

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 26TH DAY OF MAY, 2023

BEFORE

THE HON'BLE MR. JUSTICE R.NATARAJ

CRIMINAL REVISION PETITION NO.250 OF 2022

C/W

CRIMINAL REVISION PETITION NO.183 OF 2022

IN CRL.R.P.NO.250/2022:

BETWEEN:

N. NARASIMHA MURTHY,
S/O LATE NANJUNDAIAH,
AGE: 45 YEARS,
RESIDING AT NO.1059, 3RD BLOCK,
3RD STAGE, 5TH 'A' MAIN ROAD,
BASAVESHWARANAGAR,
BENGALURU-560079.

...PETITIONER

(BY SRI. RAVI B. NAIK, SENIOR ADVOCATE FOR
SRI. B.O.CHANDRASHEKAR, ADVOCATE)

AND:

STATE OF KARNATAKA
BY KARNATAKA LOKAYUKTHA POLICE,
BENGALURU CITY DIVISION POLICE STATION,
BENGALURU.
REPRESENTED BY ITS PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA,
BENGALURU-01.

...RESPONDENT

(BY SRI. C.H.JADHAV, SENIOR ADVOCATE FOR
SRI. VADAVADAGI, SPECIAL PUBLIC PROSECUTOR)

THIS CRL.RP IS FILED UNDER SECTION 397 READ WITH SECTION 401 OF THE CODE OF CRIMINAL PROCEDURE, 1973 PRAYING TO SET ASIDE THE ORDER DATED 18.12.2021 PASSED ON THE APPLICATION FILED BY THE PETITIONER U/S 227 OF CR.P.C. OF CRIMINAL PROCEDURE IN SPL.C.C.NO.493/2015 BY THE HONOURABLE XXXII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE AND SPECIAL JUDGE FOR CBI CASES (CCH-34), BENGALURU PRODUCED AT ANNEXURE-A AND MAY BE PLEASED TO ORDER FOR DISCHARGE OF PETITIONER IN THE AFORESAID CASE, CONSEQUENTLY THIS HONOURABLE COURT MY BE PLEASED TO QUASH THE FIR AND CHARGE SHEET AS AGAINST THE PETITIONER FILED SUIT SPL.C.C.NO.493/2015.

IN CRL.R.P.NO.183/2022:

BETWEEN:

V. BHASKAR @ 420 BHASKAR,
S/O LATE B.M.VENKATARAMANAPPA,
AGED 50 YEARS,
R/AT NO.105, GROUND FLOOR,
SKYLINE GOLDEN RACE APARTMENT,
BEHIND RAMAKRISHNA ASHRAM,
GAVIPURAM, GUTTAHALLI,
BENGALURU-560003.

...PETITIONER

(BY SRI. MANE SHIVAJI HANAMANTAPPA, ADVOCATE)

AND:

STATE OF KARNATAKA BY
SPECIAL INVESTIGATING TEAM,
CID.
REPRESENTED BY ITS
STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDING,
DR. B.R.AMBEDKAR VEEDHI,
BENGALURU-560001.

...RESPONDENT

(BY SRI. C.H.JADHAV, SENIOR ADVOCATE FOR
SRI. VADAVADAGI, SPECIAL PUBLIC PROSECUTOR)

THIS CRL.RP IS FILED UNDER SECTION 397 READ WITH SECTION 401 OF THE CODE OF CRIMINAL PROCEDURE, 1973 PRAYING TO SET ASIDE THE ORDER DATED 18.12.2021 PASSED BY THE LEARNED XXXII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE AND SPECIAL JUDGE FOR CBI CASES AT BENGALURU (CCH-34) IN SPL.C.C.NO.493/2015 HTEREBY POSTING THE MATTER FOR FRAMING CHARGE AGAINST THE PETITIONER/ACCUSED NO.2 ALONG WITH THE ACCUSED NOS.1 FOR OFFENCE PUNISHABLE UNDER SECTION 8 AND 9 OF PREVENTION OF CORRUPTION ACT, 1988 AND SECTION 201, 384, 419, 506 READ WITH SECTION 120B OF IPC AND CONSEQUENTLY ALLOW THE REVISION PETITION.

THESE PETITIONS HAVING BEEN HEARD AND RESERVED FOR ORDER ON 06.01.2023 AND COMING ON FOR PRONOUNCEMENT OF ORDER THROUGH VIDEO CONFERENCE THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

CrI.R.P.No.250/2022 is filed by the accused No.3 in Spl.C.C.No.493/2015 pending trial before the XXXII Additional City Civil and Sessions Judge and Special Judge for CBI Cases at Bengaluru, challenging an Order dated 18.12.2021, by which, an application filed by him under Section 227 read with Section 239 of Cr.P.C. was rejected.

2. CrI.R.P.No.183/2022 is filed by the accused No.2 in Spl.C.C.No.493/2015 pending trial before the

XXXII Additional City Civil and Sessions Judge and Special Judge for CBI Cases at Bengaluru (henceforth referred to as 'Trial Court' for short) challenging an Order dated 18.12.2021, by which, the Court posted the case for framing charge against all the accused.

