

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17th DAY OF MARCH 2021

BEFORE

THE HON'BLE MR. JUSTICE JOHN MICHAEL CUNHA

CRIMINAL REVISION PETITION NO.1120 OF 2016

BETWEEN

SRI A ALAM PASHA
S/O LATE P AMEER SAHEB
AGED ABOUT 52 YEARS
NO.674, 9TH A MAIN
1ST CROSS, 1ST STAGE
INDIRANAGAR
BENGALURU-560038

...PETITIONER

(BY SRI: A P MOHANTY, ADVOCATE)

AND

1 . SRI MURUGESH R NIRANI
AGED ABOUT 51 YEARS
FORMER MINISTER FOR INDUSTRIES
GOVERNMENT OF KARNATAKA
44/13, FAIR FIELD LAYOUT
RACE COURSE ROAD
BENGALURU-560001

2 . SRI H R NIRANI
AGED MAJOR
R/A FLAT NO.003
R/2, SIDDA ENCLAVE
FIRST FLOOR, LEFT WING
NEHRU NAGAR

SESHADRIPURAM MAIN ROAD
BENGALURU-560020

- 3 . SRI SHARANABASAPPA V KARIYANNAVAR
AGED MAJOR
S/O SRI VEERABHADRAPPA RUDRAPPA
KARIYANNAVAR
NO.4, LAKSHMI LAYOUT
GOKUL ROAD, BASAVESHWAR
HUBLI-580030
- 4 . SRI RUDRAPPA VEERAPPA VATNAL
S/O SRI VEERAPPA MALLAPPA VATNAL
AGED MAJOR
NO.MIG 237, CHURCH ROAD
NAVANAGAR
HUBLI-580025
- 5 . SRI BEGUR RUDRAMOORTHY PURNACHANDRA
S/O SRI BEGUR RUDRAMOORTHY
AGED MAJOR
NO.109(NEW), OLD NO.30
11TH MAIN, NEAR 15TH CROSS
MALLESWARAM
BENGALURU-560003
- 6 . SMT SHANTHA SUDHIR BELOOR
D/O SRI VEERABHADRAIAH
AGED:MAJOR
CHANNAVEERAPPA
NO.102, 26, R V APARTMENTS
BHIM JYOTHINAGAR
BENGALURU-560079
- 7 . SRI S PALAKSHA
S/O LATE V SAVANDAPPA
AGED:MAJOR
NO.64, 3RD MAIN,

KENGERI, SATELLITE TOWN
BENGALURU-560060

- 8 . SRI MOHAN M HEREMATH
S/O SRI MIRUGAPPA HIREMATH
AGED MAJOR
NO.200, 2ND MAIN, 2ND CROSS
KUMARESHWARANAGAR
P B ROAD
DHARWAD-580001
- 9 . SRI M ROSAY
S/O SRI P P MOHAN
AGED:MAJOR
NO.150, 4TH CROSS, 4TH MAIN
2ND PHASE, NEAR MARUTHI MEDICAL
MANJUNATHANAGAR
BENGALURU-560010
- 10 . SRI B S YADDIYURAPPA
AGED ABOUT 73 YEARS
FORMER CHIEF MINISTER OF KARNATAKA
R/A NO.381, 6TH CROSS
80 FEET ROAD, RMV II STAGE
DOLLARS COLONY
BANGALORE-560094
- 11 . SRI KATTA SUBRAMANYAM
AGED ABOUT 56 YEARS
FORMER MINISTER FOR LARGE AND
MEDIUM SCALE INDUSTRIES
GOVERNMENT OF KARNATAKA
NO.9, 6TH CROSS, RMV EXTENSION
SADASHIVANAGAR
BENGALURU-560080
- 12 . DEPUTY SUPERINTENDENT OF POLICE

LOKAYUKTA
BANGALORE URBAN
BANGALORE

13 . THE STATE OF KARNATAKA
REP BY THE STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA,
BENGALURU 560001

(Respondent No.13 Amended v/o dated 8.02.2021)

