

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10TH DAY OF JANUARY, 2022

BEFORE

THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR

CRIMINAL PETITION NO.2929/2020 C/W
CRIMINAL PETITIONS NO.513/2021, 1769/2021
AND
WRIT PETITION NO.13756/2020(GM-RES)

In CrI.P.No.2929/2020

BETWEEN:

Sri Abrar Kazi,
S/o Abdul Jabbar Kazi,
Aged about 29 years,
R/at Flat No.401,
Samakyas Pride, Ashoka Lane,
Green Glance Layout,
Bellanduru, Bengaluru-560103.

...Petitioner

(By Sri Amar Correa, Advocate)

AND:

1. State of Karnataka
Through CCB Police,
Bengaluru-560002.
Represented by
State Public Prosecutor,
High Court of Karnataka,
Bengaluru-560001.
2. Sri K.Prakash,
Police Inspector,
CCB Special Enquiry,
N.T.Pete, Bengaluru-560002.

...Respondents

(By Sri M.Dhyan Chinnappa, Addl. Advocate General
a/w Sri B.J.Rohith HCGP)

This Criminal Petition is filed under Section 482 of Cr.P.C., praying to set aside the order dated 11.02.2020 in Cr.No.197/2019 now registered as C.C.No.2939/2020 passed by the I Additional Chief Metropolitan Magistrate, Bengaluru, thereby taking cognizance of the offence punishable under Section 120B read with 420 and 34 of IPC against the petitioner who is accused No.2 vide Annexure-A and etc.

In CrI.P.No.513/2021

BETWEEN:

Sri Amit Mavi,
Son of Gyanendra,
Aged about 36 years,
Residing at No.C81,
Lal Bag Loni, Ghaziabad,
Uttar Pradesh-201102.

...Petitioner

(By Sri Akshay Prabhu, Advocate)

AND:

1. State of Karnataka by
Cubbon Park Police Station,
Bengaluru City
Investigation by
Central Crime Branch,
(Organized Crime Wing)
Bengaluru City
Represented by the
State Public Prosecutor,

High Court Buildings,
Bengaluru-560001.

2. Sri Prakash K.,
Police Inspector,
Central Crime Branch
Organized Crime Wing
Cottonpet Main Road,
Sultanpet, Bakshi Gardens,
Chickpet, Bengaluru-560053.

...Respondents

(By Sri M.Dhyan Chinnappa, Addl. Advocate General
a/w Sri B.J.Rohith, HCGP)

This Criminal Petition is filed under Section 482 of Cr.P.C., praying to quash the FIR in Cr.No.197/2019 of the Cubbon Park Police Station and the subsequent charge sheet arising out of the same, which is registered as C.C.No.2939/2020 on the file of the Hon'ble I A.C.M.M at Bengaluru for the offence punishable under Section 420, 120B of IPC read with Section 34.

In CrI.P.No.1769/2021

BETWEEN:

Ali Ashpak @ Asfak Hanif Thara
S/o Mr. Hanif Thara
Aged about 41 years,
R/at No.10, Patalamma Road,
United Pearl Apartments,
Fourth Floor, Flat No.T/4,
Near AV Hospital,
Basavanagudi, Bengaluru-560004.

...Petitioner

(By Sri A.S.Ponnanna, Senior Counsel for
Smt. P.Leela, Advocate)

AND:

1. The State of Karnataka
By Cubbon Park Police Station,
Represented by the
State Public Prosecutor,
High Court of Karnataka
Bengaluru-560001.
2. Sri Prakasha K.,
Inspector,
Central Crime Branch
Enquires, N.T.Pet,
Bengaluru City -560002.

...Respondents

(By Sri M.Dhyan Chinnappa, Addl. Advocate General
a/w Sri B.J.Rohith, HCGP)

This Criminal Petition is filed under Section 482 of Cr.P.C., praying to quash the charge sheet in C.C.No.2939/2020 dated 05.02.2020 vide Annexure-C for offences punishable under Section 420, 120B and 34 of the IPC, pending on the file of I Additional Chief Metropolitan Magistrate Court, Nrupatunga Road, Bengaluru City and all further proceedings pursuant thereto.