3. An investigation was set in motion by the Lokayukta police in Crime No.61/2015 on the basis of a written information dated 18.08.2015, furnished by Mr.D. Udayashankar, who then was a Chief Engineer at Karnataka Health System Development and Reform Project (henceforth referred to as CW.1). CW.1 claimed that he was earlier working as Superintendent Engineer, PWD, Building Circle, Bengaluru, between May 2012 to March 2015 and was in-charge of maintenance of all Government buildings including the office of the Lokayukta and the official residence of Lokayukta. CW.1 alleged that on 05.02.2015, he received a call from a person named, Krishna Rao and introduced himself as the Personal Secretary of Lokayukta and informed that the Lokayukta

wanted to speak to him. CW.1 alleged that on the same day, he went to the official residence of Lokayukta at 6.00 p.m., where he met a person, who introduced himself as Krishna Rao and he informed CW.1 to wait in the visitors area. When CW.1 asked Mr. Krishna Rao whether there was any problem in the official residence, he replied that there was no problem but there could be some complaints against CW.1, for which, he could be summoned. Mr. Krishna Rao introduced accused No.3, who was present and left CW.1 in the company of accused No.3. The accused No.3 informed CW.1 that he would introduce him to the Lokayukta and that CW.1 could speak to him. However, a person walked into the visitors area and accused No.3 introduced him to CW.1 as the son of Lokayukta (Accused No.1). The accused No.1 informed CW.1 that his mobile phone was under surveillance and that there were lot of complaints against him. CW.1 denied it and asked him the nature of complaint. However, accused No.1 instructed CW.1 to talk to accused No.3 and sort it out and went inside the house. Accused No.3

advised CW.1 to settle the issue at the earliest and avoid any problems in future. CW.1 requested the accused No.3 to disclose the nature of complaint and informed him that the marriage of his daughter was scheduled and a DPC was already held to consider his promotion as Chief Engineer. He therefore requested accused No.3 not to create trouble for him. The accused No.3 is stated to have informed CW.1 that if the issue is not sorted, then the marriage of his daughter and the prospect of his promotion might be affected. CW.1, allegedly, apprehensive of the above, requested accused No.3 as to what should be done. The accused No.3 then allegedly demanded a sum of Rs.3,00,00,000-00 and when CW.1 claimed that he did not have that much of money, the accused No.3 asked CW.1 to pay at least Rs.2,00,00,000-00. CW.1 informed him that he has to raise a loan to give the money or to draw his GPF and pay him and postpone the marriage of his daughter. To this, the accused No.3 is stated to have informed CW.1 to decide what he should do and advised him not to loose the opportunity. CW.1 alleged that since

he apprehended that a raid by the Lokayukta could affect the marriage of his daughter and his promotion, he met accused No.3 at Atria Hotel and agreed to pay how much ever possible. CW.1 later disclosed this to his friend Venkataramana Gowda (CW.3) who volunteered to pay loan of a sum of Rs.5,00,000-00, which he could return after the marriage. On 10.02.2015, on the instructions of CW.1, his driver allegedly handed over a sum of Rs.5,00,000-00 to accused No.3 near SJP College gate. On the same day at 6.45 p.m., accused No.3 telephoned CW.1 and informed him that his name was removed from the list of officers, who were to be raided by the Lokayukta. Later on 14.02.2015, accused No.3 telephoned CW.1 and congratulated him on being promoted as Chief Engineer.

4. CW.1 alleged that the news of corruption in the office of Lokayukta was reported in the print and electronic media. He claimed that he came across an interview of a person named V.Bhaskar on Suvarna News channel and identified the said V.Bhaskar as the person, who had

earlier introduced himself as Krishna Rao, Personal Secretary of Lokayukta. CW.1 also identified accused No.1, who was shown to be the son of Lokayukta. He alleged that since the accused were all well connected, he did not lodge a complaint then itself. However, the officers of the Special Investigation Team (SIT) visited CW.1 and enquired whether he had the telephone number of V.Bhaskar (accused No.2) and it was then, CW.1 narrated the events and furnished the same in writing before the Inspector of Police Karnataka Lokayukta on 18.08.2015, who registered Crime No.61/2015 for the offences punishable under Sections 8, 9 of the Prevention of Corruption Act, 1988 and Sections 384, 420, 506, 201, 120B of IPC.

5. It is relevant to note that a case was registered in Crime No.56/2015 by the Lokayukta police against some officials of the Lokayukta based on information furnished by Krishnamurthy, Executive Engineer, Zilla Panchayath, which was widely reported in the press. The Registrar of

Lokayukta, having noticed the press reports and to allay fears that the investigation may not be transparent, requested the State Government in terms of a letter dated 27.06.2015 to constitute a Special Investigation Team headed by a police Officer, not less than the rank of an Additional Director General of Police. Later, by a letter dated 28.06.2015, the Lokayukta exercising power under Section 15(3) of the Karnataka Lokayukta Act, 1984 utilized the services of the Joint Commissioner of Police (Crime), who requested to reconsider the decision. In the light of the above, the State Government in terms of an order dated 30.06.2015 constituted a Special Investigation Team headed by the Additional Director General of Police (Prisons) to investigate the offences against the officials of Karnataka Lokayukta and submit a report. Later, in terms of a Government Order dated 04.07.2015, two officers were deputed to the Special Investigation Team on additional charge basis along with their regular assignment. Further, in terms of a Government Order dated 07.07.2015, other officials of the department were

deputed on OOD basis to be part of the Special Investigation Team.

