

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 7TH DAY OF FEBRUARY 2022

BEFORE

THE HON'BLE MRS JUSTICE K.S.MUDAGAL

CRIMINAL APPEAL No.537/2019

BETWEEN:

1. AMOL KALE
2. PARASHURAM WAGHMORE
3. GANESH MISKIN
4. AMIT BADDI
5. AMIT DEGWEKAR

6. BHARAT KURNE

7. SURESH H L
S/O LAKSHMANA H C

8. RAJESH BANGERA

9. SUJITH KUMAR

10. MANOHAR EDAVE

... APPELLANTS

(BY SRI.C.V.SRINIVASA, ADVOCATE FOR
SRI.AMRUTHESH N P, ADVOCATE)

AND:

STATE OF KARNATAKA
BY RAJARAJESHWARI NAGAR P.S.

BY STATE PUBLIC PROSECUTOR,
HIGH COURT
BANGALORE – 560 001

... RESPONDENT

(BY SRI ASHOK N NAIK, SPL.P.P.)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 12 OF KCOCA ACT PRAYING TO SET ASIDE THE ORDER DATED 07.02.2019 IN SPL.C.NO.872/2018 ON THE FILE OF THE PRINCIPAL CITY CIVIL AND SESSIONS JUDGE, BANGALORE ARISING OUT OF CR.NO.221/2017 OF RAJARAJESHWARI NAGAR P.S. FOR THE OFFENCE P/U/S 302, 120B, 114, 118, 109, 201, 203, 204, 35 OF IPC AND SECTIONS 15(1), 25(1), 25(1B), 27(1) OF INDIAN ARMS ACT AND SECTIONS 3(1)(I), 3(2), 3(3), 3(4) OF KARNATAKA CONTROL OF ORGANIZED CRIME ACT, 2000.

THIS CRIMINAL APPEAL COMING ON FOR FURTHER HEARING THIS DAY, THE COURT DELIVERED THE FOLLOWING:

J U D G M E N T

Aggrieved by the rejection of their application under Section 167(2) of Cr.P.C. for bail, accused Nos.1 to 8, 13 and 14 in Special CC No.872/2018 on the file of Principal City Civil and Sessions Judge, Bengaluru, have preferred the above appeal.

2. In connection with the murder of a Journalist by name Gauri Lankesh, Rajarajeshwari Nagar Police registered Crime No.221/2017 for the offences punishable under Section 302 of IPC and under Section 25 of Arms Act, against unknown accused on the complaint of Kavitha Lankesh, the sister of the deceased.

3. In that case, on 29-05-2018 a chargesheet was filed against one Naveen Kumar. On 14-08-2018 the Investigating Officer invoked the provisions of Section 3 of the Karnataka Control of Organized Crime Act, 2000 (hereinafter referred to as 'KCOCA' for short) in the FIR. Therefore, the case was transferred to the Special Court.

4. On invoking the provisions of Section 3 of the KCOCA, the Investigating Officer filed application under Section 22 (2)(b) of KCOCA and under Section 167(2) of Cr.P.C. seeking extension of time to file the chargesheet. The date of arrest of the appellants and the date of their remand to the judicial custody as mentioned in the said application are as follows:

Sl. No.	Name of the Accused	Date of arrest	Date of Remand	UTP No.
Appellant No.1	Amoi Kaale	31.05.2018	31.05.2018	4887/2018
Appellant No.2	Parashurami Ashok Waghmore	11.06.2018	12.06.2018	5622/2018
Appellant No.3	Ganesh Miskin	22.07.2018	23.07.2018	7297/2018
Appellant No.4	Amith Baddi	22.07.2018	23.07.2018	7298/2018
Appellant No.5	Amit Degwekar	31.05.2018	31.05.2018	4888/2018
Appellant No.6	Bharath Kurne	09.08.2018	09.08.2018	7454/2018
Appellant No.7	Suresh H L	25.05.2018	26.05.2018	6849/2018

