

**IN THE HIGH COURT OF KARNATAKA
KALABURAGI BENCH**

DATED THIS THE 21ST DAY OF APRIL, 2022

BEFORE

THE HON'BLE Dr. JUSTICE H.B.PRABHAKARA SASTRY

CRIMINAL PETITION No.200447/2022

BETWEEN:

Mustaf Alias Sultan Mirza
S/o Mohd. Saleem Alias Mohd. Jaleel,
Age: 21 years, Occ: Coolie,
R/o: Tandur Now at Iqbal Colony MSK Mill,
Kalaburagi.

... Petitioner

(By Sri Vijaykumar Ambaraya, Advocate)

AND:

The State through
Raghavendra Nagar,
P.S, Kalaburagi
Reptd. By Addl. SPP,
High Court of Karnataka,
Kalaburagi.

... Respondent

(By Sri. Sharanabasappa M.Patil, HCGP)

This Criminal Petition is filed under Section 482 of the Code of Criminal Procedure praying to exercise the inherent powers U/sec. 482 Cr.P.C examine the records and set aside the order 28.03.2022 in S.C.No.1/2019 (Cr.No.121/2018 rejecting the application U/sec. 91 Cr.P.C pending before the I Addl. Session Judge at Kalaburagi) of Raghavendra Nagar P.S. Kalaburagi, and allow the petition.

This criminal petition coming on for Orders through Physical Hearing/Video Conferencing, this day the court made the following:

ORDER

The present petitioner is an accused undergoing trial in S.C.No.1/2019 in the Court of I Addl. Sessions Judge at Kalaburagi for the offence punishable under Section 302 of Indian Penal Code (hereinafter for brevity referred to as "IPC").

2. After the prosecution completing their examination of its witnesses and when the matter was stated for recording of the statement of the accused under Section 313 of Code of Criminal Procedure, the accused therein who is the present petitioner had preferred application under Section 91 of Code of Criminal Procedure (hereinafter for brevity referred to as "Cr.P.C") seeking the production of three documents. After hearing both sides the Sessions Judge's Court by order dated 28.03.2022 dismissed the said application. Challenging the same, the, the accused in the trial Court has preferred this petition.

3. Advance copy has been served to the learned High Court Government Pleader who is appearing for the respondent herein. As such though this matter is listed to the stage of admission, however with consent from both side, the matter is taken up for final disposal.

4. Learned counsel for the petitioner in his argument submitted that the documents that were sought for was very much required to disprove the alleged relationship between those persons and the accused, as such the documents were very much necessary. However, the trial Court has erroneously rejected his request.

5. Learned High Court Government Pleader on the other hand submits that the document that were sought for are in no way material to either the case of the prosecution or for the defence taken by the accused in the matter. Since it is a case for the offence punishable under Section 302 of IPC, the burden of proving the alleged guilt

against the accused is upon the prosecution as such the accused taking the strain of disproving the case of the prosecution would not arise.

6. The allegation against the present petitioner (accused) is of committing murder of four members of a single family by setting ablaze while they were sleeping inside their house. The allegation of the prosecution is that the accused is the husband of the sister of Syed Akbar (one among the deceased in the incident). It appears that the accused in his cross examination of the prosecution witnesses has denied the alleged relationship with one Smt. Heena Kausar. According to the learned counsel for the petitioner, the burden is on the prosecution to prove that Heena Kausar was not related to the accused and he was intending to secure the Aadhar card of the said Heena Kausar and also of one Smt. Shaheen Begum.

7. The present petitioner is accused of killing Syed Akbar, his wife and two small children while they were sleeping in their house in the night of alleged day of incident. The alleged motive behind the commission of crime is that said Syed Akbar (accused) was said to have advised the accused of not to ill-treat his sister Heena Kausar who is

said to be wife of the accused. Further CW6 is also stated to be the relative of the family of the deceased in some manner. It is in order to disprove the same, the present petitioner as an accused was intending to secure Aadhar card and photo of said Smt.Shaheen Begum (CW.6) and said Smt. Heena Kausar (CW.11) and also to Station House diary in connection with the Crime No.121/2018.

8. According to the learned counsel for the petitioner in order to show that Heena Kausar is married to some other person and that he is not his wife, he has produced a nikha nama and confronted the same to the prosecution witnesses. According to him, the said nikha nama has already been marked as exhibit. It is also the argument of learned counsel for the petitioner that the Aadhar cards of CW.6 and CW.11 would give the details of their marital status and the husband's details as such the same would be helpful to him.

9. The argument of the learned counsel for the petitioner that Aadhar card and photo would give the present and existing relationship of the parties with other person named if any therein and that it would act as substantial evidence to establish alleged relationship is not acceptable. His argument that by the change in the life and events the details mentioned in the Aadhar card on its own gets changed is also not acceptable. There can be several insistence where even after the change in the marital status, the party possessing their Aadhar card or some such document, retaining their old details in those documents without getting them updated with their current marital status or change in their position.

10. Added to the above, since the case in which the application under Section 91 Cr.P.C. was filed is in a Sessions Case wherein the present petitioner is accused facing the charge of committing an offence punishable under Section 302 of IPC, the entire burden of proving the alleged guilt against the accused is upon the

prosecution. The alleged relationship of the accused with the said Heena Kausar and the alleged relationship of said Heena Kausar with deceased Syed Akbar are all required to be established by the prosecution. In such an event when the burden of proving the same is upon the shoulder of the prosecution, the non production of the demanded document, by the prosecution in no manner cause prejudice or inconvenience to the interest of the accused or to his defence. Further more even according to the prosecution said CW.6 Shaheen Begum and CW11 Heena Kausar were not eye witnesses to the alleged incident and there were only circumstantial witnesses. As such also, the alleged document would not in assist the accused in any manner.

11. In addition to the above, even for summoning of the Station House dairy also the accused has not shown any reason in his application or in his petition as to for what purpose the same was required. However, it is reiterated that since the accused is facing a trial in a Criminal case,

the entire burden to prove his alleged guilt would be upon the prosecution. Thus, the accused since has not been able to mention as to for what purpose the document was sought for or required, no error or perversity or illegality can be found in the impugned order. On the other hand, even as submitted by the petitioner herein during the trial, it appears that he has approached this Court under Section 482 of Cr.P.C. for not less than two occasions. Even the trial Court also has observed that the intention behind accused/applicant in filing the application under Section 91 Cr.P.C was only to protract the proceeding. In the said circumstances when, as observed above, the applicant / accused could not able to show that the documents sought were of any assistance to him or helpful him, in the disposal of the Sessions case on its merit, the trial Court has rightly rejected his application. Accordingly, the petition stands dismissed as devoid of merits for admission.

In view of the disposal of the main petition,
I.A.No.1/2022 does not survive for consideration.

**Sd/-
JUDGE**

SMP