In W.P.No.13756/2020

BETWEEN:

Mr. C.M.Gautam,
S/o C.Muralidharan,
Aged about 33 years,
R/at No.424, 6th Main,
Amar Jyothi Layout (West Wing)

Domaluru,
Bengaluru-560071.

...Petitioner

(By Sri Hashmath Pasha, Senior Advocate for
Sri Syed Muzakkir Ahmed, Advocate)

AND:

1. State of Karnataka by
Cubbon Park Police Station,
And CCB-OCW Police,
Bengaluru-560001

2. Mr. K.Prakash,
Police Inspector,
Central Crime Branch Police,
Special Investigation Squad,
Bengaluru City -560053.

(Both are represented by
Learned State Public Prosecutor,
High Court of Karnataka
Bengaluru-560001).

...Respondents

(By Sri M.Dhyan Chinnappa, Addl. Advocate General
a/w Sri B.J.Rohith, HCGP)

This Writ Petition is filed under Articles 226 and 227 of Constitution of India read with Section 482 of the Code of Criminal Procedure, praying to quash entire proceedings pending in C.C.No.2939/2020 on the file of the Hon'ble I Additional Chief Metropolitan Magistrate, Bengaluru City and which is arising out of Crime No.197/2019 of Cubbon Park Police, Bengaluru City and which is investigated by CCB Police, Bengaluru for offence punishable under Section 120-B,

420 read with 34 of IPC as an abuse of process of law as per Annexure-A and C and etc.

These Criminal and Writ Petitions having been heard and reserved on 06.12.2021 coming on for pronouncement this day, the court pronounced the following:

ORDER

All these petitions are disposed of by common order as they are filed for quashing the proceedings in C.C.2939/2020 on the file of I ACMM, Bengaluru.

2. The petitioner in W.P.13756/2020 is accused No.1, the petitioner in Criminal Petition 2929/2020 is accused No.2, the petitioner in Criminal Petition 1769/2021 is accused No.3 and the petitioner in Criminal Petition 513/2021 is accused No.4. The necessary facts for disposal of these petitions are as below :

3. On 6.11.2019, K.Prakasha, the Police Inspector, City Crime Branch (Special

Investigating), Bengaluru, while interrogating the cricket players, coaches and owners of franchises in connection with Crime No. 124/2019 came to know about match fixing of the KPL cricket matches held in between 15th and 31st August of the year 2019 and gave a report of it to the Cubbon Park Police Station. This resulted in FIR being registered in Crime No. 197/2019 and ultimately charge sheet being filed against the petitioners and some other accused. The contents of charge sheet are that,

- i) On 22.8.2019 a match was played between Bengaluru Blasters and Bellary Tuskers at Chinnaswamy Stadium, Bengaluru. In connection with this match, accused No.3, the owner of a team called Belagavi Panthers conspired with accused No.1 and 2 and pursuant to the same

accused No.2 conceded 10 runs in over No. 7. For conceding the runs accused No.2 received advance of Rs.2.50 lakhs and then after the match was over, he again received Rs.5 Lakhs.

ii) During KPL season of the year 2018, accused No.5 asked accused No.2 to come to his residence on 1.9.2018 and told him that his team should lose the match to be played on 3.9.2018 against Shivamogga team. It is also alleged that accused No.5 asked accused No.1 that his team should lose the match to Shivamogga Lions in the said match.

iii) On 26.8.2019, match No.19 was played at Mysuru between Mysuru and Bellary teams. Accused No.5 met accused No.1 in a hotel called

'Southern Star Hotel' and asked him to play slowly.

- iv) Accused No.4 is a bookie. After the schedule of the matches of the year 2019 was announced, accused No.4 met accused No.2 through a witness by name Nitesh at Bengaluru Airport and entered into conspiracy for match fixing. Accordingly, on 23.8.2019, when a match was played between Bellary Tuskers and Shivamogga Lions, accused No.4 made a whatsapp call to accused No.2 and instructed him to stop the bowling in the middle itself and offered Rs.10,00,000/- for doing so.
- v) Accused No.6 is a secretary of Social Club and KSCA member. He, at the instance of accused No.3 bore all the

expenses of the players of other teams.

4. I have heard Sri Hashmath Pasha and Sri Ponnanna, learned senior counsel, Sri Amar Correa and Sri Akshay Prabhu appearing for the petitioners in respective cases, and Sri Dhyan Chinnappa, Additional Advocate General and Sri B.J.Rohith for the respondent/State.

