

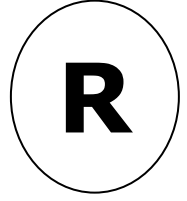
IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF APRIL, 2024

BEFORE

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

CRIMINAL REVISION PETITION NO.126/2017



BETWEEN:

1 . SRI SOMASHEKAR

... PETITIONER

(BY SRI VEERANNA G. TIGADI, ADVOCATE)

AND:

1 . STATE OF KARNATAKA
REP .BY STATION HOUSE OFFICER
PATHAPALYA POLICE STATION
PATHAPALYA,
TALUK: BAGEPALLI
REP.BY STATE PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA
BENGALURU-560 001.

... RESPONDENT

(BY SRI M.DIVAKAR MADDUR, HCGP)

THIS CRIMINAL REVISION PETITION IS FILED U/S.397 R/W 401 CR.P.C TO SET ASIDE THE IMPUGNED JUDGMENT AND ORDER OF SENTENCE DATED 09.06.2014 IN C.C.NO.135/2013 PASSED BY THE LEARNED CIVIL JUDGE AND JMFC BAGEPALLI AND JUDGMENT DATED 31.12.2016 IN CRL.A.NO.37/2014 PASSED BY THE LEARNED I ADDL. DISTRICT AND SESSIONS JUDGE, CHIKKABALLAPUR.

THIS CRIMINAL REVISION PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 18.04.2024 THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

ORDER

Heard the learned counsel for the petitioner and the learned High Court Government Pleader for the respondent-State.

2. This revision petition is filed praying this Court to set aside the impugned judgment and order of sentence dated 09.06.2014 passed in C.C.No.135/2013 on the file of the Civil Judge and J.M.F.C., Bagepalli and judgment dated 31.12.2016 in Crl.A.No.37/2014 on the file of I Additional District and Sessions Judge, Chikkaballapur in confirming the judgment of conviction and sentence.

3. The factual matrix of the case of the prosecution before the Trial Court is that on 09.04.2012, P.W.1-Sadappa filed the complaint which is marked as Ex.P1. In the said complaint at Ex.P1, an allegation is made that on 07.04.2012 at about 8.30 p.m., P.W.1-Sadappa, Assistant Sub-Inspector of Police, Pathapalya Police Station received a credible information that there was galata in front of house of Krishna at Hosahudya Village. P.W.1-Sadappa, P.W.8-Suresh, P.W.11-Jayaram and P.W.13-Seetharam Singh went to the said village. The galata had taken place between two groups near Lakshmi Narayana Temple. When they were pacifying the groups, P.W.11 Srinivasa Murthy, Circle Inspector of Police, P.W.10 Venkatachalapathi, Sub-Inspector of Police of Cheluru Police Station and their staff came to the scene of offence. All of them, pacified and controlled the situation. P.W.17 arrested the petitioner and one Venkatesh, who was in the house of Krishnappa. He handed over the petitioner and Venkatesh to P.W.1-Sadappa to take them to Pathapalya Police Station. Accordingly, P.W.1-Sadappa brought them to Pathapalya Police Station. All of them got down from the

jeep and this petitioner pulled P.W.1-Sadappa and escaped from the custody. P.W.7-M.Raju, P.W.3-Natesh and P.W.10-Nagaraj were sent to trace the petitioner, but the same went in vain. In spite of search, the petitioner was not traced. Therefore, on 09.04.2012 at about 7.30 p.m., P.W.1-Sadappa lodged complaint and based on the complaint, the police have registered Crime No.12/2012 for the offence punishable under Section 224 of IPC.

4. The prosecution mainly examined P.Ws.1 to 17 and got marked the documents as Exs.P1 to P11. The statement of the accused was recorded under Section 313 of Cr.P.C. and he did not choose to lead any defence evidence. However, during the course of cross-examination of P.Ws.5 and 7, confronted the documents of Exs.D1 and D2.