...RESPONDENTS

(BY SRI: AJAY KADKOL, ADVOCATE FOR R1 AND R2;
R-3 SERVED AND UNREPRESENTED;
SRI: S.B. PAVIN, ADVOCATE FOR R4 TO R9;
SRI: ARUNA Y.M., ADVOCATE FOR R10;
SRI: KIRAN S. JAVALI, ADVOCATE A/W
CHANDRASHEKARA.K., ADVOCATE FOR R11;
SRI: B.S. PRASAD, SPL.PP FOR R12;
SRI: V.M. SHEELVANT, SPP-I A/W
THEJESH.P., HCGP FOR R13)

THIS CRIMINAL REVISION PETITION IS FILED UNDER SECTION 397 R/W 401 CR.P.C. PRAYING TO SET ASIDE THE ORDER DATED 25.07.2016 PASSED IN PCR NO.23/2011 ON THE FILE OF XXIII ADDL. CITY CIVIL AND S.J., AND SPL. JUDGE, BENGALURU URBAN DISTRICT, BENGALURU VIDE ANNEXURE-A AND ORDER FURTHER INVESTIGATION UNDER SECTION 156(3) OF CR.P.C. AS AGAINST RESPONDENT NO.1 TO 9 AND FURTHER TO TAKE COGNIZANCE AND ISSUE SUMMONS AGAINST RESPONDENT NO.10 AND 11 FOR THE OFFENCES MENTIONED IN FINAL REPORT AT ANNEXURE-D FILED BY THE RESPONDENT NO.12.

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

ORDER

This revision petition is directed against the order dated 25.07.2016 passed by learned XXIII Addl. City Civil and Sessions Judge and Special Judge, Bengaluru(CCH-24) in PCR No.23/2011 dismissing the complaint filed by the petitioner/complainant.

2. The petitioner herein presented a private complaint under section 200 Cr.P.C. requesting the court to take cognizance of the offences punishable under sections 7, 10, 13 and 15 of the Prevention of Corruption Act, 1988(for short 'P.C. Act') against nine named accused persons who are arrayed as respondent Nos.1 to 9 in the instant petition. The Special Judge referred the complaint for investigation by the Superintendent of Police, Lokayukta, Bangalore Urban under section 156(3) of Cr.P.C. After investigation, final report was submitted before the Special Judge on 21.05.2012.

3. In the final report, respondent Nos.1 to 9(original accused Nos.1 to 9) were dropped as no evidence could be

collected against them and the charge sheet was filed against respondent No.10 and 11 herein nameiy Sri. B.S. Yeddiyurappa and Sri. Katta Subramanya Naidu, arraigning them as accused No.1 and 2.

4. In the charge sheet, it was alleged that during the course of investigation, the Investigating Officer received records from different departments and ascertained that respondent No.10 viz., Sri. B.S. Yeddiyurappa, the Ex-Chief Minister, Karnataka illegally de-notified Sy.Nos.124, 125 and 126 totally measuring 20 acres of Hoovinayakanahalli village, Jala Hobli, Bengaluru North Taluk which was notified under section 28(1) of KIAD Act, 1966, despite the observations of the Officers i.e., Under Secretary, Joint Secretary and Additional Secretary of Commerce and Industries Secretariat, Government of Karnataka that the said land cannot be denotified and directed to pay betterment charges and on his own decision with an intention to help the owners released the above land from acquisition proceedings by forfeiting

service fee of Rs.2,64,00,000/- and development fee of Rs.6.00 crores by misusing his official position and thereby caused loss to the State Exchequer and thus committed offences punishable under section 13(1) (d) sub-clause (1) and (3) r/w 13(2) of P.C. Act. In the said charge sheet, Sri. Katta Subramanya Naidu, the then Minister for Large and Medium Scale Industries (respondent No.11 herein) was also charge sheeted on the allegations that Sy.No.13/2 measuring 2 acres 8 guntas belonging to Sri. K.M. Ranganna and Sy.No.13/3 measuring 1 acre 38 guntas belonging to Nagappa situated at Makanakuppe village, Nelamangala Taluk were notified for acquisition under section 28(1) of Karnataka Industrial Area Development Act(for short 'KIAD' Act). The final notification under section 28(4) of Land Acquisition Act was issued on 27.02.2007. The land was acquired in the year 2007 and was granted to M/s.Sudarshan Extrusions Company. During the investigation, on verification of the documents obtained from Forest, Ecology and Environment Department, Government of Karnataka, Secretariat,

