

8. STATE OF KARNATAKA
VIDHANA SOUDHA
REPRESENTED BY SECRETARY
HOME DEPARTMENT
BENGALURU - 560 001

... RESPONDENTS

(BY SRI VIKRAM HULIGOL, ADDL. ADVOCATE GENERAL
ALONG WITH SRI SHANKAR H.S., HCGP FOR R1, R2 AND R8
SRI RAGHAVENDRA K., ADVOCATE FOR R3
R4 TO R6 DELETED VIDE ORDER DATED 16.01.2023
MS. MELANIE SEBASTIAN, ADVOCATE FOR R7)

THIS WRIT PETITION IS FILED UNDER ARTICLES
226 AND 227 OF THE CONSTITUTION OF INDIA READ
WITH SECTION 482 OF THE CODE OF CRIMINAL
PROCEDURE, PRAYING TO QUASH NOTIFICATION DATED
25.2.2021, BEARING NO. HD 18 POP 2021 PASSED BY THE
GOVERNMENT OF KARNATAKA, PRODUCED HERETO AS
ANNX-C AND ETC.

THESE PETITIONS HAVING BEEN HEARD AND
RESERVED FOR ORDERS ON 24.7.2023 THIS DAY, THE
COURT MADE THE FOLLOWING:

ORDER

Criminal Petition No.2450/2022 is filed by petitioner
Nos.1 to 5 - accused Nos.1 to 5 under Section 482 of
Cr.P.C. for quashing the criminal proceedings in C.C.
No.11856/2021 pending on the file of I Additional Chief
Metropolitan Magistrate, Bengaluru, in respect of charge
sheet filed by the CCB Police for the offences punishable

under Sections 323, 354(A)(B), 498-A, 504, 506 and 34 of IPC and Section 4 of Dowry Prohibition Act, 1961.

2. Writ Petition No.11718/2022 is filed by the petitioner-accused No.1 under Article 226 of Constitution of India read with Section 482 of Cr.P.C. for issue of Writ of Certiorari or any other appropriate writ, order or direction to quash the notification dated 25.02.2021 bearing No.HD 18 POP 2021 passed by the Government of Karnataka and consequently, set aside the charge sheet and the criminal proceedings pending before the I Additional Chief Metropolitan Magistrate, Bengaluru, in C.C. No.11856/2021.

3. Heard the learned Senior Counsel Sri C.V. Nagesh appearing the petitioners in Criminal Petition No.2450/2022 and Sri Sandesh J. Chouta, learned Senior Counsel appearing for the petitioner in W.P. No.11718/2022, Sri Tomy Sebastian, the learned Senior Counsel appearing for the respondent - *de-facto*

complainant and, Sri Vikram Huilgol, the Additional Advocate General and the learned High Court Government Pleader for respondent-State.

4. The case of petitioners in Criminal Petition No.2450/2022 is that the *de-facto* complainant Smt. Esha Raj filed first information statement before Basavanagudi police alleging the cruelty and abuse by her husband (accused No.1) and his relatives for dowry. She has stated that she is the daughter of one Jodhraj and Smt. Chanchal. Her father is the successful business man and a prominent person in business circle as well as in the Jain community. In the year 2009, there was marriage proposal from petitioner-accused No.1 (Ditul Mehta). After negotiation, the marriage engagement ceremony was held on 26.01.2010 at ITC Gardenia hotel and her marriage was decided to be performed on 22.11.2010. After the engagement, accused No.1 used to take the *de-facto* complainant for lunch and dinner and started enquiring about properties and assets of her father and then started

pressurizing her for making arrangement for shopping of the marriage at Jaipur, Kolkata, Milan, etc. Accordingly, clothes and jewelleries were purchased by him. The accused also pressurized for getting a BMW 5 Series Car, which was agreed. Thereafter, they started demanding more dowry, otherwise, they used to tell that would postpone the marriage. Due to the pressure of the accused persons, her father accepted to give gold, silver and other dowry articles and a car as demanded by the accused persons. The marriage of the *de-facto* complainant with accused No.1 was performed on 22.11.2010 at Bengaluru palace in a grand manner. At the time of marriage, diamond jewelry, Rolex Watch, Artefacts, camera, home theater, household items were all given to the accused. Thereafter, she started to reside in the matrimonial home. The mother of accused No.1 claimed custody of all the valuables given to her and behaved in rude manner and all the accused abused her in filthy language. Like wise, her mother-in-law and sister-in-law also suggested to get some gifts from the parents of

de-facto complainant, and it became habit of the accused for getting valuables from the house of her parents. Thereafter, the harassment was increased day by day, her mother-in-law was instigating accused No.1 for movable properties and also the rent of the commercial properties. As per the demand, her father also gifted a property to her and the rents received from the tenants for about Rs.5,99,00,000/- were all got transferred to the account of the accused persons. It is further alleged that Anu Mehta who is the sister-in-law of the *de-facto* complainant, got married on 20.06.2014, The mother-in-law of the complainant gave the jewelry of the complainant to the sister-in-law during her marriage and, thereafter, it was not returned. When the same was questioned, both her husband and in-laws were used to harass her, physically and mentally, they scolded her calling her as slut, prostitute, bitch, ass hole, whore, etc. and even they asked as to whom did she sleep with and abused her parents also in filthy language. It is also alleged by the *de-facto* complainant that she came to know that accused

No.1 is in the habit of having illicit intimacy with some other lady and used to come to home late, used to abuse her and assault her. She also gone to abroad along with family members for 10 days and the husband of her sister-in-law one Rakshit Kankaria misbehaved with her, attempted to touch inappropriately and talking with her indecently. Thereafter, they returned to Bengaluru. On 06.12.2018, when the accused-Rakshit Kankaria visited her home, he crossed the limits by attempting to kiss her forcibly and accused No.1 did not react for that and he insisted her to adjust with Rakshit Kankaria. Right from the beginning, the accused and family members pressurizing the parents of *de-facto* complainant for giving them jewelry, cash whenever they demanded. The jewels worth more than Rs.10 crores have been kept in their custody, they have taken away silver articles worth more than Rs.50 lakhs, a BMW 5 Series Car and they got transferred Rs.5.00 lakhs and more than Rs.6 crores taken through cheques. Even on 03.01.2019, when they were staying in a hotel at Mumbai, her husband-accused

No.1 abused her in filthy language and behaved in cruel manner. Hence, prayed for taking action against all the accused persons.

5. The respondent-police initially registered FIR in Crime No.104/2019 for the above said offences and later, on the direction of the Commissioner of Police, the investigation was taken by the CCB police, and they filed charge sheet. Accused Nos.1 to 5 challenging the filing of charge sheet, prayed for quashing the criminal proceedings.

6. The facts of the case in Writ Petition No.11718/2022 are that the petitioner-accused No.1 challenged referring of investigation of the matter to the CCB police and filing of charge sheet based upon the notification issued by the State Government on 25.02.2021 appointing the CCB police officers and conferring the power to the CCB police officials to exercise the power of a Station House Officer of all police stations in Bangalore

City. On various grounds, the petitioner-accused No.1 prayed for quashing the aforesaid notification and consequently, prayed for quashing the charge sheet filed by the CCB police.

