WWW.LIVELAW.IN

**IN THE HIGH COURT OF KARNATAKA AT DHARWAD**
(MEMORANDUM OF CRIMINAL PETITION FILED UNDER SECTION 482 OF THE CODE OF CRIMINAL PROCEDURE)

**CRIMINAL PETITION NO. / 2020**

IN THE COURT OF THE PRINCIPAL JMFC, GOKAK, BELGAUM DISTRICT

C.C. NO.1065/2020

**IN THE HIGH COURT OF KARNATAKA AT DHARWAD**

**CRIMINAL PETITION NO. / 2020**

RANK OF THE PARTIES
TRIAL COURT / HIGH COURT

**BETWEEN**:
SRI.B.S.YEDIYURAPPA
S/O LATE SIDDALINGAPPA
CHIEF MINISTER, STATE OF KARNATAKA
MEMBER OF LEGISLATIVE ASSEMBLY

**ACCUSED / PETITIONER**

**AND**:

1. STATE OF KARNATAKA
THROUGH GOKAK TOWN POLICE STATION,
GOKAK CIRCLE,
BELGAVI DISTRICT.
BELGAVI – 590 001
REPRESENTED BY

WWW.LIVELAW.IN

PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA
DHARWAD – 580 001.

**PROSECUTING AGENCY / RESPONDENT NO.1**

2. SRI.LAXMAN ALLAPUR
S/O TUKHAPPA
EXECUTIVE ENGINEER,
KARNATAKA NIRAVARI NIGAMA,
GRBC DIVISION NO.3, GOKAK
AGED ABOUT 58 YEARS,
GOKAK, NEAR BAMBY,
CHAL, GOKAK,
BELGAVI--590 001

**INFORMANT / RESPONDENT NO.2**

Petitioner humbly submits as follows:-

1. The addresses of the Petitioner and that of the Respondents for the purpose of service of process of this Hon'ble Court are as shown in the above cause title. Petitioner can also be served through his counsels **SANDEEP PATIL & CO, ADVOCATES & SOLICITORS,** G03, Ground Floor, Blue Cross Chambers, 11, Infantry Road Cross, Tasker Town, Shivajinagar, Bengaluru – 560 001.

2. Being aggrieved by filing of information dated 26.11.2019 lodged by the Respondent No.2, the Order dated 26.11.2019 passed under Section 155(2) of Cr.P.C, wherein the Magistrate has accorded permission to Respondent No.1 – Police for investigation into the non-cognizable offences and to file final report; the registration of FIR in crime No.147/2019 dated

WWW.LIVELAW.IN

26.11.2019 for offences under Section 123 (3) of the Representation of Peoples Act, 1951 and under Section 171 (F) of the Indian Penal code; the Order of taking Cognizance and issuance of summons dated 26.06.2020 passed by the Principal JMFC Court, Gokak, the present Criminal Petition is being filed by the Petitioner.

3. Petitioner before this Hon'ble Court is presently the Chief Minister of the Karnataka State.

4. The facts leading to the filing of the present petition are narrated hereunder.

**BRIEF FACTS OF THE CASE:**

5. The Respondent No.2 – Sri.Laxman Allapur lodged a criminal Complaint before the Respondent No.1 – Police on 26.11.2019. It is alleged in the complaint that the Complainant who is a Government Servant was deputed on election duty as a Flying Squad by the District Election Officer, Belagavi for Gokak Constituency Bye-Elections. It is alleged that on 23.11.2019 at about 5.00 - 6.40 PM while he was on his election duty in Valmiki Stadium along with Sri.M.G.Uppar, Petitioner while campaigning for the BJP Candidate Sri.Ramesh Jarkiholi had appealed in his speech that the Veerashaiva Lingayat Community Members votes must be consolidated and that they should not disperse here and there

WWW.LIVELAW.IN

and as such the Petitioner has violated the Election Code of Conduct. Based upon the said complaint, the Respondent Police registered a Non-Cognizable Report bearing N.C.No.24/2019 on 26.11.2019.

