

# Vimalchand Sandeep Gadia vs Sri. K. Nagaraj on 24 November, 2020

**Author: K.Somashekar**

**Bench: K.Somashekar**

:1:

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 24TH DAY OF NOVEMBER, 2020

BEFORE

THE HON'BLE MR.JUSTICE K.SOMASHEKAR

CRIMINAL PETITION NO.3554 OF 2017

BETWEEN

Vimalchand Sandeep Gadia

S/o Vimalchand

Aged about 33 years

R/at No.401, Asis Royal Apartment

No.33, 6th Cross, BSK 1st Stage

2nd Block, Srinagar

Bengaluru - 560 050.

... Petitioner

(By Sri. H. Pavana Chandra Shetty, Advocate)

AND

1. Sri K. Nagaraj

Age: Major

Working as a Police Inspector

Shivajinagar Police Station

Bengaluru City

Bengaluru - 560001.

2. The State of Karnataka

The Police Sub-Inspector

Shivajinagar Police Station

Bengaluru City, Bengaluru

Rep. by SPP

High Court of Karnataka

Bengaluru - 560 001.

... Respondents

(By Smt. Rashmi Jadhav, HCGP for R-2;

R-1 served - unrepresented)

:2:

This Criminal Petition is filed under Section 482 of the Code of Criminal Procedure, praying to quash the charge sheet in Cr.No.22/2016 and proceedings in relating to the C.C.No.52829/2016 on pending file of the court of XI-ACMM, Bangalore for the offences punishable under Sections 419, 420, 465, 466, 468, 471, 120B r/w 34 of IPC and offences under Section 12(1)(B) of Indian Passport Act, produced herewith as document No.4. Allow this Criminal petition with costs throughout.

This Criminal Petition coming on for Admission, this day, the court made the following:

#### ORDER

The petitioner has filed this petition seeking to quash the entire criminal proceedings initiated against the petitioner / Accused No.2 in C.C.No.52829/2016 arising out of Cr.No.22/2016 for the offences punishable under Sections 419, 420, 465, 466, 468, 471, 474, 120B read with Section 34 of the IPC, besides Section 12(1)(B) of the Indian Passports Act, 1967.

2. This matter though listed for admission, with the consent of the learned counsel for the petitioner and so also the learned HCGP for Respondent No.2, the matter is taken up for final disposal. Though notice has been served upon Respondent No.1, he remains absent and unrepresented.

3. It transpires that on the basis of credible information received, the Addl. Commissioner of Police, Bengaluru City, had alerted about human trafficking of minor children by creating forged documents and making attempt by certain persons to help human trafficking from India to United State of America (USA). Accordingly, acting on the said credible information, the complainant / first respondent who was the Police Inspector of Shivajinagar Police Station, had lodged a complaint against accused persons with the second respondent Police. The petitioner is arraigned as Accused No.2 in Cr.No.22/2016. CW-1 is cited as a witness in the charge- sheet and the crime came to be registered on his suo moto complaint. C.W-1 Shri Nagaraj K, Police Inspector of Shivajinagar P.S., Bangalore City, had lodged a complaint with the second respondent police wherein it is stated that the Addl. Commissioner of Police, Bangalore City had given credible information about human trafficking of minor children by creating forged documents, and about the attempts made by accused to traffic humans from India to America (U.S.A). Based upon credible information that trafficking of children from India to USA was being committed by forging documents with the help of the accused persons, acting in the official capacity, the Police Inspector who is cited as CW-1 of Shivajinagar P.S., investigated the case with the team members and registered an FIR against Accused Nos.1 to 14. Based upon the complaint filed by CW-1 / Shri Nagaraj, Police Inspector, the case in Cr.No.22/2016 came to be registered for the alleged offences.

It is alleged in his complaint that Francis Christopher and Maria Josten are the husband and wife who created forged birth certificates of a boy named Romea and two girls named Charilen and Grace Francis, made an application for Passport for the said children saying that they were the parents of the said children though Francis Christopher and Maria Josten were not the biological parents of the said children and had made further effort to travel along with the said children to USA. On the basis of such information, the first respondent police registered an FIR against Accused Nos.1 to 14 wherein petitioner was arraigned as Accused No.2 in the charge-sheet laid by the I.O.