7. The learned Senior Counsel Sri C.V. Nagesh appearing the petitioners in Criminal Petition No.2450/2022 raised 5 legal issues during his arguments. They are (i) The Commissioner of Police can not exercise the power under the Karnataka Police Act for transferring the investigation to the CCB police in respect of criminal case registered at Basavanagudi police, (ii) The Commissioner of Police has no power to transfer the investigation from Assistant Commissioner of Police to CCB, (iii) For the purpose of taking cognizance under Section 190 of Cr.P.C., the Magistrate can take cognizance on the police report filed under Section 173(2) of Cr.P.C. by the officer in-charge of the police station, but the CCB is not a police station. Therefore, the notification of the Government dated 25.02.2021 cannot be considered as an

order for transferring the investigation and filing charge sheet by the CCB police (the same question was also raised by accused No.1 filing separate writ petition), (iv) While taking cognizance, the learned Magistrate can not exercise the power of issuing process, summoning the accused, and the same is not in accordance with law, and, (v) There was exchange of legal notice between the accused No.1 and *de-facto* complainant. Prior to filing of the complaint, a divorce petition was filed by accused No.1 against respondent No.2 - *de-facto* complainant and the respondent No.2 - *de-facto* complainant also filed a divorce petition and the evidence of the petitioner-accused No.1 was not challenged in cross examination and the *de-facto* complainant - respondent No.2 has stated no objection to grant decree of divorce in favour of accused No.1. Therefore, it is contended that the allegation made in the complaint as well as in the divorce petition by the accused clearly reveals that there was allegation made by the accused against respondent - *de-facto* complainant, was cruelty which was admitted by her. Therefore, the

averments made by *de-facto* complainant in the complaint for cruelty on her is not sustainable and also the charge sheet is not sustainable. The learned Senior Counsel also contended that there was delay of nine years in filing the complaint. Previously, Jayanagar police prepared B-final report and sent for approval and thereafter, the Commissioner of Police transferred the Investigating to the CCB police. Therefore, without considering the B-final report filed by Jayanagar police, the charge sheet filed by the CCB police is not sustainable. Hence, prayed for quashing the charge sheet.

8. In support of his contentions, the learned Senior Counsel Sri C.V. Nagesh has relied on the following judgments:

1. *Mr. Magadi Shankar Rao Krishna Murthy and Others vs. The Commissioner of Police, Bangalore City Police and Others - ILR 2015 Kar 6039*
2. *GHCL Employees Stock Option Trust v. Kranti Sinha - (2013) 2 SCC (Cri) 414*

3. *Sunil Bharti Mittal v. Central Bureau of Investigation - 2015 AIR SCW 642*

4. *Indian Charge Chrome Ltd. v. Union of India and others - (2003) 2 SCC 533*

5. *State of Manipur and Others vs. Surjakumar Okram and Others - 2022 SCC OnLine SC 130*

6. *Kishan Singh (Dead) through L.Rs. v. Gurpal Singh - (2010) 3 SCC (Cri) 1091*

7. *Lalankumar Singh and Others VS. State of Maharashtra 2022 (7) Supreme 899*

8. *Behram Khurshid Pesikaka v. State of Bombay - AIR 1955 SC 123*

9. *Ravindranatha Bajpe VS. Mangalore Special Economic Zone Ltd. and Others - 2021 SCC OnLine SC 806*

10. *All Cargo Movers India (P) Ltd. v. Dhanesh Badarmal Jain and another - (2007) 7 SCC 334*

11. *M. Saravana Porselvi v. A.R. Chandrashekar & Others - 2008 AIR SCW 3777*

12. *Rukmini Narvekar v. Vijaya Satardekar & Ors. - AIR 2009 SC 1013*

13. *Sirajul and others Vs. State of Uttar Pradesh and another - (2015) 3 SCC (Cri.) 749*

14. *Manoj Kumar Sharma and others v. State of Chhattisgarh and another - (2016) 3 SCC (Cri) 407*

15. *T. Diwakara and others v. State of Karnataka by its SPP - ILR 2006 Kar 4632*

16. *Somasundaram Alias Somu vs. State represented by the Deputy Commissioner of Police - AIR 2020 SC 3327*

17. *Hasmukhlal D. Vora and Another vs. State of Tamil Nadu - 2022 SCC Online SC 1732*

18. *Lalankumar Singh and Others VS. State of Maharashtra 2022 (7) Supreme 899*

19. *Ravindranatha Bajpe Vs. Mangalore Special Economic Zone Ltd. and Others - 2021 SCC OnLine SC 806*

9. Sri Sandesh J. Chouta, the learned Senior Counsel appearing for the petitioner-accused No.1 in W.P. No.11871/2022 has mainly contended that the 5th respondent issued the notification on 25.02.2021 by declaring that the CCB police are the investigation officers and in turn, they filed charge sheet. But, as per Section 173 of Cr.P.C. and Sections 2(r) and 2(s) of Cr.P.C., the

officer in the CCB cannot be considered as Station House Officer and his report cannot be considered as a report under Section 2(r) and Section 173(2) of Cr.P.C. Therefore, without power, this notification has been issued and the CCB cannot be considered as police station in view of the judgments passed by the Co-ordinate Benches of the High Court as the Co-ordinate Benches have declared that the CCB is not a police station. The learned Senior Counsel has further contended that while arguing the matter of ACB in Division Bench, this notification has been issued, they have not followed the Transaction of Business Rules of Karnataka State. The file has to be placed before the Hon'ble Chief Minister or the in-charge Minister. Then, the cabinet required to approve the same. Thereafter, an amendment shall be brought to Section 36 of Cr.P.C. Thereafter, notification has to be signed in the name of the Hon'ble Governor, but the same was not followed. Therefore, the notification is required to be set aside. The State Government has not followed the procedure as required under Articles 245 and 246 of Constitution of

India. Unless there is an amendment to Section 36 of Cr.P.C., the State Government cannot exercise the power under Section 36 of Cr.P.C. for referring the investigation to the CCB Police. The Learned Senior Counsel also brought to the notice that the same procedure was followed in Delhi Police Establishment Act, National Investigation Agency Act, NDPS Act, Lokayuktha Act and contended that, in this case, there is no statutory power for the government to issue such a notification. Hence, prayed for quashing the notification.

10. In support of his contentions, the learned Senior Counsel Sri Sandesh J. Chouta has relied on the following judgments:

1. *Commercial Tax Officer, Rajasthan vs. M/s. Binani Cement Ltd. & another - (2014) 3 SCR 1*

2. *Anil @ Anthony Arikswamy Joseph Vs. State of Maharashtra - (2014) 3 SCR 34*

3. *The M.D., Chennai Metro Rail Ltd. VS. N. Ismail and Others VS. Thiru R. Govindaswamy and others - (2014) 3 SCR 64*

4. *Secretary to Government School Education Department, Chennai & ors. - (2014) 3 SCR 84*

5. *Shyamal Saha & another vs. State of West Bengal (2014) - 3 SCR 90*

6. *Gohil Jesangbhai Raysangbhai & ors. VS. State of Gujarat & another - (2014) 3 SCR 110*

7. *Nesar Ahmed & anr. VS. State of Jharkhand & ors. - (2014) 3 SCR 144*

8. *M/S. Larsen & Toubro LTD., VS. M/S. Mohan Lal Harbans Lal Bhayana - (2014) 3 SCR 162*

9. *Aayush buildwell pvt. Ltd. vs. Haryana Urban Development Authority & ors. - (2014) 3 SCR 181*

10. *Nand Kumar vs. State of Bihar & ors. - (2014) 3 SCR 193*

11. *Rajkumar vs. State of M.P. - (2014) 3 SCR 212*

12. *Pal Singh and Another. VS. State of Punjab - (2014) 3 SCR 231*

13. *Justice Ripusudan Dayal (Retd.) & ors. VS. State of M.P. & ors. - (2014) 3 SCR 242*

