

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31<sup>ST</sup> DAY OF JANUARY, 2022

BEFORE

THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR

**WRIT PETITION NO.21264 OF 2021 (GM-RES)**

**BETWEEN:**

1 . SHRI KAMAL PANT  
S/O CH. G. P. PANT

2 . SHRI. M.N. ANUCHETH

3 . SHRI MARUTHI .B

... PETITIONERS

(BY SRI PRASANNA KUMAR P, ADV. )

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**AND:**

- 1 . STATE OF KARNATAKA  
REPRESENTED BY ITS  
CUBBON PARK POLICE STATION  
KASTURBA ROAD,  
BENGALURU 560 001
- 2 . Sh. ADARSH R IYER

...RESPONDENTS

(BY SRI ROHITH B.J., HCGP FOR R1  
Sri ADARSH R IYER, R2-PARTY-IN-PERSON)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER DATED 23.11.2021 PASSED BY THE LEARNED VIII ADDL. CHIEF METROPOLITAN MAGISTRATE, BENGALURU CITY IN PCR NO.6373/2021 THEREBY REFERRING THE PRIVATE COMPLAINT FILED BY THE 2<sup>ND</sup> RESPONDENT HEREIN TO THE 1<sup>ST</sup> RESPONDENT/STATION FOR INVESTIGATION UNDER SEC.156(3) OF CODE OF CRIMINAL PROCEDURE 1973 AGAINST THE PETITIONER/ACCUSED(PRODUCED VIDE ANNEXURE-A TO THE PETITION) AND CONSEQUENTLY QUASH THE ENTIRE PROCEEDINGS PENDING THERON AS AGAINST THE PETITIONERS/ ACCUSED NO.1 TO 3 WHICH IS REGISTERED FOR THE OFFENCE UNDER SEC. 166A OF IPC.

THIS WRIT PETITION COMING ON FOR **FURTHER ORDERS** THIS DAY THROUGH VIDEO CONFERENCING, THE COURT MADE THE FOLLOWING:

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**ORDER**

When this writ petition was disposed of on 14.12.2021, the second respondent, namely, Adarsha R Iyer, was not heard as he did not appear before the Court. On 15.12.2021, he filed a memo for being spoken to and this memo was first posted before the Court on 18.01.2022. At the request of the second respondent, the case was taken up on 24.01.2022. On that day, he gave the reasons for his inability to appear on 14.12.2021 and requested for giving him a hearing. To meet the ends of justice, his memo was allowed and he was permitted to argue. Since re-hearing was granted, the order dated 14.12.2021 was recalled.

2. I have heard Sri P.Prasanna Kumar, learned counsel for the petitioners, learned High Court Government Pleader for the first respondent-State and Sri Adarsh R Iyer, the second respondent who appeared in-person.

3. The submission of Sri P.Prasanna Kumar is that, the second respondent has initiated action against the petitioners under Section 200 of Cr.P.C., in PCR No.6373/2021 alleging that the petitioners have committed an offence under Section 166A of the Indian Penal Code (IPC). The main allegation in the complaint is that the third petitioner who is the Inspector of Police, Cubbon Park Police Station failed to register an FIR on the basis of the information given by one Dinesh Kallahalli with regard to sexual harassment on a girl by the Ex-minister of the Government of Karnataka. Receiving the complaint, the Magistrate ordered for investigation under Section 156(3) of Cr.P.C. In this regard Sri P.Prasanna Kumar further submitted that the report made by Dinesh Kallahalli actually did not disclose commission of a cognizable offence and in fact he himself requested the police Inspector to ascertain the truth. Dinesh Kallahalli made the report on 02.03.2021. The Inspector