Bengaluru, it was ascertained that when respondent No.11 was serving as Large and Medium Scale Industries Minister in 2007, the owners submitted an application to denotify the above lands and in this regard, when the officers of the Department wanted to take an opinion from the Industries Secretariat, before intimating the decision to CEO and EM, the then Minister Sri. Katta Subramanya Naidu took records to his office and without passing award to collect service and betterment fee from the land owners, released the disputed land from the land acquisition proceedings.

5. The notice of this Final report having been served on the petitioner viz., the complainant, he filed a memo requesting the Court to consider his objection statement and to order for a detailed probe as accused persons were seriously involved alongwith former Chief Minister Sri. B.S.Yeddiyurappa and Sri. Katta Subramanya Naidu in receiving illegal gratification by denotifying the lands and sought for proper investigation against accused Nos.1 to 9.

6. Learned Special Judge upon hearing the counsel for the complainant, by the impugned order dated 25.07.2016 dismissed the complaint. The reasoning of the learned Special Judge find a place in para 13 of the impugned order which is extracted here below:-

13. "I need to note that on careful perusal of the record, the complainant has not submitted affidavit along with the complaint. The complainant has not chosen to file the affidavit even after filing the objections to the charge sheet submitted by the Investigating Officer. To seek further investigation from the Court supporting affidavit along with the complaint is mandatory. Where Section 156(3) of Cr.P.C. the complaint has to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. In an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. Such kind of applications are being filed in a routine manner

without taking any responsibility whatsoever only to harass certain persons. It is necessary to state here that the complainant has not filed the affidavit supporting his complaint. It is true that this Court has got power by invoking section 156(3) of Cr.P.C to refer the matter to the Investigating Officer for further investigation. But the complainant has not placed any materials before the Court to show that the accused have committed the alleged offences and the Investigating Officer has not properly investigated the matter. Further, there are no allegations in the complaint against the charge sheeted accused Sri. B.S. Yeddyurappa and Katta Subramanya Naidu. When there is no allegations made against the charge sheeted accused Nos. 1 and 2 in the complaint and non arriving of the said charge sheeted accused Nos. 1 and 2 in the complaint, this Court is unable to take cognizance of the offence against the charge sheeted accused for the alleged offences. Viewed from any angle, absolutely there is no evidence placed before the Court by the complainant to refer the matter for further investigation and to take cognizance of the alleged offences against the charge sheeted

accused. Accordingly, I answer point No.1 in the Negative."

7. The contention of learned counsel for the petitioner is that the impugned order is illegal and perverse on the face of it; the learned Special Judge had no jurisdiction to dismiss the complaint while considering the 'B' summary report submitted by the Investigating Agency. Placing reliance on the decision in the case of HARDEEP SINGH v. STATE OF PUNJAB AND OTHERS, (2014) 3 SCC 92, learned counsel pointed out that "*after committal, cognizance of an offence can be taken against a person not named as an accused but against whom materials are available from the papers filed by the police after completion of investigation. Such cognizance can be taken under Section 193 Cr.P.C. and the Sessions Judge need not wait till 'evidence' under Section 319 Cr.P.C. becomes available for summoning an additional accused.*"

8. On the same point, learned counsel placed reliance on the decision in the case of DHARAMPAL AND

OTHERS v. STATE OF HARYANA AND ANOTHER, (2014) 3

SCC 306, wherein it is held as under:-

“ That the Sessions Judge has jurisdiction to take cognizance of the offences of the persons not named as offenders but whose complicity in the case would be evident from the materials available on record and hence, even without recording evidence, upon committal under section 209, the Sessions Judge may summon those persons shown in column 2 of the police report to stand trial along with those already named therein.”