14. *Sharat Babu Digumarti v. Govt. (NCT of Delhi) - (2017) 2 SCC 18*

15. *State of Bihar and another v. J.A.C. Saldanha and others - (1980) 1 SCC 554*

16. *K.M. Muniswamy Reddy Vs State of Karnataka - 1992 SCC OnLine Kar 183*

17. *Sri. Bhooshith B. and others Vs. State Of Karnataka and others In Crl.A.No.1628/2018 c/w. Crl.A.Nos.1659/2018, 1840/2018, 1937/2018, 1960/2018, 1976/2018 and 61/2019 dated 07.04.2021*

11. The learned Senior Counsel appearing for the respondent - *de-facto* complainant has seriously objected the petition and contended that perusal of the averments made in the complaint shows that the accused persons demanded huge dowry by way of cash, gold, silver and car, and further demand was made after the marriage of accused No.1 with *de-facto* complainant. The father of the

de-facto complainant gifted a commercial building where she is receiving more than Rs.5.00 lakh as rent per month. The entire rent has been got transferred by the accused persons. Continuously, there was harassment on the *de-facto* complainant by all the accused persons. The police investigated the matter and filed charge sheet. There is triable case against the accused persons and therefore, the charge sheet cannot be quashed.

12. It is further contended by the learned Senior Counsel for the respondent - *de-facto* complainant that the averments made in the divorce petition on the ground of cruelty against the *de-facto* complainant under Section 13(1)(a) of Hindu Marriage Act, is altogether different from the cruelty mentioned under Section 498A of IPC and the provisions of D.P. Act. The respondent - *de-facto* complainant also filed a petition for divorce and she has stated no objection to grant decree, but the Family Court has not disposed of the matter and kept pending. The accused also filed an application for giving further

evidence. There were serious allegations made against the husband of *de-facto* complainant, her mother-in-law and sister-in-law and the husband of sister-in-law, who tried to sexually assault her. Therefore, the charge sheet cannot be quashed against the accused persons. Hence, prayed for dismissing the petition. In support of his contentions, learned senior counsel for the respondent - *de-facto* complainant relied on the following decisions:

1. *State of Bihar and another Vs. Lalu Singh - (2014) 1 SCC 663*
2. *State of Kerala vs. P.B. Sourabhan and Others - (2016) 4 SCC 102*
3. *Mr. Magadi Shankar Rao Krishna Murthy and Others vs. The Commissioner of Police, Bangalore City Police and Others - ILR 2015 Kar 6039*
4. *2020 SCC OnLine Kar 463 Rakesh Shetty vs. State of Karnataka, Represented by its Chief Secretary and Others*
5. *Pradeep S. Wodeyar vs. State of Karnataka - 2021 SCC OnLine SC 1140*
6. *State of Gujarat Vs. Afroz Mohammed Hasanfatta - 2019 20 SCC 539*

7. *Anita Malhotra Vs. Apparel Export Promotion Council and another. (2012) 1 SCC 520*

8. *All cargo movers (India) Private Limited and others Vs. Dhanesh Badarmal Jain and another. - 2007 14 SCC 776*

9. *M. Saravana Porselvi vs. A.R. Chandrashekar alias Prathiban and Others - 2008 11 SCC 520*

10. *Rukmini Narvekar vs. Vijaya Satardekar and others.*

11. *Sharat Babu Digumarti Vs. Government (NCT of Delhi) - 2017 2 SCC 18*

12. *K.M. Muniswamy Reddy vs. State of Karnataka - 1992 SCC OnLine Kar 183*

13. *K. Neelaveni Vs. State represented by Inspector of Police and others. - (2010) 11 SCC 607*

14. *Commercial Tax Officer, Rajasthan vs. M/s. Binani Cement Ltd. & another -(2014) 3 SCR 1*

15. *Gohil Jesangbhai Raysangbhai & Ors. vs. State of Gujarat & Another - (2014) 3 SCR 110*

16. *Nesar Ahmed & Another Vs. State of Jharkhand & Ors. - (2014) 3 SCR 144*

*17. M/S. Larsen & Toubro Ltd., Vs.
M/s. Mohan Lal Harbans Lal Bhayana reported
in - (2014) 3 SCR 162*

13. Having heard the arguments of learned counsel for the parties, perused the records in respect of criminal petition No.2450/2022.

14. The first ground urged by the learned Senior Counsel Sri C.V Nagesh is that FIR has been registered by Basavanagudi police and later, on the point of jurisdiction, the Jayanagar police registered FIR and investigated the matter. The Assistant Commissioner of Police of Jayanagar Police Station prepared B-final report and subsequently, the Commissioner of Police transferred the investigation to the CCB Police. In turn, the CCB police filed charge sheet by exercising the power under the notification dated 25.02.2021 where the State of Karnataka has issued a notification conferring the power to the CCB police officials to exercise the power of a superior of Station House Officer

of all police stations in Bangalore City comes under the Commissionerate. The petitioner-accused No.1 also challenged the said notification dated 25.02.2021 in Writ Petition No.11718/2022 for quashing the same. Therefore, ground No.1 urged by Sri C.V.Nagesh, learned Senior Counsel, and the prayer in the writ petition are one and the same. Therefore, they are taken together for discussion.

15. Both the learned Senior Counsels appearing for the petitioners have strenuously contended that the Commissioner has no power to transfer the case for investigation to the CCB police and the CCB police have no authority to file charge sheet as the CCB police is not a police station.

16. On the other hand, the learned Additional Advocate General has seriously objected the petitions and contended that the CCB is working since long for investigating the matter and the police officers are

assigned the power of investigating the matter and to file the charge sheet, which amounts to filing of the final report under Section 173(2) of Cr.P.C. Merely, there are some errors in the notification mentioning the provisions of law under the Karnataka Police Act, that itself is not a ground to quash the notification and it is not the notification declaring the CCB as police station, but the CCB police officers are given the power to exercise the power of in-charge of police stations as superior for the purpose of investigation. Therefore, prayed for dismissing the petition.

In support of his contentions, the learned AAG has relied on the following judgments:

1. *Dr. M.G. vs. State by Central Police and Another - 2021 SCC OnLine Kar 339*
2. *N. Mani v. Sangeetha Theatre, - (2004) 12 SCC 278*
3. *Zakir Abdul Mirajkar vs. State of Maharashtra and Others - 2022 SCC OnLine SC 1092*

4. *R.P. Kapur v. Pratap Singh Kairon* -
(1961) 2 SCR 143

17. Both the learned Senior Counsels appearing for the petitioners as well as the learned AAG have relied upon the order passed by the Co-ordinate Bench of this Court in the case of ***DR. M.G. GOPAL, PRINCIPAL AND DEAN OF KIMS Vs. CENTRAL POLICE AND ANOTHER*** reported in ***2021 SCC Online KAR 339***, wherein the Co-ordinate Bench has held that the CCB is not a police station for the purpose of filing charge sheet and quashed the criminal proceedings in that case. The learned AAG has also submitted that the said judgment of the Co-ordinate Bench has been stayed by Hon'ble Supreme Court in Special Leave Appeal (Criminal) Nos.2157-2158/2021 on 30.07.2021 and the stay is still operating. Therefore, the order passed by the Co-ordinate Bench is not required to be considered by this Court.

