IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE H.P.SANDESH

CRIMINAL REVISION PETITION NO.1318 OF 2024

BETWEEN:

1. STATE OF KARNATAKA
REPRESENTED BY THE
DEPUTY SUPERINTENDENT OF POLICE
SPECIAL INVESTIGATION TEAM
KARNATAKA LOKAYUKTHA
BENGAALURU-560001
REPRESENTED BY ITS
SPECIAL PUBLIC PROSECUTOR

...PETITIONER

(BY SRI. VENKATESH S. ARBATTI, SPL. PUBLIC PROSECUTOR)

AND:

1. SRI. MANOJ KUMAR JAIN
SON OF SRI BHAWARLA JAIN
AGED ABOUT 52 YEARS,
RESIDING AT
SATHYANARAYANA NILAYA
100 BED HOSPITAL ROAD,
OPP.HERO HONDA SHOW ROOM,
HOSPET-583201.

...RESPONDENT

(BY SRI. YOGEESH N.C., ADVOCATE)

THIS CRL.RP IS FILED UNDER SECTION 397 R/W 401 OF CR.PC (FILED U/S 438 R/W 442 BNNS) PRAYING TO SET ASIDE THE ORDER DATED 12/12/2023 IN THE SPL.C.C.NO.148/2022 PASSED BY THE XXIIII ADDL. CITY CIVIL AND SESSIONS JUDGE AND SPECIAL JUDGE (P.C. ACT) (CCH-24), BENGALURU, FOR THE OFFENCES PUNISHABLE UNDER SECTION 109 OF HE INDIAN PENAL CODE.

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 19.09.2026, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE H.P.SANDESH

CAV ORDER

Heard learned Special Public Prosecutor for petitioner and learned counsel for respondent.

2. This criminal revision petition is filed praying this Court to set the order the order dated 12.12.2023 passed in Special C.C.No.148/2022 allowing the application filed by respondent/accused No.4 and discharging him for the offence punishable under Section 109 of IPC and pass such other order as deems fit in the circumstances of the case.

3. The factual matrix of case of the prosecution before the Trial Court is that Sri J.M. Vrushabendraiah/accused No.1 was granted Mining Lease for extracting iron ore vide ML No.2173 for a period of 20 years vide order dated 24.08.1993. The process of extraction of iron ore from the mine head of ML No.2173 was carried out by M/s. Sri Srinivasa Mineral Trading Company/accused No.3. During the course of investigation, it was found that accused No.1 in collusion with accused Nos.2 and 3, carried out illegal extraction of iron ore without any

permits from the Department of Mines and Geology and 66,264 MT of illegally extracted iron ore from the mine head of ML No.2173 was transported to unauthorized stockyard named as 'SSM plot' by accused Nos.3 and 2 and relies upon Annexures-A, B, C, D and E. It is the allegation against accused No.4 that he had indulged in issuing invoices in the name of his proprietary concern M/s. Gururajendra Mineral Trading Company to accused No.2 without supplying iron ore and had collected commission of 3%. Hence, he has aided and abetted accused No.2 to legalize the illegally extracted iron ore from the mine head of ML No.2173. Hence, charge sheet is filed against respondent/accused No.4 invoking of Section 109 of IPC. The respondent/accused No.4 had filed an application under Section 227 and Section 239 of Cr.P.C. for discharge and the Trial Court discharged the accused. Hence, the present revision petition is filed before this Court by the petitioner/State.

4. Learned Special Public Prosecutor appearing for the revision petitioner/State would vehemently contend that the trial Judge has failed to appreciate exercising its judicial mind to the facts of the case in order to determine whether the case for trial has been made out by the prosecution. It is not necessary for the Court that at the time of considering

discharge application weigh the material and it is settled principle of law that at the initiate stage of considering an application for discharge, the Court must proceed on the assumption that the material which has been brought on record by the prosecution is true and evaluate the material, in order to determine whether the facts emerging from the material, taken on its face value, disclose the existence of the ingredients necessary to constitute the offence.

5. The counsel in support of his argument would contend that judgment of the Apex Court is very clear in **AMIT KAPOOR vs. RAMESH CHANDRA AND ANR.** reported in **(2012) 9 SCC 460** that at the initial state of framing of a charge, the Court is concerned not with proof, but with a strong suspicion that the accused has committed an offence, which, if put to trial, could prove him guilty. All that the Court has to see is that the material on record and the facts would be compatible with the innocence of the accused or not. The final test of guilt is not to be applied at that stage.