6. Thereafter the Respondent No.1 – Police made a requisition on 26.11.2019 before the Trial Court to seek permission to register and investigate into the alleged non-cognizable offences under Section 123(3) of Representation of Peoples Act, 1951 and 171(F) of IPC. Based upon the said requisition the Trial Court by its order dated 26.11.2019 accorded permission to the Respondent – Police to register the FIR. Pursuant thereto, the Respondent – Police have registered the FIR in Crime No.147/2019 dated 26.11.2019 for the alleged offences under Section 123(3) of the Representation of Peoples Act, 1951 and 171 (F) of IPC.

7. The Respondent – Police after completion of investigation has submitted the Final "B" Report in Crime No.147/2019 before the Trial Court on 25.06.2020. Pursuant thereto the Trial Court passed an Order "*Verified B Report and register the case in summary register*". Thereafter, the Registry has registered the case as Summary Case bearing Summary Case No.40/2020 on the same day when the Order was passed on (25.06.2020) by the Trial Court. However, the Trial Court strikes down the said order stated supra and on 26.06.2020

WWW.LIVELAW.IN

takes cognizance and issues summons to the Petitioner and directs the Registry to register the case as a Criminal Case in Register No.3. Accordingly, the Registrar has registered the case in C.C. No.1065/2020.

8. The registration of FIR amounts to gross violation of the Rule of Law much less in gross violation to Section 155 of Cr.P.C. Further, the Trial Court ought to have applied its mind at the time of taking cognizance and give reasons for summoning of the Petitioner while passing an Order under Section 204 of Cr.P.C. In the absence of such mandatory compliance the proceedings before the Trial Court become unsustainable and in absence of there being a set of facts so as to constitute the commission of the offences, the lodging of the complaint and registering the FIR in Crime No.147/2019 against the Petitioner and continuation of the Criminal proceeding pursuant thereto, would amount to gross abuse of process of Court and of law. Petitioner is therefore constrained to invoke the inherent powers of this Court so as to prevent the abuse of power of this Court and to secure ends of justice. Petitioner or any other person claiming under him has not filed any other petition before any other petition before any other Court, forum or authority on the same cause of action claiming same relief. In the circumstances and there being no alternative remedy, the Petitioner prefers the present petition on the following amongst other grounds.

WWW.LIVELAW.IN

**GROUNDS**

9. Section 154(1) of the Code of Criminal procedure mandates that every information relating to the commission of the cognizable offence. If given orally to an Officer in charge of the Police Station, shall be reduced into writing by him on under his discretion and be read over to the informant, and; every such information whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it; and the substance thereof shall be entered in a book to be kept by such Officer in such form as the State Government may prescribe in this behalf. It is clear from the said provisions that if the information given to a specific Officer relates to the commission of cognizable offences, then it is mandatory for him to register the FIR. In other words, if any information disclosing a cognizable offence is laid upon an Officer in charge of a Police station satisfying the requirement of Section 154(1) of the Code, the said Police Officer has no other option except enter the substance there of in the prescribed form, that is to say to register a case on the basis of such information. The information if secured does not disclose a cognizable offence but indicate a necessary inquiry, a Preliminary Inquiry may be conducted only to ascertain whether cognizable offences disclosed or not. If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In the case of the doubt about the correctness or credibility of the

WWW.LIVELAW.IN

information, Preliminary Inquiry can be conducted and thereafter, if it is satisfied that there is a prima facie case for investigation, register the FIR. On the other hand, if the facts disclose commission of a non-cognizable offence, then the Police are prohibited from investigating the offence without prior permission from the Trial Court. In the present case the Complainant does not disclose any information relating to a non-cognizable offence, he shall enter the substance of such information in a book "***refer the informant to the Magistrate***". In other words, the Police Officer in charge of the Police station upon the receipt of the information regarding commission of non-cognizable offence, after entering the substance of such information in the register/book, he will thereafter refer the informant to the Magistrate. In the present case the Respondent No.1- Police have not referred the informant to the Magistrate relating to the commission of offence, whether cognizable or non-cognizable and therefore the registration of FIR is liable to be quashed.

