

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF SEPTEMBER, 2022

BEFORE

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

CRIMINAL PETITION No.6535/2022

BETWEEN:

SRI J C MADHUSWAMY
S/O CHANDRASHEKARAI AH
AGED ABOUT 68 YEARS
OCC.: MLA - CHIKKANAYAKANAHALLI
HON'BLE MINISTER OF LAW &
PARLIAMENTARY AFFAIRS &
LEGISLATION & MINOR IRRIGATION
R/AT: JAYACHAMARAJ PURA
CHIKKANAYAKANAHALLI TQ.,
TUMKUR DISTRICT
KARNATAKA - 572 214.

... PETITIONER

(BY SRI H.S. CHANDRAMOULI, SENIOR COUNSEL FOR
MS. KEERTHANA NAGARAJ, ADVOCATE AND
SRI RAJATH, ADVOCATE)

AND:

1. STATE OF KARNATAKA
BY THE POLICE OF
HOSPET TOWN POLICE STATION
BALLARI - 583 201
REP. BY THE STATE PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA
AMBEDKAR VEEDHI
BENGALURU - 560 001.
2. SRI KIRAN MD
S/O MANJUNATHA NS
AGED ABOUT 30 YEARS

OCC.: STATE GOVT. EMPLOYEE
FLYING SQUAD TEAM-1,
ASST. ER. PRE-SUB-DIVISION
HB HALLI,
BALLARI - 583 212.

... RESPONDENTS

(BY SRI KIRAN JAVALI, SPP-I A/W
SRI ROHITH B.J., HCGP FOR R1;
R2 - SERVED;
SRI SANDESH J. CHOUTA, SENIOR COUNSEL AS
AMICUS CURIAE)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO QUASHING THE ENTIRE PROCEEDINGS IN C.C. NO.17286/2022 (OLD NO.2749/2021-CR.NO.151/2019 - HOSPET TOWN P.S) REGISTERED FOR THE OFFENCE P/U/S 171F AND 171C OF THE IPC, AND SECTION 125 OF THE REPRESENTATIVE OF PEOPLES ACT, PENDING ON THE FILE OF THE LEARNED XLII A.C.M.M. (42ND A.C.M.M) COURT, BENGALURU.

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

ORDER

Petitioner has called in question the validity of the proceedings in C.C.No.17286/2022 registered for the offences punishable under Sections 171-F and 171-C of IPC and Section 125 of the Representation of People Act, 1951.

2. The information that was made out to the police authorities was to the effect that on 02.12.2019 in front of Priya Darshini Hotel, there was a meeting and in which

certain statements were made by the petitioner which constitute violation of law as amounting to influencing the electorate on the basis of caste and religion. After the information was made out to the police authorities, a requisition was made to the Magistrate by the police authorities requesting for permission to investigate. Upon such request, the Magistrate has endorsed as follows:

"Perused the requisition. As the materials disclose commission of NC offence, IO is permitted to investigate the matter."

3. It is contended that such endorsement is not a proper procedure to be followed in light of the guidelines made in the case of **Vaggeppa Gurulinga Jangaligi (Jangaligi) vs. The State of Karnataka - ILR 2020 KAR 630** which is a re-statement of the correct procedure to be followed and on this score alone, proceedings are required to be set aside. It is also contended that the act of granting permission to investigate a non-cognizable offence must be with due application of mind and that would

become clear from the guideline No.IV in paragraph No.20 of the above referred judgment.

4. It is noticed that the requisition before the Court made by the Police Authorities contains an endorsement on the requisition itself. Such endorsement does not amount to a judicial order and proper procedure to be followed in terms of the direction passed in Paragraph No.20 at (ii) in the case of **Vaggeppa** (supra). Guidelines laid down regarding the procedure to be followed in paragraph No.20 of the above said judgment reads as follows:

"i) The Jurisdictional Magistrates shall stop hereafter making endorsement as 'permitted' on the police requisition itself. Such an endorsement is not an order in the eyes of law and as mandated under Section 155(2) of Cr.P.C.

ii) When the requisition is submitted by the informant to the Jurisdictional Magistrate, he should make an endorsement on it as to how it was received, either by post or by Muddam and direct the office to place it before him with a separate order sheet. No order should be passed

on the requisition itself. The said order sheet should be continued for further proceedings in the case.

iii) When the requisition is submitted to the Jurisdictional Magistrate, he has to first examine whether the SHO of the police station has referred the informant to him with such requisition.

iv) The Jurisdictional Magistrate should examine the contents of the requisition with his/her judicious mind and record finding as to whether it is a fit case to be investigated, if the Magistrate finds that it is not a fit case to investigate, he/she shall reject the prayer made in the requisition. Only after his/her subjective satisfaction that there is a ground to permit the police officer to take up the investigation, he/she shall record a finding to that effect permitting the police officer to investigate the non-cognizable offence.

v) In case the Magistrate passes the orders permitting the investigation, he/she shall specify the rank and designation of the Police Officer

who has to investigate the case, who shall be other than informant or the complainant."

5. It is clear that in terms of the guidelines at (ii), the Court is directed to place a separate order sheet and the order regarding requisition must be made in the order sheet, which must be a part of the proceedings before the Court. Noticing that the said procedure is not followed, the proceedings before the Magistrate is liable to be quashed.

6. Accordingly, the proceedings in C.C. No.17286/2022 is quashed and the matter is restored to the stage of the informant having appeared before the police authorities. It is for the complainant to pursue further proceedings and if the proceedings are pursued further, needless to state that in terms of the mandate under Section 155 of Cr.P.C. while taking permission for investigation of non-cognizable offence, the informant must be referred to the Magistrate. If permission is to be granted, it is open for the Magistrate to either grant or not grant permission and as specified in guideline (iv) as extracted

above, it is for the magistrate to apply his mind and see whether it is a case to be investigated. While reserving such power, the matter is remitted back. All contentions of the petitioner are kept open.

7. Writ petition is **disposed off**. The assistance of Sri. Sandesh J. Chcuta, learned amicus curiae is appreciated and the said appreciation is placed on record.

**Sd/-
JUDGE**

VP