



CNR: KAHC010467882021

NC: 2026:KHC:57637
CRL.P No. 9738 of 2021

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 13TH DAY OF OCTOBER, 2026

BEFORE

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

CRIMINAL PETITION NO.9738 OF 2021

BETWEEN:

1. SUSHEEL MONDAL
S/O JAVALLAL MONDAL
AGED ABOUT 47 YEARS
R/AT NO.25, CENTRAL STREET
LAKSHMI ROAD, 5TH CROSS
SHANTHI NAGAR
BENGALURU-560077
2. PROBIR MAJUMDAR
S/O GOPALA MAJUMDAR
AGED ABOUT 45 YEARS
R/AT NO.56/1
GANIGARA A LINE
NAGARTHPET
BENGALURU-560002
3. RANJITH SARKAR
S/O LATE HARINDRANATH SARKAR
AGED ABOUT 46 YEARS
R/AT NO.24, 5TH FLOOR
GANIGARA A LINE
NAGARTHPET
BENGALURU-560002
4. CHITTA RANJAN GORAI
@ ANJAN GURANG
S/O LAKSHMINARAYAN GARAN
AGED ABOUT 41 YEARS

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by DEVIKA M
Location: HIGH
COURT OF
KARNATAKA

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R/AT NO.24, 5TH FLOOR
GANIGARA A LINE
NAGARTHPET
BENGALURU-560002

5. CHINMAY SUR
S/O LATE DARAPADASUR
AGED ABOUT 53 YEARS
R/AT NO.58/3-1,
1ST FLOOR, 7TH CORSS
PIPELINE MAIN ROAD
MALLESHWARAM
BENGALURU-560003
6. BOLAI SHARMA
S/O NITHAHIPAD SHARMA
AGED ABOUT 43 YEARS
R/AT NO.48/86, 2ND FLOOR
ANUVAPPA MAIN ROAD
THIGALARPET
BENGALURU
7. TAPAS BAKSI
S/O LATE GANGARAM BAKSHI
AGED ABOUT 38 YEARS
R/AT NO.24, GANIGARA C LINE
6TH FLOOR, NAGATHPET CROSS
BENGALURU

...PETITIONERS

(BY SRI. RAKSHITH R., ADVOCATE)

AND:

1. STATE OF KARNATAKA
BY HALASOOR GATE POLICE STATION
REPRESENTED BY SPP
HIGH COURT OF KARNATAKA
AMBEDKAR VEEDHI
BENGALURU-01



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2. SOHIDUL MONDAL
S/O FOJU MONDAL
AGED ABOUT 41 YEARS
R/AT NO.25
1ST MAIN ROAD
GANGANAGAR
KRISHNAPPA BLOCK
R.T. NAGAR
BENGALURU-560032

...RESPONDENTS

(BY SRI. SUHAS GOWDA M.,HCGP FOR R1;
SRI. BASAWA PRASAD KUNALE &
SRI. SIVAMANITHAN, ADVOCATES FOR R2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482
OF CR.P.C PRAYING TO SET ASIDE THE ORDER DATED
06.01.2020 PASSED BY THE 1ST A.C.M.M., AT BENGALURU IN
C.C.NO.18663/2020 AND QUASH THE FURTHER PROCEEDINGS
AGAINST THIS PETITIONERS IN C.C.NO.18663/2020
CR.NO.4/2020 OF HALSOORU GATE P.S., FOR THE OFFENCES
PUNISHABLE UNDER SECTIONS 506, 120-B R/W SECTION 34
OF IPC, PENDING ON THE FILE OF THE 1ST ACMM AT
BENGALURU AND ETC.

THIS PETITION COMING ON FOR ADMISSION THIS DAY,
ORDER WAS MADE THEREIN AS UNDER:

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



ORAL ORDER

This petition is filed praying this Court to set aside the order dated 06.01.2020 passed in C.C.No.18663/2020 by the I ACMM, Bengaluru and to quash the further proceedings against this petitioners for the offences under Sections 120B and 506 read with Section 34 of IPC.

2. Heard the learned counsel appearing for the respective parties.

3. This petition is filed by accused Nos.1 to 7. The factual matrix of case is that petitioner No.1 and the complainant had a land dispute. In the year 2014, the complainant had filed a suit before the City Civil Court in O.S.No.6060/2014 and due to the differences between them, the complaint was also filed.

4. The case of the prosecution is that accused Nos.1 to 7 i.e., petitioners herein, have formed a Trust in the name and style of Sri Mahakaali Matha Seva Trust and the petitioners are the active members of the said Trust. It is contended that there was a plan to eliminate the complainant and in the said plan,



conspired each other. Petitioner Nos.3 and 7 have instigated petitioner No.2 and also approached CW6 and 7 to engage them as supari killers to eliminate the complainant. This instance is said to have been recorded by CW6 on his mobile phone and it has been informed to the complainant by CW6. Saying so, the complainant has filed a complaint before the respondent police station and police have registered the case in NCR No.003/2020 and copy of the NCR is also produced as Annexure-A.

