IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 26TH DAY OF SEPTEMBER, 2024

BEFORE

THE HON'BLE MR JUSTICE K NATARAJAN

CRIMINAL PETITION NO.201250 OF 2023

(482(Cr.PC)/528(BNSS))

BETWEEN:

MANJUNATH
S/O MAHABALESHAPPA MANNAPUR,
AGE: 28 YEARS, OCC: LAB INSPECTOR,
IN COMPUTER SCIENCE AND ENGINEER DEPARTMENT,
APPA INSTITUTE OF ENGINEERING COLLEGE,
KALABURAGI, R/O IRAKALGAD,
TQ. AND DIST. KOPPAL.

...PETITIONER

(BY SRI. ASHOK MULAGE, ADVOCATE)

AND:

Digitally signed by KHAJAAMEEN L MALAGHAN
Location: High Court Of Karnataka

THE STATE OF KARNATAKA THROUGH
ASHOK NAGAR POLICE STATION, KALABURAGI,
REPRESENTED BY ADDL. SPP,
HIGH COURT OF KARNATAKA,
KALABURAGI BENCH.

...RESPONDENT

(BY SMT. ANITA M. REDDY, HCGP)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C. PRAYING TO ALLOW THE PETITION AND SET ASIDE THE IMPUGNED ORDER PASSED BY THE V ADDL. CIVIL JUDGE AND JMFC KALABURAGI IN C.C.NO. 4940/2017 DATED 05.12.2019 ON THE APPLICATION FILED UNDER SECTION 239 OF CR.P.C. FOR DISCHARGE AND CONFIRMING THE SAME BY THE III ADDL. DISTRICT AND SESSIONS JUDGE, KALABURAGI IN CRL.REV. P. NO. 10/2020 DATED 07.12.2020 AND ALLOW THE APPLICATION FILED

UNDER SECTION 239 OF CR.P.C. FOR DISCHARGE, AND DISCHARGE THE PETITIONER / ACCUSED NO.1 FOR THE OFFENCES UNDER SECTIONS 352, 504, 336, 176, 202, 203 OF IPC AND SEC. 23 OF JUVENILE JUSTICE ACT, AND SEC. 116 OF KARNATAKA EDUCATION ACT, IN THE INTEREST OF JUSTICE AND EQUITY.

THIS PETITION, COMING ON FOR FINAL HEARING THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE K NATARAJAN

ORAL ORDER

(PER: HON'BLE MR JUSTICE K NATARAJAN)

This petition is filed by the petitioner-accused No.6 under Section 482 of Cr.P.C. for quashing the criminal proceedings in C.C.No.4940/2017 by setting aside the order of dismissal passed by the Magistrate under Section 239 and upheld by the First Appellate Court in Criminal Revision Petition No.10/2020 dated 07.12.2020.

2. Heard the arguments of the learned counsel for the petitioner and the learned High Court Government Pleader for the respondent-State.

3. The case of the prosecution is that on the first information lodged by the principal of the S.B.College, the

police registered the FIR in Crime No.91/2015 for the offence punishable under Sections 363 of IPC for missing of the student-Suresh Kumar studying in II-PU in SB College and stayed in the SB hostel from 27.06.2015 onwards.

4. It is further alleged that there was a quarrel between the Suresh Kumar and co-students, namely, Vijay Kumar Kulkarni and Banu Prakash who were also juveniles in respect of switching off and on the light by the Suresh Kumar (for short, hereinafter referred to as 'the victim') and Vijay Kumar Kulkarni said to be abused him in filthy language, insulted him. Therefore, the Suresh Kumar wants to leave the hostel and wants to die. Therefore, he prepared a death note and handed over to the Banu Prakash, the another juvenile offender, who was a student of the same college/hostel and the victim left the hostile on 27.06.2015 and his whereabouts are not known.

5. It is alleged that the said Banu Prakash who received the death note of the victim, which was

addressed to the principal of the college and the same was given to the Vijay Kumar Kulkarni. In turn, he was torn the same and thrown it thereby the juvenile offender Banu Prakash suppressed the information and it was not given to the authorities.

