



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 20<sup>TH</sup> DAY OF SEPTEMBER, 2023**

**BEFORE**

**THE HON'BLE MR JUSTICE R. NATARAJ**

**CRIMINAL PETITION NO. 5280 OF 2019**

**BETWEEN:**

MIRLE VARADARAJ  
S/O LATE BORE GOWDA,  
AGED ABOUT 57 YEARS,  
R/AT NO.544, 5<sup>TH</sup> MAIN,  
Kengeri Satellite Town,  
BENGALURU - 560 060.

...PETITIONER

(BY SRI. SANDESH J. CHOUDA, SENIOR COUNSEL FOR  
SRI. SHARATH S. GOWDA, ADVOCATE)

**AND:**

1. STATE OF KARNATAKA  
REPRESENTED BY STATION HOUSE OFFICER,  
JNANABHARATHI POLICE STATION,  
THROUGH SPL. PUBLIC PROSECUTOR,  
HIGH COURT BUILDING,  
BANGALORE - 560 001.

2. SRI. M.L. NARAYANA  
S/O C. MUNIYAPPA  
AGED ABOUT 64 YEARS,  
R/AT NO.7, 14<sup>TH</sup> MAIN, 15<sup>TH</sup> 'C' CROSS,  
BANDAPPA GARDEN, MUTHYALANAGAR,  
YESHVANTHPURA,  
BANGALORE - 560 054.

...RESPONDENTS

(BY SRI. RAJAT SUBRAMANYAM, HIGH COURT GOVERNMENT  
PLEADER FOR RESPONDENT NO.1;

SRI. A.V.AMARANATH, ADVOCATE FOR RESPONDENT NO.2)

THIS CRL.P IS FILED UNDER SECTION 482 OF THE CODE OF  
CRIMINAL PROCEDURE, 1973 PRAYING TO QUASH THE ENTIRE  
PROCEEDINGS IN C.C.NO.4322/2019 PENDING BEFORE THE





HON'BLE IX ADDITIONAL CHIEF METROPOLITAN MAGISTRATE COURT, BENGALURU FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 120-B, 468, 420, 447, 427, 504, 506 READ WITH SECTION 34 OF THE INDIAN PENAL CODE, 1860.

THIS PETITION, COMING ON FOR HEARING, THIS DAY, THE COURT MADE THE FOLLOWING:

**ORDER**

The petitioner/accused No.1 has challenged the prosecution launched against him in C.C. No.4322/2019 pending trial before the IX Additional Chief Metropolitan Magistrate, Bengaluru, for the offences punishable under Sections 120B, 468, 420, 447, 427, 504, 506 read with Section 34 of the Indian Penal Code, 1860 (for short, IPC').

2. The respondent No.1 took up investigation on an information furnished by the respondent No.2 on 10.12.2018 that the land bearing Sy. No.45/1 of Mallathahalli village, Yeshwantapura hobli, Bengaluru North Taluk, belonged to Mr. Patel M. Rudrappa, who had formed a layout of residential sites therein. The said Mr. Patel M. Rudrappa is stated to have sold a site bearing



No.12, measuring 30 feet x 40 feet to late Smt. Backialakshmi, the wife of the respondent No.2 on 22.12.1994. Respondent No.2 claimed that his wife had paid municipal taxes in respect of the aforesaid site and due to financial difficulties, they could not put up any construction. When the respondent No.2 and his wife tried to enclose the site by a compound wall, the petitioner herein along with Mr. N. R. Nagaraj obstructed them claiming that they had purchased the entire land measuring 01 Acre in Sy.No.45/1 of Mallathahalli. The respondent No.2 had in that regard lodged a complaint before the Jnanabharati police station on 30.11.2003 and that the petitioner and Mr. N.R. Nagaraj/N.R. Nagaraju were summoned by the Police and warned not to interfere with the possession of the wife of the respondent No.2. Despite that, the petitioner and Mr. N.R. Nagaraj continued to disturb the attempts made by the respondent No.2 and his wife to put up a compound wall. Later, on 24.12.2003, the petitioner and Mr. N.R. Nagaraj along with his supporters went to the site and threw away the



constructed material stocked in the site. Similarly, they also went to the site Nos.10 and 15 and other sites and vandalized the barbed wire fencing. He contended that the petitioner and Mr. N.R. Nagaraj who allegedly had obtained an order of *status quo* from a Civil Court did not respect the said order but violated it with impunity. He contended that the order of *status quo* was modified by the Civil Court and an order of injunction was granted against which the respondent No.2 and his wife filed an appeal before this Court and this Court in terms of an order directed both the parties not to alienate the site in question. He alleged that though Mr. Patel M. Rudrappa had conveyed the sites formed in Sy. No.45/1 of Mallathahalli village to various persons including the petitioner and though the said fact was within the knowledge of his daughter-in-law, Mrs. Sujaya, and though she was present at the time of registration of certain sites, and had attested those sale deeds, yet in order to take over the sites belonging to the wife of the respondent No.2, she had conspired with the petitioner and Mr. N.R.