9. Highlighting these principles, learned counsel emphasized that a complaint could be dismissed only under section 203 Cr.P.C. provided the learned Magistrate or the Special Court decides to proceed under section 200 Cr.P.C., whereas, in the instant case, the learned Special Judge himself having directed investigation and having secured an investigation report, he had no other option other than to take cognizance of the offences against the offenders even if they were not named in the FIR.

10. Insofar as the maintainability of the petition under Section 397 Cr.P.C., he has relied on the decision in MANJU SURANA v. SUNIL ARORA AND OTHERS, (2018) 5 SCC 557 and submitted that an order of dismissal of the complaint has the effect of discharging the accused against whom charge sheet has been laid by the police thus finally terminating the proceedings and therefore the impugned order is amenable for challenge under Section 397 Cr.P.C.

11. Insofar as the allegations leveled against accused Nos.1 to 9 are concerned, learned counsel at the outset submitted that he does not insist prosecution of accused Nos.1 to 9 and that he is pursuing the complaint only against the order of the learned Special Judge insofar as declining to take cognizance of the offences alleged against accused Nos.10 and 11.

12. Questioning the locus-standi of the petitioner to maintain the petition against respondent Nos.10 and 11,

Sri. Kiran S. Javali, learned counsel representing Sri. Chandrashekara. K appearing for respondent No.11 at the outset submitted that accused Nos.10 and 11 were not named in the PCR or in the FIR registered by police; the investigation was undertaken only against accused Nos.1 to 9; there were no allegations against accused Nos.10 and 11, under the said circumstances, the petitioner has no locus-standi to challenge the order passed by the Special Court when the investigating agency themselves have not chosen to prefer any appeal or revision against the order passed by the Special Court and thus sought to dismiss the complaint.

13. Sri. B.S. Prasad, learned Special Public Prosecutor appearing for respondent No.12 however submitted that the impugned order cannot be sustained under law or on fact; the learned Special Judge while considering the final report cannot dismiss the complaint; the order passed by the Special Judge has the effect of discharging the accused; the impugned order does not

reflect any application of mind by the Court; the Special Court has rejected the complaint on the ground that the affidavit as prescribed by the Hon'ble Supreme Court in ***PRIYANKA SRIVASTAVA AND ANOTHER v. STATE OF UTTAR PRADESH AND OTHERS*** reported in ***(2015) 6 SCC 287***, was not filed. Placing reliance on the coordinate Bench decision of this Court in CrI.P.No.3868/2020 dated 01.12.2020, learned counsel submitted that the procedure prescribed by the Hon'ble Supreme Court in Priyanka Srivastava's case is not applicable to a complaint filed as regards corrupt activities and therefore, the learned Special Judge could not have dismissed the complaint for want of affidavit especially when the alleged complaint was filed much earlier to the decision in Priyanka Srivastava's case.

14. Sri. S.B. Pavin, learned counsel for respondent Nos.4 to 9 would submit that respondent Nos.4 to 9 were mere Directors of the companies. There were no allegations against them constituting the ingredients of

any of the offences. Under the said circumstances, the investigating agency having failed to gather any evidence in proof of the involvement of respondents Nos.4 to 9, the Special Court has rightly rejected the complaint. Under section 9(2) of the Karnataka Lokayukta Act, 1984, the complainant is required to file an affidavit in respect of the accusations made by him. No such affidavit having been filed, the Special Court was well within its power to reject the complaint.

15. The learned counsels appearing for other respondents have not addressed any arguments inspite of affording sufficient opportunity to put forth their submissions. But the learned SPP-I argued in support of the impugned order and questioned the locus standi of the petitioner to maintain the petition against respondent Nos.10 and 11.