6. Since Crime No.61/2015 was registered by the Lokayukta police and both Crime No.56/2015 and Crime No.61/2015 were interlinked, the Additional Director General of Police (Prisons) being the head of SIT, wrote to the State Government on 04.07.2015 to authorise it under Section 4 of the Karnataka Police Act, 1963 and Sections 32 and 33 of Cr.P.C. to grant powers of an officer in charge of a police station to submit a report to the Court. This was accentuated by the DG & IGP by letter dated 08.07.2015. Following this, the State Government issued an Order dated 09.07.2015. The State Government in exercise of its power under Sections 32 and 33 of Cr.P.C. as well as Section 4 of the Karnataka Police Act, 1963 authorised the Special Investigation Team to investigate Crime No.56/2015 registered by the Lokayukta police as well as all other cases that may henceforth be registered by the Lokayukta police. In terms of an order dated 18.08.2015

passed by the head of the SIT, an officer was nominated as Chief Investigating Officer. The DG & IGP in terms of an order dated 13.10.2015 granted sanction under Section 19(1)(b) of the Prevention of Corruption Act, 1988 and under Section 197 of IPC to prosecute the accused No.3. The Chief Investigating Officer after conducting and completing an investigation, filed a charge-sheet against the accused Nos.1 to 5 for the offences punishable under Sections 8, 9 of the Prevention of Corruption Act, 1988 and Sections 384, 419, 506, 201, 120B of IPC.

7. The Trial Court, after considering the material placed along with the charge-sheet was satisfied that there was sufficient material to proceed against the accused and thus took cognizance of the offences punishable under Sections 8, 9 of the Prevention of Corruption Act, 1988 and Sections 384, 419, 201, 506, 120B of IPC, consequent to which Spl.C.C.No.493/2015 was registered.

8. Later, applications were filed by the accused Nos.1, 3, 4 and 5 under Section 227 read with Section 239

of Cr.P.C. to discharge them from the case on various grounds. The Trial Court after hearing the learned counsel for the accused Nos.1, 3, 4 and 5 rejected the applications in terms of the order dated 18.12.2021 holding that it need not make a roving enquiry into the case to verify the truth of the allegations made against the accused. It also held that the material placed on record by the prosecution was sufficient to justify the charge-sheet and that the grounds urged by the accused cannot be considered at that stage of the proceedings. It posted the case for framing charges against the accused.

9. Being aggrieved by the said order, the accused No.3 has filed CrI.R.P.No.250/2022, while accused No.2 has filed CrI.R.P.No.183/2022 contending that the Trial Court without considering whether there was adequate material to frame charge against them, mechanically proceeded to frame charge against all the accused, after rejecting the applications filed by accused Nos.1, 3, 4 and 5 for their discharge from the case.

10. The learned Senior Counsel Mr.Ravi.B.Naik representing the counsel for the accused No.3/petitioner in CrI.R.P.No.250/2022 contended that though the accused No.3 had raised several grounds in support of the petition, yet he would restrict it to only one legal contention, namely that, the SIT could not have filed a charge-sheet as it was not a "police station" as defined under Section 2(s) of Cr.P.C.

11. The learned Senior counsel in support of his solitary contention as stated above, referred to the Government Order dated 30.06.2015 constituting a Special Investigation Team and contended that SIT was only required to submit a report to the State Government. He therefore contended that the Special Investigation Team was bound to only submit a report to the State Government and was not authorized to file a charge-sheet. In support of his contention, he referred to the following judgments:-

1. *Smt. Premalatha Divakar vs State of Karnataka and Another* (Crl.R.P.No.638/2016 c/w Crl.R.P.No.550/2016)
2. *Sri. Manjunath Hebbar vs State of Karnataka and Another* (W.P No 56754/2018)
3. *M.G Gopal Principal and Dean of Kims vs State of Karnataka* (CRIMINAL REVISION PETITION Nos.34/2018, 1237/2016)
4. *P. Vijayan vs State of Kerala and Another* (2010) 2 SCC 398

12. The learned counsel for the petitioner/accused No.2 in Crl.R.P.No.183/2022 adopted the contention urged by the learned Senior counsel for the petitioner in Crl.R.P.No.250/2022 and submitted that the Trial Court did not apply its mind to the charge-sheet material and did not pass speaking order as to whether there was enough material to frame a charge against the accused No.2 under Sections 8 and 9 of the Prevention of Corruption Act, 1988. He contended that the learned trial judge after rejecting the applications filed by the accused Nos.1, 3, 4 and 5 for discharge had mechanically posted the case for framing of charge against all the other accused without considering

the charge-sheet material before proceeding to frame a charge. He submitted that framing a charge against an accused involves serious consequences and therefore, a speaking order must have been passed before proceeding to frame charge against the accused.