10. When the offences alleged are non-cognizable in nature, it is mandatory for the Police to seek permission of the Magistrate before commencement of the investigation. Such permission is contemplated under Section 155 (1) of Cr.P.C. In the present case the Respondent-Police upon receipt of the information pertaining to an offence which is not cognizable in

WWW.LIVELAW.IN

nature failed to refer the Informant to the Trail Judge and as such the mandatory requirement contemplated under Section 155(1) of Cr.P.C. has not been adhered by the Respondent No.1– Police. Therefore, the registration of the FIR is liable to be set aside.

11. The Representation of Peoples Act, 1951 is an Act of the Parliament of India to provide for the conduct of election, of the Houses of Parliament, Houses of the Legislature of each State, the qualification, disqualification of membership of those houses, the corrupt practices and other offences at or in connection with such elections and the decision of doubts and disputes arising out of or in connection with such collections. The Act was enacted by the Provisional Parliament under Article 327 of the Indian Constitution, before the first General Elections. The said Act is divided in XI Parts and each part is further divided into different heads and furthermore each head consists of different chapters. Section 8(A) of the Act, 1951 falls under Part II (*Qualification and Dis-Qualification*) Chapter III (*Disqualification for membership of Parliament and State Legislature*) which relates to disqualification on the ground of corrupt practises by an order passed under Section 99 of the Act, 1951, holding an person guilty of an offence of corrupt practice and such order passed under Section 99 of the Act, 1951 shall be submitted to the President for determination of

WWW.LIVELAW.IN

the question as to whether such person shall be disqualified and if so, for what period. Section 99 of the Act, 1951 comes under Part VI (*Disputes regarding election*) Chapter III (*Trial of Election Petitions*) and relates to the power of the High Court to pass the order at the time of making an order under Section 98 of the Act, 1951, also to pass an order where any change is made in the petition of any corrupt practices having been committed at the election after recording a finding whether any corrupt practices has or has not been proved to have been committed at the election and the nature of corrupt practice. The definition of corrupt practices is defined under Section 2(1)(c) of the Act, 1951 which means any practices specified under Section 123 of the Act, 1951. Section 123 of the Act, 1951 comes under Part VII (*Corrupt Practices and Electoral Offences*) Chapter 1 (*Corrupt Practices*) wherein the said section stipulates corrupt practices relating to the Acts such as bribery, exercising undue influence, appeal to vote on the ground of religion, caste, community, language, etc; promote oblique attempt to promote feelings of enmity or hatred between classes of citizens, publication of statement which is false; hiring or procuring vehicles for the conveyance of election, expenditure in contravention to Section 177 of the Act, 1951 , obtaining any assistance for the furtherance for the prospect of that candidates election from governmental Officials and booth capturing shall be deemed to interfere with

WWW.LIVELAW.IN

the free exercising of electoral right. It is relevant to state here that a conjunctive reading of Section 8(A); Section 99 and Section 123 of the Act, 1951 categorically leads to a conclusion that Section 8(A) of the Act disqualifies a candidate if he/she is found guilty in corrupt practices under Section 123 of the Act after recoding a finding under Section 99 of the Act. In other words, whether a corrupt practice under Section 123 of the Act has been committed or not has to be decided by the High Court after recording a finding to that effect under Section 99 of the Act and thereafter Section 8(A) comes into force for disqualification of the candidate for a specific period on the ground of corrupt practice. Therefore, Section 123 is applicable for disqualification of a candidate on the ground of corrupt practice and hence it is not a penal provision. There cannot be any trial for corrupt practices before a Criminal Court and as such the FIR could not have been registered at all. Therefore, the Trial Court has no jurisdiction to take cognizance and to summon the Petitioner for the alleged offence under Section 123 of the Representation of Peoples Act, 1951.