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issued a notice to Dinesh Kallahalli for inquiry and that on 05.03.2021, Dinesh Kallahalli appeared and told the inspector that the person who had given him CD containing the intimate moments of the Minister with the girl did not contact him again. On 07.03.2021, Dinesh Kallahalli addressed a letter to the Police Inspector stating that he would withdraw the complaint. In the meantime as the Minister had also given a report to the police against unknown person, the Police Commissioner constituted a Special Investigation Team (SIT) on 11.03.2021. The Inspector of Cubbon Park Police Station is also member of SIT. Then on 26.03.2021, at the instance of victim girl, FIR was registered in Crime No.30/2021. Thereafter a woman by name Smt. Geetha Mishra instituted Writ Petition No.6586/2021 with regard to the same incident and in the said writ petition, the Division Bench of this Court passed an order on 27.07.2021 to the effect that the investigation in Crime No.21/2021 and

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30/2021 should continue, but the final report should not be filed. Now actually the final report is ready, but not filed because of the direction given by the Division Bench of this Court.

4. Referring to these consecutive events, Sri P.Prasanna Kumar submits that since Dinesh Kallahalli's report did not disclose commission of a cognizable offence, FIR was not registered. Later-on he himself withdrew his complaint. Soon after the victim girl made a report, FIR was registered. Therefore it cannot be said that the petitioners have committed an offence punishable under Section 166A of IPC. Probably the second respondent did not know all these developments and he rushed to the Court of Magistrate with a complaint being unaware of the factual aspects. The petitioners never showed dereliction in the duty and if prosecution is permitted, it will demoralize the police officers for no fault of them. He submitted that the second respondent is not

concerned with the case and he is totally a third person. Hence he argued for quashing of the proceedings in the private complaint.

5. Respondent No.2 submits that the report made by Diensh Kallahalli discloses commission of cognizable offence. The moment they received a report of this type, the third petitioner ought to have registered an FIR as per the dictum of the Supreme Court in the case of **LALITHA KUMARI V. GOVERNMENT OF UTTAR PRADESH AND OTHERS [AIR 2014 SUPREME COURT 187]**.

Subsequently, the victim girl herself might have given a report and based on that an FIR might have been registered, but it is altogether a different aspect. He submitted that his complaint before the Magistrate is in regard to not registering FIR immediately after Dinesh Kallahalli gave his report about sexual harassment on a girl by the Ex-minister. The very fact that the Government ordered for constitution of SIT shows that it yielded

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to the pressure exerted by the Minister. But a common man's complaint remained unattended. The petitioners 1 and 2 being the superior police officers are also responsible for the dereliction of duty by the 3<sup>rd</sup> petitioner. According to Section 36 of Cr.P.C., the superior police officers can exercise the same powers that a station house officer exercises and in this view the petitioners 1 and 2 are also responsible for non registration of FIR and thus they can be prosecuted for the offence under Section 166A of IPC. He argued that several amendments were brought to the criminal laws after *Nirbhaya's* case directing the police officers to take strict action once report about sexual harassment on a woman is brought to their notice. The petitioners have violated the law. The learned Magistrate is right in ordering for investigation under Section 156(3) of Cr.P.C., and hence the petition is to be dismissed.



6. I have considered the arguments. The second respondent appears to be a social worker and he is president of an organization called Janadhikara Sangharsha Parishad. Though the petitioners have questioned the second respondent's *locus-standi*, it is to be stated that it is settled principle that the criminal law can be set in to motion by any person, especially when a cognizable offence is committed.

7. Section 166A of IPC reads as below:

**166A—Public servant disobeying direction under law**—Whoever, being a public servant,-

(a) knowingly disobeys any direction of the law which prohibits him from requiring the attendance at any place of any person for the purpose of investigation into an offence or any other matter, or

(b) knowingly disobeys, to the prejudice of any person, any other direction of the

*law regulating the manner in which he shall conduct such investigation, or.*

*(c) fails to record any information given to him under sub-section (1) of section 154 of the Code of Criminal Procedure, 1973 (2 of 1974), in relation to cognizable offence punishable under section 326A, section 326B, section 354, section 354B, section 370, section 370A, section 376, section 376A, section 376B, section 376C, section 376D, section 376E or section 509,*