Appellant No.8	Rajesh Bangera	23.07.2018	24.07.2018	7299/2018
Appellant No.9	Sujith Kumar	13.05.2018	31.05.2018	4886/2018
Appellant No.10	Manohar Edave	31.05.2018	31.05.2018	4889/2018

5. The application under Section 22 (2) (b) of KCOCA was filed on 23-8-2018. The said application was allowed on 29-8-2018. The extended period for filing of chargesheet expired on 27-11-2018. On 28-11-2018, the appellants filed application under Sections 167(2) Cr.P.C. seeking statutory bail on the ground that the chargesheet was not filed within the prescribed time. On that day, the trial Court directing the Registry to verify whether the chargesheet is filed, adjourned the matter to 28-12-2018. The application was opposed by the prosecution. The trial Court by the impugned order rejected the application holding that the chargesheet is filed on 23-11-2018 itself. That is within the prescribed time.

Submissions of Sri. C.V. Srinivas, learned counsel for the appellants assailing the order are as follows:

6. The chargesheet was not filed on 23-11-2018 and that is ante-dated. Whenever the chargesheet is filed Rule 10(1) of Karnataka Criminal Rules of Practice,

1968 requires the judge to sign on the chargesheet and the Chief Administrative Officer to enter the same in Register No.I. Rule 10(2) and (3) of Karnataka Criminal Rules of Practice require the Magistrate to examine the chargesheet and take steps to secure the documents referred to in the chargesheet, properties seized in the case and the FIR if they are not produced along with the chargesheet and issue process. As per the said provisions, whenever the Magistrate proceed to issue process, the Registry has to enter the chargesheet in Register No.III that is the Register of Criminal Cases. Section 207 Cr.P.C. requires the Magistrate to furnish the copies of the chargesheet, enclosures and FIR to the accused soon after filing of the chargesheet. But no such entries were made in Register Nos.I and III. Preliminary chargesheet was filed on 30-5-2018. The final chargesheet should have been filed within 90 days. Even the time extended under the order dated 23-8-2018 expired on 27-11-2018. In the registry's note that the chargesheet is filed on 23-11-2018 is not creditworthy as the date 23-11-2018 is interpolated. The moment the

application under Section 167(2) was filed, the Sessions Judge could have secured the chargesheet and examined that instead of adjourning the case to 28-11-2018. That leads to inference that the chargesheet was not filed on 23-11-2018. Despite the appellants filing application under Right to Information Act, seeking information of the entries in the Register Nos. I and III of Criminal Rules of Practice, the Information Officer did not furnish the relevant information. That goes to show that on 23-11-2018 the chargesheet was not filed. The chargesheet is purportedly filed on getting the sanction order. The sanction order was purportedly issued on 23-11-2018. It would not have been possible to get the sanction order and include that in the chargesheet and file the chargesheet on the same day as the chargesheet copies run into thousands of pages. Therefore, the impugned order is unsustainable in law. The chargesheet copies were not furnished to the accused within 180 days and there was violation of Rule 10 of Karnataka Criminal Rules of Practice.

7. In support of his submissions, he relied on the following judgments:

- (i) **Rajesh Nayak and others Vs. State by Vitla Police**¹
- (ii) **Magoola John Vs. State of Karnataka**²
- (iii) **Bikramjit Singh Vs. The State of Punjab**³
- (iv) **State of Haryana and others Vs. Ch.Bhajan Lal and another;**⁴
- (v) **Copy of the ordersheet in Spl.CC No.872/2018**⁵
- (vi) **M. Ravindran Vs. Intelligence Officer, Directorate of Revenue Intelligence;**⁶
- (vii) **State Bank of Patiala and others Vs. S.K. Sharma;**⁷
- (viii) **Matchumari China Venkatareddy and others Vs. State of Andhra Pradesh;**⁸
- (ix) **Fakhrey Alam Vs. The State of Uttar Pradesh;**⁹
- (x) **S.Kasi Vs. State through the Inspector of Police, Samaynallur Police Station, Madurai District;**¹⁰
- (xi) **Abhishek Vs. State NCT of Delhi** ¹¹

¹ Crl.R.P.No.949/2017

² Crl.Petition No.5935/2020;

