

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 13TH DAY OF MARCH, 2023

BEFORE

THE HON'BLE MR. JUSTICE K.NATARAJAN

WRIT PETITION NO.18864 OF 2021 (GM-RES)

BETWEEN

SRI B. PRASHANTH HEGDE

... PETITIONER

(BY SRI. SANDESH J. CHOUTA, SENIOR ADVOCATE
FOR SRI. H.N. VASUDEVAN, ADVOCATE)

AND

STATE OF KARNATAKA
BY CID POLICE,
BENGALURU 560062,
REP BY ITS HCGP
STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDING,
HIGH COURT OF KARNATAKA,
BENGALURU - 560 001

... RESPONDENT

(BY SRI. KIRAN S. JAVALI, SPP ALONG WITH
SRI. R.D. RENUKARADHYA, HCGP)

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 DIRECT THE JURISDICTIONAL I ADDITIONAL CHIEF METROPOLITAN MAGISTRATE, BENGALURU TO TAKE COGNIZANCE AND ISSUE SUMMONS TO STATE BANK OF INDIA AND PUNJAB NATIONAL BANK AS BODY CORPORATES, ON WHOSE BEHALF ACCUSED NO.3 AND 4 FOR STATE BANK OF INDIA AND ACCUSED NO.6 AND 7 FOR PUNJAB NATIONAL BANK HAVE COMMITTED THE OFFENCES.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 23.02.2023 THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

This petition is filed by the petitioner-first informant under Articles 226 and 227 of the Constitution of India to direct the I Additional CMM Bengaluru to take cognizance against the body corporates i.e., State Bank of India and Punjab National Bank in C.C.No.11073/2018 for the offences punishable under Sections 120B, 403, 408, 409, 447, 381, 420 read with Section 37 of IPC.

2. Heard the learned Senior counsel for the petitioner and learned High Court Government Pleader for the respondent-State.

3. The case of the petitioner is that the petitioner is the first informant who filed a complaint against the accused persons for the offences punishable under Sections 120(B), 408, 409, 420, 468, 471, 474, 36, 37 of IPC and FIR was registered in Crime No.486/2015 by the Ashoknagar Police Station, Bengaluru making various allegations against the Bank Officers and Officials of the SBI and Punjab National Bank for misappropriation of fund and cheating the complainant. The matter was referred to the CID police for investigation and the respondent-CID police filed the charge-sheet against the officials of the above said two Banks. But the Investigating Officer while filing the final report has not included the Bank as accused, but filed the charge-sheet only against the Bank Officials where petitioner is before this Court for issuing direction to the trial Court to take cognizance against the Bank officials together with the Bank.

4. The Learned Senior counsel for the petitioner has contended that the offence was committed by the

corporate bodies namely the State Bank of India and the Punjab National Bank. Therefore, in order to proceed with them, the body corporate is required to be made as accused otherwise, the bank officials cannot be convicted without making Bank as accused. Therefore, learned Senior counsel submits that the trial Court can direct the Police Officer to make further investigation and to make additional charge-sheet and also to take the cognizance against the Corporate body i.e., the Banks.

5. The learned Senior counsel further submits that though the Investigating Officer submitted the final report under Section 173(2) of Cr.P.C., but, the Investigating Officer not intimated or communicated about filing of the final report to the informant as per Section 173(2)(ii) of Cr.P.C. Therefore, it is necessary for the informant to approach this Court for impleading the corporate bodies as accused and necessary direction shall be issued to the Investigating Officers to comply the provision under Section 173(2)(ii) of Cr.P.C.

6. Per contra, learned High Court Government Pleader submits that the learned Magistrate can take the cognizance even during the trial by invoking Section 319 of Cr.P.C. or 305 of Cr.P.C. Therefore prayed for dismissing the petition.

