

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF MAY 2023

BEFORE

THE HON'BLE MR. JUSTICE K.NATARAJAN

CRIMINAL PETITION NO.2954 OF 2023
CONNECTED WITH
CRIMINAL PETITION NO.2906 OF 2023,
CRIMINAL PETITION NO.2908 OF 2023

IN CRIMINAL PETITION NO.2954 OF 2023

BETWEEN

SHRI SIDDAPPA B H

... PETITIONER

(BY SRI SHANKAR P. HEGDE, ADVOCATE)

AND

THE STATE BY
LOKAYUKTHA POLICE,
DAVANGERE - 577001

(REPRESENTED BY SPECIAL PUBLIC PROSECUTOR
OF KARNATAKA LOKAYUKTHA ,
HIGH COURT BUILDINGS,
BANGALORE - 560001)

... RESPONDENT

(BY SRI B.S. PRASAD, SPECIAL COUNSEL - LOKAYUKTHA)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C. PRAYING TO QUASH THE IMPUGNED ORDER DATED 18.11.2022 PASSED BY THE PRINCIPAL DISTRICT AND SESSIONS JUDGE AND SPECIAL JUDGE (LOKAYUKTHA) DAVANAGERE IN SPL.C.(LOKAYUKTHA).NO.3/2008 WHICH IS PRODUCED AT ANNEXURE-A AND ALLOW THE APPLICATION FILED UNDER SECTION 91 OF CR.P.C. AS PRAYED FOR.

IN CRIMINAL PETITION NO.2906 OF 2023

BETWEEN

SHRI SIDDAPPA B H
S/O LATE BELALGERE HALAPPA
AGED ABOUT 69 YEARS
OCC-THEN ASSISTANT COMMISSIONER
REVENUE DEPARTMENT
HAVERI
R/O NO.24, OLD 480,
3RD FLOOR, 40TH CROSS,
5TH BLOCK, JAYANAGAR
BENGALURU-560040

... PETITIONER

(BY SRI SHANKAR P. HEGDE, ADVOCATE)

AND

THE STATE BY
LOKAYUKTHA POLICE
DAVANAGERE-577001
REPRESENTED BY SPECIAL PUBLIC PROSECUTOR FOR
KARNATAKA LOKAYUKTHA
HIGH COURT BUILDINGS
BENGALURU-560001

... RESPONDENT

(BY SRI B.S. PRASAD, SPECIAL COUNSEL - LOKAYUKTHA)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 CR.P.C PRAYING TO QUASH THE IMPUGNED ORDER DATED 07.12.2022 PASSED BY THE PRINCIPAL DISTRICT AND SESSIONS JUDGE AND SPECIAL JUDGE (LOKAYUKTHA) DAVANAGERE IN SPL.C.(LOKAYUKTHA).NO.3/2008 WHICH IS PRODUCED AT ANNEXURE-A AND ALLOW THE APPLICATION

FILED UNDER SECTION 311 OF CR.P.C. PRAYING TO RECALL PW-79/ SRI BASAVARAJAPPA, INVESTIGATION OFFICER BY ISSUING SUMMONS AND ALSO ISSUE SUMMONS TO THE ACCUSED TO BE EXAMINED AS A WITNESS.

IN CRIMINAL PETITION NO.2908 OF 2023

BETWEEN

SHRI SIDDAPPA B H
S/O LATE BELALAGERE HALAPPA
AGED 69 YEARS,
OCC.: THEN ASSISTANT COMMISSIONER
REVENUE DEPARTMENT,
HAVERI
R/O NO. 24, OLD NO. 480,
3RD FLOOR, 40TH CROSS,
5TH BLOCK,
JAYANAGARA,
BENGALURU - 560 041.

... PETITIONER

(BY SRI SHANKAR P. HEGDE, ADVOCATE)

AND

STATE BY
LOKAYUKTHA POLICE
DAVANAGERE - 577 001
(REP BY SPECIAL PUBLIC PROSECUTOR,
FOR KARNATAKA LOKAYUKTHA,
HIGH COURT BUILDINGS,
BANGALORE - 560001)

... RESPONDENT

(BY SRI B.S. PRASAD, SPECIAL COUNSEL)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C PRAYING TO QUASH THE IMPUGNED ORDER DATED 10.01.2023 PASSED BY THE PRINCIPAL DISTRICT AND SESSIONS JUDGE AND SPECIAL JUDGE (LOKAYUKTHA) DAVANAGERE IN SPL.C.(LOKAYUKTHA).NO.3/2008 AND ALLOW THE APPLICATION FILED U/S 311 OF CR.P.C. TO SET ASIDE THE ORDER DATED 15.09.2022 AND RECALL WITNESSES MENTIONED IN THE LIST OF DEFENCE WITNESSES FILED ON 15.02.2022 NAMELY SRI B.H.SIDDAPPA, SMT.SAVITHRAMMA, DR.SANJAY AND DR.MAITHRI, SIR SIDRAMAPPA, SHRI

MANJAPPA, SRI SHIVAKUMAR, SRI GOPAL RAO AND SRI SRINIVAS WHICH IS PRODUCED AT ANNEXURE-A.