16. Having heard the learned counsel for the petitioner, learned counsel for respondent Nos.4 to 9,

learned counsel for respondent No.11, learned Special Public Prosecutor for respondent No.12 and learned SPP-I for respondent No.13 and on perusal of the impugned order, I am of the clear view that the impugned order is indefensible and cannot be sustained under law or on the facts of this case for the following reasons:

Firstly, the impugned order has been passed by the learned Special Judge while considering the 'B' Summary report submitted by the Investigating Agency insofar as accused Nos.1 to 9 are concerned. The procedure to be followed by the Magistrate or the Court in accepting or rejecting the 'B' summary report is concerned are laid down by the Hon'ble Apex Court in *KAMALAPATI TRIVEDI V. STATE OF WEST BENGAL*, (1980) SCC (2) 91, which are followed by this Court in *DR. RAVI KUMAR v. MRS. K.M.C. VASANTHA AND ANOTHER*, ILR 2018 KAR 1725, as under:-

"5. xxxxxxxxxxxxxxxx It is well recognized principle of law that, once the police submit 'B' Summary Report and protest petition is filed to the same, irrespective of contents of the protest petition,

the court has to examine the contents of 'B' Summary Report so as to ascertain whether the police have done investigation in a proper manner or not and if the court is of the opinion that the investigation has not been conducted properly, the court has got some options to be followed, which are,-

- i) "The court after going through the contents of the investigating papers, filed u/s 173 of Cr.P.C., is of the opinion that the investigation has not been done properly, the court has no jurisdiction to direct the Police to file the charge sheet however, the Court may direct the Police for re or further investigation and submit a report, which power is inherent under section 156(3) of Cr.P.C, but before taking cognizance such exercise has to be done. This my view is supported by the decisions of the Hon'ble Apex Court in a decision reported in AIR 1968 S.C. 117 between Abhinandan Jha and Dinesh Mishra (para 15) and also Full Bench decision of Apex Court reported in (1980) SCC 91 between Kamalapati Trivedi and State of West Bengal.*
- ii) If the court is of the opinion that the material available in the 'B' Summary Report makes out a cognizable case against the accused and the same is sufficient to take cognizance, and to issue process, then the court has to record its opinion under Sec.204 of Cr.P.C., and the Court has got power to take cognizance on the contents of 'B' Summary Report and to proceed against the accused, by issuance of process.*

- iii) *If the court is of the opinion that the 'B' Summary Report submitted by the Police has to be rejected, then by expressing its judicious opinion, after applying its mind to the contents of 'B' report, the court has to reject the 'B' Summary Report.*
- iv) *After rejection of the 'B' Summary Report, the court has to look into the private complaint or Protest Petition as the case may be, and contents therein to ascertain whether the allegations made in the Private complaint or in the Protest Petition constitute any cognizable offence, and then it can take cognizance of those offences and thereafter, provide opportunity to the complainant to give Sworn Statement and also record the statements of the witnesses if any on the side of the complainant as per the mandate of Sec.200 Cr.P.C."*

17. In a recent decision in the case of VISHNU KUMAR TIWARI v. STATE OF UTTAR PRADESH THROUGH SECRETARY, HOME CIVIL SECRETARIAT, LUCKNOW AND ANOTHER, (2019) 8 SCC 27, the Hon'ble Supreme Court has reiterated that mere fact that the magistrate had earlier ordered an investigation under Section 156 (3) and received a report under Section 173 will not have the effect of total effacement of the complaint and therefore

the Magistrate will not be barred from proceeding under Sections 200, 203 and 204. It is held in this decision that

1) a Magistrate who on receipt of a complaint, orders an investigation under Section 156(3) and receives a police report under Section 173(1), may, thereafter, do one of three things: (a) he may decide that there is no sufficient ground for proceeding further and drop action; (b) he may take cognizance of the offence under Section 190 (1)(b) on the basis of the police report and issue process; this he may do without being bound in any manner by the conclusion arrived at by the police in their report; (c) he may take cognizance of the offence under Section 190(1)(a) on the basis of the original complaint and proceed to examine upon oath the complainant and his witnesses under Section 200. If he adopts the third alternative, he may hold or direct an inquiry under Section 202 if he thinks fit. Thereafter he may dismiss the complaint or issue process, as the case may be."

