
(2021) 04 KAR CK 0004

Karnataka High Court

Case No: Criminal Petition No. 2360 Of 2021

K.T. Naveen Kumar

APPELLANT

Vs

State Of Karnataka

RESPONDENT

Date of Decision: April 16, 2021

Acts Referred:

- Code Of Criminal Procedure, 1973 - Section 323, 482
- Indian Penal Code, 1860 - Section 37, 115, 120B, 302
- Indian Arms Act, 1959 - Section 3, 25(1)(a), 25(1B)(a)

Hon'ble Judges: H.P. Sandesh, J

Bench: Single Bench

Advocate: Madhukar M. Deshpande, Showri H.R

Final Decision: Disposed Of

Judgement

H.P. Sandesh, J

1. This petition is filed under Section 482 of Cr.P.C, praying this Court to set aside the order dated 08.02.2021 passed in C.C.No.19618/2018 on the

file of XXXI ACMM, Bengaluru (earlier V ACMM, Bengaluru), or allow the application filed under Section 323 of Cr.P.C., or alternatively direct the

learned Magistrate to decide on the application filed by the petitioner-accused No.1 under Section 323 of Cr.P.C., or pass such other and further

reliefs as this Court deemed fit in the facts and circumstances of the case.

2. The factual matrix of the case is that the police have investigated the matter and filed the charge sheet against the accused for the offences

punishable under Sections 120B read with Section 37 of IPC, Section 3 read with Sections 25(1)(a) and 25(1B)(a) of the Arms Act, 1959. Based on

the charge sheet material, the Trial Court has framed the charge against the petitioner for the above offences. The petitioner herein has filed an

application under Section 323 of Cr.P.C., praying the Court to commit the above case to the Court of summons contending that Section 120B is

invoked against the petitioner herein, which clearly says that, whoever is a party to a criminal conspiracy to commit an offence punishable with death,

imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the

punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence. It is also urged before the Trial Court that the

Schedule 1 of the Code of Criminal Procedure specifically mentions that under the aforementioned section criminal conspiracy to commit an offence

punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards is triable by the Court, which abetment of

the offence, which is the object of conspiracy if triable. Hence, the matter has to be committed to the Sessions Court. The said application is opposed

by the prosecution contending that the offences under Section 302 of IPC is not invoked and also no such offence is taken place and only an allegation

of conspiracy is alleged against the petitioner. Under the circumstances, no need to commit the matter to the Sessions Court. The Trial Court having

considered the grounds urged in the petition and also the oral objection raised by the Senior APP comes to the conclusion that as on today, the

witnesses examined have not spoken about the ingredients of Section 120B or Section 302 of IPC. So, until the examination of the material witnesses,

it is appropriate to keep the application in abeyance and further observed that at this stage, an application appears to be pre-matured. Therefore,

ordered to keep the application in abeyance. Hence, the present petition is filed before this Court challenging the order passed by the Trial Court.

3. The learned counsel appearing for the petitioner in his arguments, he reiterated the grounds urged before the Trial Court and further contends that

the offence under Section 120B of IPC is triable by that Court by which abetment of the offence which is the object of the conspiracy is triable. The

schedule also makes it clear that abetment of an offence is triable by the Court which is empowered to try the offence abetted. Therefore, the offence

of Section 302 is triable by the Court of Sessions; the case in hand ought to be committed thereto.

4. Learned counsel brought to the notice of this Court Section 120B and also Schedule 1 of Code of Criminal Procedure and would vehemently

contend that the Trial Court has committed an error in deferring the application without coming to the definite conclusion that whether the matter is

triable by the Sessions Court or by the Court itself and there cannot be an enquiry and thereafter committing the matter to the Sessions Court. Hence,

it requires an interference of this Court.

5. Per contra, learned High Court Government Pleader appearing for the respondent/State would vehemently contend that the alleged conspiracy is

taken place between the accused persons and the same has not been implemented and the learned counsel brought to the notice of this Court, the

offence under Section 115 of IPC, where with regard to the abetment of death or imprisonment for life, if offence not committed where it says that

whoever abets the commission of an offence punishable with death or imprisonment for life, shall, if that offence be not committed in consequence of

the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with imprisonment of either description

for a term which may extend to seven years, and shall also be liable to fine.

6. Learned counsel referring to Section 115, would submit that if the offence is not committed and the punishment also may extend to seven years and

shall also be liable to fine and the Court in which the matter is pending imposed the punishment till seven years. When the offence is not committed

and when the offence under Section 302 has not been invoked, the matter has to be tried by the Court in which the matter is pending. Hence, there cannot be any order for committing the matter to the Sessions Court.

7. The learned counsel for the petitioner also would vehemently contend that the learned Trial Court has not formed any opinion, only deferred the

matter in coming to the conclusion that as on the date of the application, no material is placed before the Court and none of the witnesses have spoken

to about the ingredients of Section 120B or Section 302 of IPC and until the examination of material witnesses, it is appropriate to keep the application

in abeyance. When such an order has been passed, there cannot be any quashing of the order unless the material comes before the course of the trial,

there cannot be any committing of the matter to the Sessions Court.

8. Having heard the arguments of the respective counsel and on perusal of the charge sheet, the offences invoked against the petitioner herein for the

offences punishable under Sections 120B read with Section 37 of IPC, Section 3 read with Sections 25(1)(a) and 25(1B)(a) of the Arms Act, 1959.

9. On perusal of the records also, the Trial Court has framed the charge on 20.11.2019 and the accused persons have not pleaded guilty and thereafter

the trial is commenced. The Trial Court also while deferring the application comes to a conclusion that none of the witnesses have been examined

before the Trial Court and they have not spoken anything about the ingredients of Section 120-B or Section 302 of IPC.

10. Admittedly, the offence under Section 302 of IPC has not been invoked. It is an allegation that there was a conspiracy between the accused

persons and with regard to the conspiracy also with the witnesses, who have been examined have not spoken anything as observed by the Trial Court

and also the learned High Court Government Pleader for the respondent/State also brought to the notice of this Court, Section 115 of IPC., wherein,

the offence is not committed, then, the ingredients of the offences, which have been invoked also to be taken note of. No doubt, there is a force in the

contention of the learned counsel for the petitioner that there cannot be a two trial one before the present Court and one before the Sessions Court

and after coming to the conclusion on merits, the Committal which causes the prejudice to the accused. But the fact is that when the witnesses are

examined before the Trial Court and when the none of the witnesses have not spoken anything about invoking of the offence under Section 120B or

with regard to the conspiracy to eliminate a person and in the absence of any material, the Court in which the trial is conducted also cannot commit the

matter and take a decision and when the evidence emerges during the course of the trial, then, if it comes within the ingredients of the offences triable

by the Sessions Court, then the matter can be committed to the Sessions Court. In the absence of no such material, the question of committing the

matter to the Sessions Court does not arise and the Trial Court has not committed any error in passing an order deferring the matter and keeping the

application in abeyance. Hence, I do not find any merit in the application either to set aside the order or to give a direction as sought for by the

petitioner in this proceeding.

11. With these observations, the petition stands disposed of.

In view of disposal of the main petition, I.A.No.1/2021 for stay does not survive for consideration and the same stands disposed of.