



C/W CRL.RP No. 203 of 2014

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF JANUARY, 2023

BEFORE

THE HON'BLE MR JUSTICE R. NATARAJ

CRIMINAL REVISION PETITION NO. 202 OF 2014

C/W

CRIMINAL REVISION PETITION NO. 203 OF 2014

IN CRL.RP.NO.202/2014:

BETWEEN:

1. THIPPESWAMY
S/O PAPAITH, MAJOR,
CASHIER IN AISHWARYA BAR
GANDHINAGAR,
CHALLAKERE-577 522.
2. ANJANEYA
S/O MARAPPA, MAJOR,
AGRICULTURIST,
R/O. GHATATAPARTHI CILLAGE,
CHALLAKERE TALUK-577 522.
3. BASAVARAJ
S/O. GURUMURTHAPPA,
MAJOR,
R/O. JANATHA COLONY,
CHALLAKERE-577 522.
4. SEENA @ KARE SEENA
S/O THIPPESWAMY,
MAJOR,
R/O CHALLAKERE TOWN,
CHITRADURGA DISTRICT-577 522.

...PETITIONERS

(BY SRI. MAHESH.S, ADVOCATE)



C/W CRL.RP No. 203 of 2014

AND:

STATE BY CHALLAKERE POLICE
CHITRADURGA DISTRICT-577 522.

...RESPONDENT

(BY SRI. KRISHNA KUMAR.K.K, HCGP)

THIS CRL.RP IS FILED U/S.397 AND 401 CR.P.C BY THE
ADVOCATE FOR THE PETITIONERS PRAYING THAT THIS
HON'BLE COURT MAY BE PLEASED TO SET ASIDE THE
JUDGMENT AND ORDER OF CONVICTION DATED:1.3.14
PASSED BY THE ADDL. DIST. AND S.J., CHITRADURGA IN
CRL.A.NO.44/11 AND CONFIRMING THE JUDGMENT AND
ORDER DATED:1.7.11 PASSED BY THE PRL. JMFC, CHALLAKERE
IN C.C.NO.534/2008 AND ETC.,

IN CRL.RP.NO.203/2014:

BETWEEN:

1. RAJU
S/O. BASAVARAPPA, MAJOR
KIRANI SHOP BUSINESS
R/O. NEAR DOUBLE WATER TANK,
GANDHINAGAR,
CHALLAKERE -577522.
2. RAMESH
S/O. THIPPESWAMY, MAJOR
BUSINESS
R/O. HOUSING BOARD COLONY
CHALLAKERE-577522.
3. OBALESH
S/O. RAMAIAH, MAJOR,



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ACCOUNTANT, WRITER IN SHIVA BAR
R/O. MADAKARINAGAR,
CHALLAKERE-577522.

4. DADU @ DADAPEER
S/O. BASHEER SAB, MAJOR
WORKING IN RUDRAMUNIYAPPA'S
EXERCISE OFFICE
R/O. BUDNAHATTI VILLAGE,
CHALLAKERE TALUK-577522.
5. SHIVAPUTRAPPA
S/O. SHADAKSHARAPPA, MAJOR
BUSINESS
R/O. THYAGARAJANAGAR, CHALLAKERE,
CHITRADURGA DISTRICT-577522.

...PETITIONERS

(BY SRI. MAHESH.S, ADVOCATE)

AND:

1. STATE BY CHALLAKERE POLICE
CHITRADURGA DISTRICT-577 522.

...RESPONDENT

(BY SRI. KRISHNA KUMAR, K.K, HCGP)

THIS CRL RP IS FILED U/S.397 AND 401 CR.P.C BY THE ADVOCATE FOR THE PETITIONERS PRAYING THAT THIS HON'BLE COURT MAY BE PLEASED TO SET ASIDE THE JUDGMENT AND ORDER OF CONVICTION DATED:1.3.14 PASSED BY THE ADDL. DIST. AND S.J., CHITRADURGA IN CRL.A.NO.43/11 AND CONFIRMING THE JUDGMENT AND ORDER DATED:1.7.11 PASSED BY THE PRL. JMFC, CHALLAKERE IN C.C.NO.534/2008.

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



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ORDER

The petitioners were tried for the offence punishable under Section 80 of The Karnataka Police Act, 1963. It was claimed that PW-7 received information that the petitioners were playing a game of chance, namely "Andar Bahar" and therefore, PW-7 after submitting a written request to PW-3 and after obtaining a special warrant under Section 80 of The Karnataka Police Act, 1963, searched the premises and found that the petitioners were playing a game of chance. PW-7 seized the playing cards and a sum of Rs.1,48,970/- and two tarpaulins as M.Os.1, 2, 3 and 4 and thereafter, the prosecution after recording the statement of the witnesses, filed a charge sheet for the offence punishable under Section 80 of The Karnataka Police Act, 1963. The petitioners pleaded not guilty and claimed to be tried and the prosecution examined PW-1 to PW-8 and marked exhibits as P1 to P6 and M.Os.1 to 4. The statement of the petitioners was recorded under Section 313 of Cr.PC, but they denied the evidence against them. However, they did not lead any evidence.

2. Based on the oral and documentary evidence, the trial Court convicted the petitioners for the offence punishable

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under Section 80 of The Karnataka Police Act and sentenced them to under go simple imprisonment for a period of one month and to pay a fine of Rs.500/-.

3. Being aggrieved by the said judgment of conviction and the order of sentence, the petitioners filed Crl.A.Nos.43/2011 and 44/2011. The appellate Court secured the records of the trial Court and perused the records and after hearing the petitioners, dismissed the appeal in terms of the judgment dated 01.03.2014. Being aggrieved by the same the present petition is filed.

4. Learned counsel for the petitioners submitted that, the prosecution had failed to place on record proof of compliance of proviso to Section 81, namely a written complaint by the officer conducting the search, based on which a special warrant was issued. He contended that the offence under Section 80 of The Karnataka Police Act was punishable with imprisonment which could extend up to one year and therefore was a non-cognizable offence. He therefore contended that the prosecution was required to comply Section 155(2) of Cr.PC before launching prosecution. In this regard,

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he relied upon the judgment of a Co-ordinate Bench of this Court in Crl.P.No.8529/2017 and contended that Section 155(2) of Cr.PC is applicable even in respect of offence punishable under Sections 79 and 80 of Karnataka Police Act.

5. Learned High Court Government Pleader submitted that the special warrant issued to conduct the search was based on a written complaint and the same was evident from the warrant itself. He contended that the petitioner did not challenge this in Trial, but has raised this ground in the present revision. He contended that no questions were posed to the IO at the time of trial. Therefore, he contended that the conviction cannot be challenged on this ground. He however could not contradict the contention of the learned counsel for the petitioner that the prosecution had failed to comply with Section 155(2) of Cr.PC.

6. It is undisputed that an offence under Section 80 was non-cognizable. Assuming that the special warrant issued to search the premises was lawful, yet a prosecution could not have been launched without complying Section 155(2) of Cr.PC.



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7. In that view of the matter, the prosecution of the petitioners has to fail on this fundamental defect.

Therefore, these revision petitions are allowed and impugned judgment of conviction dated 01.07.2011 passed by Principal Civil Judge and JMFC, Challakere in C.C.No.534/2008 and the consequent sentence are set aside. Consequently, the judgment dated 01.03.2014 passed by Additional District and Sessions Judge, Chitradurga in CrI.A.Nos.43/2011 and CrI.A.Nos.44/2011. The petitioners are acquitted for the said offences.

**Sd/-
JUDGE**

PK