12. Under the Representation of Peoples Act, 1951 Part VII (Corrupt Practices and Electoral Offences) Chapter III (pertain to Electoral offences such as;

WWW.LIVELAW.IN

*Section 125: - Promoting enmity between classes in connection with election;*

*Section 25A:- Penalty for filing false Affidavit;*

*Section 126:- Prohibition of Public meeting during period of 48 hours ending with hour fixed for conclusion of poll;*

*Section 126A:- Restriction on publication and dissemination of results of exit polls, etc.;*

*Section 126 B:- Offences by companies;*

*Section 127:- Disturbances at election meetings;*

*Section 127A:- Restriction or printing of pamphlets, posters;*

*Section 128:- Maintenance of secrecy of voting;*

*Section 129:- Officers, etc. at elections nor to act for candidates or to influence voting;*

*Section 130:- Prohibition of canvassing in or near polling station;*

*Section 131:- penalty for disorderly conduct in or near polling station;*

*Section 132:- Penalty for misconduct at polling station;*

*Section 132A:- Penalty for failure to observe procedure for voting;*

*Section 133:- Penalty for illegal hiring or procuring of conveyance at elections;*

WWW.LIVELAW.IN

*Section 134:- Breaches of official duty in connection with elections;*

*Section 134A:- penalty for governmental servants for acting as election agents, polling agents or counting agents;*

*Section 134B:- Prohibition of going armed to or near polling station;*

*Section 135:- Removal of ballot paper from polling station to be an offence.*)

A bare perusal of the aforesaid offences demonstrates that undue influence relating to corrupt practices has not been made as an offence. In other words, Part VII which consist two parts wherein one pertains to corrupt practices as a ground to disqualification of a candidate and the other Part III specifically pertains to electoral offences that is to say offences which are made penal under the said Act. The corrupt practices defined under Section 123 of the R.P. Act are not a penal offence. It is not an offence for which determination can be made by a criminal court. The corrupt practices defined under Section 123 of the R.P. Act can be agitated in an election petition filed before the court of competent jurisdiction and, if proved, the same may lead to disqualification of a candidate who is elected. On proof of such charge, a candidate may be disqualified even for future election. However, the police have no jurisdiction to

WWW.LIVELAW.IN

investigate into such a charge. Similarly, the court exercising criminal jurisdiction could not have taken cognizance of such offence on the basis of police report submitted under Section 173(2) of the Cr. P.C. Hence, the proceedings are liable to be quashed.

13. Section 171(F) of the Indian Penal Code reads as under :

> "*Punishment for undue influence or personation at an election – whoever commits the offence of under influence or personation at an election shall be punished with imprisonment of either description of a term which may extend to one year or with fine, or with both*".

A careful reading of the above provisions demonstrates that an offence is committed under the aforesaid section when a person with undue influence or personation interfered with the free electoral right of a voter. In the present case the Complainant himself has stated in his further statement before the Investigating Officer that due to pressure of work and under wrong assumption he had stated in his complaint that the Petitioner had appealed in his speech that the "*Veerashaiva Lingayat Community members votes shall be consolidated*", and as such the Petitioner has not violated the moral code of conduct. Infact the appeal was to the karyakartas or the

WWW.LIVELAW.IN

members of the BJP political party and not to that of the public in general. Therefore, when the Complainant himself has given a statement that the Petitioner has not made any such statements, as alleged in the complaint, the ingredient of Section 171(F) is not forthcoming. Hence in absence of the same the Trial Court erred in taking cognizance of the alleged offence or issuing summons against the Petitioner and as such the same is liable to be quashed.

14. A careful & harmonious reading of sections 171C (undue influence), 171D (personation) & 171F (punishment for undue influence & personation) would lead to conclusion that the offences if any must be committed on the date of election and not prior to it. The words '***at an election***' found in the above sections would categorically indicate that the offence of undue influence or personation can only be committed on the day of election ie. the polling day. In the present case the alleged offence as stated in the information is not on the polling day or the day or the election day but much prior. Therefore, the FIR itself could not have been registered for the said offence.

