

Karnataka High Court

Kalegowda vs The State Of Karnataka on 23 March, 2009

Author: Dr.K.Bhakthavatsala

Crl.P No.4 12052003

IN THE HIGH COURT OF ' KARNATAKA AT BANGALORE
DATED THIS THE 23*) DAY OF MARCH 2009

BEFORE

THE HON'BLE DR. JUSTICE K. BHAKTHAVA'z'si=;L;a;. '___'__*~ "

CRIMINAL PETITION No.4120/2003..__, '___'__~-, 0'
BETWEEN I it 0

Sri Kalegowda,

S /0 late Sri Kenchegowda,

Age: 6 years,

R/0 Kolalgundi,

Maralawadi Hobli,

Kanakapura Taluk, -- » _ : V A AA

Bangalore Rural District. Petitioner

AND:

1. The State of Karnataka, A
By its Principal Secretary to
Forest Departgrnent, " . _ A

M S''B'uildin-\$01' H ****
Bangalore~.560 00001. _

,2. the A'u.th!ori0se-:0{'Qfiiee:and
Deputy Conservatol'.of.F*'orest,

Bangalore R'ural, . _ Division,

_Al=a_nya., Bhavan, '
Ma1'lqehWaFam, "
Bangalo:*e546--Q 003.

~ _ 0' Aegsietant Conservator of
. V F'otre:sts,, Mobile Squad,
}3.ang'a,lore Rural District,

CrS.P No.4120: '2003

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Aranya Bhavan,
Malleshwararn,
Bangalore-560 03. Respondents

(By Sri A V Ramakrishna, HCGP, for respondent) F This Criminal Petition is filed under Section 482 of the Criminal Procedure, praying to quash the order dated 3.3.2003 passed by the A O and Dy. Conservator of Forest, Bangalore District, in FCC. No.703/82-83 and the proceedings thereunder and the judgment dated 18.6.2003 passed by the P. S J, Bangalore, in District, Bangalore District, in Cr. Misc. Appeal No.4/2001. I W = This Petition coming on for hearing this day, the learned Judge made the following:

No. MYW 7077, in which by the authorized officer and the Dy. Conservator of Forest, Bangalore Rural Division, under Section 71-A(2) of the Karnataka Forest Act, 1963, is before this Court under Section 482 of Criminal Procedure, praying for quashing the order dated 3.3.2003 passed in No.703/82-83 on the application of the authorized Officer and Dy. Conservator of Forests, and the proceedings thereunder dated 18.6.2003 made in Cr. Misc. Appeal the file of P. Sessions Judge, Bangalore Rural District, Bangalore, and issue direction to the respondents to release the lorry L/ K/15.1 of the petitioner as early as possible. Thereafter, the petitioner noticed the order of confiscation of the lorry in newspaper dated 12.8.1992. The petitioner approached the respondent/ authorized Officer and made enquiries. The petitioner obtained the order dated 16.7.1992 and filed Misc. Appeal No.4/2001 challenging the order of confiscation of the lorry. The learned Judge, Bangalore Rural District, Bangalore, after hearing arguments, dated 30.11.1999, set aside the order of confiscation dated 16.7.1992 and remanded the case to the 2nd Officer for fresh enquiry and disposal of the lorry. After giving opportunity to the respondent, the respondent commenced the enquiry and again of confiscation of the lorry holding that the lorry was involved in the commission of forest offence in case 82433. The petitioner again challenged the confiscation in Cr. Misc. Appeal No.4/2001. The learned Judge, Bangalore Rural District, Bangalore, after hearing arguments, by judgment dated 18.6.2003 set aside the order of the authorized Officer regarding confiscation of the lorry. The petitioner filed Writ Petition No.37510/2003 challenging the order of confiscation of the authorized Officer as well as the judgment of the Sessions Court made in Cr. Misc. No.4/2001, but on 7.10.2003, the Writ Petition was withdrawn as not maintainable. Petition came to be filed under Section 482 of Cr. P C praying for the reliefs, as mentioned above.

3. The short question that arises for consideration is: Whether the present Petition under Section 482 of Cr. P C is maintainable?

4. Learned Counsel for the petitioner submits that since the petitioner has filed a Petition under Section 482 of Cr. P C and the same was withdrawn on 7.10.2003 as not maintainable, the present Petition may be entertained and disposed of on merits. Government Pleader submits that the petitioner filed an Appeal under Section 482 of the Karnataka Forest

Act--1963 before the Sessions Judge. The order of the learned Sessions Judge as per S.Lilb4~Si\$CYtiOI~1"../2) of Section 71-13 of the Karnataka Forest Act, 1953 shall the same cannot be questioned under Section 482 of Cr. P.C.; the cited a decision reported in 2005 see (Cri..) 248 (STATE IL/ Cr\$.P No.é\$§2oi-'Zoo3 OF' HIMACHAL PRADESH Vs. DHANWANT SINGH) on the point that a Petition under Section 482 of Cr. P.C., cannot be entertained. The alternative remedy is to file a Petition under Article 226 of the Constitution of India.

6. The Hon'ble Apex Court in Re.

that invocation of Section 482 of Cr. P.C. to deal with the order of the Sessions Judge passed in Appeal. is not proper. The above-said decision is applicable on all on hand and the present Petition is not maintainable.

7. Learned Counsel for the petitioner submits that liberty may be given to the petitioner to file a Petition filed by the petitioner in W.P. No.3 of 2003.

8. Learned Government Pleader has no objection.

9. In view of the above, the Petition is rejected as not maintainable, with to the petitioner to seek for restoration of W.P. .

Judge Bjs "