5. Having registered the NCR, the requisition was given before the I ACMM, Bengaluru. The copy of the requisition is also produced as Annexure-B. The learned Magistrate of I ACMM Court, having considered the requisition, passed an order permitting the Investigating Officer to investigate the matter vide order dated 06.01.2020. The copy of the said order is also produced as Annexure-D. The police have investigated the matter by registering the FIR in Cr.No.4/2020 and invoked the offences under Sections 506, 120B read with Section 34 of IPC. Hence, the petitioners have approached this Court by filing the petition.



6. The main contention of the counsel appearing for the petitioners that the investigation officer is permitted to register the case against the accused persons. That shows, order was passed by the trial court without any finding or observation which is bad in law. The counsel also vehemently contend that under Section 155(1), when the non-cognizable offence was found, the IO has to refer the informant to the Magistrate to comply the provisions under Section 155(1) of Cr.P.C and the same has not been done. Instead of, Investigating Officer sought the permission from the Magistrate and obtained the permission under Section 155(2) of Cr.P.C and investigated the matter and filed the charge sheet. The very procedure adopted by the Investigating Officer is erroneous. Hence, it requires interference of this Court.

7. Per contra, the counsel appearing for the complainant would vehemently contend that the very contention of the petitioners' counsel cannot be accepted. The counsel vehemently contend that it is an option to the Investigating Officer either he has to refer the informant to the Magistrate and also even seek the permission from the learned



Magistrate to get the permission and proceed in accordance with law.

8. The counsel for respondent No.2 in support of his arguments, relies upon the judgment of this Court passed in **Crl.P.No.2394/2020** dated **28.09.2020** in the case of **PRAKASH RAJ @ PRAKASH RAI vs STATE OF KARNATAKA AND ANOTHER** and brought to notice of this Court paragraph 10 wherein this Court considered the provisions of Section 155(2) of Cr.P.C taken note that the police officer has approached the Magistrate according to Section 155(2) of the Code for an order to proceed further in the matter. When the Police Officer placed the report of commission of non-cognizable Offence (NCR), the Magistrate should not have directed his office to register it as a private complaint, for, such a procedure is not contemplated. Because the NCR was registered as a private complaint, the learned counsel for the petitioner argued that supporting affidavit was necessary. This argument was unfounded. The Police Officer proceeded further in the matter having obtained an order under Section 155(2) of the Code. What is made out by the learned counsel is a procedural



irregularity, which cannot be a ground for invoking jurisdiction under Section 482 of the Code; even the learned counsel failed to point out the substantial injustice caused to the petitioner on account of the procedural error.

9. The counsel also relies upon judgment of this court wherein followed the said principle laid down by the coordinate bench in the **Writ Petition No.11186/2023** dated **16.06.2023** and the counsel brought to notice of this Court paragraph 9 of the said judgment which reads as follows:

"9. On a coalesce of all the judgments what would unmistakably emerge is that, it is open to a Police Officer or any complainant to approach the Magistrate under sub-section (2) of Section 155 of the Cr.P.C., to investigate a non-cognizable offence. There is nothing in the section to indicate that the informant alone should seek permission from the Magistrate to commence investigation. I deem it appropriate to concur such plethora of opinions rendered by various High Courts as what sub-section (1) mandates referring the informant to the Magistrate. Sub-section (2) remains silent as to who has to obtain permission. Therefore, permission can either be sought by the complainant



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*or by the Station House Officer. Wherefore, it is not necessary for the informant alone to knock at the doors of the learned Magistrate with a requisition seeking permission for registration of FIR, it could be either the informant or the Station House officer. I am in respectful agreement with the view taken by other High Courts and the co-ordinate bench of this Court in **PRAKASH RAJ** (supra)".*

10. The counsel for the respondent also relies upon the judgment of the Apex Court passed in **CrI.A.No.1996/2013** arising out of SLP (CrI)734/2012 dated **25.11.2013** in the case of **STATE OF GUJARAT vs GIRISH RADHAKRISHNAN VARDE** and brought to notice of this Court the observations made by the Apex Court in page 11 that if the offence complained of is a non-cognizable one, the police officer can either direct the complainant to approach the Magistrate or he may obtain permission of the Magistrate and investigate the offence. The counsel referring this judgment would contend that no error on the part of the IO and IO though not referred the complainant under Section 155(1) to the Magistrate, but the IO exercised the power under Section 155(2), took the permission from the Court and investigated the matter and filed



the charge sheet. Hence, there cannot be any quashing of proceedings.