15. It is trite law that there needs to be application of mind on the part of the Court at two initial stages of criminal prosecution; One at the stage of taking cognizance under Section 190 of Cr.P.C. and the other at the stage of summoning

WWW.LIVELAW.IN

of the accused person under Section 204 of Cr.P.C. While taking cognizance, the Court has to find out whether prima facie case exists an against the Accused while summoning the Accused there must exist sufficient grounds to proceed in the matter. At both the stages the application of judicious mind and giving reasons in imperative. Summoning of an Accused in a criminal case is a very serious matter and the Court cannot be mechanical in its approach. In the present case, the order of taking cognizance or the order of issuance of summons against the Petitioner does not disclose any application of mind on the part of the Court below. No reasons are forthcoming regarding the formation of any opinion that there existed sufficient grounds to proceed against the Petitioner. Hence the order of taking cognizance and issue of summons deserves to be quashed.

16. Section 202 (1) of the Code of Criminal Procedure states as thus,

> ***"SEC 202(1)":-****. Postponement of issue of process.*
>
> *(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit, postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is*

WWW.LIVELAW.IN

*sufficient ground for proceeding: Provided that no such direction for investigation shall be made,--*

*(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or*

*(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200.*

*(2) In an inquiry under sub- section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath: Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.*

*(3) If an investigation under sub- section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer- in- charge of a police station except the power to arrest without warrant.*

It is submitted that sub-section (1) of section 202 of CrPC has been amended by Act 25 of 2005 w.e.f.23.06.2006; wherein the words "***and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction***" has been inserted. It would be noticeable that this amendment has not brought in any change so far as the nature of enquiry, required to be held under the section is concerned. It can further be noticed that holding of enquiry has been made obligatory in a case where accused person is

WWW.LIVELAW.IN

residing at a place beyond the area in which the Magistrate exercises jurisdiction thus, seems to be the only change introduced by way of this amendment. In other words, the Magistrate would now be under obligation to enquire into a case either himself or direct investigation to find out whether or not there was sufficient ground for proceeding against an accused where he resides at a place beyond his area of jurisdiction. Further, the amendment and the wording thereof, when read in the light of objects behind the same, would make it clear that the legislature intended this provision to be made as obligatory/mandatory in nature. Thus, holding of an enquiry and the other options available to the Magistrate in this regard under Section 202 Cr.P.C. would be obligatory where it is found that person is residing beyond his jurisdiction. In the present case, Petitioner is not residing within the jurisdiction exercised by Trail Court, Gokak. Thus, it was obligatory for the Magistrate to hold enquiry envisaged under Section 202 of Cr.P.C. before issuing process and as such the issuance of summons is against the Petitioner is bad in law. In other words, the Trail Court ought to have conducted an inquiry against the Petitioner residing beyond its jurisdiction before issuing summons. Hence, the issuance of summons against the accused is bad in law.

WWW.LIVELAW.IN

17. The procedures in respect of cognizable offences and non-cognizable offences in respect of investigation or thereafter are different. As regards the non-cognizable offence, if after investigation, the police submit a 'B' Report then the Magistrate has two options. Either to accept the 'B' Report after notice to informant / complainant or to reject the report and take cognizance on the original complaint made at the time of obtaining the permission for commencing the investigation. The Magistrate doesn't have power to take cognizance on the very Report of the police unlike in the case of a cognizable offence. In the present, firstly there was no complaint filed u/s 200 R/w 155(2) of Crpc filed by the complainant before the Magistrate and secondly the Magistrate has misdirected himself while taking cognizance on the very report of the police which is wholly impermissible. The irregularity is uncurable and hence the cognizance is bad in law.