4. It is contended by the learned counsel for the petitioner during the course of his arguments that though the Police Inspector of Shivajinagar P.S. had acted on credible information received from his superior officer and though he raided the scene of crime, but there is no role made by Accused No.2 personally and he had no knowledge about the alleged incident set up in the crime registered by the second respondent - police. The petitioner by avocation is a businessman from the State of Rajasthan. That during his childhood he had come to Bengaluru along with his family members for his livelihood. He had started doing small scale business by selling electronic and other items and he has reached to a level of standard of life but he has been lugged into the alleged crime. Merely because he had rented out his house to one Uday @ Uday Prathap Singh / Accused No.1 as per the agreement dated 29.08.2012, the present petitioner has implicated as an accused in the said crime. The learned counsel contends that the present petitioner's relationship with Uday Pratap Singh who is arraigned as Accused No.1, is nothing but a landlord and tenant relationship. Without there being any basis, the second respondent - police have lugged this petitioner in the alleged crime and also laid the charge-sheet against him. The second respondent - police have not secured any document regarding involvement of the present accused in the commission of an offence by this accused no.2. Despite of it, he has been implicated in the alleged crime and subsequently, charge-sheet has been laid against him also.

He further contends that the offences alleged against the accused are not clear either in the complaint allegation or even in the substance of the FIR. The human trafficking of children or aged persons from their own country to another country are not regular offences. Even taking into consideration travelling from one country to another country, there is certain procedure that the Passport Authority who issues the Passport, ought to go through the entire materials facilitated in terms of the document and must give permission to that effect. But in the instant case, there is no such allegation of jumping such authority or mis-using the documents of such authority in relation to the offences under the Indian Passports Act which has been lugged against the accused in the charge-sheet laid by the I.O. Without any material evidence collected by the I.O. during the course of investigation, unnecessarily Accused No.2 has been implicated in the charge-sheet laid by the I.O, which is causing mental stress to him and his family members and also there is some ignominy caused on his status. In spite of the fact that there is no single ground to make an allegation insofar as the involvement of commission of offences by this accused, he has been implicated the crime.

5. In support of his submission, the learned counsel places reliance on a judgment of the Supreme Court in the case of R.P. KAPOOR VS. STATE OF PUNJAB (AIR 1960 SC 866), wherein it is held that, the allegation in the First Information Report or the complaint which was registered by the police, even if they are taken at their face value and accepted in their entirety, do not constitute the

offences alleged. Where the allegations constitute an offence but there is no legal evidence adduced or the evidence adduced clearly or manifestly failed to prove the charges, then power under Section 482 Cr.P.C. ought to be applied. Hence, he contends that the reliance of the above judgment ought to be applied and he prays this court to exercise the power under Section 482 Cr.P.C. to quash the entire criminal proceedings initiated against this accused.

On all these grounds, learned counsel prays this court for exercising power under Section 482 Cr.P.C. and thereby to quash the entire criminal proceedings initiated against the petitioner / Accused No.2 in C.C.No.52829/2016 arising out of Cr.No.22/2016 of Shivajinagar Police Station.

6. On the other hand, learned HCGP for the State has taken me through the charge-sheet laid by the I.O. relating to the offences lugged against this accused who is also arraigned as an accused in Cr.No.22/2016 for the offences under the IPC, 1860 and so also for the offences under Section 12(1)(B) of the Indian Passports Act, 1967. However, there was a role made by this accused as he had given his house on rental basis by executing rental agreement with Accused No.1 / Uday @ Uday Prakash Singh and hence, there was a relationship between them as landlord and tenant. Therefore, there are some materials collected by the I.O. who had proceeded with the case in order to lay a charge-sheet against the accused. The I.O. has followed the requisite condition under Section 173(2) of the Cr.P.C. and laid the charge-sheet against the accused. This petitioner who is arraigned as the accused has aided in attempting human trafficking for transportation of minor children from India to the United State of America (U.S.A) by creating forged documents. The raid was taken by the Investigating Agency and CW-1 Police Inspector of Shivajinagar P.S., who registered a complaint suo moto by recording an FIR and proceeding with the case for investigation. Therefore, the accused is required to face trial in C.C.No.52829/2016. Unless the witnesses cited in the charge-sheet have been subjected to test and also subjected to production of material documents on the part of the prosecution to prove the guilt of the accused, at this stage, a conclusion cannot be arrived that there are no sufficient materials to include this accused as Accused No.2 in the charge-sheet and discharge this accused from the alleged offences in Cr.No.22/2016 relating to the case in C.C.No.52829/2016. On this premise, the learned HCGP for the State is seeking to dismiss the petition, as there is no justifiable ground in this petition for discharging the accused from the alleged cases.