11. The counsel appearing for the State also would submits that there is no any error on the part of the Investigating Officer in proceeding since having obtained the permission from the Court only, he proceeded in the matter.

12. The counsel appearing for respondent No.2 also brought to notice of this court the order passed by this Court in view of inventing of new enactment of BNSS, no rule is framed and directed the concerned to frame a rule. The counsel also brought to notice of this court the other States have also framed the rules consequent upon Section 174(1) of BNSS i.e., Telangana, Jammu and Kashmir, Gujarat, Delhi and Puducherry. The same are placed on record. In this regard, the counsel also relied upon the judgment of this Court passed in **Crl.P.No.201594/2024 dated 01.07.2025** wherein this Court directed to forward the copy of the said order to the Law Department for taking suitable action.



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13. In support of this argument, the counsel for the petitioners relies upon the judgment of this Court reported in **LAWS(KAR)-2016-7-126 Decided on 11.07.2016** in the case of **PRAVEEN BASAVANNEPPA SHIVALLI vs STATE OF KARNATAKA** wherein the very scope of Section 155(1) and 155(2) of Cr.P.C in paragraph 10 that when an officer in charge of police station receives the information as to the commission of a non-cognizable offence, he shall enter or cause to be entered the substance of the information in a book to be maintained by such officer in the registered form and refer the informant to the Magistrate. Sub-section (2) of Section 155 Cr.P.C makes it clear, that no police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit such case for trial. Sub-section (1) of Section 155 Cr.P.C which casts a duty on the Station House Officer, who receives information as to the commission of non-cognizable offence to enter or cause to be entered the information in the prescribed book and refer the informant to the Magistrate, does not enable the SHO himself to approach the Magistrate and seek orders. The provision



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makes it clear that the SHO shall refer the informant to the Magistrate, thereby, making clear that it is for the informant to seek the orders of jurisdictional for issue of direction to the police for investigation of the case.

14. Having heard the learned counsel appearing for the respective parties and also on perusal of the material on record, the point that would arise for consideration of this petition are:

1. Whether the petitioners have made out the ground to quash the proceedings invoking Section 482 of Cr.P.C in non-compliance of Section 155 (1) of Cr.P.C in not referring the complainant to the Magistrate in view of offences invoked against the petitioners are non-cognizable offences?
2. What order?



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Point No.(1):

15. Having heard the learned counsel for the petitioners and the learned counsel for the complainant, and upon considering the factual aspects of the case, before proceeding to consider the issue involved, this Court must take note of the offences alleged against the petitioners. It is not in dispute that the offences invoked against the petitioners are non-cognizable in nature.

16. The sum and substance of Annexure-B, namely, the requisition dated 05.01.2020 by the Investigating Officer (IO) to the learned Magistrate is for permission to investigate the non-cognizable offences and prior to that, an NCR had been issued on 04.01.2020, as per Annexure-A, and thereafter, permission was sought from the learned Magistrate.

17. It is also not in dispute that, upon receipt of the request, the learned Magistrate passed an order as per Annexure-C wherein the learned Magistrate took note of the requisition to accord permission to register a case against the accused persons for the offences punishable under Sections



120-B and 506 of the IPC, which are non-cognizable offences and perused the requisition and also the documents, namely, the NCR and complaint. Having considered the same, made an observation to grant permission to the Investigating Officer to register a case against accused Nos. 1 to 7 for the aforesaid offences and directed the Investigating Officer to investigate the matter.

18. Having perused the material on record, particularly Annexures-'A', 'B' and 'C', it is clear that the contents of the complaint discloses non-cognizable offence and instead of referring the informant to the jurisdictional Magistrate, the Investigating Officer himself sought permission to investigate the matter. No doubt, Section 155(1) of the Cr.P.C. provides for referring the informant to the Magistrate and when the matter was heard on an earlier occasion, this Court directed the parties to clarify whether any format under the Cr.P.C. for referring the informant to the Magistrate and whether the Police Manual contains any such provision. It is also important to note that it is very difficult for a common man or informant



to directly approach the jurisdictional Magistrate to get the permission for investigation.

19. The learned counsel for the petitioners relied upon the judgment of this Court in **PRAVEEN BASAVANNEPPA SHIVALLI** (*supra*), wherein, at paragraph No.10, this Court considered Sections 155(1) and 155(2) of the Cr.P.C. and observed that the Station House Officer is required to refer the informant to the Magistrate, thereby making it clear that it is for the informant to seek an order from the jurisdictional Magistrate permitting the police to investigate the case.

