

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 22ND DAY OF AUGUST, 2022

BEFORE

THE HON'BLE MR.JUSTICE S. SUNIL DUTT YADAV

CRIMINAL PETITION No.5528/2022

BETWEEN:

MAHANTESH KOUJALAGI
S/O SHIVANANDA
AGED ABOUT 53 YEARS
NO.598, KOULAGI
CHAL, BAILHONGAL
BELAGAVI DISTRICT
KARNATAKA - 591 102.

... PETITIONER

(BY SRI M. SHARASS CHANDRA, ADVOCATE)

AND:

1. STATE OF KARNATAKA BY
MARKET P.S.,
(REP. BY SPP
HIGH COURT OF KARNATAKA
BANGALORE - 560 001).

2. PREETHAM NASALAAPURE
AGED MAJOR
TAHASILDAR,
TAHASILDAR OFFICE
BELAGAVI
KARNATAKA - 591 102.

... RESPONDENTS

(BY SRI ROHITH B.J., HCGP)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO QUASH THE PROCEEDINGS AGAINST THE PETITIONER/ACCUSED IN C.C. NO.31408/2021 (CRIME NO.224/2016) OF MARKET POLICE AT BELAGAVI REGISTERED FOR THE OFFENCE P/U/S 127(A) REPRESENTATION OF PEOPLE ACT WHICH IS PENDING ON THE FILE OF THE 42ND ACMM, BANGALORE.

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

ORDER

Learned High Court Government Pleader accepts notice for respondent No.2.

2. Petitioner has called in question the validity of the proceedings in C.C.No.31408/2021 (Crime No.224/2016) of Market Police Station at Belgaum, for the offence punishable under Section 127-A of the Representation of People Act.

3. It is the case of the petitioner that offence under Section 127-A of the Act, even if made out would result in imprisonment for a term which may extend to 6 months or with fine. Accordingly, it is submitted that this would be a non-cognizable offence. It is further submitted that there is

no material on record that would indicate permission of the Magistrate has been obtained prior to investigation and charge sheet that is filed is liable to be set aside on this sole ground alone.

4. Attention is drawn to the information made out by the Tahsildar and it is specifically asserted that no permission to investigate has been granted by the Magistrate.

5. It is to be noticed that in light of the offence under Section 127-A being a non-cognizable offence, permission must be granted in terms of Section 155 of Cr.P.C. and on this sole ground alone, the investigation made and charge sheet filed are to be set aside and the matter is to be remitted to the stage of information being made out to the police authorities on 07.06.2016. If information is placed before the Magistrate for obtaining permission, the reference must be of the informant and the Magistrate to pass orders by applying his mind and keeping in mind the guidelines as laid down in the judgment in the

case of ***Vaggeppa Gurulinga Jangaligi (Jangaligi) vs. The State of Karnataka - ILR 2020 KAR 630.***

6. Accordingly, the proceedings in C.C.No.31408/20121 (Crime No. 224/2016) is set aside and the matter is remanded back to the initial stage of information being made to the police authorities.

7. Insofar as the contention that charge sheet is filed for the offence punishable under Section 127-A of the Act, whereas the case made out is commission of offence relating to violation of model code of conduct as was held in public premises, in light of setting aside of the charge sheet, such contention is to be taken note of appropriately by the investigating agency if investigation is ordered after following the procedure.

8. In light of the above, the matter is ***disposed off***. All contentions are kept open.

**Sd/-
JUDGE**