6. The counsel also relied upon judgment of the Apex Court in **STATE OF MADHYA PRADESH vs. MOHANLAL SONI** reported in **(2000) 6 SCC 338**, wherein it is held that at

the stage of framing charge, the Court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The Court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused. The counsel referring these two judgments would vehemently contend that Trial Court has not considered statement of objections with documents filed by the prosecution and there is sufficient material to satisfy prima facie case against accused No.4, since the Investigating Team has collected material and without any cogent reason and only based on surmise facts has discharged accused No.4 and the same is totally incorrect and erroneous.

7. The counsel also in his argument would vehemently contend that when the transport invoices were found during the course of investigation, particularly invoice Nos.53 and 63, not paid the tax and there was no such supply, discharge made by the Trial Court is not correct. But, with regard to the contention that there is stock in the stockyard, there is no permit and the very approach of the Trial Court, particularly in paragraph No.19 is not correct. No doubt, no dispute with regard to other three invoices are concerned, the only dispute is in respect of two invoice Nos.53 and 63 and no material is placed before the

Court as to how the accused No.4 got the material and the same is in stockyard.

8. Learned counsel appearing for respondent/accused No.4 would vehemently contend that against this accused is concerned, offence invoked is under Section 109 of IPC. The counsel also would vehemently contend that his name is not found in the FIR and it is also not in dispute that accused No.1 is having many leasehold property and the accused Nos.2 and 3 have excavated iron ore from the leasehold property of accused No.1. The counsel would vehemently contend that the transactions are legal and not committed any offence and the Investigating Officer has not placed any material for having issued invoices and collected commission at 3%. The counsel also would vehemently contend that charge sheet witnesses have not spoken anything about the role of respondent/accused No.4. Hence, the Trial Court rightly discharged the accused. The counsel also brought to notice of this Court that invoices are dated 06.12.2009 and 01.02.2010 for the month of December and February. The Trial Court while discharging the accused, taken note that no material is collected for having received the commission, so also iron ores found in respect of

invoices dated of 06.12.2009 and 01.02.2010 and the same is also discussed. Hence it does not require any interference.

9. In reply to this argument of learned counsel for respondent/accused No.4, learned Special Public Prosecutor appearing for the petitioner/State would submit that the documents which have been produced along with memo on 19.09.2026 are not placed before the Trial Court and those documents are not relevant to analyze whether there is strong suspicion to proceed against the accused. The counsel also would contend that the documents which have been produced not pertains to the issue involved between the parties.

10. Learned Special Public Prosecutor appearing for the petitioner/State in support of his argument relies upon the order passed by this Court in **Crl.P.No.3876/2022** dated **04.03.2026,** wherein this Court referring the judgments of Apex Court while invoking Section 482 of Cr.P.C. held that once the investigation is conducted and charge sheet is filed, it is the duty of the accused to make out a case during the course of trial whether he had indulged in such act or not and while exercising the power under Section 482 also, taken note of extracting the iron ore beyond the permissible limit and without

the consent of the State would become a movable property capable of being stolen in terms of the first and second explanation to Section 378 of the IPC and the same is observed in paragraph No.7 of the order. The counsel would vehemently contend referring this order that the Apex Court in paragraph No.9 held that for the offence of criminal conspiracy there need not be direct evidence, nor is it necessary that all conspirators participate at the very stage of commission of offence. What is material is existence of prior agreement whether express or implied to commit the act. Similar issue is involved in this case also that accused Nos.1 to 3 were abetted and aided to commit the offence and whether they aided for illegal transfer is an issue to be considered by the Court during the course of trial.

11. Having heard learned Special Public Prosecutor appearing for the petitioner/State and learned counsel appearing for the respondent/accused No.4 and also considering the grounds which have been urged in the petition and the principles laid in the judgments which have been referred by learned Special Public Prosecutor appearing for the petitioner/State in the petition itself, the points that would arise for consideration of this Court are:

(i) Whether the Trial Court committed an error in discharging the accused and whether it requires interference by exercising the revisional powers?

(ii) What order?

Point No.(i):

12. Having heard respective counsel, this Court has to take note of the charges leveled against respondent/accused No.4, wherein accusation is made in the charge sheet that this accused is the owner of M/s. Sri Gururajendra Mineral Trading Company. Even though, no iron ore was supplied to accused Nos.2 and 3 in 2009 and 2010, he had indulged in issuing invoice that totally 50,003 MT iron ores were supplied to them and in return, he has received 3% commission and accused Nos.1 and 2, who have illegally produced the iron ore aided in transporting the same without payment of tax to export the same. As a result, the loss has been caused to the tune of Rs.2,60,01,570/-. Having considered the said accusation and also the application filed by accused No.4 for discharge, the Court has to take note of material available on record. Admittedly, the accused No.4 is not the accused in the FIR. But, only during the course of investigation, invoked the

offence under Section 109 of IPC. But, it is not in dispute that this accused is a licensed dealer in purchasing and reselling the iron ore and phosphate.