Nagaraj in bringing about a sale deed dated 15.09.2003 in favour of Mr. N.R. Nagaraj and that the petitioner and Mr. N.R. Nagaraj were attempting to encumber the property to various persons and were also trying to dispossess the respondent No.2, his wife and similarly situated persons. The respondent No.2 claimed that his wife died on 31.10.2012 and therefore, he requested the respondent No.1 to take suitable action against the petitioner and Mr. N. R. Nagaraj/N.R. Nagaraju and Mrs.Sujaya.

3. Based on this, the respondent No.1 registered Crime No.356/2018 against the petitioner and others for the offences punishable under Sections 120B, 468, 447, 420, 504, 506 read with Section 34 of IPC and took up investigation. Respondent No.1 recorded the statement of CW.4, who is the owner of site Nos.10 and 15 and who alleged that on 26.11.2003, the petitioner along with Mr. N.R. Nagaraj / accused No.2 prevented him from constructing the compound wall. CW.5 was another owner



of site Nos.9 and 16 who also stated that the petitioner and Mr. N.R. Nagaraj prevented him from carrying on construction activity on 23.12.2003 and again on 24.03.2004. CW.6 is the owner of site No.11, who alleged that during November 2003, the petitioner and Mr. N.R. Nagaraj prevented her from constructing the compound wall and that they renewed their attempt on 24.12.2003. CW.7 is the owner of a site No.17, who also claimed that he was prevented by the petitioner and Mr. N.R. Nagaraj from constructing the compound wall in the year 2003 and that the petitioner and accused No.2 renewed their attempt on 24.12.2003. CWs.8, 9 and 10 are similar such site owners, who all alleged that between the years 2003 and 2004, the petitioner and Mr. N.R. Nagaraj had prevented them from putting up any construction in the respective site/s owned by them.

4. Based on this statement, respondent No.1 filed a charge sheet for the offences punishable under Sections 120B, 468, 420, 447, 427, 504, 506 read with Section 34



of IPC. The Trial Court took cognizance of the offences and registered C.C. No.4322/2019 and issued process to the petitioner and other accused. The petitioner is, therefore, before this Court challenging the criminal prosecution initiated against him in the aforesaid case.

5. Learned senior counsel representing the petitioner submitted that an offence was allegedly committed on 30.11.2003 in respect of which a complaint was registered before Jnanabharati Police Station and that the petitioner and Mr. N.R. Nagaraj were summoned and warned not to interfere with the possession of the wife of respondent No.2. He contended that later, the petitioner and Mr. N.R. Nagaraj were accused of trespassing into the property on 24.12.2003 and that they threw out the construction material stocked in the site. He contended that between the year 2003 till the year 2018, there have been no incidents as per the information furnished by the respondent No.2 before respondent No.1. The wife of respondent No.2 died on 31.10.2012. Long thereafter i.e.,



after nearly 15 years from the date of the alleged commission of a crime, the respondent No.2 lodged a complaint on 10.12.2018 alleging the commission of various offences. He, therefore, submitted that there is no explanation for the delay in lodging this information before the respondent No.1 and therefore, this delay vitiates the prosecution. Further, he contended that the wife of respondent No.2 since deceased and represented by respondent No.2 and his daughter had filed a suit in O.S. No.3352/2010 before XVII Additional City Civil and Sessions Judge, Bengaluru for declaration of her title to the suit schedule property i.e., site No.12 and for consequential reliefs and that the said suit was dismissed on merits in terms of the judgment and decree dated 29.09.2015. He, therefore, contends that the respondent No.2 is no longer the owner of the property and hence, he cannot pursue the prosecution launched against the petitioner and other accused. Learned senior counsel further contended that a suit in O.S. No.9073/2003 was filed by the accused No.2 - Mr. N.R. Nagaraj against the





wife of respondent No.2 and others before the City Civil and Sessions Court, Bengaluru. He submitted that the wife of the respondent No.2 had filed a written statement on 14.01.2004 and in the written statement, there was not even a whisper about the crime allegedly committed by the petitioner and Mr. N.R. Nagaraj on 30.11.2003 and 24.12.2003. He, therefore, submitted that the prosecution launched against the petitioner is not only false but an abuse of the process of law and Court.