³ Crl.A.No.667/2020 (Special Leave Petition (Crl.) No.2933/2020)

⁴ AIR 1993 SC 1348

⁵ Spl.CC No.872/2018

⁶ AIR 2020 SC 5245;

⁷ AIR 1996 SC 1669;

⁸ 1994 CrL.L.J. 257 (1993) 1 LS 277;

⁹ 2021 SCC Online SC 532;

¹⁰ 2020 SCC Online SC 529

¹¹ Crl.M.C.2242/2020

- (xii) **Rahul Shivaji Khomane Vs. The State of Maharashtra;**¹²
- (xiii) **Mathias Vijay Toppo Vs. The State of Jharkhand and others;**¹³
- (xiv) **Akul Ravi Teja @ Bulli Vs. The State of Andhra Pradesh**¹⁴

Submissions of learned Special Public Prosecutor justifying the impugned order are as follows:

8. Section 12 of KCOCA provides for an appeal only against an order which is not interlocutory in nature. The order extending time to file the chargesheet, adjourning the matter to 28-12-2018 to verify of the chargesheet is filed are all interlocutory orders and they cannot be questioned in an appeal under Section 12 of KCOCA. Some of the appellants were secured in the case on body warrants. Such securing of the appellants does not amount to their arrest and remand to the judicial custody. Therefore, they cannot claim that chargesheet was not filed within 180 days of their arrest. On 23-11-2018 the case was not listed for hearing. Therefore, the filing of the chargesheet was not

¹² Crl.Bail application No.2375/2021

¹³ W.P.(Crl.) No.371/2018;

¹⁴ Crl.Petition No.4276 of 2020

mentioned in the ordersheet. Rule 10(1) of the Rules requires the Judge only to initial on the chargesheet and does not mandate him to bring that in the ordersheet on the very same day. Wild and baseless allegations are made against the Judicial Officer which is condemnable. Another accused Mohan Naik challenged the very same order before this Court in Crl.P.No.5507/2019 which came to be dismissed on merits. Therefore, the same matter cannot be re-agitated in this case. Some other co-accused filed Criminal Petition Nos. 8325/2018 and 5507/2019 claiming bail on the very same grounds and those petitions were dismissed rejecting the contentions of those accused. On that count also, this appeal is not maintainable. Section 207 Cr.P.C. is only directory and not mandatory. It only says that the Magistrate shall without delay furnish the copies to the accused. It does not say that the chargesheet copies shall be furnished within the time prescribed under Section 167(2) of Cr.P.C. Since chargesheet copies are voluminous, there may be some delay in furnishing the copies. Section 173(8) of Cr.P.C. empowers the Investigating Officer to

file further chargesheet. Therefore, there is no merit in the contention that the chargesheet filed earlier cannot be treated as final chargesheet.

9. In support of his submissions, he relied on the following judgments:

- (i) **Sanjay Dutt Vs. State through CBI Bombay** ¹⁵
- (ii) **Suresh Kumar Bhikanchand Jain Vs. State of Maharashtra and another;** ¹⁶
- (iii) **Afzal Ibrahim Jariwala Vs. State of Maharashtra** ¹⁷
- (iv) **Bhole Alias Bholesh Vs. The State of Madhya Pradesh;** ¹⁸
- (v) **Mohan Nayak Vs. State of Karnataka** ¹⁹

10. Having regard to the rival submissions, the point that arises for consideration is,

"Whether the impugned order of rejection of application of the appellants for bail under Section 167(2) of Cr.P.C. suffers illegality?"

11. Though several grounds are urged before this Court to challenge the impugned order, the order of the trial Court indicates that the application was filed on the

¹⁵ (1994) 5 Supreme Court Cases 410

¹⁶ (2013) 3 Supreme Court Cases 77

¹⁷ 2002 SCC Online Bombay 1227;

¹⁸ 1992 SCC Online MP 209;

¹⁹ Crl.Appeal No.505/2019 DD 13-7-2021;

sole ground that chargesheet was not filed within the prescribed period. Admittedly, the case involved the offences under KCOCA, though initially case was registered only for the offences under Section 302 of IPC and Section 25 of the Arms Act.