18. The learned AAG has also seriously contended that the notification issued by the government on 25.02.2021 is only a clarification regarding investigation officer to be investigated by the CCB by assigning the power of the superior officer of all police stations in Bengaluru. Therefore, once the power assigned to the officer of the CCB to investigate the crime registered in the police station comes under the Commissionerate of Bangalore City and the police officer of CCB, being a superior officer of the police station, is empowered to file charge sheet, Therefore, it is contended that the said ground is not sustainable.

19. The learned Senior Counsel for the petitioner also relied upon the judgment of the another Co-ordinate Bench of this Court in the case of **MAGADI SHANKAR RAO KRISHNAMURHTY AND OTHERS VS. COP BANGALORE CITY** reported in **ILR 2015 KAR 6039**, wherein the said Co-ordinate Bench while considering the definition of Section 2(o) of Cr.P.C. regarding the officer in

charge of a police station and Section 2(22) of the Karnataka Police Act in respect of superior police officer and Section 36 of Cr.P.C., has held that the Commissioner did not take over the investigation by himself but directed the Commissioner of Police (Crimes) to order a police officer of the CCB unit to conduct the investigation and the Co-ordinate Bench has held that the Commissioner has no power to refer the investigation to the other inferior officer and he could have taken the investigation himself being a superior of the police station. This judgment was delivered in the year 2015, that is on 28.10.2015, and subsequent to the said judgment, the State Government issued the notification dated 25.02.2021 empowering the powers to the CCB police for investigating the matter as the superior officers of the police station. Therefore, the said judgment was delivered prior to issuing the impugned notification. Hence, that order is not required to be considered at this stage.

20. Regarding power of the State Government for issuing notice has been disputed by Sri Sandesh J. Chouta, the learned Senior Counsel for the petitioner in W.P. No.11718/2022, contending that the procedure under the provisions of Karnataka Police Act read with Section 36 of Cr.P.C. for issuing the notification by the State Government dated 25.02.2021 was not followed and without following the proper procedure and the Rules, the State Government has over night issued the impugned notification. The learned Senior Counsel has also relied upon the various enactments including the Delhi Special police Establishment Act, wherein Section 3 of the said Act empowers the officer in charge of police station for exercising the power above the rank of Sub-Inspector, subject to any order of Central Government, he can exercise the power of in charge of the police station for discharging the functions; Section 3 of the National Investigation Act empowers the power of the Sub-Inspector. Above the rank of Sub-Inspector can exercise the power of officer in charge of the police station; and

Section 53 of NDPS Act empowers an officer giving power to exercise as a Station House Officer. But, in the present case, no such law empowers the State Government to issue impugned notification dated 25.02.2021. Hence, he has contended that the notification shall be quashed.

21. The learned Senior Counsel Sri Sandesh J. Chouta has relied upon the judgment of the Co-ordinate Bench of this Court in the case of **STATE OF KARNATAKA BY SUPERINTENDENT OF POLICE Vs. THAMMAIAH AND OTHERS** passed in Criminal Petition No.749/1996 dated 03.08.1998, wherein the establishment of COD police for investigation has been questioned. In the said case, the Magistrate referred the complaint to the COD police and it was set aside by the High Court. There is no second thought about the principles laid down by the Co-ordinate Bench of this Court that under Section 156(3) of Cr.P.C., the complaint shall be referred to the Station House Officer of the police station and subsequently, the investigation can be ordered to be taken up by the COD

police as per the direction of the Commissioner or Superintendent of Police. The said order was passed in the year 1998 and there was no impugned notification dated 25.02.2021 at that time. Hence, the said judgment will not come to the aid of the petitioners.

22. Another Co-ordinate Bench of this Court in the case of **N. RAJACHAR AND OTHERS Vs. KODANDARAMA AND ANOTHER** reported in **ILR 2002 KAR 2909** in respect of referring the complaint to the CCB police for investigation, has held that the CCB police is not an in charge police station and accordingly, the proceedings has been quashed. The said order was delivered in March, 2002. At that time, there was no notification issued by the State Government. The notification was issued only on 25.02.2021.

23. Another Co-ordinate Bench in the case of **RAKESH SHETTY Vs. STATE OF KARNATAKA AND OTHERS** reported in **2020 SCC Online KAR 4638** (in

Writ Petition No.11169/2020 (GM-RES) dated 05.11.2020), while considering the quashing of FIR and charge sheet at para 11.8 of its judgment, has held that CCB is not a police station and the CCB by itself cannot register or investigate into any matter since there is an embargo on such registration of complaint and such power is conferred only on a person in charge of police station. The Co-ordinate Bench has further held that CCB is not Police station, however, it has held that the power of CCB to investigate an offence by way of an administrative order passed in relation thereto and the charge sheet shall not be filed by them and after the investigation, they should hand over the charge sheet to the Police station and in turn, the particular police can file the charge sheet.

24. The Co-ordinate Bench has held in *Rakesh Shetty's* case, cited supra, that *the CCB police can investigate the crime but they cannot file charge sheet and they should hand over the charge sheet to the concerned*

police and in turn, the concerned police or in charge Police station shall file charge sheet.

25. The learned Senior Counsel has relied upon the another judgment of the Co-ordinate Bench of this Court in the case of **MANJUNATH HEBBAR Vs. STATE OF KARNATAKA** reported in **2021 SCC Online KAR 1493**, wherein it is held that the CID police cannot be held to be superior officer in charge of a police station. It is submitted that the said judgment has been stayed by the Hon'ble Supreme Court in Special Leave Petition and therefore, the said judgment need not be considered at this stage.

26. The learned Senior Counsel has contended that the notification issued by the State Government is not in accordance with law and that was not issued in the manner prescribed which is known to law. He has relied upon the judgment of the Hon'ble Supreme Court in **JURWASIR LIMITED Vs. REGIONAL DIRECTOR, ESI, HYDERABAD**

reported in **(2015)7 SCC 690**. At para 14 and 15 of the said judgment, the Hon'ble Supreme Court relied upon its earlier judgment reported in **STATE OF JHARKAND AND OTHERS Vs. AMBAY CEMENT AND ANOTHER** reported in **(2005)1 SCC 368** wherein it has been held that *"it is the cardinal rule of interpretation that where a statute provides that a particular things should be done, it should be done in the manner prescribed and not in any other way"*.

27. At para 15, the Apex Court relied upon the earlier judgment in the case of **BABU VERGHESE Vs. BAR COUNCIL OF KERALA** reported in **(1999) 3 SCC 422** wherein it was held that *"it is basic principle of law long settled that if the manner of doing a particular act is prescribed under a statute, the act must be done in that manner or not at all. The origin of this rule is traceable to the decision in TAILOR Vs TAILOR was followed by Lord Roche in NAZEER AHMED Vs. KING EMPEROR"*. Here, in the present case, the Hon'ble Supreme Court has held

that for legislating any law or a rule, the procedure shall be followed.

28. The learned Senior Counsel also contended that the Commissioner cannot exercise power prescribed under the law and the delegatee cannot delegate the power. The learned Senior Counsel also relied upon the judgment in the case of ***SAINT JOHNS TEACHER INSTITUTE Vs. REGIONAL DIRECTOR NATIONAL COUNCIL FOR TEACHER EDUCATION AND ANOTHER*** reported in ***(2003)3 SCC 321***, wherein, the said case also laid the similar principles as stated in ***AGRICULTURAL MARKET COMMITTEE Vs. SHALIMAR CHEMICAL Works Limited reported in (1997)5 SCC 516***. In another judgment in the case of ***STATE OF RAJASTHAN AND OTHERS Vs. BASANTH NAHATA*** reported in ***(2005) 12 SCC 77***, the Hon'ble Supreme Court at para 19 of the judgment, has held that the necessity of the legislatures delegating its power in favour of the executive, is a part of legislative function. It is a constituent element

of the legislative power as a whole under Article 245 of Constitution of India. Such delegation of power however cannot be vide, untenalised, or unguided. It is also held by the Hon'ble Supreme Court that the legislative functions cannot be delegated.

