

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 5TH DAY OF JANUARY, 2023

BEFORE

THE HON'BLE MR. JUSTICE HEMANT CHANDANGOUDAR

WRIT PETITION NO.1353/2018 (GM-RES)

BETWEEN:

1. HONNEGOWDA
S/O DANEGOWDA,
AGED ABOUT 30 YEARS,
ITTAMADU MAIN ROAD,
A.G.S. LAYOUT,
BANASHANKARI 3RD STAGE,
BANGALORE-560 085.
2. PRAVEEN H K
S/O KUMARASWAMY,
AGED ABOUT 27 YEARS,
NO.42, 2ND CROSS,
ITTAMADU, BANGALORE-85.

...PETITIONERS

(BY SRI PRASANNA KUMAR P., ADVOCATE)

AND:

1. STATE OF KARNATAKA
BY VIJAYANAGAR POLICE STATION,
REPRESENTED BY
HIGH COURT GOVERNMENT PLEADER,
HIGH COURT BUILDING,
DR. B.R. AMBEDKAR VEEDHI,
BENGALURU-560 001.
2. DINESH
S/O DHARMACHAND,
AGED ABOUT 45 YEARS,

R/AT NO.1422, 10TH MAIN,
VIJAYANAGAR, BANGALORE-560 040.

...RESPONDENTS

(BY SRI VINAYAKA V.S., HCGP FOR RESPONDENT/STATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA READ WITH SECTION 482 OF CODE OF CRIMINAL PROCEDURE, PRAYING TO QUASH THE IMPUGNED ORDER DATED 16.9.2017 PASSED BY THE LEARNED XXIV ADDITIONAL CHIEF METROPOLITAN MAGISTRATE, BANGALORE IN CC NO.23225/2017 THEREBY TAKING COGNIZANCE AGAINST THE PETITIONERS FOR THE OFFENCE PUNISHABLE UNDER SECTIONS 454, 380, 413 OF IPC AS PER ANNEXURE-G TO THE WRIT PETITION IN SO FAR AS THE SAME RELATES TO THE PETITIONERS [ACCUSED NO.2 AND 4] AND CONSEQUENTLY QUASH THE ENTIRE PROCEEDINGS PENDING THEREON AS AGAINST THE PETITIONERS BY CALLING FOR THE RELEVANT RECORDS.

THIS WRIT PETITION COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The FIR was lodged for the offence punishable under Sections 454, 380 and 413 of IPC alleging that the gold jewellery belonging to the complainant was stolen by the accused and sold the same to the Attica Gold Pvt. Ltd., in various branches.

2. The Police after investigation submitted the charge sheet against the petitioners-accused Nos.2 and 4 before the

learned Magistrate and the learned Magistrate after perusal of the charge sheet has taken cognizance of the aforesaid offence and the same is impugned in this petition.

3. Learned counsel for the petitioners-accused Nos.2 and 4 submits that petitioners-accused Nos.2 and 4 were the employees of the Attica Gold company which is alleged to have purchased the stolen gold jewellery and in the company having not been arraigned as an accused, the cognizance taken is impermissible.

4. He further submits that there is no material that the accused Nos.2 and 4 as employees of the company have purchased the stolen gold jewellery belonging to the complainant.

5. On the other hand, learned HCGP appearing for the State submits that the petitioners-accused Nos.2 and 4 who are the employees of the company having purchased the stolen jewellery have committed the aforesaid offences. Hence, the cognizance taken does not warrant any interference and sought for dismissal of the petition.

6. I have examined the submission made by the learned counsel appearing for the parties.

7. The Hon'ble Supreme Court in the case of **R. Kalyani -vs- Janak C. Mehta and Others**, reported in **(2009) 1 SCC 516** held that, "If a person, thus, has to be proceeded with as being vicariously liable for the acts of the company, the company must be made an accused. In any event, it would be a fair thing to do so, as legal fiction is raised both against the company as well as the person responsible for the acts of the company".

8. In the instant case, the charge sheet is laid against the petitioners-accused Nos. 2 and 4 alleging that the company in which they are working as an employees have purchased the stolen gold jewellerys. In the absence of the company not being arraigned as a accused, the petitioners-accused Nos.2 and 4 cannot be held vicariously guilty of the same.

9. Even otherwise, there is no material produced to substantiate the allegation that the petitioners-accused Nos.2 and 4 as employees of the said company fully knowing that the gold jewellerys were stolen from the respondent No.2 have purchased the same, the registration of the FIR culminating in

laying of the charge sheet is impermissible. Hence, the continuation of the criminal proceeding against the petitioners-accused Nos.2 and 4 will be an abuse of process of law. Accordingly, I pass the following:

ORDER

- i) The Writ Petition is allowed.
- ii) The impugned proceedings in C.C.No.23225/2017 on the file of the 24th Additional Chief Metropolitan Magistrate, Bengaluru, in so far it relates to petitioners-accused nos.2 and 4 are hereby quashed.

Sd/-
JUDGE

HR