

IN THE COURT OF XLII ADDL. CHIEF METROPOLITAN  
MAGISTRATE, BENGALURU.

Dated this the 30<sup>th</sup> day of March, 2022.

:Present:

Smt. PREETH. J., B.A.L., LLB.,  
XLII Addl.CMM Judge,  
(Spl. Court for trial of cases filed against sitting as  
well as former MPs/MLAs,  
triable by Magistrate in the State of Karnataka)

**PCR.No.5716/2022.**

Complainant: Riyaz Ahamed,

i,

(By Sri.NG.R., Advocate)

**Vs.**

Accused: 01. K.S.Eshwarappa,

02. Chenny @. Channabasappa,

**ORDERS ON REFERRING THE PRIVATE COMPLAINT  
UNDER SECTION 156(3) OF Cr.P.C.**

01. This is a Private Complaint filed under section 200 of Cr.P.C., alleging that the accused No.1 and 2 have committed the offences punishable under section 124-A, 153-A, 153-B, 295-A, 295-B, 505(2) and 504, r/w. section 34 of Indian Penal Code. After the presentation of the Private Complaint, the learned counsel for complainant has prayed this Court to refer the matter for investigation under section 156(3) of Cr.P.C. to the S.H.O. of Doddapete Police Station, Shivamogga.

02. Brief facts of the case is that on 20.02.2022 at 09.00 p.m., a young man by name Harsha was murdered within the jurisdiction of Doddapete police station and a case was also registered by Doddapete Police, Shivamogga in Cr.No.77/2022 for the offence punishable under section 302 of IPC. When this case was in investigation stage and when any of the accused persons were also not arrested by the police and also when the police could investigate the actual cause of the said murder, the accused no.1 and 2 have started propagating publicly that the murder of Harsha took place due to political and religious cause.

The accused no.1 and 2 have done so with an intention to promote enmity between Hindus and Muslims. The accused have provoked the people of one religion and the result of which, on 21-02-2022 a procession was also held by the community of one religion against the community of another religion and also committed the act of rioting and also pelted stones on many innocent people in the public and also caused damage to the house and vehicles of the innocent people by setting fire. The said rioting was committed due to the public speech and statement made by the accused persons. Due to the violence and disharmony in the Shivamogga City Curfew was also in force for few days this also caused threat to the life of the people in Shivamogga. The complaint lodged by the complainant before the police station is also not entertained due to the political power of the accused persons. It is averred that the complainant has also approached all the higher authorities but all his efforts went in vain.

03.It was averred in the complaint that the above said publication was provocative, baseless, false and amounted to irresponsible imputations attracting the offences under section

153-A, 153-B, 295-A and 505(2) of I.P.C., intended to promote enmity between two religions namely, Hindu and Muslim on the ground of religion and such acts being prejudicial to the maintenance of harmony.

04. I have heard the learned counsel for the complainant.

05. Perused the Private Complaint and entire case on record. The following points arise for my consideration:

Point No.1: Whether the complainant has made out grounds to refer this case under section 156(3) of Cr.P.C for investigation?

Point No.2: What order?

06. My answer to the above points are as follows:

Point No.1: In the Affirmative.

Point No.2: As per the final order for the following:-

### **REASONS**

07. **Point No.1**: The complainant is alleging that the accused have committed the offences punishable under section 124-A, 153-A, 153-B, 295-A, 295-B, 505(2) and 504 r/w section 34 of IPC, as averred in the complaint, which is narrated above.

On perusal of the the complaint averments and also the documents produced along with the complaint, it goes to show that the complainant has complied with the directions given by the Hon'ble Apex Court in **Priyanka Srivastava's Case**. The complainant has lodged a complaint before the Jurisdictional Police Station, but no action was taken. The complainant has also lodged a compliant in this regard to the Higher Authorities also, but no action is taken. The complainant has also filed his affidavit stating that he has lodged the complaint and no action is taken by the police. As such, the complainant has filed this Private Complaint with the prayer of refer the complaint under 156(3) of Cr.P.C for investigation.

08.The complainant has produced documents in compliance of section 154 of Cr.P.C and also filed Affidavit in that regard in which is inclusive pf complaint averments. The complainant has sought to refer this case to the jurisdictional police for investigation. As such at this pre- cognizance stage bar under section 196 Cr.P.C will not come into play. And this is also held by our Hon'ble High Court of Karnataka in Criminal Petition NO.8733 OF 2017 between Sri. A. Alam Pasha VS

Anant Kumar Hegde and another decided on 10-02-2021. As such Point No.01 is answered in the affirmative.

09. **Point No.2**: For the reasons stated above, I proceed to pass the following:

**ORDER**

This complaint is referred to SHO of Doddapete Police Station, Shivamogga under section 156(3) of Cr.P.C for investigation.

(Typed by me directly on the computer, corrected and then pronounced by me in open court on this the 30<sup>th</sup> day of March - 2022).

(PREETH. J)  
XLII Addl. C.M.M.,  
(Spl. Court for trial of cases filed against sitting as well  
as former MPs/MLAs, triable by the Magistrate  
in the State of Karnataka)

30.03.2022

Complt., by - NGR.,  
For order.

(Order pronounced in open court vide separate order)

**ORDER**

This complaint is referred to SHO of  
Doddapete Police Station, Shivamogga under  
section 156(3) of Cr.P.C for investigation.

Await report by 05.05.2022.

(PREETH. J)

XLII Addl. C.M.M.,

Spl. Court for trial of cases filed against sitting as well  
as former MPs/MLAs, triable by the Magistrate  
in the State of Karnataka)