*shall be punished with rigorous imprisonment for a term which shall not be less than six months but which may extend to two years, and shall also be liable to fine.*

8. Certainly, according to Section 166A(c) if a public servant fails to record any information under Sub-section (1) of 154 of Cr.P.C., in regard to offences relating to sexual harassment of a woman, it amounts to an offence. The allegation of the second respondent is that the third petitioner

did not register FIR based on the information given by Dinesh Kallahalli. Therefore, it is to be seen whether Dinesh Kallahalli's report actually discloses commission of a cognizable offence. It is better to extract his report dated 02.03.2021, which reads thus:

ಮೇಲ್ಕಂಡ ವಿಷಯಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ ರಾಜ್ಯದ ಹಾಲಿ ಬೃಹತ್ ನೀರಾವರಿ ಸಚಿವರಾದ ಶ್ರೀ ರಮೇಶ್ ಜಾರಕಿಹೋಳಿ ರವರು (ಮಹಿಳೆಯೊಬ್ಬರಿಗೆ) ಯವರಿಗೆ ಲೈಂಗಿಕ ಕಿರುಕುಳ ನೀಡಿ, ಉದ್ಯೋಗ ಆಮಿಶ ಒಡ್ಡಿ ಜೀವ ಬೆದರಿಕೆ ಹಾಕುತ್ತಿರುವ ಬಗ್ಗೆ ದೂರು ನೀಡಲು ಬಯಸುತ್ತೇನೆ. ಉತ್ತರ ಕರ್ನಾಟಕ ಮೂಲಕ ಬಡ ಕುಟುಂಬದ ಯುವತಿಯೊಬ್ಬಳು ಬೆಂಗಳೂರಿನ ಆರ್.ಟಿ.ನಗರದ ವಸತಿ ನಿಲಯದಲ್ಲಿ ವಾಸ ಮಾಡುತ್ತಿದ್ದು ಸದರಿ ಯುವತಿ ಕಿರುಚಿತ್ರ ನಿರ್ಮಾಣಕ್ಕೇಂದು ಸಚಿವ ಶ್ರೀ ರಮೇಶ್ ಜಾರಕಿಹೋಳಿ ರವರ ಬಳಿ ಬಂದಾಗ ನಿನಗೆ ಕೆ.ಪಿ.ಟಿ.ಸಿ.ಎಲ್. ನಲ್ಲಿ ಉದ್ಯೋಗ ಕೊಡಿಸುವುದಾಗಿ ತಿಳಿಸಿ ಆಕೆಯನ್ನು ತಮ್ಮ ಕಾಮ ತೃಷ್ಣೆಗಾಗಿ ಬಳಸಿಕೊಂಡು ನಂತರ ಉದ್ಯೋಗವನ್ನು ನೀಡದೆ ಆಕೆಗೆ ವಂಚಿಸಿರುತ್ತಾರೆ. ಸದರಿ ಯುವತಿ ಬಳಿ ತಮ್ಮ ಕಾಮದಾಟದ ವೀಡಿಯೋ ಇದ್ದೊಂದು ತಿಳಿಯುತ್ತಿದ್ದಂತೆ ಆಕೆ ಮತ್ತು ಆಕೆಯ ಕುಟುಂಬದ ಸದಸ್ಯರಿಗೆ ಜೀವ ಬೆದರಿಕೆ ಒಡ್ಡಿರುತ್ತಾರೆ.

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ಸಾಮಾಜಿಕ ಹೋರಾಟದಲ್ಲಿ ಗುರುತಿಸಿಕೊಂಡಿರುವ ನನ್ನ ಬಳಿ  
ಕುಟುಂಬದ ಸದಸ್ಯರೊಬ್ಬರು ಬಂದು ಈ ವಿಷಯ ಮತ್ತು  
ಸಿ.ಡಿ.ಯನ್ನು ತಲುಪಿಸಿ ಈ ವಿವರಗಳನ್ನು ನೀಡಿರುತ್ತಾರೆ.