5. The Trial Court, having considered both oral and documentary evidence placed on record, convicted the accused for the offence punishable under Section 224 of IPC and imposed rigorous imprisonment for six months and to pay fine of Rs.1,000/-. In default of payment of fine, to undergo simple

imprisonment for two months. Being aggrieved by the said judgment of conviction and sentence, an appeal is filed in Crl.A.No.37/2014 and the First Appellate Court also, on re-appreciation of both oral and documentary evidence placed on record, confirmed the judgment of conviction and sentence. Being aggrieved by the said judgment of conviction and sentence, the present revision petition is filed before this Court.

6. Learned counsel appearing for the appellant in his argument would vehemently contend that both the Courts have failed to see that at the time of alleged escape, the petitioner was not charged with any offence and also he was not in lawful custody. The Courts below have failed to see that the ingredients of Section 224 of IPC are not attracted or proved the case and failed to properly assess the evidence on record and there were contradictions in the evidence of P.Ws.1 to 17. The Courts below have failed to see that there is inordinate and unexplained delay in filing the complaint. Though it is alleged that the offence was committed by the petitioner at 1.20 a.m. on 08.04.2012, the complaint was lodged only on 09.04.2012 at 19.30 hours and

FIR was sent to the jurisdictional Magistrate at 10.00 p.m. Learned counsel also would vehemently contend that both the Courts failed to invoke Section 360 of Cr.P.C. or the provisions of Probation of Offenders Act. Learned counsel also brought to notice of this Court very provisions of Section 224 of IPC and when there was no separate crime, the petitioner cannot be arrested.

7. Learned counsel also would vehemently contend that Section 220 of Cr.P.C. is very clear that there cannot be any trial for more than one offence. In the case on hand, the petitioner was tried for two cases in respect of Crime No.12/2012 as well as Crime No.11/2012. Learned counsel would vehemently contend that Section 224 of IPC is very clear that even he may be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both. Hence, the counsel would contend that at the most, the Court can modify the judgment of conviction and sentence by imposing fine only.

8. The learned High Court Government Pleader for the respondent-State would vehemently contend that material available on record is very clear that ingredients of offence under Section 224 of IPC is invoked, since the petitioner had escaped from lawful custody and sufficient evidence is placed before the Court with regard to the ingredients of the offence under Section 224 of IPC. He would also contend that the very contention that under Section 220 of Cr.P.C., the trial for more than one offence cannot be permitted and the same cannot be accepted as both the incidents are in respect of different crimes i.e., one in respect of cognizable offence at difference place and the present crime is registered in view of the fact that the petitioner had escaped from lawful custody from different place, that too in front of Pathapalya Police Station and charges are also different. Hence, Section 220 of Cr.P.C. does not attract and it does not require any interference and both the judgments passed by the Trial Court as well as the First Appellate Court is based on material available on record.

9. Having heard the learned counsel for the petitioner and the learned High Court Government Pleader for the respondent-State, the points that would arise for consideration of this Court are:

- (1) Whether both the Courts have committed an error in convicting the accused and confirming the same for the offence punishable under Section 224 of IPC and whether it requires interference with regard to the conviction and sentence by exercising the revisional jurisdiction?
- (2) What order?

Point No.(1)

10. Having heard the learned counsel for the petitioner and the learned High Court Government Pleader for the respondent-State and also considering the factual aspects of the case and the charges leveled against the petitioner, this Court has to consider whether revisional powers can be exercised in favour of the petitioner. Admittedly, the scope of revision is very limited and the same has to be exercised sparingly only if there are any errors on the part of both the Trial Court as well as

the First Appellate Court and if the judgment of conviction and sentence suffers from its legality and correctness. The allegation against the petitioner is that on 07.04.2012, at about 1.30 p.m., at Pathapalya Police Station, the petitioner escaped from the custody in which he was lawfully detained for cognizable offence and thereby committed an offence punishable under Section 224 of IPC. The prosecution also mainly relied upon the evidence of P.Ws.1 to 17 and the documents at Exs.P1 to P11.

11. Before considering the material on record, this Court would like to extract the penal provisions of Section 224 of IPC invoked against the petitioner which reads as hereunder:

"224. Resistance or obstruction by a person to his lawful apprehension. –

Whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself for any offence with which he is charged or of which he has been convicted, or escapes or attempts to escape from any custody in which he is lawfully detained or any such offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both".