5. One point commonly urged by all the counsel for the petitioners is that match fixing is not an offence, nor has it been defined to be an offence in any law. And offence under section 420 of IPC cannot be imputed against the petitioners for, the essential ingredients for the said offence to constitute are not forthcoming in the charge sheet. Even if it is assumed for argument sake that the petitioners did involve in match fixing, it will not constitute an offence and at best it is breach of the Code of Conduct

prescribed to the players by the BCCI. Action may be taken by the BCCI and in this case the Cricket Board has not taken any action against some of the petitioners who are players. In this view, charge sheet for the offence under section 420 IPC is not sustainable and for the same reason the offence of conspiracy punishable according to section 120B is also not sustainable.

5.1. Sri Hashmath Pasha in particular highlighted one point of argument that the very registration of FIR in Crime No. 197 of 2019 is bad because respondent No.2 made a report to the Cubbon Park police based on some information he elicited or extracted from accused No.2 while interrogating him in connection with another case. But, the information the respondent extracted while interrogating accused 2 has not been produced and because of this faulty procedure, FIR deserves to be quashed.

5.2. Sri Akshay Prabhu, learned counsel, argued that statement made by an accused cannot be used against co-accused or even against one who made it if the statement is inculpatory in nature. Since registration of FIR is based on confession statement of an accused, FIR is bad in law and consequently the charge sheet is also bad.

5.3. Sri Ponnanna also submitted that FIR cannot be registered on the basis of information received during custodial interrogation.

6. The points urged by Sri Dhyan Chinnappa for the respondent/State while arguing are that Anti-Corruption Code prescribed by BCCI is not a bar for initiating criminal proceedings and that in the case on hand, all the essential ingredients for the offence under section 420 IPC are present. He elaborated his argument that people buy tickets to watch a match. They carry an impression in their

mind that they are going to watch a fair play which will yield a just result. If match fixing takes place, the result is pre-determined and there is no fair game. Thus people are cheated. The property involved in a case of this type to invoke the offence under section 420 IPC is the money that the people pay for buying tickets. They are induced to buy tickets for the fair play assured and in case there is match fixing, certainly element of deception can be made out and thus section 420 is attracted. He also argued that section 120B IPC is an independent offence, there are materials in the charge sheet indicating conspiracy among the accused for fixing the game. Even assuming that section 420 is not attracted, the petitioners can be tried for the offence under section 120B IPC. Thus, it is his argument that all the petitions are devoid of merits.

7. Sri Hashmath Pasha, learned senior counsel, replied that though offence under section 120B is an independent offence, the corresponding offence for which conspiracy is alleged to have been hatched should be forthcoming from the charge sheet materials, or otherwise section 120B cannot also be invoked. In this case section 420 IPC is not at all attracted and thus section 120B does not stand independently.

8. I have considered the arguments. Firstly, one point of argument regarding registration of an FIR is to be dealt with. All the counsel for the petitioners have fussed over this aspect. It is true that the second respondent made a report to the Cubbon Park police for registration of FIR on the basis of information that he gathered while interrogating a player in connection with Crime No. 124/2019. It appears that the information the second respondent gathered is in the form of

confession of an accused and this is the reason for taking strong objection for registration of FIR in Crime No. 197/2019 which has given rise to charge sheet in the case on hand. Of course there is substance in the argument that the confession statement of an accused given before the police cannot be referred to in view of bar contained in section 25 of the Indian Evidence Act. But, the said bar is to the extent of proving the confession against the accused who made it, there is no prohibition as such to make use of any information that a police officer comes to know for the first time regarding a crime which might have taken place in the past and not detected till then, while interrogating an accused in connection with another case of crime. Supposing that an accused himself goes to police station and gives information about the offence committed by him, the police in such a circumstance can very well register an FIR and this proposition is well

established [***Faddi vs State of Madhya Pradesh, (AIR 1964 SC 1850) and Aghnoo Nagesia vs State of Bihar (AIR 1966 SC 119)***]. If this is the position, why a statement given by a co-accused regarding another crime cannot be made use of for registration of FIR. In fact many incidents of theft, robbery or dacoity come to light only during such interrogations. It may be stated further that such statement can be made use of only for the limited purpose of registration of FIR and it cannot be used for proving it against an accused. Registration of FIR is not the end in itself and it is not a substantive piece of evidence also. Mere registration of FIR in this manner does not lead to convicting an accused, investigator has to collect independent evidence and further the prosecution must be able to prove its case beyond reasonable doubt. Therefore the entire argument that statement of a co-accused during interrogation in connection with some other crime

cannot form basis for registration of FIR is totally unfounded.