THESE CRIMINAL PETITIONS HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 21.4.2023, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

All these petitions are filed by the petitioner-accused under Section 482 of Cr.P.C. for setting aside the orders dated 18.11.2022, 07.12.2022 and 10.01.2023 passed by the Principal District and Sessions Judge and Special Judge (Lokayuktha), Davanagere, in Special (Lokayuktha) Case No.3/2008, for having rejected the applications filed by the petitioner under Sections 91 and 311 of Cr.P.C. respectively.

2. Heard the arguments of learned counsel for the petitioner and Sri B.S Prasad, the learned Special Counsel for respondent-Lokayuktha.

3. Criminal Petition No.2954/2/203 is filed against the order of dismissal dated 18.11.2022 under Section 91 Cr.P.C. for summoning the alleged three reports submitted by the investigation officer for the purpose of getting

permission to prosecute the case. Learned counsel for the petitioner has contended that the investigation officer, who was examined as P.W.79, has filed charge sheet before the Court, but prior to that he has prepared three reports calculating the disproportionate assets against the petitioner and thereafter, filed the charge sheet by showing the higher value of assets and therefore, those documents are necessary for the petitioner to summon the same and to verify the veracity of the charge sheet. Hence, prayed for setting aside the order.

4. In Criminal Petition No.2906/2023, the petitioner has challenged the order of dismissal on the application dated 07.12.2022 passed under Section 311 Cr.P.C. for recalling P.W.79 for the purpose of further cross examination. Learned counsel for the petitioner has contended that P.W.79, who is an investigation officer, has filed charge sheet. On verification, the investigation officer prepared three reports and obtained permission to file the charge sheet. Therefore, in order to further cross

examine P.W.79 and to confront the reports prepared by investigation officer, his presence is necessary for further cross examination. Hence, prayed for setting aside the order of dismissal dated 07.12.2022. It is also contended that the prosecution filed the similar application which was allowed for recalling P.W.79, but subsequently, the prosecution did not proceed to issue summons the said witness as the accused would get the chance of cross examination, even though the application of the accused recalling P.W.79 has been rejected by the trial Court on an earlier occasion.

5. In Criminal Petition No.2908/2023, the petitioner has challenged the dismissal of the application dated 10.01.2023 passed under Section 311 Cr.P.C. for summoning himself to be examined as witness and also summoning his wife as witnesses, apart from the other Eighth witnesses. Learned counsel for the petitioner has contended that it is necessary for the petitioner to examine

himself and his wife as witnesses and accordingly, prayed for allowing the petition.

6. Per Contra, learned Special Counsel objected the petitions seeking the relief under section 91 of Cr.P.C. He has contended that the investigation officer has prepared some reports on discussion with the higher officer. The said documents are correspondence within their administration and since they are confidential, they cannot be produced before the Court for the purpose of evidence. It is the opinion formed by the officials during investigation that cannot be a part of the case and therefore, it cannot be allowed to verify the same by the petitioner. Hence, prayed for dismissing the petition.

7. In respect of recalling P.W.79, the learned counsel for the respondent has contended that after examination of investigation officer as P.W.79, the said officer is now suffering from Parkinson's disease and he has lost his memory. The medical records have been

produced to show that he is suffering from the said disease. Therefore, P.W.79 cannot be summoned once again for the purpose of further cross examination. Though the prosecution earlier moved an application for recalling P.W.79, but later not pressed the same in view of health condition of the investigation officer. The learned counsel for the respondent has further contended that if the application is allowed for recalling P.W.79 and, in the event, if the witness does not appear for cross examination, the possibility of expunging his evidence, is not ruled out. Therefore, prayed for dismissing the petition.

8. In respect of recalling some of the witnesses in Criminal Petition No.2908/2923, the learned counsel for the respondent contended that the accused has already examined two witnesses as D.Ws.1 and 2 and the same was allowed by the trial Court, even though, the accused has stated in the statement under section 313 of Cr.P.C. that he had no witness to be examined. Therefore, the

question of summoning the accused himself as a witness and summoning the other witnesses does not arise. This matter pertains to the year 2008 and for the last 15 years, the case is pending and out of which, for the last three years, the case is at the stage of arguments. Therefore, the learned counsel contended that the trial Court has rightly rejected the application and hence, prayed for dismissing all the petitions.