13. The learned counsel for the petitioner/accused No.2 in CrI.R.P.No.183/2022 relied upon the following judgments:

1. *Union of India vs Praful Kumar Samal and Another [(1979) 3 SCC 4]*
2. *Niranjn Singh Karam Singh vs State of Maharashtra [(1990) 4 SCC 76]*
3. *J. Alexander vs CBI [ILR 2000 KAR 1418]*
4. *Aravind Kumar vs State of Rajasthan [(2015) 2 RLW 1498 (Raj.)]*
5. *Vikramjit Kakati vs State of Assam [2022 SCC OnLine SC 967]*
6. *CBI, Hyderabad vs K. Narayana Rao [(2012) 9 SCC 512]*
7. *Surendra Kumar and Another vs State of U.P [2021 SAR (Cri) 786]*
8. *Praveen @ Sonu vs State of Haryana [2022 SAR (Cri) 240]*

9. *State by SP through the SPE CBI vs Uttamchand Bohra [2022 SAR (Cri) 226]*
10. *State of Karnataka vs L. Muniswamy and Ors [(1977) 2 SCC 699]*

14. Per contra, the learned Senior Counsel Sri.C.H.Jadhav, representing the respondent, submitted that the charge-sheet was filed by the Deputy Superintendent of Police and Investigating Officer, S.I.T., C.I.D. Head Quarters, which was a police station. He submitted that a charge-sheet was filed under Section 173(2) of Cr.P.C. He submitted that an "officer-in-charge of a police station" as defined under Section 2(o) of Cr.P.C. includes any police officer, who may be directed by the State Government to perform the duties of an officer-in-charge of a police station. He contended that the officer, who had filed the charge-sheet was directed to perform the duties of an officer in-charge of a police station in terms of the Government Order dated 09.07.2015 and therefore, there is no error committed by the prosecution. He invited the attention of the Court to Sections 32 and 33

of Cr.P.C. and submitted that the State Government in exercise of its powers under Section 4 of the Karnataka Police Act, 1963 had constituted the Special Investigation Team to investigate the offence in Crime No.56/2015 registered in the Karnataka Lokayukta Police Station bearing and authorised the SIT with the power under Sections 32 and 33 of Cr.P.C. He therefore submitted that there is no error committed by the investigating officer in filing the charge-sheet. He further contended that none of the accused had challenged the formation/investigation and the final report of SIT and the competence of the SIT to file a charge-sheet was not raised before the Trial Court but is raised before this Court for the first time. He further invited the attention of the Court to Section 156(2) of Cr.P.C. and contended that the accused cannot question the proceedings of the investigating officer on the ground that he was not empowered to investigate. He also contended that the irregularity in the proceedings should be so grave that it should prejudice the accused and it is only then that such irregularity should result in vitiating

the proceedings. He relied upon the judgment passed by the Division Bench of this Court in Crl.A.No.1628/2018 and connected cases and contended that in similar circumstances, the question whether the Assistant Commissioner of Police, City Crime Branch is a police station or not came up for consideration in Crl.A.No.1628/2018 and connected cases, where the Division Bench held as follows:-

"72. In view of the rival contentions urged by the learned Counsel for the parties stated supra, it is relevant to consider the provisions of the Code of Criminal Procedure:

"Section 2(o) - 'Officer in charge of a police station' includes, when the officer in charge of the police station is absent from the station-house or unable from illness or other cause to perform his duties, the police officer present at the station-house who is next in rank to such officer and is above the rank of constable or, when the State Government so directs, any other police officer so present."

"Section 2(r) - 'Police report' means a report forwarded by a police officer to a

Magistrate under Sub-section (2) of Section 173 of Cr.P.C.”

Sub-section (2) of Section 173: *As soon as the investigation is completed, the Officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government.*

Section 2(s) – “Police Station’ *means any post or place declared generally or specially by the State Government, to be a police station, and includes any local area specified by the State Government in this behalf.*

Section 32: “Mode of conferring powers:- *(i) In conferring powers under this Code, the High Court or the State Government, as the case may be, may, by order, empower persons specially by name or in virtue of their offices or classes of officials generally by their official titles.*

(ii) Every such order shall take effect from the date on which it is communicated to the person so empowered.”

CHAPTER IV: A-POWERS Of SUPERIOR OFFICERS OF POLICE –

Section 36 prescribes 'Powers of Superior Officers of Police'.- Police officers superior in rank to an officer in charge of a police station may exercise the same powers throughout the local area to which they are appointed as may be exercised by such officer within the limits of his station.

73. A careful reading of the provisions of Section 36 of Cr.P.C., makes it clear that the said provision can be divided as under:

- a) Police Officers superior in rank;*
- b) an officer in charge of a police;*
- c) limits of the station; and*
- d) appointment.*

Therefore, it is clear that any police officer superior in the rank to an officer in charge of a police station shall have the same powers, throughout the local area to which they are specifically appointed.

74. On careful perusal of the memo dated 12.4.2010 as per Ex.P.111, the Commissioner of Police, Bangalore City has entrusted the Assistant Commissioner of Police, Special Enquiries Squad, CCB, Bangalore City for further investigation of Crime No.101/2010 of

Sanjaynagar Police Station under Section 364(A) of IPC with immediate effect and to conduct day-to-day investigation with an instruction to the Police Inspector, Sanjaynagar Police Station, Bangalore City to immediately handover the case file to the Assistant Commissioner of Police, Special Enquiries Squad, CCB, Bangalore City and report. The said memo issued by the Police Commissioner, Bangalore City has reached finality since none of the accused persons have challenged the said entrustment of day-to-day investigation conducted by the ACP of CCB. It is also not in dispute that the investigating officer so entrusted has conducted a detailed investigation and submitted the final report which has also not been challenged by any of the accused persons.