7. In the context of the contentions, it is relevant to state that CW-1 Shri K. Nagaraj, Police Inspector, registered a complaint with the second respondent - police against the accused and others in Cr.No.22/2016, whereby this accused was aware of the activities carried on by Accused No.1 and hence was cited as an accused in the charge-sheet by the I.O. Petitioner who is arraigned as Accused No.2 in C.C.No.52829/2016, is by avocation a businessman from Rajasthan who has settled in Bangalore along with his family members and he has come up in his life by doing business in selling electronic items and other such other items. But he has been implicated as an accused though there is no acquaintance of this accused with other accused in commission of the alleged offences and though he did not have an independent role to play along with other accused. Hence, this accused has been roped in the alleged crime though nowhere in the FIR said to have been recorded by the police it is stated regarding the specific role of this accused that he had illegally trafficked children or aged persons from one country to another country with the involvement of the other accused.

In support of his contentions, the learned counsel has placed reliance on an order passed by a co-ordinate bench of this court in CrI.P.No.5823/2016 C/w. CrI.P.No.5824/2016 dated 29.09.2016, which is a case relating to a similar incident as in the present petition wherein the case was registered on information from the Police Inspector that active human trafficking of minor children from India to U.S.A was going on by creating forged documents.

8. In the present case on hand, the Police Inspector of Shivajinagar P.S. had filed a suo moto complaint on the instructions of his superior officer. Thereafter, took a raid and proceed with the case for investigation and collected certain materials against the accused persons. The petitioner has been implicated in this case on the basis of a rental agreement executed by him with Uday Prathap Singh / Accused No.1. The rental agreement which is produced in this petition as 'Document No.4' has been executed by the petitioner herein being the Lessor in favour of Accused No.1 / Lessee as on 28.09.2012 in respect of which the rent was applicable from 29.08.2012. The rental agreement has been executed in respect of Residential Apartment No.418-A, III Floor of Block-D of Neeladri Mahal, Phase-II. It is in view of this document that the present petitioner has been implicated as Accused No.2 in Cr.No.22/2016.

However, CW-1 Nagaraj / Police Inspector on credible information received from his Superior Officer that there is some human trafficking and based upon the permission from the superior that he took up raid and proceeded with the case for initiation of suo moto complaint against the accused persons. Subsequently, the case has been taken up for investigation and laid the charge-sheet against the accused in C.C.No.52829/2016 against the accused persons. But this petitioner is arraigned as Accused No.2.

9. But having gone through the entire material available on record, it is said that the documents secured by the I.O. and also the materials collected by the I.O. relates to human trafficking of minor children from India to USA by creating certain fake documents and also passports and so also Visa. Though this petitioner who is arraigned as Accused No.2 in the aforesaid charge-sheet case, but there is no specific overt act attributed against this accused of committing the alleged offences with other accused for having involved in human trafficking by transporting minor children from India to U.S.A. by forging documents. However, even in retrospect, it was found that the petitioner who is arraigned as Accused No.2 was innocent and he had merely come from Rajasthan to Bangalore to establish his business and was staying along with his family members to do his business of selling electronic items and others. But this accused had executed a rental agreement, he being the lessor, in favour of the lessee namely Accused No.1 / Uday @ Uday Pratap Singh, who was the tenant. Hence, petitioner has been arraigned as Accused No.2. Except this relationship between him and Accused No.1 as a tenant and landlord, there is no further transaction or any type of business with him by the present petitioner, throughout his life. There is no crime registered in his name. But his name has been lugged in the alleged crime only because he was the lessee, which has caused harassment to him and so also his family members. It is this circumstance that requires to be considered for exercise of power under Section 482 Cr.P.C. If there is any miscarriage of justice and abuse of process of law, certainly it requires to be interfered with. If not, there shall be some miscarriage of justice to the gravamen of the allegation made in the complaint. Therefore, it is relevant to refer to the judgment of the Apex Court in the case of State of Karnataka vs.

L.Muniswamy and others reported in AIR 1977 SC 1489, wherein, the relevant portion reads thus:

"In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's has inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice."

The ratio of the said reliance is squarely applicable to the present case on hand, wherein the I.O. has laid the charge-sheet against this accused in C.C.No.52829/2016 arising out of Cr.No.22/2016. It is true that charge-sheet has been laid against the accused as contemplated under Section 173(2) of Cr.P.C. by following all requirements. But the substance in the charge-sheet cannot be said that there is a specific role made by the petitioner along with the other accused. For this reason, it is said that the petitioner is deserving to seek quashing of the entire criminal proceedings initiated against him in C.C.No.52829/2016.

Consequently, the petition is hereby allowed and the case in C.C.No.52829/2016 arising out of Cr.No.22/2016 which is pending before the Court of the XLIII ACMM, Bengaluru City, is hereby quashed insofar as the petitioner / Accused No.2 is concerned.

However, any observation made in this order shall not influence the mind of the Trial Court while disposing of the case in respect of the other accused. But the case against the other accused shall be disposed of on merits, in accordance with law.

Sd/-

JUDGE KS