



**IN THE HIGH COURT OF KARNATAKA,**

**KALABURAGI BENCH**

**DATED THIS THE 8<sup>TH</sup> DAY OF FEBRUARY, 2023**

**BEFORE**

**THE HON'BLE MR JUSTICE V SRISHANANDA**

**CRIMINAL PETITION NO. 201553 OF 2022 (482-)**

**BETWEEN:**

SACHIN S/O GHALEPPA HUNDEKAR

...PETITIONER

(BY SRI. SACHIN M MAHAJAN.,ADVOCATE)

**AND:**

1. THE STATE OF KARNTAKA, BY HUMNABAD POLICE STATION DIST BIDAR 585417, BY ITS SHO, REPRESENTED BY THE SPP HIGH COURT OF KARNATAKA BENCH AT KALABURAGI
2. SRI. MAHESH S/O MANIKAPPA CHINKERE

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NAGAVENI  
Location:  
High Court  
of  
Karnataka

...RESPONDENT

(BY SRI.GURURAJ V. HASILKAR HCGP FOR R1, AND SRI. VEERSHETTY B.K & SRI. B.K. PATIL FOR COMPLAINANT/IMPLEADING R2.,ADVOCATE)



THIS CRL.P IS FILED U/S.482 OF CR.P.C. PRAYING TO, CALL FOR RECORDS AND QUASH THE ORDER DATED 17.09.2022 PASSED BY THE LEARNED II ADDL. DIST. AND SESSIONS JUDGE, BIDAR, SITTING AT BASAVAKALYAN IN CRL.RP. NO.5002/2021.

THIS PETITION, COMING ON FOR FINAL HEARING, THIS DAY, THE COURT MADE THE FOLLOWING:

**ORDER**

Heard Sri Sachin M. Mahajan, learned counsel for the petitioner and Sri Gururaj V. Hasilkar, learned High Court Government Pleader for first respondent - State and Sri Veershetty and B.K. Patil, learned counsel for respondent No.2 and perused the records.

2. This Petition is filed under Section 482 of Cr.PC. with the following prayer:

*"WHEREFORE, the petitioner most respectfully pray that this Hon'ble Court may be pleased to call for records and quash the order dated 17.09.2022 passed by the learned II Addl. Dist. & sitting at Basavakalyan in Crl.RP Sessions Judge, Bidar, No.5002/2021, wherein the learned Sessions set aside the order dated 12.10.2020 passed by the learned Prl. Civil Judge & JMFC at Humnabad in CC No.192/2017 and allow the application filed by the respondent herein under section 319 CrPC and array the petitioner herein as accused No.2 in CC*



*No.192/2017 for the alleged offence punishable under section 323, 504, 506, R/w 34 of IPC, in the interest of justice.”*

3. Brief facts of the case which are necessary for disposal of the petition are as under:

Second respondent filed a private complaint which was registered in PC No.20/2017 on the file of the Principal Civil Judge (Jr. Dn.) & JMFC, Humnabad. The private complaint was referred to police for investigation under Section 156(3) of Cr.P.C.,

4. After receipt of the private complaint, the Humnabad Police registered a case in Crime No.192/2017 on 28.06.2017 initially for the offence punishable under Section 420 IPC. After thorough investigation, the police filed charge sheet for the offence punishable under Section 323, 504 and 506 IPC as against one Ashok son of Shivachandra Agadi and dropped the case against the petitioner who was the second accused in the private complaint.



5. The complainant did not challenge the final report and also the offences invoked by the police in the charge sheet and the matter went for trial as the accused Ashok did not plead guilty. When the matter stood thus, an application came to be filed by the prosecution on 30.07.2019 under Section 319 Cr.P.C., stating that the petitioner herein has also involved in cheating the complainant and therefore, he has to be arraigned as a second accused in the case. The learned Trial Magistrate issued show cause notice to the petitioner herein and petitioner herein filed a detailed written objections as to how he is not a necessary accused person in the case on hand. The learned Trial Magistrate heard the parties in detail and passed an order rejecting the application filed on behalf of the prosecution under Section 319 Cr.P.C., by order dated 12.10.2020.

6. Being aggrieved by the order passed by the learned Trial Magistrate, the prosecution filed a Revision Petition before the District Court in Criminal Revision Petition No.5002/2021. Notice of the Revision Petition was served on the present petitioner and he contested the matter. The learned Sessions Judge after considering the rival contentions of the parties, by order dated 17.9.2022, issued direction to the Trial Court to



issue summons to accused No.2 to face trial for the alleged charges.