75. Admittedly, the jurisdictional Magistrate has taken cognizance of the offence as stated in the final report submitted by the ACP of CCB which was not challenged by any of the accused persons. All the accused persons allowed the trial to be conducted and ultimately the trial culminated into the conviction and now in the appeal, they have raised an objection with regard to the power exercised by the ACP of CCB in filing

final report. Admittedly, in none of the contentions raised by the learned Counsel for the accused persons they have taken the contention that the ACP of CCB has no power to conduct the investigation and all the learned Counsel appearing for the accused have contended that the ACP of CCB can conduct the investigation, but cannot file report as he is not an Officer in charge of a police station. When the breach of such a mandatory provision is neither brought to the knowledge of the Court at a sufficiently earliest stage nor an objection was raised while the Court was taking cognizance with regard to the fact that necessary steps were not taken to get the illegality cured so also to rectify the defect of filing the report by the ACP of CCB. It is not the case of the appellants-accused that the Court has taken cognizance of final report filed by ACP of CCB when he is not competent to proceed with the trial or they had raised objection at the earliest stage or have challenged either entrustment/conduct of the investigation by the Commissioner of Police in the year 2010 or filing of final report filed by the ACP of CCB in the year 2012 or have questioned taking cognizance by the learned Magistrate and as such, now it is not open

for them to raise the same after the impugned judgment of conviction and order of sentence is passed against them.

76. The appellants have not shown how the miscarriage of justice has been caused in taking cognizance of the final report filed by the ACP of CCB by the competent Court. A defect or illegality in investigation, however serious, has no direct bearing on the competence or the procedure relating to cognizance or trial. No doubt a police report which result from an investigation is provided under Section 190 of Cr.P.C., as the material on which cognizance was taken. Admittedly, the present appellants have admitted the entrustment of matter to ACP of CCB for conducting day to day investigation by the Commissioner of Police, Bangalore City in view of the Memo dated 12.4.2010 and when that itself is not challenged, and allowed the ACP of CCB to conduct investigation, now questioning after filing of final report and taking cognizance of the said report for the first time before this Court in the present criminal appeals is impermissible.

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85. *Though a contention was raised by the learned Counsel for the appellants-accused especially by the learned Senior Counsel, Sri Sandesh Chouta that, the learned Single Judge of this Court has taken a view that CCB is not a police station which has persuasive value, the fact remains that the order passed by the learned Single Judge of this Court was subject matter before the Hon'ble Supreme Court in Special Leave to Appeal (Crl) Nos.2157-2158/2021 wherein the Hon'ble Supreme Court has stayed the operation of the impugned order passed by the learned Single Judge of this Court for a period of four weeks. Any how, in the present appeals, we are not deciding, whether ACP of CCB is a police station or not and that is not an issue raised at the earliest point of time. Even otherwise, the State Government by a Notification, dated 25.2.2021, in exercise of powers under the provisions of Sections 4, 5, 6, 11 and 12 of the Karnataka Police Act, 1963 and read with Section 36 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974) the Government of Karnataka directed and appointed that, Police Officer of, and above the Rank of Inspector, in the Central Crime Branch (CCB),*

Bengaluru as Superior Officers of Police in respect of all Police Stations within the limits of Police Commissionerate of Bengaluru City for the purpose of exercising the powers, same as the officer in charge of a Police Station.

86. Though the said notification is prospective, we are of the opinion, that the irregularity committed by the Commissioner of Police, Bangalore City, in issuing a memo dated 12.4.2010 entrusting Crime No.101/2010 of Sanjaynagar Police Station under Section 364(A) IPC to the Assistant Commissioner of Police, Special Enquiries Squad, CCB., Bangalore with immediate effect was not challenged and they are not aggrieved by entrustment of crime to ACP of CCB, but they are specifically aggrieved by the opinion arrived at in filing the final report by the ACP of CCB. If that is so, they ought to have raised the said contention at the earliest point of time. Having maintained silence, allowed the competent Court to take cognizance of such report and proceed with the trial, they having participated in the proceedings, it is not open for the accused-appellants now to contend that there is irregularity in filing the final report. In the

absence of the same, the entire trial culminating conviction cannot be said to be vitiated in view of the provisions of Section 465 of Cr.P.C. stated supra. In that view of the matter, we decline to decide whether ACP of CCB is a police officer in charge of a police station which would be decided in appropriate case, if raised, at the earliest point of time."

15. In support of his contention, the learned Senior counsel for the respondent relied upon the following judgments:-

1. *State through Deputy Superintendent of Police vs R. Soundarirasu [2022 SCC OnLine SC 1150]*
2. *Vinod Kumar Garg vs State (NCT of Delhi) [(2020) 2 SCC 88]*
3. *Ashok Kumar Todi vs Kishwar Jahan and Others [(2011) 3 SCC 758]*

16. In so far as the contentions urged by the learned counsel for the petitioner in CrI.R.P.No.183/2022 are concerned, the learned Senior counsel representing the respondent contended that the same are inconsequential

since the Trial Court has clearly held while rejecting the applications filed by the accused Nos.1, 3, 4 and 5 that there was sufficient material to justify the charge-sheet and therefore, the contention urged by the petitioner do not merit consideration.