9. Having heard the arguments of learned counsel for the parties, perused the records.

10. In respect of summoning the reports prepared by the investigation officer (P.W.79), on discussion with the higher officials, the investigation officer filed charge sheet. The petitioner wanted to recall the investigation officer for confronting those documents from the investigation officer under Sections 311 of Cr.P.C. and 91 of Cr.P.C. On verifying the records, it is seen that the police have already investigated the matter and filed

charge sheet long back in the year 2008 itself. FIR has been registered in the year 2005, i.e. almost seventeen years back and the trial is pending for almost 15 years. The investigation officer was examined as P.W.79, who is said to be examined in full by the prosecution and cross examined by the accused. Though the petitioner has filed the application for recalling P.W.79, on the earlier occasion, it came to be dismissed, but later, the prosecution also filed a similar application for recalling P.W.79 which was allowed. However, the prosecution did not press to recall P.W.79 as he is said to be suffering from Parkinson's disease. That apart, three reports are said to be prepared by investigation officer. On obtaining the opinion of the higher officer, the investigation officer filed charge sheet. The other reports, the petitioner wants to summon and mark through the investigation officer, in my considered opinion, it cannot be allowed for the reasons that any investigation papers, which are in the case diary of the investigation, cannot be summoned or summoning

the same for contradiction under Section 145 of the Evidence Act, is bar under Section 172(3) of Cr.P.C.

11. Section 172(3) of Cr.P.C reads as under:

" Neither the accused nor his agents shall be entitled to call for such diaries, nor shall he or they be entitled to see them merely because they are referred to by the Court; but, if they are used by the police officer who made them to refresh his memory, or if the Court uses them for the purpose of contradicting such police officer, the provisions of section 161 or section 145, as the case may be, of the Indian Evidence Act, 1872 (1 of 1872), shall apply"

12. Therefore, except the documents produced by the investigation officer under Section 161 of Cr.P.C., the remaining documents cannot be summoned except for contradiction under Section 145 of Evidence Act. Therefore, the different reports said to be prepared by P.W.79, on discussion with higher officer, before filing charge sheet, cannot be summoned, because they are the

part of the investigation, but not the part of charge sheet or final report under Section 173(2) of Cr.P.C. Therefore, for the purpose of summoning the documents under Section 91 of Cr.P.C. and summoning P.W.79 for further cross examination, cannot be allowed.

13. That apart, P.W.79 is said to be suffering from Parkinson's disease. In any case, if P.W.79 is summoned by the Court for recalling for further evidence, and if he is not turndown then, every possibility of accused counsel seeking expunging the evidence of P.W.79, is not ruled out. Therefore, the applications filed by the petitioner for recalling P.W.79 and summoning the documents under Section 91 of Cr.P.C. have been rightly dismissed by the trial Court, which do not call for interference by this Court.

14. As regards the application filed by the petitioner under Section 311 Cr.P.C. for summoning himself as witness and also examining his wife as witness, the said application has been rejected by the trial Court. Though

the petitioner-accused has already examined two witnesses on his behalf, but the petitioner-accused is the better witness for himself to explain or to rebut the evidence of the prosecution. If he does not enter the witness box, there is every possibility of drawing adverse inference against him is not ruled out and it is the case of disproportionate assets, where the property of the wife also included apart from the property of the petitioner-accused. Though the petitioner-accused has stated in the statement under Section 313 of Cr.P.C. that there is no witnesses to be examined, however, in the interest of justice, to provide a fair trial, this Court feels deem fit and proper to allow the petitioner-accused to enter into the witness box and also examine his wife as a witness. However, regarding summoning the other witnesses, cannot be allowed as the case is already crossing 18 years and it may cause further delay in disposal of the case by the trial Court. Therefore, I am of the view that the request of the petitioner-accused to examine himself and his wife shall be allowed.

15. Accordingly, Criminal Petition No.2954/2023 for summoning the documents under Section 91 of Cr.P.C. and Criminal Petition No.2906/2023 for recalling P.W.79 are dismissed.

Criminal Petition No.2908/2023 for summoning the petitioner-accused to be examined himself and his wife, as witnesses, is allowed in part.

The trial Court is directed to permit the petitioner to be examined himself and also his wife as witnesses.

Regarding summoning the other witnesses on behalf of the petitioner-accused is hereby dismissed.

The trial Court is directed to take the matter on day today basis and dispose of the matter in accordance with law.

**Sd/-
JUDGE**

CS