7. Being aggrieved by the same, the proposed accused No.2 has challenged the order of the learned Sessions Judge in this petition on the following grounds:

- *It is submitted that the alleged dispute if any is between the complainant and the accused No.1 Ashok. Admittedly there is no involvement of the petitioner in so far as the alleged business is concerned. Admittedly the petitioner is neither party to any agreement or partner in the alleged business. The bank account as per the complainant is between the complainant and the accused No.1. The complainant does not disclose in a credible way as to how the petitioner is involved in the business between himself and the accused No.1. Therefore, from the perusal of the material on record, it is clear that the petitioner has been falsely implicated. Therefore, the petition deserves to be allowed and the impugned order deserves to be set aside.*
- *The police has registered FIR under section 420 of IPC. The FIR is based on the allegations made in the complaint which are purely civil in nature*



*and they are pertaining to the alleged transactions between the complainant and the accused No.1 regarding their alleged business and the petitioner has nothing to do with their alleged business. The police has rightly dropped the name of petitioner from the chargesheet as no material name of whatsoever was found against the petitioner herein. Therefore, when the charge sheet is not disclosing any involvement on the part of the petitioner, the impugned order is not justifiable and hence it is liable to be set aside.*

- *It is submitted that the learned Magistrate has taken a correct view of the matter by rejecting the application filed under section 319 CrPC. However, the learned sessions judge has taken an erroneous view of the entire matter and has slipped into error by allowing the petition.*
- *It is submitted that the reasons assigned by the learned sessions judge while allowing the petition are totally unsustainable. Therefore, the impugned order is fit to be interfered.*
- *It is submitted that the petitioner is a law-abiding citizen. The petitioner is serving in GESCOM in a respectable position. The impugned order has the compelling effect of arraying the petitioner as accused and the*



*petitioner would now be required to appear as an accused in the case, which is not only civil in nature but the same is between the complainant and the accused No.1. Therefore, in the circumstances, the impugned order is liable to be interfered with.*

- *It is submitted that the learned sessions judge ought to have appreciated that the personal liberty and dignity of the petitioner are involved in the matter. In the absence of any credible material, the sessions judge ought not to have exercised discretion to allow the revision petition.*
- *It is submitted that the petitioner has been deliberately implicated in the case, even though there is no material to proceed against him. The application filed at the behest of the complainant is meant to coerce the petitioner to come to terms negotiate for some and kind of settlement between the complainant and the accused No.1.*
- *Viewed from any angle, the impugned order passed by the learned sessions judge is not sustainable in the eye of law.*
- *The petitioner begs to reserve the leave and liberty of this Hon'ble Court to urge all other*



*grounds available to him at the time of arguments.*

8. Reiterating the grounds urged in the petition, Sri Sachin Mahajan, learned counsel for the petitioner vehemently contended that in the entire charge sheet materials, there is no syllable that the petitioner has been responsible for cheating the complainant and the charge sheet is filed against Ashoka, for the offence punishable under Section 323, 504 and 506 of IPC. As such, learned Trial Magistrate has rightly appreciated the contents of the application filed under Section 319 of Cr.P.C., on behalf of the prosecution and rejected the application filed by the prosecution.

9. He further contended that ignoring the factual aspects, the learned Sessions Judge in the impugned order, allowed the application of the prosecution based on the contents of the application and the contents of the private complaint, which has resulted in miscarriage of justice and sought for allowing the petition.

10. Per contra, Learned High Court Government Pleader and Sri B.K. Patil for the defacto complainant, opposed the





petition grounds by contending that in the private complaint, there are specific allegations levelled against the petitioner herein for cheating the complainant and therefore, the same has been rightly appreciated by the learned Sessions Judge in the impugned order and sought for dismissal of the petition.

11. In view of the rival contentions of the parties, this Court perused the material on record meticulously.

12. In the case on hand, the crime came to be registered by Humnabad Police Station based on the order passed by the learned Trial Magistrate referring the matter under Section 156(3) Cr.P.C., for investigation in pursuance of the private complaint filed by the second respondent herein. Private complaint contents no doubt reveals certain facts about the investigation being made and some financial transactions and drawing of money by the petitioner and another accused from Patedar Flinanciers, Basavakalyan etc., However, the police after thorough investigation, after registering the case in Crime No.192/2017, for the offence punishable under Section 420 IPC, did not find any such material as is alleged in the private complaint, but instead found that Ashoka, who is the first



accused in the private complaint has committed an offence..  
323, 504 and 506 IPC and filed the charge sheet.

13. It is pertinent to note that the complainant did not challenge the charge sheet filed by the police after thorough investigation in pursuance of Crime No.192/2017.

