



2. LOHITH KUMAR,

...RESPONDENTS

(BY SRI. MAHESH SHETTY, HCGP FOR R1;  
SRI. RAJATH, ADVOCATE FOR R2)

THIS CRL.P. IS FILED UNDER SECTION 482 CR.P.C  
PRAYING TO QUASH THE ENTIRE CRIMINAL PROCEEDINGS IN  
C.C NO.2181/2022 (CR.NO.118/2018) AND PENDING ON THE  
FILE OF ADDITIONAL CIVIL JUDGE AND JMFC AT K.R.NAGAR.

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY,  
THE COURT MADE THE FOLLOWING:

**ORDER**

The petitioners - accused Nos.1 to 8 are before this Court  
calling in question the proceedings in C.C.No.2181/2022, which  
arose out of Crime No.118/2018 for offence punishable under  
Section 302 read with Section 34 of IPC.

2. Heard Sri. Pratheep K.C., learned counsel appearing  
for the petitioners, Sri. Mahesh Shetty learned HCGP for  
respondent No.1 and Sri. Rajath, learned counsel for  
respondent No.2 and have perused the material on record.



3. Facts in brief, germane for a consideration of the *lis* are as follows:

The second respondent is the complainant. A complaint comes to be registered on 29.03.2018, in Crime No.118/2018 for offence punishable under Section 302 read with Section 34 of IPC. The gist of the complaint is that the mother of the complainant had gone missing and when the complainant goes in search of his mother, finds the saree of his mother floating on the river and then finds a body decomposed, which is then identified to be the mother of the complainant. The reason for the said murder is sought to be traced by the complainant is to a squabble that had happened immediately before the murder, between the accused and the mother of the complainant. A grudge was brewing between the families on account of a murder of daughter of the first petitioner, that took place in the year 2016. Therefore, the motive is traced in the complaint being that fact the daughter of the first petitioner had been allegedly murdered by the family members of the complainant, and now as a retaliation, the mother of the complainant has



been murdered by the family of the first petitioner, who had lost their sister.

4. Based upon the complaint, a crime comes to be registered, in Crime No.118/2018 for offence punishable under Section 302 read with Section 34 of IPC. The registration of the crime leads to investigation and the investigation leads to filing of a 'B' summary report by the Investigating Officer. A lengthy 'B' summary report is filed by narrating all circumstances that led to such filing.

5. The 'B' summary report being placed before the learned Magistrate. The complainant was notified and the complainant files a protest petition. On the protest petition, the learned Magistrate takes cognizance of the offence and registers a criminal case against the petitioners for offence punishable under Section 302 read with Section 34 of IPC. It is taking of cognizance, on rejection of the 'B' report, is what drives the petitioners to this Court in the subject petition.

6. Learned counsel appearing for the petitioners would vehemently contend that all the family members of the first petitioner without any rhyme or reason have been dragged into



these proceedings, notwithstanding the fact that the Investigating Officer had filed a detailed 'B' report. The 'B' report had all the material that would disclose no offence against the petitioners. Therefore, the learned Magistrate ought not to have rejected the 'B' report. It is his further submission that the rejection of 'B' report runs foul of the judgment of the co-ordinate Bench of this Court rendered in the case of ***Ravi Kumar v. Mrs. K.M.C. Vasantha and Another*** reported in **ILR 2018 KAR 1725** and would submit that the matter should be remanded, in the least for the appropriate consideration of the 'B' report in terms of the law laid down by the co-ordinate Bench of this Court.

7. On the other hand, the learned counsel representing the complainant would vehemently refute the submissions to contend that deliberately the Investigating Officer files a 'B' report in a case of murder, which is an offence punishable under Section 302 of IPC. He would take this Court to the protest petition so filed to contend that important and minute details are deliberately left over by the Investigating Officer and therefore, the concerned Court has taken cognizance of the offence rejecting the 'B' report and would



submit that it is a matter of trial, for the petitioners to come out clean.