6. That apart that this petitioner said to be a lecturer working in the said college and also in-charge warden of the hostel, who had knowledge about the quarrel between the Vijay Kumar Kulkarni and the victim Suresh Kumar. But he has not intimated to the management and after knowledge that the Suresh Kumar was missing for almost four days, he has not given to the intimation to the college and also to the parents, but he has suppressed the same. Therefore, the police have filed the charge-sheet against the petitioner and others. It is also stated by the police in the charge-sheet, charge-sheet will be filed against the juvenile offenders Banu Prakash and Vijay Kumar Kulkarni before the Juvenile Justice Board. Accordingly, the petitioner and other accused

persons appeared before the Magistrate and they filed application under Section 239 of Cr.P.C. The magistrate discharge the accused Nos.1, 3 to 5 and 7 to 9 and dismissed the application of accused No.2 and accused No.6/this petitioner.

7. Subsequently a revision petition came to be filed by the accused No.2 and 6. The First Appellate Court i.e. Revisional Court allowed the revision petition in-part and discharged the accused No.2, but directed to proceed against this petitioner, who is accused No.6. Hence, the petitioner is before this Court.

8. The learned counsel for the petitioner brought to the notice of this Court at para-25 of the order passed by the learned Sessions Judge, wherein the learned Sessions Judge has categorically held that there is no ingredients to attract any of the offences against the accused No.6, however, the revision filed by this petitioner came to be rejected.

9. On careful reading of the entire allegation made in the charge-sheet, which reveals it is not in dispute Suresh Kumar, Vijay Kumar Kulkarni and Banu Prakash are the students studying in II-PU, they were hostel mates, they were juveniles and there was quarrel between the victim-Suresh Kumar and Vijay Kumar Kulkarni, which said to be brought to the notice of this petitioner, who is in-charge warden of the hostel. However, he has not intimated the same, either to the management, which attracts Section 176 of IPC and non-furnishing information which is punishable under Section 202 of IPC and giving wrong information to the parents or the college authority, which punishable under section 203 of IPC. These three offences also applicable to the juvenile offender-Banu Prakash, who has received the death note of the deceased-the victim, but not given to the management or to the principal of the college, thereby the missing of the victim not able to trace out and he was continuously missing till date, his whereabouts not known.

10. As regards to the provocation, assault, abuse and causing injury, which attracts against the juvenile offender-Vijay Kumar Kulkarni, but not against this petitioner or any other accused. Though the learned Sessions Judge discharged the accused No.2 by allowing revision petition in-part, but holding that there is no negligence on the part of the accused No.6 and no ingredients made out in any of the offences is not correct.

11. On the other hand, on careful reading of Sections 176, 202, 203 of IPC, which attracts against this petitioner. However, all these three offences are non-cognizable offences. The police ought to have register the FIR against this petitioner by obtain the permission to investigate the matter under Section 155(2) of Cr.P.C. Though the FIR registered under section 363 of IPC, which is missing or abduction, but they found during the investigation it was missing complaint, missing case and false information submitted or no information submitted to the college authority or parents. Therefore, the police

cannot file charge-sheet without permission of the Magistrate for the offences 176, 202 and 203 against this petitioner. But the First Appellate Court though considered, and the Trial Court/Magistrate also considered rightly discharged the other accused persons, but failed to discharge this petitioner. Therefore, this petitioner is also entitled for the discharge of the alleged offences. Accordingly, I pass the following:

ORDER

(i) The petition is allowed.

(ii) The order passed by the Magistrate and upheld by the revisional Court are hereby set aside.

(iii) The application of the petitioner under Section 239 Cr.P.C. is allowed.

(iv) The petitioner/accused No.6 is hereby discharged from the charges.

Sd/-
(K NATARAJAN)
JUDGE

SDU
LIST NO.: 1 SL NO.: 5
CT: SI