7. Having heard the arguments and on perusal of the records, the learned Senior counsel for the petitioner has relied upon the judgment of the Apex Court in the case of ***Bhagawant Singh v. Commissioner of Police and another*** reported in **(1985) 2 SCC 537**. The Hon'ble Supreme Court at Paragraph Nos.3 and 4 as held as under:

"3. It will be seen from the provisions to which we have referred in the preceding paragraph that when an informant lodges the first information report with the officer-in-charge of a police station, he does not fade away with the lodging of the first information report. He is very much concerned with what action is initiated by the officer-in-charge of the police station on the basis of the first information report lodged by him. No sooner he lodges the first information report, a copy of it has

to be supplied to him, free of cost, under sub-section (2) of Section 154. If, notwithstanding the first information report, the officer-in-charge of a police station decides not to investigate the case on the view that there is no sufficient ground for entering on an investigation, he is required under sub-section (2) of Section 157 to notify to the informant the fact that he is not going to investigate the case or cause it to be investigated. Then again, the officer-in-charge of a police station is obligated under sub-section (2)(ii) of Section 173 to communicate the action taken by him to the informant and the report forwarded by him to the Magistrate under sub-section (2)(i) has therefore to be supplied by him to the informant. The question immediately arises as to why action taken by the officer-in-charge of a police station on the first information report is required to be communicated and the report forwarded to the Magistrate under sub-section (2)(i) of Section 173 required to be supplied to the informant. Obviously, the reason is that the informant who sets the machinery of investigation into motion by filing the first information report must know what is the result of the investigation initiated on the basis of the first information report. The informant having taken the initiative in lodging the first information report with a view to initiating investigation by the police for the purpose of ascertaining whether any offence

has been committed and, if so, by whom, is vitally interested in the result of the investigation and hence the law requires that the action taken by the officer-in-charge of a police station, on the first information report should be communicated to him and the report forwarded by such officer to the Magistrate under sub-section (2)(i) of Section 173 should also be supplied to him.

4. *Now, when the report forwarded by the officer-in-charge of a police station to the Magistrate under sub-section (2)(i) of Section 173 comes up for consideration by the Magistrate, one of two different situations may arise. The report may conclude that an offence appears to have been committed by a particular person or persons and in such a case, the Magistrate may do one of three things: (1) he may accept the report and take cognizance of the offence and issue process or (2) he may disagree with the report and drop the proceeding or (3) he may direct further investigation under sub-section (3) of Section 156 and require the police to make a further report. The report may on the other hand state that, in the opinion of the police, no offence appears to have been committed and where such a report has been made, the Magistrate again has an option to adopt one of three courses: (1) he may accept the report and drop the proceeding or (2) he may disagree*

with the report and taking the view that there is sufficient ground for proceeding further, take cognizance of the offence and issue process or (3) he may direct further investigation to be made by the police under sub-section (3) of Section 156. Where, in either of these two situations, the Magistrate decides to take cognizance of the offence and to issue process, the informant is not prejudicially affected nor is the injured or in case of death, any relative of the deceased aggrieved, because cognizance of the offence is taken by the Magistrate and it is decided by the Magistrate that the case shall proceed. But if the Magistrate decides that there is no sufficient ground for proceeding further and drops the proceeding or takes the view that though there is sufficient ground for proceeding against some, there is no sufficient ground for proceeding against others mentioned in the first information report, the informant would certainly be prejudiced because the first information report lodged by him would have failed of its purpose, wholly or in part. Moreover, when the interest of the informant in prompt and effective action being taken on the first information report lodged by him is clearly recognised by the provisions contained in sub-section (2) of Section 154, sub-section (2) of Section 157 and sub-section (2)(ii) of Section 173, it must be presumed that the informant would