8. I have given my anxious consideration to the contentions of respective learned counsel and have perused the material on record.

9. The afore-narrated facts are not in dispute. The issue now lies in a narrow compass as to whether the rejection of the 'B' report and taking cognizance by the learned Magistrate suffers from the tenets laid down by the co-ordinate Bench in the case of **Ravi Kumar** (*Supra*). The events narrated hereinabove are not in dispute. The complaint so registered by the complainant on losing his mother alleging murder by the petitioners leads to registration of a crime, in Crime No.118/2018. The Police after investigation filed a 'B' report before the concerned Court. The concerned Court issues notice to the petitioners and the petitioners file their protest petition. It is germane to notice the contents of the protest petition. The protest petition reads as follows:



**"PROTEST PETITION FILED BY THE COMPLAINANT**

1. The "B" report filed by the I.O is not maintainable, either on law or on facts of the case.

2. The Investigation Officer has averred reason at Para No.2 to 10 in his report at Column No. 16 of Final report filed u/s 173 of Cr.P.C and further opinion that, the death of the deceased Smt. Vanajamma w/o Bhadregowda, is due to drowning due to asphyxia.

3. **In his reason at Para No.2 of Column No. 16 mentioned that, except the complainant Lohith Kumar S.B, know the witnesses are available and his desire is with reference to mistaken of law, which appear in the course of investigation. At Para No.3 mentioned that, except the complainant no witnesses are available and for subjecting prosecution sole complainant witnesses and sufficient the other witnesses i.e., eye witness, circumstances witnesses, spot seen witnesses and the antecedent witnesses are not available. However he taken the outline external appearances of the body of Smt. Vanajamma and just taken the stale reason that was given by the Doctor by mentioning that, the Diatoms are appearing in sternum bone and as such by leveling the above said Para No.2 to 10 has**



***filed the "B" report to accept the same as mistaken of law by the complainant.***

4. ***It is submitted that,*** the investigation officer has not properly conducted the investigation in proper and perspective manner.

5. ***It is further submitted that,*** he has averred at Para No.8 of his inquest mahazar he has clearly mentioned that, the dead body was found in the River Cauvery which runs towards Western to Eastern side, which is Northern side of Srirama Temple of Chunchanakatte Village and he has unequivocally mentioned that, for the said place one cannot go by claiming the rocks and walking in the river water. So, therefore it goes to show that, the deceased being a women cannot go to such a place without the help of other person. Hence it rule out the visiting of said deceased Smt.Vanajamma, for committing suicide.

6. ***It is further submitted that,*** the dead body was found in the water i.e., in the river of Cauvery. At the time of conducting the post mortem both the lungs and other parts of the body i.e., sample No.1 to 9 has been collected for the purpose of forensics examination to find out the cause of death of the deceased.



7. ***It is further submitted that, the above said materials has been sent to forensic examination by excluding the sample No.3 heart, sample No.4 part of liver and spleen and sample No.5 stomach and its contents, which is the main sources for the examination of diatoms.***

8. ***It is further submitted that, the main material sample No.5 - Stomach and its contents has not been sent to the FSL Laboratory as per the examination report dated 20.08.2018, RFSL(MY/1117/2018) and in the said examination the stomach and its contents has not been subjected to examination to verify whether the diatoms were present in No.13, were present in Sample No.5, collected by the Doctor at the time of PM examination.***

9. ***It is further submitted that, at the time of FSL examination even though both the lungs has been sent for examination the diatoms were not detected in article No. 1 and 2 i.e., in right lung and left lung. In-fact if a person drowns in to water, the water is rushes in to the lungs and its place is taken up by water which is drawn into the lungs. So, therefore the said water should be the same water where the deceased drown into the water and the***





***diatoms should be present in the water which is available in the lungs and its should be appeared at the time of lungs examination by FSL Laboratory. Per contra there is no such presence of diatoms in either lungs of deceased Smt.Vanajamma's collections.***

10. ***It is further submitted that,*** even when a person drowns in to water one can draws/drinks water into the stomach and lungs. As the person drinks the water not only through stomach but also through lungs the weight of the body increases as a result he sinks into the water and it causes the death of the person. So, therefore the contents of the stomach should also evidently disclose that, the water contents of the stomach should contain the diatoms which present in the place, where the dead body sinks or drowns. But, unfortunately no such examination of stomach and its contents were subjected in the above case.