17. I have considered the submissions made by the learned Senior counsel for the petitioner in CrI.R.P.No.250/2022 and the learned counsel for the petitioner in CrI.R.P.No.183/2022 as well as the learned Senior counsel for the respondent.

18. Since the learned Senior counsel for the petitioner in CrI.R.P.No.250/2022 has restricted the grounds in support of his application under Section 227 read with Section 239 of Cr.P.C., to the sole contention that the Special Investigation Team had no power to file a charge-sheet, this revision petition is examined only to consider the above contention.

19. It is pertinent to note that an offence was reported by Krishnamurthy, Executive Engineer of Zilla Panchayat that some officials of the Lokayukta had laid a demand for money, which was reported widely in the print and electronic media. The Registrar, Karnataka Lokayukta, communicated with the State Government in terms of his letter dated 27.06.2015 and referred to the reports in the media about the allegations of corruption against officials in the Lokayukta, which were grave and serious and therefore, felt it desirable that the Lokayukta police investigated the case. Therefore, he requested the State Government to issue an order constituting a Special Investigation Team headed by a police officer not below the rank of Additional Director General of Police to investigate into the offences. Following this request, the State Government issued an order dated 30.06.2015 constituting a Special Investigation Team headed by Mr. Kamal Pant, IPS, Additional Director General of Police (Prisons) to investigate an offence registered by the Karnataka Lokayukta. Following this, a request was made

by the Additional Director General of Police (Prisons), in terms of his letter dated 04.07.2015 to grant powers under Section 4 of the Karnataka Police Act, 1963 and under Sections 32 and 33 of Cr.P.C. to investigate and to submit a report to the Court. Following this, the State Government passed an Order dated 09.07.2015 to the following effect:-

"ಪ್ರಸ್ತಾವನೆಯಲ್ಲಿ ವಿವರಿಸಿರುವ ಅಂಶಗಳ ಹಿನ್ನೆಲೆಯಲ್ಲಿ, ಕರ್ನಾಟಕ ಲೋಕಾಯುಕ್ತ ಕಛೇರಿಯಲ್ಲಿ ನಡೆದಿದೆ ಎನ್ನಲಾದ ಭ್ರಷ್ಟಾಚಾರದ ಆರೋಪಗಳ ಕುರಿತು ಲೋಕಾಯುಕ್ತ ಪೊಲೀಸ್ ಠಾಣೆಯಲ್ಲಿ ದಾಖಲಾಗಿರುವ ಮೊಕದ್ದಮೆ ಸಂಖ್ಯೆ: 56/2015 ರ ಪ್ರಕರಣದ ತನಿಖೆಯನ್ನು ವಹಿಸಿಕೊಂಡು ಹಾಗೂ ಈ ಪ್ರಕರಣಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ ಮತ್ತು ತನಿಖೆಯಲ್ಲಿ ಹೊರಬರುವ ಅಂಶಗಳ ಆಧಾರದ ಮೇಲೆ ಮುಂದೆ ಎಲ್ಲಾ ಲೋಕಾಯುಕ್ತ ಪೊಲೀಸ್ ಠಾಣೆಗಳಲ್ಲಿ ದಾಖಲಾಗಬಹುದಾದ ಪ್ರಕರಣದ ತನಿಖೆಯನ್ನು ಕೈಗೊಳ್ಳಲು ಕರ್ನಾಟಕ ಪೊಲೀಸ್ ಅಧಿನಿಯಮ, 1963 ರ ಪ್ರಕರಣ 4 ರ ಹಾಗೂ ದಂಡ ಪ್ರಕ್ರಿಯಾ ಸಂಹಿತೆ 1973 ರ ಪ್ರಕರಣ 32 ಮತ್ತು 33 ರಲ್ಲಿನ ಪ್ರದಕ್ಷವಾದ ಅಧಿಕಾರವನ್ನು ಚಲಾಯಿಸಲು ವಿಶೇಷ ತನಿಖಾ ತಂಡಕ್ಕೆ ಸರ್ಕಾರವು ಮುಂದಿನ ಆದೇಶದವರೆಗೂ ಅನುಮತಿ ನೀಡಿ ಆದೇಶಿಸಿದೆ."

20. The head of the SIT passed the following Order dated 18.08.2015:-

ORDER NO.SIT/ADG/OP-4/2015, DATED
18-08-2015

As per the Govt. Order cited above in reference No.(3), in order to conduct the investigation of the Bengaluru City Division, Lokayukta P.S. Cr.No.61/2015 U/s 8, 9 of Prevention of Corruption Act, 1988 and U/s 384, 420, 506, 120(B) IPC, Sri. C.A. Simon, Dy.SP, CID, Bengaluru, is nominated as the Chief investigating Officer (CIO). He will be assisted by the other officers, who will function as Additional Investigation Officers (AIOs). He will submit the progress of investigation to the DIG, SIT and the undersigned on regular basis.