29. In another case in **STATE OF T.N. Vs. P. KRISHNAMURTHY** reported in **(2006)4 SCC 517**, the Hon'ble Supreme Court at para 15 of the judgment, has held as under:

"Whether the rule is valid in its entirety?"

15. *There is a presumption in favour of constitutionality or validity of a subordinate legislation and the burden is upon him who attacks it to show that it is invalid. It is also well recognised that a subordinate legislation can be challenged under any of the following grounds:*

(a) Lack of legislative competence to make the subordinate legislation.

(b) Violation of fundamental rights guaranteed under the Constitution of India.

(c) Violation of any provision of the Constitution of India.

(d) Failure to conform to the statute under which it is made or exceeding the limits of authority conferred by the enabling Act.

(e) Repugnancy to the laws of the land, that is, any enactment.

(f) Manifest arbitrariness/unreasonableness (to an extent where the court might well say that the legislature never intended to give authority to make such rules)."

30. In another judgment, the Constitution Bench of the Hon'ble Supreme Court in the case of **R.S. JOSHI, SALES TAX OFFICER GUJRATH Vs. AJIT MILLS LTD.** reported in **(1997)4 SCC 98**, has laid down the principles regarding the competence of the state legislature to enact provisions by exercising the power under Articles 245, 246, 265 and list-II Schedule-7 of Constitution of India and also laid down the enactment and its sustainability.

31. In another judgment, the Full Bench of High Court of Andhra Pradesh in the case of ***M/s. INDIAN OIL CORPORATION LIMITED Vs. MR. KAREM ZAHEER YAR JUNG*** reported in ***1997 SCC Online AP 271*** has considered the judicial review of the delegated legislation.

32. The petitioners have also relied upon the judgment of the Division Bench of this Court in the case of ***CHIDANANADA Vs. STATE OF KARNATAKA*** and connected matters, reported in ***2022 SCC Online KAR 1488***, wherein the Division Bench has scrapped the creation of Anti Corruption Bureau (ACB) established on the executive order of the State Government. The learned Senior Counsel has contended that while arguing the matter before the Division Bench in respect of challenging the ACB, the notification was issued for creation of ACB. But, in the present case, the State Government has hurriedly issued the impugned notification dated 25.02.2021 without following the procedure under the

Karnataka Government (Transaction of Business) Rules, 1977. Therefore, prayed for quashing the said notification.

33. By keeping the principles laid down by the Hon'ble Supreme Court, in the above said cases, in respect of enacting the legislature by following the procedures known to law or in the manner known to law, they cannot delegate the power to Commissioner of Police, etc. In this regard, it is relevant to note the impugned notification issued by the State Government dated 25.02.2021, which is as under:

GOVERNMENT OF KARNATAKA

*No.HD 18 POP 2021 Karnataka Government Secretariat,
Vidhana Soudha
Bengaluru, Dated: 25.02.2021.*

NOTIFICATION

In exercise of the powers conferred by Sections-4, 5, 6, 11 and 12 of the Karnataka Police Act, 1963 (Karnataka Act 4 of 1964) and read with Section-36 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974) the Government of Karnataka hereby directs and appoints that, Police Officer of, and above the Rank of Inspector, in the

Central Crime Branch (CCB), Bengaluru as Superior Officers of Police in respect of all Police Stations within the limits of Police Commissionerate of Bengaluru City for the purpose of the exercising the powers, same as the officer in charge of a Police Station.

*By order and in the name of
Governor of Karnataka,*

(B.N. DEVARAJ)

*Under Secretary to Government,
Home Department (Police Expenditure).*

To:

The Compiler, Karnataka Gazette, Bengaluru for publication in the next special issue of the Gazette and to supply 100 copies to the Police Expenditure Section of Home Department.

Copy to:

1. *The Accountant General (Audit), Karnataka, Bengaluru-560 001.*
2. *Director General & Inspector General of Police, Nrupathunga Road, Bengaluru.*
3. *Commissioner of Police, Bengaluru City, Bengaluru.*

34. It is also relevant to refer to Sections 4, 5, 6, 7, 11 and 12 of Karnataka Police Act, which are as under:

4. Superintendence of Police Force to vest in the Government.—*The superintendence of*

the Police Force throughout the State vests in and is exercisable by the Government and any control, direction or supervision exercisable by any officer over any member of the Police Force shall be exercisable subject to such superintendence.

5. Constitution of Police Force.—Subject to ¹[x x x]¹ the provisions of this Act,—

(a) *the Police Force shall consist of such number in the several ranks and have such organisation and such powers, functions and duties as the Government may by general or special order determine;*

¹ [(b) and proviso x x x] ¹

6. Inspector-General and Deputy Inspector-General.—(1) *For the direction and supervision of the Police Force, the Government shall appoint an Inspector-General of Police who shall subject to the control of the State Government exercise such powers and perform such functions and duties and shall have such responsibilities and such authority as may be provided by or under this Act.*

(2) (a) *The Government may appoint such number of Deputy Inspectors-General as it may deem fit.*

(b) *The Government may direct that any of the powers, functions, duties and responsibilities and authority of the Inspector-General may be exercised, performed or discharged, by a Deputy Inspector-General.*

(c) *The Government may also by a general or special order direct that the Deputy Inspector-General shall assist and aid the Inspector-General in the performance, exercise and discharge of his powers, functions, duties, responsibilities and authority in such manner and to such extent as may be specified in the order.*

7. Commissioner.—(1) *The Government may appoint a Police Officer not below the rank of a Deputy Inspector-General of Police to be the Commissioner of Police for the City of Bangalore or any other area specified in a notification issued by the Government in his behalf and published in the official Gazette.*

(2) The Commissioner shall exercise such powers, perform such functions and duties and shall have such responsibilities and authority as are provided by or under this Act or as may otherwise be directed by the Government by a general or special order: Provided that the Government may direct that any of the powers, functions, duties, responsibilities or authority exercisable or to be performed or discharged by the Commissioner shall be exercised, performed or discharged subject to the control of the Inspector-General: Provided also that in any area for which a Commissioner is appointed and is empowered to exercise any power or perform any function or duty under this Act, the District Magistrate shall not exercise the same power or perform the same function or duty notwithstanding the fact that such area forms part of a District within the territorial jurisdiction of the District Magistrate: Provided further that the area for which a Commissioner has been appointed, under this section shall not, unless otherwise provided by or under this Act, be under the charge of a Superintendent for any of the purposes of this Act, notwithstanding the fact that such, area

forms part of a district within the territorial jurisdiction for which a Superintendent may have been appointed.

11. Deputies and Assistants to the

Commissioner.—(1) *The Government may appoint one or more Deputy Commissioners not below the rank of a Superintendent and one or more Assistant Commissioners of Police not below the rank of an Assistant Superintendent or Deputy Superintendent in the City of Bangalore or in any area in which a Commissioner has been appointed under subsection (1) of section 7.*

(2) *Every such Deputy or Assistant Commissioner shall, under the orders of the Commissioner, exercise and perform any of the powers, functions and duties of the Commissioner to be exercised or performed by him under the provisions of this Act or any other law for the time being in force, in accordance with the general or special orders of the Government made in this behalf: Provided that the powers to be exercised by the Commissioner of making, altering or rescinding rules under section 31 shall not be*

exercisable by a Deputy or Assistant Commissioner.