9. Regarding the argument of Sri Hashmath Pasha that statement recorded by respondent No.2 during investigation in Crime No. 124/2019 has not been produced, it is to be stated that production of such a statement is not necessary. FIR is to be registered based on the information relating to commission of a cognizable offence. According to respondent No.2 he collected that information during interrogation in Crime No. 124/2019. It was a confessional statement of an accused and it forms part of the record in Crime No. 124/2019. While a copy of that statement could have been produced along with report made by respondent No.2 to the Cubbon Park police, its non-production has least effect for, even if it is produced, it cannot be proved against the accused in the present case. The report of respondent

No.2 shows information that he collected regarding match fixing for the KPL matches of the season 2019 and this much of information can certainly be basis for registration of FIR if really an offence has been committed. Therefore this argument is also not acceptable.

10. However, the other common point urged by all the counsel is worth acceptance. According to the prosecution match fixing amounts to cheating and therefore the offence under section 420 IPC has been invoked in the charge sheet. For invoking offence under section 420 IPC, the essential ingredients to be present are deception, dishonest inducement of a person to deliver any property or to alter or destroy the whole or any part of a valuable security. It was argued by Sri Dhyani Chinnappa that the cricket lovers go to watch the match by buying tickets and thereby they are induced to part with their property, i.e.,

their money. Of course money is a property, but his argument that they are induced to buy tickets cannot be accepted. They may have a feeling that they are going to witness a fair game being played, but, they buy the tickets voluntarily. So, question of inducement to buy ticket can be ruled out.

11. It is true that if a player indulges in match fixing, a general feeling will arise that he has cheated the lovers of the game. But, this general feeling does not give rise to an offence. The match fixing may indicate dishonesty, indiscipline and mental corruption of a player and for this purpose the BCCI is the authority to initiate disciplinary action. If the bye-laws of the BCCI provide for initiation of disciplinary action against a player, such an action is permitted but, registration of an FIR on the ground that a crime punishable under section 420 IPC has been

committed, is not permitted. Even if the entire charge sheet averments are taken to be true on their face value, they do not constitute an offence.

12. One of the petitioners is a bookie said to have involved in betting. Sri Hashmath Pasha has relied upon a judgment of the Supreme Court in ***Board of Control for Cricket vs Cricket Association of Bihar and Others [2016 (8) SCC 535]*** where it is observed that betting is to be legalized. It was argued by the respondent that betting amounts to gaming which is an offence under the Karnataka Police Act. If section 2(7) of Karnataka Police Act is seen, its explanation very clearly says that game of chance does not include any athletic game or sport. Cricket is a sport and therefore even if betting takes place, it cannot be brought within the ambit of definition of 'gaming' found in Karnataka Police Act.

13. Sri Dhyan Chinnappa argued that section 120B of IPC is an independent offence and therefore notwithstanding the fact that ingredients for section 420 IPC can be said to be not there for argument sake, still the accused can be prosecuted for offence under 120B and in this regard he has placed reliance on the judgment of a co-ordinate bench of this court in the case of ***Sachin Narayan vs Income Tax Department and Another (W.P.5299/2019 and connected writ petitions)***. There is no second word with regard to his argument that section 120B is an independent offence but, to invoke this offence of conspiracy, as has been argued by Sri Hashmath Pasha, the allegations found in the charge sheet must constitute an offence in connection with which conspiracy is alleged. As discussed above, the allegations found in the charge sheet do not constitute an offence under section 420 IPC and therefore offence under section 120B cannot be

invoked in the facts and circumstances. Therefore the argument of Sri Dhyan Chinnappa cannot be accepted.

14. From the foregoing discussion, I come to conclusion that all these petitions deserve to be allowed. The proceedings against the petitioners in C.C.2939/2020 on the file of I ACMM, Bengaluru, are quashed.

**SD/-
JUDGE**

Ckl/-