21. Following this, Crime No.61/2015 registered by the Additional Superintendent of Police, Karnataka Lokayukta against accused Nos.1, 2 and 3 on the basis of a written information furnished by CW.1 on 18.08.2015, was transferred by the Karnataka Lokayukta police to the Special Investigation Team in terms of the letter dated 18.08.2015. The investigation was undertaken by the Special Investigation Team and a charge-sheet was filed

against the accused for the offences punishable under Sections 8, 9 of the Prevention of Corruption Act, 1988 and Sections 384, 419, 201, 506 read with Section 120B of IPC. The Trial Court took cognizance of the offences referred above and registered Spl.C.C.No.493/2015. The accused Nos.1, 3, 4 and 5 filed applications under Section 227 read with Section 239 of Cr.P.C. for discharge, which were rejected and the case was posted for framing of charge against the accused.

22. In so far as the threshold contention of the learned Senior counsel for the respondent that the accused No.3 as well as the accused No.2 had not raised any ground regarding the competency of the SIT to file a charge-sheet and therefore, they cannot raise it in the first time before this Court is concerned, it is now settled that an accused should be given all the opportunity to defend and extricate himself from the offences alleged against him. The contention urged before this Court that the SIT was not a police station and therefore was not empowered

to file a charge-sheet is a pure question of law that can be entertained by this Court, despite the fact that the same was not urged before the Trial Court, as that affected the vitals of the case and if left undecided, could affect the prosecution at a later stage. In that view of the matter, the petitioners are entitled to urge the aforesaid ground.

23. It is relevant to note that there is no provision under the Karnataka Lokayukta Act, 1984 to investigate offences committed by Lokayukta and its officers, though all of them are "public servants" as defined under Section 2 (12) of the Karnataka Lokayukta Act, 1984. Nonetheless, the office of Superintendent of Police, Police wing, Karnataka Lokayukta, City Division, Bengaluru was designated as a "police station" as defined under Section 2(s) of Cr.P.C., the offences in Crime Nos.56/2015 and 61/2015 were rightly registered by the Lokayukta police. The Registrar of Karnataka Lokayukta, in an attempt to ensure transparency in investigation of the offence, requested the State Government to pass appropriate

orders to appoint a Special Investigation Team headed by an officer not below the rank of Additional Director General of Police to investigate the offence. The State Government in exercise of its powers under Section 4 of the Karnataka Police Act, 1963 and Sections 32 and 33 of Cr.P.C, constituted the SIT. Section 32 of Cr.P.C. merely enables a State Government to empower persons specially by name or in virtue of their offices or classes of officials generally by their official titles. Therefore, there can be no dispute that the Special Investigation Team was entitled to investigate the offence but the moot question is in the facts and circumstances of the case whether SIT could have filed a final report under Section 173(2) of Cr.P.C.

24. It is relevant to note that the Government of Karnataka in exercise of its powers under Section 2(s) of Cr.P.C. issued a notification bearing number HD 292 PEG 2000 dated 08.05.2002 and declared the places specified in Column (2) of the table below as police Stations and the

local areas mentioned were declared as the local areas included within those police stations.

GOVERNMENT OF KARNATAKA

No.HD 292 PEG 2000

KARNATAKA GOVERNMENT SECRETARIAT
VIDHANA SOUDHA,
BANGALORE, DATED 08.05.2002

NOTIFICATION

In exercise of the powers conferred by clause (S) of Section 2 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974) and in suppression of all the Notifications issued in this behalf, the Government of Karnataka hereby declares the places specified in column (2) of the table below as Police Stations and specifies the local areas mentioned in the corresponding entries in column (3) thereof as local areas included within those Police Stations.

TABLE

Sl. No.	Name of the Police Stations	Local Areas included within the police stations specified in column (2)
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(1)	(2)	(3)
1	Office of the Additional Director General of Police, Police Wing, Karnataka Lokayuktha, Bangalore	Whole of the State of Karnataka
2	Office of the Deputy Inspector General of Police, Police wing, Karnataka Lokayuktha, Bangalore	Whole of the State of Karnataka
3	Office of the Superintendent of Police, (1) Police Wing, Karnataka Lokayuktha, City Division Bangalore	Areas within the jurisdiction of the Commissioner of Police, Bangalore City
X	Xxxxxxxx	xxxxxx
X	xxxxxxxx	xxxxxxxx
45	Office of the Police Inspector, Police Wing, Karnataka Lokayuktha, Gadag,	Gadag District
46	Office of the Police Inspector, Police Wing, Karnataka Lokayuktha, Haveri	Haveri District
47	Office of the superintendent of Police, Police Wing, Karnataka Lokayuktha, Gulbarga Division	Gulbarga, Raichur, Koppal and Bidar Districts

48	Office of the Deputy Superintendent of Police, Police Wing, Karnataka Lokayuktha, Gulbarga Division	Gulbarga and Bidar Districts
49	Office of the Deputy Superintendent of Police, Police Wing, Karnataka Lokayuktha, Raichur Division	Raichur and Koppal Districts
50	Office of the Police Inspector, Police Wing, Karnataka Lokayuktha, Gulbarga	Gulbarga District excluding Yadgir, Shahapur, Sedam and Shorapur Taluks
51	Office of the Police Inspector, Police Wing, Karnataka Lokayuktha, Yadgir	Yadgir, Shahapur, Sedam and Shorapur (Surpur) taluks in the Gulbarga District
52	Office of the Police Inspector, Police Wing, Karnataka Lokayuktha, Bidar	Bidar District
53	Office of the Police Inspector, Police Wing, Karnataka Lokayuktha, Raichur	Raichur District