6. Per contra, the learned counsel for respondent No.2 submitted that the wife of respondent No.2 had lawfully purchased site No.12 from Mr. Patel M. Rudrappa and that the petitioner herein had obtained a power of attorney from the daughter-in-law of Mr. Patel M. Rudrappa, who conveyed the site/s in favour of his wife. He submitted that the petitioner and Mr. N. R. Nagaraj in collusion with the daughter-in-law of Mr. Patel M. Rudrappa were attempting to dispossess the owners of sites formed in Sy. No.45/1 of Mallathahalli. He further contends that



the sale of the sites in Sy. No.45/1 was within the knowledge of the accused No.3 (Mrs.Sujaya). Nonetheless, she had brought about colourable transactions in favour of Mr. N.R. Nagaraj and that the said Mr. N.R. Nagaraj along with the petitioner were interfering with the possession of the wife of respondent No.2 and similar site owners. He invited the attention of this Court to the statements of CWs.4, 5, 6, 7, 8, 9 and 10 and submits that all these witnesses owned site/s in the layout in the said Sy. No.45/1 and all of them in one voice have stated that it is the petitioner and Mr.N.R. Nagaraj who were interfering with their possession and were preventing them from using their site/s. He, therefore, submits that this Court may not exercise jurisdiction to quash the criminal proceedings. Further, he contended that against the judgment and decree dated 29.09.2015 passed by the XVII Additional City Civil and Sessions Judge, Bengaluru, dismissing the suit in O.S.No.3352/2010, the wife of respondent No.2 had filed RFA No.1742/2015 before this Court and the said appeal was connected with RFA



Nos.1661/2015 and 1743/2015 and that this Court in terms of the judgment dated 03.03.2023, had allowed the appeals and set aside the said judgment and decree dated 29.09.2015 passed in O.S. Nos.3352/2010 and two other suits and remitted the suits back to the Trial Court with a direction to hold re-trial after affording a reasonable opportunity to both the parties to lead their evidence and that the suit in O.S. No.3352/2010 is pending consideration. He relied upon the judgment of Hon'ble Supreme Court of India in the case of ***Dr. Dhruvaram Murlidhar Sonar v. The State of Maharashtra and others [Criminal Appeal No.1443/2018]*** and contended that this Court should be slow in exercising jurisdiction under Section 482 of Cr.P.C., particularly when a charge sheet is filed.

7. The learned High Court Government Pleader for respondent No.1 contended that there are material to prosecute the petitioner.



8. I have considered the submissions made by the learned senior counsel for the petitioner and the learned High Court Government Pleader for respondent No.1 and the learned counsel for respondent No.2.

9. The wife of the respondent No.2 claimed that she purchased site No.12 from Mr. Patel M. Rudrappa on 22.12.1994. She further claimed that the petitioner and Mr. N.R. Nagaraj had prevented her and her husband from putting up a compound wall in the year 2003 and that a complaint was filed before the Jananabharati police station. It is alleged that the jurisdictional Police summoned the petitioner and Mr. N.R. Nagaraj and warned them of action if they disturbed the possession of the wife of respondent No.2. The wife of the respondent No.2 again alleged that on 24.12.2003, the petitioner and Mr. Nagaraj along with their associates went to the said property and vandalized the construction material stocked in the site. However, between the years 2003 and 2018, there have been no incidents. The wife of respondent No.2



had filed O.S. No.3352/2010 for declaration of title and for perpetual injunction and the said suit was dismissed on merits by the XVII Additional City Civil and Sessions Judge, Bengaluru, on 29.09.2015. Though respondent No.2 claimed that an appeal was filed before this Court against the said dismissal, between 2015 and 2018, the respondent No.2 did not take any steps to lodge any complaint if the possession of the respondent No.2 was disturbed. The fact that the complaint was lodged nearly 15 years from the date of the alleged incident vitiates the prosecution as held by the Apex Court in the case of ***Hasmukhlal D. Vora and Another v. State of Tamil Nadu* [2022 SCC OnLine SC 1732]**. It is now trite that mere delay in lodging the complaint would not itself vitiate the prosecution but enormous unexplained delay would vitiate the prosecution as between the date of the alleged offence and the date of the complaint, the complainant would have improved the version and could give a distorted version of the alleged incident. Since the complaint filed by the respondent No.2 did not disclose the



reason for the delay in lodging the complaint, this should result in vitiating the prosecution against the petitioner. Even otherwise, the respondent No.2 is already before the Civil Court (CCH-6 XXIV Additional City Civil and Sessions Judge) in O.S. No.3352/2010 for declaration of his title to the suit schedule property/site No.12 and the matter is seized before the Civil Court where there is an order of injunction restraining Mr. N.R. Nagaraj from interfering with the property sold in favour of the wife of respondent No.2. Therefore, it is clear that the respondent No.2 has given a criminal cloak to a civil dispute and therefore, the prosecution against the petitioner cannot continue. The judgment relied upon by the learned counsel for the respondent No.2 is inapplicable to the facts of the case in view of the inordinate and unexplained delay in lodging a complaint.

10. In that view of the matter, the petition is allowed and the impugned prosecution of the petitioner / accused No.1 in C.C. No.4322/2019 pending trial before



the IX Additional Chief Metropolitan Magistrate, Bengaluru, for the offences punishable under Sections 120B, 468, 420, 447, 427, 504, 506 read with Section 34 of the Indian Penal Code, 1860 is quashed. It is however made clear that the respondent No.2 is at liberty to lodge a fresh complaint in the event of the petitioner committing any offence in respect of the site in question after disposal of the suit.

**Sd/-**  
**JUDGE**

SMA  
List No.: 1 Sl No.: 17