equally be interested in seeing that the Magistrate takes cognizance of the offence and issues process, because that would be culmination of the first information report lodged by him. There can, therefore, be no doubt that when, on a consideration of the report made by the officer-in-charge of a police station under sub-section (2)(i) of Section 173, the Magistrate is not inclined to take cognizance of the offence and issue process, the informant must be given an opportunity of being heard so that he can make his submissions to persuade the Magistrate to take cognizance of the offence and issue process. We are accordingly of the view that in a case where the Magistrate to whom a report is forwarded under sub-section (2)(i) of Section 173 decides not to take cognizance of the offence and to drop the proceeding or takes the view that there is no sufficient ground for proceeding against some of the persons mentioned in the first information report, the Magistrate must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the report. It was urged before us on behalf of the respondents that if in such a case notice is required to be given to the informant, it might result in unnecessary delay on account of the difficulty of effecting service of the notice on the informant. But we do not think this can be regarded as a valid objection

against the view we are taking, because in any case the action taken by the police on the first information report has to be communicated to the informant and a copy of the report has to be supplied to him under sub-section (2)(i) of Section 173 and if that be so, we do not see any reason why it should be difficult to serve notice of the consideration of the report on the informant. Moreover, in any event, the difficulty of service of notice on the informant cannot possibly provide any justification for depriving the informant of the opportunity of being heard at the time when the report is considered by the Magistrate".

On perusal of the judgment of the Hon'ble Supreme Court, it is clear that once the Investigating Officer, investigated the matter, a duty cast upon the Investigating Officer to intimate the first informant about filing of the final report and if it is communicated, then the informant can come to know about the investigation done by the Investigating Officer on his first information for the purpose of taking further course of action and follow up the case. Admittedly, in this case there is no communication sent by the Investigating Officer to the first

informant-complainant regarding submitting the final report. The provision of Section 173(2)(ii) of Cr.P.C. is defined as under:

"(ii) The officer shall also communicate, In such manner as may be prescribed by the State Government, the action taken by him, to the person, if any, by whom the information relating to the commission of the offence was first given."

8. In the above said provision of Section 173(2)(ii) of Cr.P.C., the Legislature used the word 'shall' to communicate the final report to the first informant. Of course, the manner of communication has to be issued by the State Government, but, no such information sent to the informant by the Investigating Officer.

9. Now, the present contention of the learned counsel for the petitioner is that when the allegation made against the Bank and Bank Officials, where the bank is corporate body and without the corporate body, the criminal proceedings cannot be proceeded against the

officials of the Bank. Therefore, the Hon'ble Supreme Court has taken similar view in the cases of ***Aneeta Hada vs. M/s. Godfather Travels & Tours Pvt. Ltd.*** and ***Sunil Bharti Mittal vs. Central Bureau of Investigation*** reported in ***(2015) 4 SCC 609***.

10. Of course, the Court can implead the Bank as a co-accused or additional accused by invoking Section 319 of Cr.P.C. or implead the company or a bank as accused under Section 305 of Cr.P.C. Even otherwise, the Police Officer may be directed to file additional charge-sheet under Section 173(8) of Cr.P.C. against the corporate body, since the accused persons are vicariously liable for the offence committed by the Bank. Therefore, the trial Court before taking cognizance ought to have applied the mind to direct the Investigating Officer to implead the corporate body as accused and proceed to take cognizance, otherwise, the proceedings cannot be sustainable against the officials of the Bank without

impleading the Bank as accused. Therefore, the petition filed by the petitioner deserves to be allowed.

11. It is also deem fit and proper to this Court to direct the DG and IGP of the State of Karnataka to instruct all Investigating Officers of the Investigation Agencies to communicate the final report prepared by them to the first informant as per Section 173(2)(ii) of Cr.P.C.

12. Accordingly, the petition is **allowed**.

The trial Court is directed to take cognizance against both the banks i.e., State Bank of India and Punjab National Bank in accordance with law or direct the Investigating Officer to file the additional charge-sheet by showing the Bank as accused as per Section 173(8) of Cr.P.C. by making further investigation.

It is directed the Registry to send copy of this order to the Inspector General and Director General of Police (DG and IGP) and Commissioner of Police, Bengaluru and

to communicate the final report to the first informant under Section 173(2)(ii) of Cr.P.C.

**Sd/-
JUDGE**

GBB