



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 14TH DAY OF SEPTEMBER, 2022

BEFORE

THE HON'BLE MR JUSTICE SURAJ GOVINDARAJ

CRIMINAL PETITION NO. 8077 OF 2017

BETWEEN:

1. K. UMESH SHETTY,

...PETITIONER

(BY SRI. C.H.JADHAV, SENIOR COUNSEL FOR
SRI. M J ALVA.,ADVOCATE)

AND:

1. STATE OF KARNATAKA,
REPRESENTED BY INSPECTOR OF POLICE,
BASAVESHWARNAGAR POLICE STATION,
BASAVESHWARANGAR,
BENGALURU – 560 079.
REPRESENTED BY
STATE PUBLIC PROSECUTOR

...RESPONDENT

(BY SRI.MAHESH SHETTY, HCGP)





THIS CRL.P. IS FILED U/S.482 OF CR.P.C PRAYING TO QUASH THE IMPUGNED ORDER DATED 07.09.2017 PASSED BY THE LEARNED V ADDITIONAL CHIEF METROPOLITAN MAGISTRATE, BENGALURU IN C.C.NO.28411/2006 WHICH IS PRODUCED AT ANNEXURE 'A' AND TO QUASH ALL FURTHER PROCEEDINGS AGAINST THE PETITIONER IN C.C.NO.28411/2006 PURSUANT TO THE FILING OF THE CHARGE SHEET BY THE RESPONDENT POLICE BEFORE THE LEARNED V ADDITIONAL CHIEF METROPOLITAN MAGISTRATE, BENGALURU.

THIS CRL.P COMING ON FOR ADMISSION, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

1. The petitioner is before this Court seeking for the following reliefs:

- a) *Quash the impugned order dated 07.09.2017 passed by the learned V Additional Chief Metropolitan Magistrate, Bengaluru in C.C.No.28411/2006 which is produced at Annexure 'A'.*
- b) *Quash all further proceedings against the petitioner in C.C.No.28411/2006 pursuant to the filing of the charge sheet by the respondent police before the learned V Addl. Chief Metropolitan Magistrate, Bengaluru.*
- c) *Grant cost of this petition.*



d) *And also grant such other and further reliefs as this Hon'ble Court deems fit considering the facts and circumstances of the case to meet the ends of justice."*

2. Crime No.244/2006 was registered by the Basaveshwara Nagara Police Station against one Umesh Shetty S/o. Ponnappa, Kiran S/o. Basavaraju, Smt. Pinke, W/o. Raju and Suma D/o. Linganayak, for the offences punishable under Section 3, 4 , 5 and 7 of the Immoral Traffic (Prevention) Act, 1956. Though the said accused persons had been arrested and remanded to judicial custody on 15.07.2006 subsequently, they were released on bail and accused No.1 was absconding and not found.
3. Upon completion of investigation, a charge sheet was filed in C.C.No.28411/2006 for the aforesaid offences and a non-bailable warrant ('NBW' for short) was issued. It was at that stage that accused No.1 was not traceable and a proclamation was issued under Section 82 and 83 of Cr.P.C. and thereafter, the NBW



was sought to be executed as against the petitioner-accused No.1 is concerned.

4. When the petitioner informed the concerned officer that he is not K. Umesh Shetty S/o. Ponnappa but he is K. Umesh Shetty, S/o. Late Vittal Shetty, as such, he is not the person named in the NBW. In that background, the prosecution filed an application for conducting of a test identification parade in order to ascertain the identity of the petitioner. The trial Court vide its order dated 07.09.2017 had directed to conduct the test identification period of accused No.1 by issuing a notice and securing the presence of the petitioner-accused No.1. It is challenging the said order, the petitioner is before this Court.
5. Sri C.H. Jadhav, learned Senior Counsel appearing for the petitioner would submit that the incident having occurred in the year 2006 and a crime number registered on 14.07.2006, the question of



conducting a test identification parade in the year 2017 would not arise since the same would be unbelievable on account of lapse of a long period of time i.e. more than 11 years. He further submits that now in the year 2022, after a lapse of 16 years, there would be no purpose in conducting a test identification parade.

6. He further submits that in order to ascertain the identity of the petitioner, finger prints of the petitioner were taken and sent to the forensic lab for verification, and the forensic lab has reported that the finger prints of the petitioner do not match those found at the site, which had been obtained at the time of the investigation. On all the three grounds i.e. the name of the father being different, the long lapse of time and the finger prints not matching, he submits that the above petition is required to be



allowed and the order passed by the trial Court is required to be quashed.

7. Sri Mahesh Shetty, learned HCGP appearing for the respondent would submit that the name of the petitioner is the same as that of the accused No.1 and that there is a reasonable doubt of the petitioner being accused No.1 in the said case. The proceedings have not been continued on account of the absence of accused No.1 and, as such, the test identification parade would aid the prosecution to proceed with the matter in the event of the identity of the petitioner being that of the accused No.1 in Crime No.244/2006. On enquiry as regards the finger prints, he submits that the finger prints of the petitioner did not match with those found at the scene of occurrence.
8. Heard Sri C.H. Jadhav, learned Senior Counsel appearing for the petitioner and Sri Mahesh Shetty,



learned HCGP appearing for the respondent and perused the papers.

9. The purpose of the test identification parade is to ascertain the identity of a person, who is alleged to be the accused or who is the perpetrator of a crime. The test identification parade is required to be carried out at the earliest so that there is no failing memory or improper memory which can be attributed to the test identification parade. In the present case, the test identification parade was sought to be carried out by the investigating officer after a period of 11 years and after the registration of the complaint. Hence, I am of the considered opinion that after a period of 11 years, memory being very frail and the identification of the witnesses cannot be trusted. There is no purpose which would be served by carrying out the test identification parade after a lapse of 11 years. More so, when the



finger prints of the petitioner were found to be not matching with that found at the scene of occurrence.

10. In view of the above, looked at from any angle, the order passed by the trial Court does not serve any purpose. Hence, I pass the following:

:ORDER:

- a) The petition is allowed.
- b) The impugned order dated 07.09.2017 passed by the V Additional Chief Metropolitan Magistrate, Bengaluru in C.C.No.28411/2006 and all further proceedings taken thereof are quashed.

**Sd/-
JUDGE**