12. Section 167(2) of Cr.P.C. relied on by the appellants reads as follows:

"167. Procedure when investigation cannot be completed in twenty four hours.

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has no jurisdiction to try the case, from time to time, **authorise the detention of the accused** in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:

Provided that-

(a) the Magistrate may authorise the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days; if he is satisfied that adequate grounds exist for doing so, but **no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding,-**

(i) ***ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment*** for a term of not less than ten years;

(ii) sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every

person released on bail under this sub- section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter."

13. If the case involved only offences under IPC and Arms Act, in the ordinary course, the chargesheet should have been filed within 90 days from the date of arrest of the accused, otherwise, they were entitled for grant of bail. Since the provisions of Section 3 of the KCOCA are involved in the matter, Section 22 of the said Act becomes applicable. Section 22 (1) and (2) of the KCOCA relevant for the purpose of this case read as follows:

"22. Modified application of certain provisions of the Code. - (1) Notwithstanding anything contained in the Code or in any other law, every offence punishable under this Act, shall be deemed to be a cognizable offence within the meaning of clause (c) of section 2 of the Code and "Cognizable case" as defined in that clause shall be constructed accordingly.

(2) Section 167 of the Code shall apply in relation to a case involving an offence punishable under this Act subject to the modifications that, in sub-section (2), -

(a) The references to "fifteen days" and "**Sixty days**" wherever they occur, shall be construed as references to "Thirty days" and "**ninety days**" respectively;

(b) After the proviso, the following proviso shall be inserted, namely:-

"Provided further that if it is not possible to complete the investigation within the said period of ninety days, the Special Court **shall extend** the said period **up to one hundred and eighty days** on the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of ninety days."

14. The reading of the above provisions show that the Special Court has the power to extend the period of 90 days upto 180 days on the request of the Public Prosecutor. Therefore, the only question in the case was, whether the chargesheet in the case on hand was filed within those 180 days.

15. Though several judgments are relied on by both side relating to Section 167(2) Cr.P.C., the ratio in the said judgments is that, if the chargesheet is not filed within 90 days as contemplated under Section 167(2) of Cr.P.C., the accused is entitled to statutory bail. By virtue of operation of Section 22 of KCOCA, the said time gets extended upto 180 days.

16. As rightly pointed out by learned Special Public Prosecutor, the other contentions that the accused were not heard on the application under Section 22 for extension, the chargesheet copies were not furnished to

them, etc., were the interlocutory orders. They were not appealable under Section 12 of the Act. Moreover, the appellants did not challenge those orders, therefore, they attained finality. Therefore, now it is not open to the appellants to question them in this proceeding.

17. The attack on the impugned order was that chargesheet was not filed on 23-11-2018, but that was ante-dated. The trial Court rejected the said contentions. The appellants did not seek any administrative action against the Ministerial officer who allegedly interpolated the date 23-11-2018 nor the presiding officer on the ground of judicial impropriety. Under Section 114 of the Indian Evidence Act, 1872 illustration (e) there is presumption that judicial acts or official acts have been regularly performed. Except for scandalizing the office staff and the Judge, nothing was done to rebut the said presumption.

18. It is material to note that the application under Section 167(2) of Cr.P.C. was made before the trial Court by accused Nos.1 to 8, 11 to 14. The said applications were rejected by the trial Court by common

impugned order. Challenging that order, accused No.11 filed Crl.A.No.505/2019 before this Court on the same grounds. In Crl.A.No.505/2019, this Court rejected the contention of the accused that chargesheet was not filed within 180 days and records were manipulated to depict so and dismissed the appeal. That order has attained finality. Therefore, it is not open to the appellants to urge the same ground by filing parallel appeal.

19. If the ground that chargesheet was not filed within ninety days fails then nothing survives in this appeal. In the light of the aforesaid facts and circumstances, this Court does not find it necessary to refer to each of the judgments relied upon by learned Counsel on both side. The appeal is dismissed.

**Sd/-
JUDGE**

tsn*/KSR