12. Having considered Section 224 of IPC, it is very clear that there are two distinct parts, the first part relates to resistance or illegal obstruction to the lawful apprehension and second part relates to escape from the custody in which he is lawfully detained. It has to be noted that when Section 224 of IPC is invoked against the petitioner and having considered the accusation made against him, it attracts second distinct part i.e., whoever intentionally escapes or attempts to escape from any custody in which he is lawfully detained for any such offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

13. In order to prove the ingredients of the offence, the prosecution has to prove the following:

- (1) That the accused was taken into custody for commission of an offence;
- (2) That such detention in custody was lawful;
- (3) That the accused escaped from such custody or made an attempt to do so; and
- (4) That the accused did either intentionally.

14. Having considered the material on record, the accusation against the accused is that he had escaped from lawful custody and in order to prove the same, the prosecution mainly relies upon the evidence P.Ws.1 to 17. Out of that, P.W.1 is the Assistant Sub-Inspector of Police to whom the accused was handed over to take him to Police Station, lodged the complaint with regard to the escape of this petitioner and accordingly, he took the accused at the instructions of P.W.17-Srinivasa Murthy, Circle Inspector of Police who had apprehended this petitioner and co-accused Venkatesh, who were in the house of Krishnappa. It has to be noted that P.W.1 and other police officials went to the spot in connection with Crime No.11/2012 as he had received the information that there was a clash between two groups at the village.

15. It has to be noted that P.Ws.2, 4 and 5 have stated that after the incident, the police officials came to the scene of offence and arrested the accused/petitioner-Somashekar and Venkatesh and took them to police station in a jeep. It is also important to note that P.Ws.8, 9, 11, 12, 13 and 16 have

categorically stated that after the incident, this petitioner and co-accused, who were in the house of Krishnappa were arrested and sent them to Pathapalya Police Station in a jeep under escort of P.W.1-Sadappa. It is also important to note that the prosecution witnesses speak with regard to the fact that the petitioner was in lawful custody in connection with Crime No.11/2012. P.Ws.1, 7, 9 and 10 also speak that when they reached the Police Station at about 1.30 a.m. in the early morning along with this petitioner and other accused and this petitioner ran away pushing P.W.1 and the Investigating Officer deputed other police official to trace them and their effort went in vain.

16. It is also important to note that the main contention of the learned counsel for the petitioner is that he was not in lawful custody and the said contention cannot be accepted when the Investigating Officer has received the credible information with regard to the cognizable offence and P.W.1-Sadappa immediately rushed to the place where cognizable offence had taken place, wherein this petitioner was arrested and brought

him to the police station on the instructions of P.W.17. The documents pertaining to Crime No.11/2012 are also marked before the Trial Court i.e., certified copy of the charge-sheet in Crime No.11/2012 as Ex.P8, certified copy of the FIR in Crime No.11/2012 of Pathapalya Police Station as Ex.P9, true copy of statement in Crime No.11/2012 as Ex.P10 and true copy of the spot mahazar in Crime No.11/2012 as Ex.P11.

17. Having perused these documents, it is clear that offence under Section 307 of IPC and other offences are invoked in respect of the said crime i.e., Crime No.11/2012. Hence, it is clear that on credible information with regard to the galata which had taken place, P.W.1 and P.W.12 went to the spot and apprehended this petitioner and other accused by P.W.17. Learned counsel appearing for the petitioner would contend that in the said case, all the accused have been acquitted and whether they have been acquitted or convicted is immaterial to consider this case. It is also important to note that there is a delay in lodging the complaint and complaint was lodged on 09.04.2012 and incident has taken place in the early morning on 08.04.2012. Admittedly, there is a delay of one day in lodging

the complaint. But the fact is that P.W.1 categorically states that immediately when this petitioner ran away and he deputed the Police Constable to trace him, but he was not traced. Hence, complaint is lodged.

18. It is also the contention of the learned counsel appearing for the petitioner that no case was registered against the petitioner at the time of arrest and therefore, he was not in lawful custody and the said contention cannot be accepted for the reason that when credible information was received by the Investigating Officer, immediately he rushed to the spot and pacified the galata and Section 41 of Cr.P.C. is very clear that Police Officer is empowered to arrest any person without the order from the Magistrate or without warrant even on the basis of suspicion of commission of cognizable offence. I have already pointed out that Section 307 of Cr.P.C. is invoked in respect of Crime No.11/2012. It is also important to note that Section 41(g) of Cr.P.C. states that on credible information, a person can be arrested by the Police Officer when a cognizable offence is

committed and offence under Section 307 of IPC is a cognizable offence.