18. A perusal of the impugned order on the face of it reveals that the learned Special Judge has not considered

the final report filed by respondent No.13 insofar as accused Nos.1 to 9 are concerned and no order has been passed either rejecting or accepting the report insofar as accused Nos.1 to 9 are concerned. Under the said circumstances, even though the learned counsel for the petitioner has conceded that he does not intend to proceed with the complaint lodged by him against accused Nos.1 to 9 are concerned, yet, in view of the settled position of law, investigation in the case having been undertaken on the direction of the Special Court, it was the duty of the Court either to accept or reject the 'B' summary report by considering the material collected by the investigating agency. As the learned Special Judge has failed to consider the 'B' summary report and has not passed any orders either rejecting or accepting the report filed by the respondent No.13 insofar as respondent Nos.1 to 9 (original accused Nos.1 to 9), the impugned order is liable to be set aside only on that score.

19. Now coming to the charge sheet laid by the police against respondent Nos.10 and 11 is concerned, no-doubt, it is true that respondent Nos.10 and 11 were not named in the FIR and no order was passed by the court under section 156(3) Cr.P.C. to conduct any investigation into the allegations levelled against respondent Nos.10 and 11. Nonetheless, once the charge sheet is filed, the Magistrate or the Court has no other option than to take cognizance of the offence alleged in the charge sheet and proceed in accordance with law. In the instant case, on going through the impugned order, I find that the Special Court was oblivious of the fact that it was dealing with the allegations relating to the violation of the provisions of P.C. Act that was enacted with the avowed object of eradicating corruption in public life. The P.C. Act encompasses within its fold not only the public servants but also those who abet and conspire with them in respect of the offences enumerated therein. Though by subsequent amendment to the P.C. Act much greater protection has been provided to the public servants by introducing section 17A of PC Act and

allied provisions; but the law as existed required the Special Court to effectuate the object and purpose of the P.C. Act and apparently, for this reason, unlike other criminal courts, the Special Judge manning the Special court constituted under section 3 of the P.C. Act has been invested with the original jurisdiction and the power of Magistrate as well as the Sessions Judge and even the power of the District Judge while exercising the power under The Criminal Law (Amendment) Ordinance, 1944.

20. As per Section 5(1) of the PC Act, the Special Judge could take cognizance of the offences under the Act without the matter being committed to him. Therefore, when a charge sheet is filed before the learned Special Judge alleging commission of cognizable offences under the provisions of the P.C. Act, he has no discretion to choose to ignore the cognisable offence staring on the face of the record and give reprieve to the accused on the flimsy ground that the allegations of the cognizable offences are not made in the complaint or in the FIR. It is trite law that the Sessions Judge assuming original

jurisdiction has power to take cognizance of the offence based on the material placed before him even if the offenders were not named in the FIR. This view has been crystallised into settled principle of law as observed by the Hon'ble Supreme Court in DHARAMPAL AND OTHERS v. STATE OF HARYANA AND ANOTHER, (2014) 3 SCC 306, wherein it is held as under:-

xxxxxxxxxx *The language of Section 193 of the Code very clearly indicates that once the case is committed to the Court of Session by the learned Magistrate, the Court of Session assumes original jurisdiction and all that goes with the assumption of such jurisdiction. The provisions of Section 209 will, therefore, have to be understood as the learned Magistrate playing a passive role in committing the case to the Court of Session on finding from the police report that the case was triable by the Court of Session. Nor can there be any question of part cognizance being taken by the Magistrate and part cognizance being taken by the learned Session Judge.*

In that view of the matter, we have no hesitation in agreeing with the views expressed in Kishun Singh's case (supra) that the Session Courts has jurisdiction on committal of a case to it, to take cognizance of the offences of the persons not named as offenders but whose complicity in the case would be evident from the materials available on record. Hence, even without recording evidence, upon committal under Section 209, the Session Judge may summon those persons shown in column 2 of the police report to stand trial along with those already named therein."