20. However, this Court has also taken note of the subsequent judgment passed in W.P. No.11186/2023, wherein the earlier judgment in **PRAKASH RAJ** (*supra*) was considered. At paragraph No.10 of the said judgment, this Court observed that the argument by the learned counsel for the petitioner was unfounded, considering the proviso to sub-section (2) of Section 155 of the Cr.P.C. In the said case, an NCR had been registered, and the Investigating Officer proceeded with the investigation after obtaining permission under Section 155(2) of the Cr.P.C. This Court held that the



same is a procedural irregularity and could not constitute a ground for invoking the jurisdiction under Section 482 of the Cr.P.C., particularly when no substantial injustice had been caused to the petitioners.

21. It is further relevant to note that, in the said writ petition, this Court, while referring to the aforesaid judgment, observed at paragraph No.9 that there is no bar in proceeding under Section 155(2) of the Cr.P.C. without the informant personally seeking permission from the Magistrate. The power to permit investigation is given to the Magistrate to investigate the non-cognizable offence, and such investigation can be undertaken by the police only after obtaining the requisite permission. However, there is nothing in Section 155(2) of the Cr.P.C. to show that the permission must be sought only by the informant. But in Section 155(1) of the Cr.P.C. provides for referring the informant to the Magistrate and there is no bar that the Investigating Officer should not approach the Magistrate for permission to investigate the matter. This Court further observed that, while sub-section (1) mandates the



police to refer the informant to the Magistrate, sub-section (2) remains silent as who has to obtain permission.

22. In view of the aforesaid observations, this Court comes to the conclusion that permission under Section 155(2) of the Cr.P.C. may be sought either by the informant or by the Station House Officer. Therefore, it is not necessary that the informant alone must approach the jurisdictional Magistrate seeking permission for investigation, it can either be informant or the Station House Officer to seek such permission.

23. The learned counsel appearing for the respondents/complainant also relied upon the judgment of the Hon'ble Supreme Court in **STATE OF GUJARAT V. GIRISH RADHAKRISHNAN VARDE**, passed in Crl.A. No.1996/2013 arising out of **SLP (Crl.) No.734/2012**, dated 25.11.2013. Even prior to the judgment of this Court in **PRAVEEN BASAVANNEPPA SHIVALLI** (supra), the Hon'ble Apex Court, at paragraph No.11 of the said judgment, observed that, in respect of a non-cognizable offence, the police officer may either direct the informant to the Magistrate or obtain



permission from the Magistrate and proceed to investigate the offence.

24. Having regard to the aforesaid principle, it is clear that referring the informant to the Magistrate is not the only method available, as the Investigating Officer may also seek permission from the jurisdictional Magistrate and proceed with the investigation. When such being the case, the judgment of the Hon'ble Apex Court in the case of **STATE OF GUJARAT** (supra) is applicable to the case on hand.

25. In the present case, when the complaint was lodged, an NCR was registered on the previous day. On the next date of hearing, the Investigating Officer sent a request to the learned Magistrate seeking permission to investigate the matter. Thereafter, the learned Magistrate granted permission to the Investigating Officer to investigate the matter. The Investigating Officer proceeded with the investigation and filed the charge sheet.

26. The very contention of the learned counsel appearing for the petitioners is that, in the absence of



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compliance of Section 155(1) of the Cr.P.C., there cannot be any investigation under Section 155(2) of the Cr.P.C., cannot be accepted. Section 155(2) of the Cr.P.C., allows the jurisdictional Magistrate to grant permission for the investigation, and the Investigating Officer, having obtained such permission, was allowed to proceed with the investigation.

27. Accordingly, I do not find any force in the contention of the learned counsel for the petitioners. The ratio laid down by the Hon'ble Apex Court in the judgment referred to supra aptly applies to the facts and circumstances of the present case. Therefore, I answer Point No.(1) accordingly.

28. It is also to be noted that, with the enactment of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), the proviso to Section 174 is in *pari materia* with the provision under Section 155 of the Cr.P.C. However, no rules have been framed by the State in this regard. This Court has already, in **Crl.P.No.201594/2024 dated 01.07.2025** issued a direction to forward a copy of the order to the Law Commission for framing appropriate rules.



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29. The learned counsel appearing for respondent No.1 also brought to the notice of this Court that some States have already framed rules in this regard in terms of Section 174 of the BNSS. When such being the case and in view of the contentions raised in the present petition, this Court would like to enlighten the Law Commission of Karnataka for framing appropriate rules, in addition to the direction already issued by this Court.

Point No.(2):

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

ORDER

- (i) The Criminal Petition is ***dismissed***.
- (ii) The Registry is directed to forward a copy of this order to the Law Commission of Karnataka, in addition to the directions already issued by this Court, for consideration of the issue and taking appropriate steps towards framing necessary rules in view of the new



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enactment of the Bharatiya Nagarik
Suraksha Sanhita, 2023 (BNSS) forthwith.

Sd/-
(H.P.SANDESH)
JUDGE

SN/Vmb
List No.: 1 SI No.: 9