19. It is also important to note that in the present case, P.W.17-Circle Inspector of Police, Bagepalli on receipt of information from the complainant went to Hosahudya Village, controlled the mob and made an enquiry and he found that the accused and another assaulted one Aswatha Reddy with iron rod and stone and thereafter, he has taken this petitioner to the custody and also one Venkatesh from the house of one Krishnappa. With regard to this aspect is concerned, P.W.17 has been examined before the Trial Court and his evidence is credible. Hence, the very contention that at the time of arrest, no crime was registered cannot be accepted. The other contention that under Section 224 of IPC, there cannot be two trial and this contention also cannot be accepted and proviso to Section 220 of Cr.P.C. is clear that if, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence

and Section 220 of Cr.P.C. not attracts as contended by the learned counsel for the petitioner for the reason that, no doubt, he was arrested in connection with Crime No.11/2012, but the present Crime No.12/2012 is on account of escape from lawful custody, that too, in front of Pathapalya Police Station when he was arrested and brought and the same is a different incident and not in respect of series of acts so connected together and there cannot be one trial in respect of other incident. However, taking into note of the factual aspects and learned counsel appearing for the petitioner also contend that in respect of Crime No.11/2012 for the offence punishable under Section 307 of Cr.P.C. and other offence, already the accused has been acquitted and the present case in Crime No.12/2012 is not in connection with the said crime. No doubt, Section 224 of IPC is punishable with imprisonment for two years, it is a summons trial and plea has been recorded in the case. Apart from that, prosecution has also proved the ingredients of the offence under Section 224 of IPC by examining the prosecution witnesses.

20. It is also borne out from the records that P.W.1 was made to face departmental enquiry before the appropriate authority which is also evident from the documentary evidence at Ex.P7 i.e., the order passed by the Superintendent of Chickballapur and the Trial Court has taken note of this fact into consideration that the petitioner is not entitled to the benefit of either under the provisions of Section 3 or 4 of the Probation of Offenders Act, 1958. The Trial Court has also taken note of the fact that the official, who was on duty i.e., P.W.1 was made to face departmental enquiry before the appropriate authority on the ground of dereliction of his duty, since this petitioner has escaped from lawful custody. It is also important to note that this petitioner, even after escape also, failed to resubmit before the authority and the same was also considered by the Trial Court in Para No.30 of the judgment while considering Point No.2 with regard to the punishment is concerned.

21. It has to be noted that the petitioner intentionally escaped from the lawful custody by pushing the P.W.1 and the same is also spoken to by the prosecution witnesses. When such

being the case, I do not find any ground to reduce the sentence only to fine as contended by the learned counsel appearing for the petitioner and the Trial Court has also taken note of the fact that consequence upon the escape of this petitioner, the official, who was on duty was made to face the departmental enquiry. Hence, the question of invoking Section 360 of Cr.P.C. as well as Probation of Offenders Act, 1958 does not arise. The escapism of the petitioner from the lawful custody has led the official to face the consequence. Under such circumstances, no lenient view can be taken in favour of the petitioner to reduce the sentence to fine as contended by the learned counsel for the petitioner by modifying the judgment of conviction and sentence and the Trial Court has taken note of said fact into consideration and the First Appellate Court also, while reassessing the material on record, comes to the conclusion that there are no grounds to interfere with the judgment of conviction and order of sentence passed by the Trial Court. Hence, there is no force in the contention of the learned counsel for the petitioner either to set aside the judgment or to modify the sentence and there is no merit in the petition to exercise the revisional powers and both

the judgments of the Trial Court and the First Appellate Court not suffers from its legality and correctness and no grounds are made out to exercise the revisional powers. Accordingly, I answer point No.(1) as 'negative'.

Point No.(2)

22. In view of the discussion made above, I pass the following:

ORDER

The criminal revision petition is dismissed.

**Sd/-
JUDGE**

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