Further in para 42, the Constitution Bench has held as under:-

"The Reference to the effect as to whether the decision in Ranjit Singh's case (supra) was correct or not in Kishun Singh's case (supra), is answered by holding that the decision in Kishun Singh's case was the correct decision and the learned Session Judge, acting as a Court of original jurisdiction, could issue summons under Section 193 on the basis of the records transmitted to him as a result of

the committal order passed by the learned Magistrate."

21. In a later decision in HARDEEP SINGH v. STATE OF PUNJAB AND OTHERS, (2014) 3 SCC 92, at para 111, it is held as under:-

"Even the Constitution Bench in Dharam Pal (CB) has held that the Sessions Court can also exercise its original jurisdiction and summon a person as an accused in case his name appears in Column 2 of the chargesheet, once the case had been committed to it. It means that a person whose name does not appear even in the FIR or in the chargesheet or whose name appears in the FIR and not in the main part of the chargesheet but in Column 2 and has not been summoned as an accused in exercise of the powers under Section 193 Cr.P.C. can still be summoned by the court, provided the court is satisfied that the conditions provided in the said statutory provisions stand fulfilled."

22. In the light of this legal position, the reasoning of the learned Special Judge that there were no allegations

in the complaint against the charge sheeted accused Sri. B.S. Yeddiyurappa and Sri. Katta Subramanya Naidu and therefore, no cognizance could be taken against them being contrary to the settled principles of law, cannot be sustained. Likewise, the reasoning of the Special Court that for want of affidavit filed in support of the allegations, the original complaint itself has to be dismissed is based on the misconception of rudiments of law and misreading the judgment of the Hon'ble Supreme Court in Priyanka Srivatsava's case. As per the said decision, the affidavit is required only when the complainant seeks reference of the complaint to the police under section 156(3) of Cr.P.C. If the learned Magistrate himself in exercise of powers under section 190 Cr.P.C. chooses to refer the complaint to the police for investigation, the requirement of filing an affidavit does not arise. Moreover, in the instant case, the reference under Section 156(3) Cr.P.C. having been made much earlier to the decision in Priyanka Srivatsava's case, non-filing of the affidavit does not vitiate either the order of reference or the subsequent charge sheet laid by the

police. Even otherwise, the question of filing the affidavit does not arise after submission of the charge sheet. Said requirement would arise only when the Court was called upon to take cognizance of the offence or to refer the complaint for cognizance of the offence. Either way, the reasoning assigned by the Special Court being perverse and whimsical cannot be sustained. This Court in a recent decision in MR. G. JAGADEESHA v. STATE OF KARNATAKA AND ANOTHER (Cri.P.No.3868/2020 dated 01.12.2020) has held that the dicta of the Hon'ble Supreme Court in Priyanka Srivatsava's is not applicable to the complaint as regards corrupt activities. The impugned order therefore being wholly perverse, arbitrary and contrary to law and facts of the case, in my view, cannot be sustained.

Accordingly, the petition is allowed. The impugned order dated 25.07.2016 passed by learned XXIII Addl. City Civil and Sessions Judge and Special Judge, Bengaluru (CCH-24) in PCR No.23/2011 is set-aside.

The matter is remitted to the Special Court to consider the 'B' summary report filed by the Investigating Agency afresh in terms of the guidelines issued by the Hon'ble Supreme Court in Kamalapati Trivedi v. State of West Bengal, (1980) SCC (2) 91, which is followed by this Court in Dr.Ravi Kumar v. Mrs. K.M.C. Vasantha and Another, ILR 2018 KAR 1725.

In the light of the discussions above, the Special Court is directed to take cognizance of the offences made out in the charge sheet against respondent Nos.10 and 11(named as accused Nos.1 and 2 in the charge sheet) and proceed in accordance with law.

At this juncture, learned counsel for petitioner-complainant submits that the complainant is apprehending danger to his life. If so, the complainant shall approach the jurisdictional police who shall provide necessary protection to the complainant as per law.

**Sd/-
JUDGE**