SAUDI ARABIA - 52531

...PETITIONER

(BY SRI. BALAKRISHNA M R., ADVOCATE)

Digitally signed by DEVIKA M
Location: HIGH COURT OF KARNATAKA

AND:

1. STATE OF KARNATAKA
   BY MULKI POLICE STATION,
   MOODABIDRI.
   REPRESENTED BY ITS
   STATE PUBLIC PROSECUTOR,
   HIGH COURT BUILDING,
   BENGALURU 560 001.

2. HASAN,
   AGED ABOUT 54 YEARS,
   S/O LATE M ABBAS,
   R/AT OPPOSITE TO NARAYAN HIGH SCHOOL,

SANTEKATTE,
HALEANGADI GRAMA AND POST,
MANGALORE TALUK,
D.K DISTRICT - 574146.

…RESPONDENTS

(BY SRI. VINAY MAHADEVAIAH, HCGP FOR R1)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.PC (FILED U/S 528 BNSS) PRAYING TO QUASH THE ENTIRE CRIMINAL PROCEEDINGS AGAINST THE PETITIONER IS CONCERNED IN CC.NO.664/2023 PENDING ON THE FILE OF HONBLE SENIOR CIVIL JUDGE AND JMFC, MOODABIDRI FOR THE ALLEGED OFFENCES PUNISHABLE UNDER SECTIONS 457, 380, 109, 120(B), 201 R/W 34 REGISTERED BY THE RESPONDENT NO.1/MULKI PS.

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

CORAM: HON'BLE MR. JUSTICE H.P.SANDESH

ORAL ORDER

Heard learned counsel for the petitioner and learned High Court Government Pleader appearing for respondent No.1-State.

2. The factual matrix of the case of the prosecution is that this petitioner and other accused persons were arrested in Crime No.58/2019 of Mulki Police station and this petitioner and other accused gave voluntary statement that they have committed the offence under Sections 457, 380, 109, 120(B),

201 and 212 read with Section 34 IPC and case was registered, the police investigated the matter and filed the charge-sheet.

3. That on 31.03.2019/01.04.2019 in between 12.00 to 1.00 a.m. in the midnight, this petitioner instructed, if anybody comes, give signal and accused Nos.1 and 2 went and removed the backdoor by using iron rod and searched the valuable things in the house and found Rs.15,000/- in the pant pocket and the same was taken and they left the house. The case is registered only based on the voluntary statement and there is no recovery at the instance of this petitioner, except drawing mahazar. The counsel brought to notice of this Court the witnesses, who have been arraigned as C.Ws.1 to 11 have not spoken anything about any recovery and they only speak about drawing of mahazar. The counsel also brought to notice of this Court that mahazar was conducted on 19.06.2019 and the same only points out the place where they committed the offence. In the absence of any incriminating material, there cannot be any criminal prosecution.

4. Learned counsel also brought to notice of this Court that earlier the case was registered in C.C.No.376/2020 and thereafter, it was renumbered as C.C.No.664/2023 and this Court already quashed the proceedings initiated against accused No.4 in Crl.P.No.3101/2021. The counsel brought to notice of this Court that this Court in Crl.P.No.4248/2020 relied upon the judgment of the Apex Court in the case of **SURINDER KUMAR KHANNA vs INTELLIGENCE OFFICER, DIRECTORATE OF REVENUE INTELLIGENCE** reported in **(2018) 8 SCC 271** and extracted paragraph 14 of the said judgment which reads as follows:

> "14. In the present case it is accepted that apart from the aforesaid statements of co-accused there is no material suggesting involvement of the appellant in the crime in question. We are thus left with only one piece of material that is the confessional statements of the co-accused as stated above. On the touchstone of law laid down by this Court such a confessional statement of a co-accused cannot by itself be taken as a substantive piece of evidence against another co-accused and can at best be used or utilized in order to lend assurance to the Court. In the absence of any substantive evidence it would be inappropriate to base the conviction of the appellant purely on the statements of co-accused. The appellant is therefore entitled to be acquitted of the

> charges leveled against him. We, therefore, accept this appeal, set aside the orders of conviction and sentence and acquit the appellant. The appellant shall be released forthwith unless his custody is required in connection with any other offence."

5. The counsel also brought to notice of this Court that in paragraph 7 of the above said judgment discussion was made that there was no recovery at the instance of this petitioner under Section 27 of the Evidence Act, 1872 and confession statement is hit by Section 25 of the Evidence Act, 1872 and hence, it requires interference of this Court. The counsel also submits that having considered the principles laid down in the judgment, allowed the petition and hence, this petitioner is entitled for he same benefit.

6. Per contra, the learned counsel appearing for the State would vehemently contend that when this petitioner was arrested in Cr.No.58/2019, he had revealed that he himself along with others have committed the offence and hence, the case has been registered against this petitioner and this petitioner only pointed out the house where they have committed the offence and hence, the matter requires trial.

Having heard the learned counsel appearing for the respective parties and also having perused the charge sheet material, it discloses that except the statement of the complainant stating that the incident was taken place in his house and complaint was given against unknown person and only at the time of conducting the mahazar, witnesses were present and there was no any incriminating evidence and also there was no any recovery and allegation is that they have committed theft of Rs.15,000/- in the house of the complainant but no recovery at all. In the absence of any incriminating material against the petitioner and this Court already quashed the proceedings against accused No.4 who is also similarly placed as in the case on hand, the petition requires to be allowed by quashing the same.

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

ORDER

The petition is allowed.

The proceedings initiated against the petitioner/accused No.3 in C.C.No.664/2023 on the file of Senior Civil Judge and JMFC, Moodabidri are hereby quashed.

In view of allowing the main petition, IA if any does not survive for consideration and the same stands disposed of.

Sd/-
(H.P.SANDESH)
JUDGE

ST/SN
List No.: 1 Sl No.: 55