ತಾವು ದಯಮಾಡಿ ಇದರ ಸತ್ಯಾಸತ್ಯತೆಯನ್ನು ಪರಿಶೀಲಿಸಿ  
ಸಂಬಂಧಪಟ್ಟ ಸಚಿವರ ಮೇಲೆ ಕ್ರಿಮಿನಲ್ ಮೊಕದ್ದಮೆ ಹೂಡಿ  
ಸಂತ್ರಸ್ತ ಯುವತಿಯ ರಕ್ಷಣೆಗೆ ಮುಂದಾಗುವಂತೆ ತಮ್ಮಲ್ಲಿ  
ಕೋರುತ್ತೇನೆ.

9. In the first para of his report, it is stated that a Minister exploited a girl sexually giving an assurance that he would secure an employment in KPTCL and then cheated her without securing any employment to her. It is also stated that he put life threat to the girl and her family members once he came to know that the girl had video recording of their intimate moments. He gave this report to the first petitioner based on some information given to him by a person who had recognized himself in a social movement. In third para, Dinesh Kallahalli requested the Police Commissioner to verify the truth and afford protection to the girl.

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10. It is possible, as argued by the second respondent, to infer from the first para that Dinesh Kallahalli reported commission of a cognizable offence. But the subsequent paras do indicate very well that he received that information from another person and therefore wanted the Police Commissioner to ascertain the truth. Now if this report is read as a whole, it may be stated that Dinesh Kallahalli was not sure about a cognizable offence being committed.

11. The petitioners have produced some documents which show that Dinesh Kallahalli was directed to appear on 04.03.2021 for inquiry and that on 05.03.2021, he appeared and stated that actually he did not know the person who gave him the CD, but he came to know that the girl was from Gulbarga District and he did not know her name. Though he stated on that day that he watched the video clippings on his laptop, and that he would provide further information, but on 07.03.2021, he

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wrote a letter to the Circle Inspector, Cubbon Park that he was withdrawing his complaint.

12. It is not disputed that the victim girl thereafter made a report and FIR came to be registered in Crime No.30/2021 based on her report. Be that as it may, if the action taken by the petitioners pursuant to Dinesh Kallahalli's report is seen, it may be stated that there is no legal infirmity in it, for as observed above, the report in clear and unequivocal terms does not indicate commission of a cognizable offence and probably in this view, the third petitioner wanted to hold a preliminary inquiry. According to the dictum of the Supreme Court, in the case of Lalitha Kumari, FIR has to be registered the moment, report is given that a cognizable offence has been committed. The police should not waste time in registration of FIR. But in the case on hand, there was no definite information that a cognizable offence had been committed.

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13. It might be a fact that SIT was constituted after the Minister made a report against unknown person. Even assuming that SIT came to be constituted yielding to the pressure put by the Minister, so far as the petitioners are concerned, it is impossible to infer that non registration of FIR on the basis of the report given by Dinesh Kallahalli would amount to an offence punishable under Section 166A of IPC. The concern of the second respondent towards society can be very much appreciated, but at the same time, it is impossible to accept his argument.

14. Pursuant to direction given by this Court in WP No.6586/2021, final report pursuant to investigation taken up in connection with Crime Nos.21/2021 and 30/2021 has not been filed and the second respondent does not deny this. This shows that the petitioners did proceed with the matter and that they had no intention not to register an FIR based on Dinesh Kallahalli's report.

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As observed already, his report was ambiguous about commission of cognizable offence. In this view, if the petitioners are prosecuted for the offence under Section 166A of IPC, it amounts to abuse of process of Court. Hence the proceedings before the Magistrate and the investigation ordered by him under Section 156(3) of Cr.P.C., cannot be sustained. Therefore the petition is allowed. Proceeding in PCR No.6373/2021 on the file of the Additional Chief Metropolitan Magistrate Bengaluru and the order dated 23.11.2021 directing investigation under Section 156(3) of Cr.P.C., are quashed.

**Sd/-  
JUDGE**

Kmv/-