11. ***It is further submitted that,*** as per the case of the investigation officer the diatoms were present in the sternum i.e., in sample No.6. In-fact the sternum is the bone contents and the said bone is composed of only the calcium and other organic materials and not any other material. The I.O in its reason it para No.8, column No.16, of 173 Final report mentioned that, the diatoms were detected in



*sternum bone. In-fact the bone material certainly will not contain the diatoms as the diatoms are the microorganism and that cannot be digested and the said materials assimilated and absorbed by the body and it becomes the part and contents of the sternum bone material. Hence such a view is highly impossible to believe presence of diatoms in the sternum. Unless the diatoms i.e., micro-plantans(Organism) are noticed in the contents of lungs material and stomach material one cannot find such a material in the component of sternum bone. As there is no access for the entry of the water to the sternum bone. Only the water dampens area i.e, either the external part of the body or where the water sinks/drinks to the inner side of the body one cannot find out of the presence of diatoms, which are similar to the water that was collected at the place where the dead body collected.*

**12. It is further submitted that,** *the non-examination stomach and its contents is very much fatal to the investigation in the case.*

**13. It is further submitted that,** *there is an installation and availability of CCTV footages at the Srirama Temple of Chunchanakatte village, in the said footages one can notice the movement of either the deceased or the culprits. So, without conducting*



*the such a material evidence the investigation officer has purposefully dropped the said material evidence to help the accused in the case.*

14. ***It is further submitted that,*** *there is a row of shops and commercial establishment among the road, while moving towards the entry of river beds and neighboring villagers use to wash their cloth since morning 06.00AM to 05.00PM. so, it is very harsh to believe that, no one of the witnesses are not available to the investigation officer to collect and to come to his final conclusions in filing the report. Therefore, the I.O opinion the non-availability of eye witnesses is also based on perverse and not on fairness in investigation.*

***Wherefore,*** *it is prayed that the Hon'ble court be pleased to reject the "B" report filed by the I.O and permit the complainant to conduct the enquiry and to hear on the veracity of the report, in the interest of justice and equity."*

*(Emphasis supplied)*

The complainant points several lacunae in the investigation conducted by the Investigating Officer and all of which according to the protest petition would lead to a *prima facie* allegation of the offence punishable under Section 302 of IPC against the petitioners. On the protest petition, the learned



Magistrate rejects the 'B' report and takes cognizance. The reasons rendered by the learned Magistrate to take cognizance of the offences read as follows:

**"REASONS**

8. *According to the complainant, he suspects that one Nagarajegowda of Hosakoppalu Village, Natesh of Salekoppalu Village, Nagarajegowda's son Nagesha, wife Seethamma and one Manjunatha, Pavan, Prathap and Sujatha due to revenge of their daughter's suicide have committed the murder of his mother and thrown the dead body in the chanal. During the course of arguments the counsel for complainant has vehemently argued that the police officials have not sent the major organs such as heart, diatom and stomach to the post mortem though nine organs were stored by doctor. These organs which are not sent for post mortem are very much necessary for examination to have a clear picture as to whether the person voluntarily or by accidently fell into the river or the said person was murdered somewhere else and the dead body was dumped in the river. These differences can be made out only by examination of these organs, but these organs were intentionally not sent by the police officers in order to facilitate the accused persons. It is also brought*