18. Section 362 of Cr.P.C. states that no Court where it has signed its judgment or its final Order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error. In the present case the Court below pursuant to the submission of the B Final Report, submitted by the Respondent No.1 – Police, the Court has passed an order "*Verified B Report and registered the case in summary register*". Pursuant thereto in accordance with the said order, the

WWW.LIVELAW.IN

registry has registered the case in summary register and has signed a Summary Case in Summary Case No.40/2020 on the very same day when the order was passed directing the registry to register the said case in the Summary Register. The said registration of the case as Summary No.40/2020 is also evident from the order sheet in respect of the case maintained in the Court. It is pertinent to state that the Trial Court has however struck down the order directing to register the case in Summary Register and has proceeded to pass an order of taking cognizance and issuing summons against the Petitioner. The said Act of the Trial Court is in gross violation of Section 362 of Cr.P.C. inasmuch as the Trial Court has review its earlier order which is hit by Section 362 of Cr.P.C. Therefore, the Order of taking cognizance and issuance of summons is liable to be quashed.

19. A perusal of the order sheet indicates that the Magistrate has rejected the 'B' Report. After having rejected the Report in entirety, he has chosen to take cognizance on the very Report. It was another aspect if the Magistrate would have reflected in the order of taking cognizance that the conclusion arrived at by the IO has been rejected but not the Report itself, then probably the order might have been saved. However, after having rejected the Report, there was no other material in existence on the basis of which the Magistrate could have taken

WWW.LIVELAW.IN

cognizance of the offences. The procedure adopted is alien to criminal procedure and as such the order of taking cognizance deserves to be set aside.

20. It is well settled by series of decision of this Court that cognizance cannot be taken unless there is at least some material indicating the guilt of the Accused, and cognizance cannot be taken or made on the basis of suspicion. It is submitted that the statements made in the complaint are contrary to the averments made in the statement under Section 161 of Cr.P.C. which clearly indicates that the complaint is being filed under misconception against the Petitioner herein. Therefore, the Trial Court without application of judicious mind has taken cognizance of the said offence in the absence of there being any iota of material indicating the guilt of the Accused persons. Since the cognizance taken is bad in law the summons issued becomes unsustainable and as such is liable to be quashed.

21. A bare reading of the complaint and the entire B Final Report reveals that the allegations made therein are based on presumptions and no evidence of whatsoever nature is produced so as to implicate the Petitioner. The entire complaint is concocted and does not instil any credibility and as such is liable to be quashed.

WWW.LIVELAW.IN

22. Petitioner seeks leave of this Hon'ble Court to raise such and other additional grounds as necessary during the hearing of the present Application.

## PRAYER

**WHEREFORE**, it is most humbly prayed that this Hon'ble Court may be pleased to:

(i) Quash the complaint dated 26.11.2019 in C.C. No.1065/2020 for offences under Section 123 (3) of the Representation of Peoples Act, 1951 and under Section 171 (F) of the Indian Penal code, pending on the file of Principal JMFC Court, Gokak; AND

(ii) Quash the order dated 26.11.2019 passed under Section 155(2) of Cr.P.C. registered as C.C. No.1065/2020 for offences under Section 123 (3) of the Representation of Peoples Act, 1951 and under Section 171 (F) of the Indian Penal code by the Principal JMFC Court, Gokak; AND

(iii) Quash the order of taking cognizance, and issuance of summons dated 26.06.2020 in C.C. No.1065/2020 for offences under Section 123 (3) of the Representation of Peoples Act, 1951 and under Section 171 (F) of the Indian Penal code, passed by the Principal JMFC Court, Gokak and consequently quash the entire and all further proceedings in C.C. No.1065/2020 for offences under Section 123 (3) of the Representation of Peoples Act, 1951 and under Section 171 (F) of the Indian Penal code, pending on the file of Principle JMFC Court, Gokak in the interest of justice.

WWW.LIVELAW.IN

DHARWAD
DATE:13.08.2020

**ADVOCATE FOR PETITIONER**
**(SWAMINI GANESH)**