54	Office of the Police Inspector, Police Wing, Karnataka Lokayuktha, Koppal	Koppal District
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BY ORDER IN THE NAME OF
THE GOVERNOR OF KARNATAKA

Sd/-
(R. RANGAMANI)
UNDER SECRETARY TO GOVERNMENT,
HOME & TRANSPORT DEPARTMENT (POLICE SERVICES)"

25. This notification was superseded by another notification dated 19.03.2016 by which the Anti Corruption Bureau was declared to be the police station under Section 2(s) of Cr.P.C., which was later struck down by a Division Bench of this Court in ***Chidanand Urs vs State of Karnataka and Others (2022)5 KLJ 193(DB)***. Thus as the matter stands, the Karnataka Lokayukta for all practical purposes continues to be a police Station as defined under Section 2(s) of Cr.P.C.

26. Section 173(2) of Cr.P.C. mandates that once an investigation is complete, "the officer-in-charge of the police station shall forward to the Magistrate empowered to take cognizance of the offence on a police report, a

report in the form prescribed". A "police report" as defined under Section 2(r) of Cr.P.C. means a report forwarded by a police officer to a Magistrate under Section 173(2) of Cr.P.C.

27. A "police station" is defined under Section 2(s) of Cr.P.C. which is as follows:

"Section 2(s) - 'Police Station'
means any post or place declared generally or specially by the State Government, to be a police station, and includes any local area specified by the State Government in this behalf."

28. Similarly, the words "Officer-in-charge of a police station" is inclusively defined under Section 2(o) of Cr.P.C. as follows:

"Section 2(o) - 'Officer-in-charge of a police station'
includes, when the officer in charge of the police station is absent from the station-house or unable from illness or other cause to perform his duties, the police officer present at the station-house who is next in rank to such officer and is above the rank of

constable or, when the State Government so directs, any other police officer so present."

29. Therefore, it is indisputable that a final report under Section 173(2) of Cr.P.C. should be filed only by an Officer in-charge of a police station and any post or place and its local area must be declared generally or specially by the State Government. This power of filing a report by the officer in-charge of a police station cannot be delegated but a superior officer of that police station and no other can exercise such power in view of Section 36 of Cr.P.C. (**refer Judgment of the Apex Court in State of Bihar and another vs Lalu Singh (2014) 1 SCC 663**)

30. The Hon'ble Apex Court while considering the question whether a charge-sheet filed by an officer of CID would stand vitiated or not in the case of **Tofan Singh vs State of Tamilnadu, [(2021) 4 SCC 1**, held as follows:-

"19. It is also important to note that in Balkishan A. Devidayal [(1980) 4 SCC 600], these

judgments were referred to, and the Court then concluded:

"70. To sum up, only a person against whom a formal accusation of the commission of an offence has been made can be a person "accused of an offence" within the meaning of Article 20(3). Such formal accusation may be specifically made against him in an FIR or a formal complaint or any other formal document or notice served on that person, which ordinarily results in his prosecution in court. In the instant case no such formal accusation had been made against the appellant when his statement(s) in question were recorded by the RPF officer."

31. On a coalesce of the above, it is evident that a police report must be filed by an officer in-charge of a police station and such police station should be declared by the State Government by general or special orders. However, in the present case, there is no shred of evidence to indicate that the SIT was declared as a police station and the officer who filed the charge-sheet was the Chief Investigation Officer of SIT and not an "officer in charge of a police station" and therefore, fell foul of the requirement under Section 173(2) of Cr.P.C. The

notification of the State Government declaring the office of Superintendent of Police, Police wing, Karnataka Lokayukta, City Division, Bengaluru, as a police station, stood revived in view of the Judgment of the Division Bench of this Court and therefore, it was for the Superintendent of Police, Police wing, Karnataka Lokayukta, City Division, Bengaluru, to file the final report under Section 173(2) of Cr.P.C. This being a mere irregularity cannot vitiate the proceedings and the accused Nos.2 and 3 cannot be discharged on this ground.

32. In that view of the matter, CrI.R.P.No.250/2022 deserves to be allowed-in-part and the cognizance of the offences taken by the Trial Court deserves to be set aside.

33. Hence, CrI.R.P.No.250/2022 is **allowed-in-part**. The cognizance of the offences taken by the Trial Court is set aside. However, as this is a curable defect, the charge-sheet filed against the accused deserves to be returned reserving liberty to the Superintendent of Police

or the concerned officer Police wing, Karnataka Lokayukta, City Division, Bengaluru to submit the final report in accordance with law. The Trial Court may thereafter proceed in accordance with law.

34. Consequently, CrI.R.P.No.183/2022 is also ***allowed-in-part***. The impugned Order directing framing of charges is set aside.

35. Having regard to the seriousness of the issue and the protracted proceedings, the Superintendent of Police or the concerned officer Police wing, Karnataka Lokayuktha, City Division, Bengaluru is granted three months time to submit the final report before the appropriate Court and the Trial Court shall endeavour to conclude the trial in accordance with law and as expeditiously as possible which shall not exceed one year from the date of filing the charge-sheet.

**Sd/-
JUDGE**

PMR