14. On the contrary, he was examined by the prosecution and during the course of evidence, he has also stated about the involvement of the petitioner in cheating. Based on such deposition, learned Additional Public Prosecutor filed an application under Section 319 Cr.P.C., contending that the present petitioner is involved in cheating and therefore, he should also be arraigned as an additional accused in the case on hand ignoring the fact that the Court has taken cognizance for the offence punishable under Section 323, 504 and 506 and not for the offence punishable under Section 420 of IPC. The contents of the application filed under Section 319 Cr.P.C., does not speak about the present petitioner for the charges that has been levelled against accused No.1 even though in the private complaint, few allegations are levelled against the petitioner which would attract the offence under Section 420 IPC.



15. Taking these aspects of the matter into consideration, learned Trial Magistrate rightly appreciated the application filed under Section 319 Cr.P.C.,.

16. Being aggrieved by the order passed by the learned Trial Magistrate, the State has preferred the Revision Petition before the II Additional District and Sessions Judge, Bidar, sitting at Basavakalyan in Criminal Revision Petition No.5002/2021, wherein, the learned Sessions Judge after considering the material on record in paragraph Nos.9, 10 and 11, has held as under:

*"9. The trial court has given findings that, the prosecution has not given any reasons to implead the accused No.2/respondent and also the trial court mentioned that, accused No.1 and 2 were committed cheating against the Cw-1/Pw-1. But the trail court has not taken the cognizance against the accused No.2 at the time of taking the cognizance of the proceedings and also came to wrong conclusion that, accused No.2 cannot be impleaded on the basis of evidence given by the Cw-1/Pw-1 and also mentioned reasons that, the said transaction was held at Basavakalyan between the Cw-1/Pw-1 and accused No.1 and 2 and also further reasons mentioned by the trail court in the impugned order dated 12.10.2020 is not in accordance with law and not sustainable and liable to be set aside.*

*10. Further observed by this court that, the said transaction has held at Basavakalan between the Cw-1/Pw-1 and accused No.1 and 2 as per the*



*say of Cw-1/Pw-1 and the trial court if came to conclusion that, this court has no jurisdiction to entertain the said offences same will be transfer to Basavakalyan JMFC Court.*

*11. Further observed by this court as per the say of Cw-1/Pw-1 the transaction was held between the CW-1/Pw-1 and accused No.1 and 2 and he deposed in chief examination before the trail court and as well as in private complaint also, but the police has not filed charge sheet against the accused No.2 even though there is remedy to the victim persons under section 319 of Cr.P.C to seek to implead the proposed accused person whoever left by charge sheet, even though the trial Court did not taken cognizance against the proposed accused whoever left by the charge sheet at the time of cognizance proceedings and there is a bar under section 319 of Cr.P.C to proceed against the proposed accused if there is prima-facie material available against him, otherwise injustice will be caused to Cw-1/Pw-1, and also the trial court is bounded duty to protect larger interest of the society as well as injured persons, who ever causes injuries from the hands of the accused persons, therefore looking the materials and evidence deposed by the Cw-1/Pw-1 is prima-facie materials to proceed against the accused No.2 and the respondent/accused No.2 should be face trail alleged charged against him.*

17. Admittedly, the learned Sessions Judge did not bestow its attention to the charges that were framed by the Trial Court in pursuance of the charge sheet filed against Ashoka, who is the first accused in the private complaint after thorough investigation. In other words, the Investigating Agency did not



find any material to invoke the offence under Section 420 IPC even though private complaint contents revealed that there was an element of cheating as against the petitioner is concerned.

18. When the charge sheet is silent as to the allegations with regard to cheating against the accused Ashoka and the present petitioner, rightly the learned Trial Magistrate framed the charge for the offence punishable under Sections 323, 504 and 506 IPC only against accused No.1 and he would be tried.

19. Just because the complainant who is examined as PW-1 deposes before the Court while he was examining on behalf of the prosecution that present petition is also involved in cheating would not ipso facto make out a case for the prosecution to file an application under Section 319 Cr.P.C., to arraign the present petition as an additional accused in the case. More so, when there is no material that present petition is involved in an act which would attract the offence under Section 323, 504 and 506 IPC

20. If at all, the petitioner is aggrieved by the improper filing of the charge sheet by the police in pursuance of his



private complaint, the remedy for the second respondent defacto complainant lies elsewhere.

21. This aspect of the matter has not been properly appreciated by the learned Sessions Judge while allowing the Revision Petition, more so, having regard to the scope of the revisional jurisdiction.

22. Suffice to say, when the order passed by the learned Sessions Judge is against the material facts on record, whereby the rights of the petitioner has been infringed warranting this Court to interfee with the said order by exercising jurisdiction under Section 482 Cr.P.C.,

23. Accordingly, following order is passed:

**ORDER**

The Criminal Petition is allowed. The order dated 17.09.2022 passed in CRL.RP No.5002/2021 by the II Additional District and Sessions Judge, Bidar sitting at Basavakalyan, is hereby quashed.

**Sd/-  
JUDGE**