13. It is the contention of learned Special Public Prosecutor that accused No.4 has issued invoice No.53 dated 06.12.2009 pretending to have sold 30,001 MT and invoice bearing No.63 dated 01.02.2010 for 20,001 MT, in all 50,002 MT of iron ore to accused Nos.2 and 3. He has not supplied the material, but received 3% commission enabling them to export the stolen ore of 66,264.93 MT. In other words, the prosecution version is that 50,002 MT of ore is the part and parcel of the ore illegally exported. The main accusation is that, those two invoices are issued by accused No.4. But, in order to prove the fact that he had issued invoices and collected 3% commission, no material is placed before the Court.

14. The learned Special Public Prosecutor appearing for the petitioner/State during the course of argument also categorically admits that for having received 3% commission is concerned, nothing is collected by the Investigating Officer. Hence, there is no basis for the accusation that 3% commission was received for issuance of these two invoices. No doubt, in

respect of the transaction is concerned, five invoices are referred, but only dispute is in respect of invoice Nos.53 and 63. But, accusation is clear that subsequently, accused Nos.2 and 3 failed to obtain necessary permit from the Department of Mines and Geology to take delivery of ore under all the five invoices. But, the dispute is only in respect of two invoices. The prosecution stand is also that transaction in respect of other invoices is concerned, no dispute. But, only in respect of two invoices are concerned, there is a dispute.

15. It has to be noted that the Trial Court also taken note of the fact in paragraph No.20 that in respect of collecting 3% commission, nothing is collected by the Investigating Officer. The Trial Court also taken note of the fact that invoice No.53 dated 06.12.2009 is seen to have been raised by the accused No.4 much later to the dates on which accused Nos.2 and 3 have allegedly exported 21,423.72 and 30,817.17 MT. Whereas, invoice No.63 dated 01.02.2010 is approximately 8 months prior to the alleged export of 14,024.040 MT of the ore. Having taken note of the same comes to the conclusion that this renders to be a strong circumstance to rule out the role of accused No.4 in facilitating the accused Nos.2 and 3 to export the ore in question on receipt of 3% commission. When there is

no receipt of 3% commission and the same is an allegation against him that he has received the same and issued invoices, the same is not substantiated. When there is no material for having collected 3% commission, there cannot be any prosecution against accused No.4 and there must be prima facie material to proceed against the accused and the very contention that the suspicion is enough cannot be accepted as contented by learned Special Public Prosecutor appearing for the petitioner and there must be strong suspicion to proceed before the Court. In order to connect the accused in respect of these two invoices and allegation of receiving the commission, nothing is found. But, the very contention of respondent/accused No.4 is that the same is still there in the stockyard and the accused Nos.2 and 3 failed to get permission from the Department of Mines and Geology to take delivery of ore under all the five invoices and only they took permission in respect of other three invoices is concerned, but in respect of two invoices are concerned, no such permission is obtained.

16. When such being the case, the very contention of learned Special Public Prosecutor appearing for the petitioner that Trial Court committed an error in discharging the accused cannot be accepted. The Trial Court in paragraph Nos.18 and

19 discussed, particularly with regard to two invoices are concerned and in paragraph Nos.20 and 21 discussed particularly the dates of invoices and also the transport made by the accused persons and specific defence of the accused was also considered in paragraph No.18. Hence, I do not find any error on the part of the Trial Court in discharging the accused.

17. No doubt, it is settled principle that the Court cannot consider the evidence at the time of discharge, but at the same time, it is the duty of the Court to analyze with due care and caution whether prima facie material is available before the Court, in order to proceed for trial. When such material is not found and particularly, foundational allegation against the accused that he has received 3% commission in doing such illegal act is not established and the Investigating Officer also clearly admitted that no such material is collected that accused received 3% commission, the very foundational allegation made in the charge sheet is baseless. Hence, this Court cannot find fault with the order of the Trial Court and I answer point No.(i) as 'negative'.

<u>Point No.(ii)</u>

18. In view of the discussion made above, I pass the following:

ORDER

The criminal revision petition is ***dismissed.***

Sd/-
(H.P.SANDESH)
JUDGE

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