*to the notice of the court that CC camera was fixed near the spot at the temple. But, the same has not been seized by the investigation officer for the purpose of investigation which helps to find out whether deceased voluntarily fell into the river or she was brought dead and dumped in the river. He also submitted that there are several shops situated at the spot since there is a temple nearby the spot and the workers of the said shop who are well acquainted with the spot are not investigated and their statements have not been recorded by the investigation officer. He submitted that there is no proper investigation made by the investigation officer to bring out the truth and give justice to the deceased. Hence, he prays for consideration of sworn statement of above witnesses and prays to set aside the 'B' report and take cognizance for the offences punishable U/Sec. 302 R/w 34 of IPC.*

*9. The sworn statement of the complainant supports his contention made in complainant. CW.2 to 5 are the witnesses who have supported the version of the complainant and suspects above persons as accused who have committed the murder of complainant's mother. They both have supported the complaint averments. That apart, the court has perused entire B report of the investigation officer and found that there is lack in the investigation made by the investigation officer. It is relevant to*



*note that the I.O has not interrogated public who are closely associated to the temple street and the spot and also footages of CC camera has not been recovered. Therefore prima-facie looking into the sworn statement of complainant and witnesses and materials available on record, a strong suspicion has been made out against the accused persons namely Nagarajegowda of Hosakoppalu village, Natesh of Salekoppalu Village, Nagarajegowda's son Nagesha, wife Seethamma and one Manjunatha, Pavan, Prathap and Sujatha. The allegations made in complaint and sworn statement and after perusal of the materials prima-facie it points out that the allegations against accused attracts offences p/u/s 302 r/w/s 34 of IPC. Limiation to take cognizance does not attracts in this case since the alleged offence is punishable with death or life imprisonment. Thus, sufficient grounds have been made out by the complainant to take cognizance for the above offence and proceed against the accused for the above reasons and also in the interest of justice and equity. In the light of above discussion, the court answers the above point in the Affirmative and proceed to pass the following..*

**ORDER**

*Cognizance is taken for the offences punishable under section 302 r/w/s 34 of IPC.*



*Office is directed to register the case in Register No.III against the accused. Issue Summons to the accused persons by name Nagarajegowda of Hosakoppalu Village, Natesh of Salekoppalu Village, Nagarajegowda's son Nagesha, wife Seethamma and one Manjunatha, Pavan, Prathap and Sujatha (details mentioned in B-reports) if P.F and complaint furnished. R/by 09.02.2023."*

The submission of the learned counsel for the petitioners that the order of the learned Magistrate does not bear application of mind, is unacceptable, as it does, the order supplies cogent reasons. The submission of the learned counsel, is that it is contrary to the law laid down by the coordinate Bench in the case of **Ravi Kumar** (*Supra*) is also unacceptable, for the reason that a minute procedural aberration in a case where the learned Magistrate would reject the 'B' report and take cognizance cannot cause any prejudice to the petitioner. These would all come in the realm of curable defects in an order of taking of cognizance, as available under Section 465 of Cr.P.C. The Apex Court in the case of **Pradeep S. Wodeyar vs the State of Karnataka**<sup>1</sup> has dilated upon the curable defects under Section 465 of Cr.P.C., and has held that the order of taking of cognizance sometimes would have some

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<sup>1</sup> 2021 SCC Online SC 1140



procedural defects, which were all curable unless the defect would cut at the root of the matter. The defect in the case at hand does not and cannot be seen to be cutting at the root of the matter, as what the learned counsel for the petitioners points at is, that the sworn statement is recorded even before the rejection of the 'B' report. As a matter of fact on a perusal at the order of taking cognizance, does not reject the 'B' report at all, takes cognizance of the offence against the petitioners. This is, at best, a curable procedural defect.

10. In the light of the law laid down by the Apex Court in the case of **Pradeep S. Wodeyar** (*Supra*), which is subsequent to the law laid down by the co-ordinate Bench in the case of **Ravi Kumar** (*Supra*), I decline to accept the said submission of the so called procedural aberration for even a remand to the hands of the learned Magistrate. None of the grounds so urged by the learned counsel for the petitioners would hold any water. Therefore, the petition lacking in merit, stands rejected.

**Sd/-**  
**JUDGE**

KG/List No.: 1 Sl No.: 13