12. Appointment of subordinate police.—

Subject to such rules as the Government may from time to time make, the appointment of Police Officers of and below the rank of Inspectors shall be made by the prescribed authority."

35. The notification also refers the provisions of Section 36 of Cr.P.C. For convenience, Section 36 of Cr.P.C. is cited as under:

Powers of superior officers of police:

Police officers superior in rank to an officer in charge of a police station may exercise the same powers, throughout the local area to which they are appointed, as may be exercised by such officer within the limits of his station.

36. Considering the above said provisions of Karnataka Police Act and Section 36 of Cr.P.C., now this Court is required to consider :

(i) Whether the petitioner made out ground for quashing the notification dated 25.02.2021 empowering the CCB police to investigate the matter is not in accordance with law ?

(ii) Whether the Commissioner of Police is having power to refer the investigation to the CCB police under the Karnataka Police Act ?

37. In this regard, on perusal of the Karnataka Police Act 1963, it is clear that it is a legislature in respect of the powers and functions of the police under the Karnataka State. Section 4 of the Karnataka Police Act confers the power of the government regarding superintendence of police force in the State; Section 5 states the State Government has power to give ranks to the police officials; and Section 6 empowers DG and IGP for having control, direction, supervision of police service and State Government shall appoint DG and IGP; and Section 7 provides the Government may appoint a Police

Commissioner for the Bangalore City and Section 7(2) empowers the Police Commissioner for performing such functions and duties as provided under the Act or as may otherwise directed by the Government; Section 11 empowers the State Government to appoint the Deputy and Assistant to the Commissioner i.e. DCP and ACP; and Section 12 empowers the Government to make an appointment of police officers of and below the rank of inspector shall be made by the prescribed authority. Therefore, the State Government has power to issue any notification under the Karnataka Police Act for appointing any police officer or establish police station in the local area and appoint Police officers for investigating the matters/crimes. There is reference available under Section 36 of Cr.P.C. which provides the police officers superior in rank to an officer in charge of a police station may exercise the same powers, throughout the local area to which they are appointed, as may be exercised by such officer within the limits of his station.

38. The learned AAG has relied upon the judgment of the Hon'ble Supreme Court in the case of **STATE OF KERALA Vs. P.B. SOURABHA** reported in **(2016)4 SCC 102**, wherein the Hon'ble Supreme Court, in a similar circumstances, has held that the power exercised by the State Police Chief/Director General of Police empower to appoint superior police officer to investigate crime registered outside the territorial jurisdiction of such officer. The Hon'ble Supreme Court at paragraph 7 of the said judgment has held as under:

"7. Section 36 empowers police officers superior in rank to an officer in charge of a police station to exercise the same powers as that of an officer in charge of a police station insofar as the territorial/local area within the jurisdiction of such superior police officers is concerned. Section 18(1) of the State Police Act, on the other hand, vests the administration, supervision, direction and control of the police throughout the State in the State Police Chief. The power under Section 36, on a plain reading thereof, is to be

exercised by the District Police Chief who, by virtue of the said section, is empowered to appoint an officer above the rank of an officer in charge of a police station to exercise the same powers as may be exercised by an officer in charge of the police station. This is, however, subject to the condition that such superior officer would be competent to exercise powers within the territorial/local limits of his jurisdiction. We do not see how Section 36 CrPC, in any way, can debar the exercise of powers by the State Police Chief to appoint any superior officer who, in his opinion, would be competent and fit to investigate a particular case keeping in view the circumstances thereof. Section 36 CrPC does not fetter the jurisdiction of the State Police Chief to pass such an order based on his satisfaction. It is the satisfaction of the State Police Chief, in the light of the facts of a given case, that would be determinative of the appointment to be made in which situation the limits of jurisdiction will not act as fetter or come in the way of exercise of such jurisdiction by the superior officer so appointed. Such an appointment would not be hedged by the limitations imposed by Section

36 CrPC. Section 18 of the State Police Act, on the other hand, does not confer any such power and merely recognises the State Police Chief as the head of the police force in the State."

39. The judgment of the Hon'ble Supreme Court in ***Sourabha***'s case, cited supra, is squarely applicable to the case on hand as the Commissioner of Police has acted in accordance with the power conferred by the State Government under Section 7 of Karnataka Police Act and in view of Section 7(2) of Karnataka Police Act, the Commissioner of Police has referred investigation to the CCB police and in turn, the CCB police investigated the matter and filed charge sheet. Therefore, the contention of the petitioners' counsel that the Commissioner of Police does not have power to refer investigation to the CCB police in respect of FIR registered at police station comes under the Commissionerate of Bangalore City, can not be acceptable.

40. The learned AAG also relied upon the judgment of the Hon'ble Supreme Court in the case of **N MANI Vs. SANGEETHA THEATER AND OTHERS** reported in **(2004)12 SCC 278**, at paragraph 9 of the judgment, the Hon'ble Supreme Court has held as follows:

"It is well settled that if an authority has a power under the law, merely because while exercising that power the source of power is not specifically referred to on a reference is made to a wrong provision of law that by itself does not vitiate the exercise of power so long as the power does exist and can be traced to a source available in law."

41. In another case in **JAKEER ABDUL. Vs. STATE OF MAHARASHTRA** reported in **2022 SCC Online 1092**, the Hon'ble Supreme Court while dealing with the case challenged under the provisions of Maharashtra Control of Organized Crimes Act (MOCA Act), considered the challenging the investigation by the police under the special enactment. At paragraph 67 of the judgment, the Hon'ble Supreme Court has held as under:

*"67. It is our view that the expression "rank" must be understood as a class or category which encompasses multiple posts. The **posts** of SP, Addl. SP, and DCP all fall within the same **rank** as they exercise similar functions and powers and operate within similar spheres of authority. Every person within a particular rank will not be of the same seniority. Officers of the same rank may have been in service for a different number of years. At times, this may even bear on the post to which they are appointed but their rank remains undisturbed. A difference in the seniority of a particular officer is not the same as a difference in their ranks. The insignia on officers' uniforms denote, in this case, their seniority as well as their designations."*

42. The Hon'ble Supreme Court in the said case has categorically held that the police are empowered to investigate the matter under law. Especially, the judgment of the Hon'ble Supreme Court in case of **P.B. SOURABHA** cited supra, it is held that the Commissioner has power to appoint the superior officer for investigating the matter.

Here, in this case, the Commissioner of Police has referred to the CCB police officer for investigating the matter and to file charge sheet. Therefore, the contention of the learned Senior Counsel for the petitioner that charge sheet filed by the CCB is unsustainable under the law and the Commissioner of Police does not have power to refer the complaint for investigation to the CCB police holds no water.

43. Here, in the case on hand, the Commissioner of Police directed the CCB police to investigate the matter in the crime registered by Basavanagudi police. The CCB police officer investigated the matter and filed charge sheet, which is under the challenge. The main contention of the learned Senior Counsel for the petitioners was that the notification dated 25.02.2021 was issued by over night without following the procedure as per the Karnataka Government (Transaction of Business) Rules, 1977.

44. The learned AAG has produced the file pertaining to the issuance of impugned notification by the State Government in a sealed cover. On perusal of the said file, the parliamentary affairs and the home department has created a file No.HD/18/POP/2021 on 29.01.2021 (DPAL/29/ASHARA/2021 dated 30.01.2021) and sent to the Department of Parliamentary Affairs and Legislation and the same was verified by the Additional Chief Secretary, Home Department and later, forwarded to the concerned minister on the same day and the same was approved later, it was referred back to the Additional Chief Secretary and the impugned notification has been issued on 25.02.2021. On verifying the said file, it was revealed that the CCB police was created on 03.09.1971 consisting record section, special squad, cycle squad and totally 2 circle inspectors, 8 sub inspectors, 20 head constables and 12 constables were deputed and the ACP was in charge of the CCB. Later, further notification was issued by the State Government on 10.02.1994 by deputing the additional officers. On 13.11.2002, further notification

was issued categorizing the crimes and appointing the DCP and ACP and other police officers. Later, in the year 2004, investigation officer was appointed. On 27.03.2004, the strength of the investigation officer was increased by reorganization of CCB by appointing more ACPs. Finally, the present notification dated 25.02.2021 has been issued.

45. On careful reading of these orders from the year 1971 and subsequent dates, appointing the officers from the rank of circle inspectors to the rank of police inspectors, ACP and DCP to exercise the power under Section 36 of Cr.P.C. for investigating the matter in the manner exercised by the police officer of the particular Police station, therefore, the notification issued by the State on 25.02.2021 cannot be said that it is prepared over night empowering the CCB police for investigation. On the other hand, for the last 50 years, the CCB is functioning and the officers deputed in the CCB are investigating the matters by functioning as investigation officer for crimes registered in the various Police station at

Bangalore city and they are empowered under this notification and they are classified and identified as superior officer of the Police stations comes under the Commissionerate, Bangalore City, for the purpose of investigation.

46. Once the power of investigation is exercised by the Police officer as Superior of a Police station, in view of deputing the police in the CCB, they can exercise all the powers and functions of a superior investigation officer of police station and they have power to file charge sheet or final report under Section 173(2) of Cr.P.C. in view of Section 36 of Cr.P.C. Once the CCB Police officer investigated the matter as a superior officer of the police station, he becomes automatically an officer in-charge of the police station by virtue of the power given to him by the State Government under the Karnataka Police Act and he can exercise the power under Section 36 of Cr.P.C. vide notification issued on 25.02.2021. Therefore, the contention of the learned Senior Counsel that the State

Government has no power to issue such notification, without seeking amendment to the Cr.P.C. in the floor of the assembly and in the manner known to law, cannot be acceptable.

47. The Karnataka Police Act was legislated in the year 1963 and the powers and functions were stated in the Karnataka Police Act and the State Government by exercising the power under the Karnataka Police Act appointed the Commissioner of Police under Section 7 of Karnataka Police Act, and he, being the superior officer of the entire police station in the Bangalore city, is having power to superintendence over all the police stations under Section 7(2) of Karnataka Police Act. When the investigation officer in Jayanagar police station prepared the B-final report in favour of the accused, the Commissioner found that the investigation was not proper, and therefore, he has assigned the investigation to the CCB police and in turn, the CCB police by virtue of the power under the notification issued by the Government

from time to time from the year 1971, investigated the matter and filed charge sheet.

48. Therefore, I am of the view that the notification dated 25.02.2021 is only an order in respect of clarification stating that the police officers working in the CCB are the superior officers in respect of all Police station within the limit of Police Commissionerate of Bangalore city and they can exercise the same powers as the officer of in charge of Police station under Section 36 of Cr.P.C. Once the government empowered the CCB police officers as superior officer of the concerned police stations in Bangalore city, automatically the CCB police gets power under Section 36 of Cr.P.C. for the purpose of functioning as investigation officer and they are empowered to investigate and file charge sheet as they become officer in charge of police station as per definition of section 2(o) of Cr.P.C. and the Karnataka Police Act empowers the State Government to direct any police superior officers as officer in charge of the police station, they can exercise power

under Section 36 of Cr.P.C. and once the CCB filed the final report, it becomes police report under Section 173(2) of Cr.P.C. and therefore, the Magistrate is empowered to take cognizance under Section 190 of Cr.P.C. on the police report. Therefore, I am of the view that the investigation conducted by the CCB police is in accordance with the provisions of Section 36 of Cr.P.C. and charge sheet filed by them is sustainable.

49. In view of the findings above, I hold that the investigation done by the CCB police and filing of the charge sheet by the CCB police, amounts to final report under Section 173(2) of Cr.P.C. and the cognizance taken by the Magistrate, is in accordance with law. Therefore, W.P.No.11718/2022 filed by accused No.1 challenging the notification dated 25.02.2021 is liable to be dismissed holding that the CCB police are empowered to file final report/charge sheet under Section 173(2) of Cr.P.C.

50. As regards to the contention taken by Sri C.V. Nagesh, the learned Senior Counsel for the petitioner-accused Nos.1 to 5, for quashing the charge sheet filed against the petitioner-accused No.1 in the writ petition as well as against the petitioner-accused Nos.1 to 5 in the criminal petition, on perusal of the very first information under Section 154 of Cr.P.C., makes out sufficient ingredients to attract Sections 498-A, 354(A)(B), 504, 506, 324 of IPC and demanding additional dowry after marriage also attracts Section 4 of Dowry Prohibition Act. Though the learned Senior Counsel for the petitioners Sri C.V. Nagesh has relied upon the various judgments in respect of quashing FIR, charge sheet including the judgment in the case of **STATE OF HARYANA AND OTHERS Vs. BHAJANLAL AND OTHERS** reported in **1992 SCC (Cri) 426** case, but the charge sheet material reveals that the accused persons demanded and received gold and diamond ornaments, silver articles worth of crores, and got engagement ceremony in ITC Gardenia hotel spending crores of rupees, performing marriage at

Bangalore-Palace spending more than Rs.12.00 crores, a BMW 5 Series Car was given to accused. At the instance of the accused, a commercial building was gifted by the parents of complainant to the complainant and rent received by her were got transferred to the account of the accused. There is also allegation that the mother and sister of accused No.1 taken gold and diamond ornaments of the complainant and kept in their custody which was used for marriage of the accused No.4-sister of accused No.1, and all the accused harassed the complainant demanding additional dowry, abusing her in filthy language and accused No.5-husband of accused No.4 trying to outrage the modesty of the complainant touching her on the body and the accused also attempted to commit murder, where Section 307 of IPC also registered. Such being the case, there is abundant material placed on record to show the involvement of the accused persons in harassing the married woman-complainant and demanding additional dowry as well as cruelty on the complainant, which falls within the meaning of the for the offences punishable

under Section 498A, 504, 506, 354(A)(B) of IPC and Section 4 of D.P. Act.

51. The learned Senior Counsel for the petitioner has relied upon the various judgments for quashing the criminal proceedings, but those cited judgments depends on the facts and circumstances of the each case and they are not applicable to the case on hand. The Hon'ble Supreme Court in case of ***K. NEELAVENI Vs. STATE BY INSPECTOR OF POLICE AND OTHERS*** reported in ***(2010)11 SCC 607***, has held that the High Court cannot quash the charge sheet even prior the Magistrate examine as to whether the accused persons deserve to be discharged in terms of Section 239 of Cr.P.C. Paragraph 14 of the said judgment reads as under:

"14. It has to be borne in mind that while considering the application for quashing of the charge-sheet, the allegations made in the first information report and the materials collected during the course of the investigation are required to be considered. Truthfulness or

otherwise of the allegation is not fit to be gone into at this stage as it is always a matter of trial. Essential ceremonies of marriage were gone into or not is a matter of trial."

52. As regards to the contention raised by the learned Senior Counsel appearing for the petitioner-accused No.1 that accused No.1 has filed matrimonial case for divorce against the *de-facto* complainant making so many allegations of cruelty and harassment under Section 13(1)(a) of Hindu Marriage Act on the respondent - *de-facto* complainant. appeared and she also filed a similar divorce petition and the family court taken both the matters together. The allegation made by the petitioner against the respondent - *de-facto* complainant on the ground of cruelty has not been challenged and on the other hand, she has accepted the same in M.C. No.5654/2019 and she also stated no objection for decreeing the divorce petition. Therefore, it is contended when the *de-facto* complainant has not disputed the evidence of the petitioner on oath making serious

allegations of cruelty against her in the matrimonial proceedings, therefore, she cannot maintain a case under Section 498A of IPC against the petitioner, when she has not disputed the allegation made by him in the matrimonial case, therefore, the criminal proceedings is not sustainable.

53. In this regard, the learned counsel for the respondent - *de-facto* complainant has objected the proceedings in the divorce case under the provisions of Section 13(1)(a) of Hindu Marriage Act, stating that the burden of proving the case is on the preponderance and probabilities of the fact. Here, in the criminal case, it has to be proved beyond reasonable doubt and the matrimonial case is based upon the averments made in the petition for granting divorce, whereas in the criminal case where serious allegations are made against the accused persons, investigation has been conducted and charge sheet came to be filed for punishment and the complainant was fed up with the harassment made by the accused and

therefore, she wanted to get rid out of the problems and stated no objection to grant decree and the accused persons retained all the dowry articles, gold ornaments etc. in their house, therefore, it is contended that the charge sheet, cannot be quashed.

54. On careful reading of the charge sheet materials, the proceeding in the Family Court, it is an admitted fact that petitioner-accused No.1 filed divorce petition on the ground of cruelty where the *de-facto* complainant also filed another divorce case for granting decree on the ground of cruelty, but the Family Court has not passed any decree on the admitted facts. However, the cruelty alleged in the matrimonial case cannot be considered on par with the cruelty defined under Section 498A of IPC and Section 4 of Dowry Prohibition Act. Merely, the *de-facto* complainant has not chosen to cross examine accused No.1 in matrimonial case and the case was under progress and the Family Court not yet decided

the cruelty alleged by the petitioner No.1. However, the said cannot be used for the purpose of quashing the charge sheet in this case. If at all the said contention was used by the petitioner for the purpose of acquittal in the criminal case, but the averments made in the complaint and the documents in the charge sheet specially witnesses, family members reveals abundant material placed on record for framing of charge by the trial Court. When there is no material against the accused and groundless in the charge sheet, then only the court can quash the criminal proceedings by exercising power under Section 482 of Cr.P.C. and it shall be considered only in the rarest of rare cases, the charge sheet can be quashed and not as a matter of routine or as a rule.

55. This Court is aware of the principles laid down by the Hon'ble Supreme Court in *Bhajanlal's case*, cited supra, and the various judgments regarding quashing of charge sheet in respect of criminal case. The Hon'ble

Supreme Court has held when the serious allegations are made, the case is required for trial and the Court cannot quash the criminal proceedings.

56. Though the learned Senior Counsel has contended that B-final report has been filed by Jayanagar Police and without referring the B-final report, the charge sheet came to be filed by the CCB police. But, the said contention can be raised in the trial as a defence.

57. Therefore, I hold that the petitioner has not made out a case for quashing the impugned notification. The Police Commissioner, being a superior to all the police stations in the Bangalore city, is empowered to direct any of the police under the Commissionerate for investigating the matter on the power conferred under the notification dated 25.02.2021. Therefore, referring the matter by the Police Commissioner to the CCB is in accordance with law. Hence the contention of the learned Senior Counsel for the petitioner is not acceptable.

58. It is also well settled that for issuing process and taking cognizance when the charge sheet is filed by the police, the Magistrate need not pass a detailed order for issuing process as required under the private complaint filed by the complainant under Section 200 Cr.P.C. The learned Senior Counsel for respondent No.3 has relied upon the judgment in the case of **PRADEEP S WODEYAR Vs STATE OF KARNATAKA** reported in **2021 SCC Online SC 1140**.

59. The same view is taken by the Hon'ble Supreme Court in the case of **THE STATE OF GUJARAT Vs. AFROZ MOHAMMED HASANFATTA** reported in **(2019)20 SCC 539**, where it is held by the Hon'ble Supreme Court that the Magistrate need not pass a detailed order while taking cognizance on the charge sheet filed by the police. Therefore, the contention raised by the learned Senior Counsel for the petitioner that the

cognizance taken by the Magistrate is not correct, cannot be acceptable.

60. Though the learned senior counsel for the petitioners have strenuously contended that CCB cannot be a police station and various pronouncements of this court has declared CCB is not a police station, there is no second opinion in this regard that CCB is not a police station and the notification of the Government says the officers working in the CCB are the Superior Officers of the in-charge of police station, only for the purpose of investigation and investigating the heinous offences. Therefore, it cannot be said that CCB is a police station, but the Officers are meant for investigating the matters and in view of the notification of the State, once they have appointed or identified as investigatning officers, then they can file the final report/ charge sheet under Section 173 (2) of Cr.P.C.

61. For the foregoing reasons and on perusal of the records, once the State Government is having authority under Sections 4 to 7, 11 and 12 of the Karnataka Police Act for appointing the police officers and establishing the police stations and, once the notification was issued by the State Government on 25.02.2021 appointing the CCB Police officers as above the rank of police inspector as superior officer of the police stations in Bangalore city, the CCB police officer who took up investigation becomes the superior officer of the police station and the investigation report prepared by him under Section 173(2) of Cr.P.C., amounts to a police report as per the provisions of Section 2(r) of Cr.P.C. Therefore, once the police officer of the CCB investigates the matter, it amounts to the police report under Section 2(r) of Cr.P.C. and the charge sheet filed by him to the Court amounts to the final report under Section 173(2) of Cr.P.C. Therefore, the CCB police is empowered to file charge sheet against the accused

persons in view of the notification issued by the State Government. The power of the State Government is defined under the Karnataka Police Act as stated above. Therefore, there is no flaw in the issuance of notification dated 25.02.2021 and there is no ground made out for quashing the said notification. Therefore, the writ petition filed by the petitioner-accused No.1 in W.P. No.11718/2022 is liable to be dismissed.

62. In view of the power exercised under the Karnataka Police Act, the State Government appointed the Commissioner of Police under Section 7 of the Karnataka Police Act and the Commissioner of Police by exercising the power under Section 7(2) of the Karnataka Police Act, referred the matter to the CCB Police for investigation and in turn, the CCB police filed the charge sheet. Once the charge sheet is filed by the police, the Magistrate need not pass an elaborate order for taking cognizance. Therefore, the Magistrate has rightly taken cognizance under Section

190 of Cr.P.C. and issued process to the petitioners-accused, which is in accordance with law. Therefore, when the sufficient materials are placed on record for framing charges against the petitioners-accused, the petitioners are required to face trial and it is not a fit case for exercising the power under Section 482 of Cr.P.C. for quashing the criminal proceedings. Therefore, Criminal Petition No.2450/2022 filed by the petitioner-accused Nos.1 to 5 is liable to be dismissed.

63. In view of the above findings, both Criminal Petition No.2450/2022 filed by petitioner-accused Nos.1 to 5 and Writ Petition No.11718/2022 filed by petitioner-accused No.1 are hereby dismissed.

**Sd/-
JUDGE**

CS
CT:SG