

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 05TH DAY OF NOVEMBER, 2020

BEFORE

THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

WRIT PETITION NO.11169 OF 2020 (GM-RES)

BETWEEN:

RAKESH SHETTY
S/O SANJIV SHETTY
AGED ABOUT 44 YEARS
MANAGING DIRECTOR
M/S POWER SMART MEDIA (CPC)
PRIVATE LIMITED
A COMPANY REGISTERED UNDER THE
PROVISION OF THE COMPANIES ACT
HAVING ITS REGISTERED OFFICE AT
NO.7(OLD NO.21), 11TH MAIN ROAD
1ST STAGE, 1ST PHASE, GOKULA
BENGALURU-560022

...PETITIONER

(BY SRI.A.S. PONNANNA, SENIOR COUNSEL FOR
SRI. RAVI KUMAR B.K., ADVOCATE)

AND:

1. STATE OF KARNATAKA
REPRESENTED BY ITS CHIEF SECRETARY
DEPARTMENT OF HOME AFFAIRS
VIKASA SOUDHA
BENGALURU-560001
2. STATE OF KARNATAKA
REPRESENTED BY ITS ADDL. CHIEF SECRETARY
DEPARTMENT OF HOME AFFAIRS

VIKASA SOUDHA
BENGALURU-5600001

3. THE CITY CRIME BRANCH
BY ITS INSPECTOR POLICE
CHAMARAJPETE
BENGALURU-560018

4. SRI. CHANDRAKANTHA RAMALINGAM
S/O RAMALINGAM
AGED ABOUT 36 YEARS
RESIDING AT:NO.705, ETA GARDEN
BINNY MILLS ROAD, MAGADI ROAD
K.P. AGRAHARA
BENGALURU-560023

... RESPONDENTS

(BY SRI.C.V. NAGESH, SENIOR COUNSEL FOR
SRI. MANMOHAN.P.N, ADVOCATE FOR C/R4;
SRI. DHYAN CHINNAPPA, AGA FOR
SRI. VINAYAKA.V.S, HCGP FOR R1 TO R3)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226
AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO
QUASH THE IMPUGNED COMPLAINT AND FIR DATED
24.09.2020 AND FIR IN CRIME NO.135/2020 REGISTERED BY
THE RESPONDENT KP AGRAHARA POLICE, BENGALURU DATED
24.09.2020, COPIES OF WHICH ARE PRODUCED HEREIN AS
ANNEXURE-A AND B RESPECTIVELY.

THIS WRIT PETITION COMING ON FOR **ORDERS** AND
HAVING BEEN RESERVED FOR ORDERS ON 09.10.2020, THIS
DAY, **THROUGH VIDEO CONFERENCE** THE COURT
PRONOUNCED THE FOLLOWING:

ORDER

1. The Petitioner is before this /Court seeking for:
 - 1.1. A writ of certiorari quashing the Complaint and FIR dated 24.09.2020 registered as crime No.125/2020 by the K.P.Agrahara police, Bangalore;
 - 1.2. Certiorari to quash the panchanama dated 28.09.2020 drawn by 1st Respondent-police;
 - 1.3. Certiorari to quash the panchanama dated 29.09.2020 drawn by 1st Respondent-police;
 - 1.4. A declaration that the Complaint and FIR against the Petitioner is actuated by malafides and malice, therefore, *void ab initio*;

1.5. A mandamus directing the Respondent-police to return the articles shown in the panchanama which were seized from the office premises of the Petitioner, as also other premises in the course of the investigation;

1.6. A mandamus directing the Respondent-police to ensure that the social media/digital platform such as Facebook, YouTube through which the TV channel of the Petitioner is telecast be restored to its original position to enable the Petitioner to carry out telecast of the news channel.

2. **FACTS:**

2.1. The Petitioner is the Managing Director of M/s Power Smart Media (OPC) Private Limited, which is in the business of running Television News channel in

Kannada under the name and style of 'Power TV' from the year 2018.

2.2. It is alleged that the Petitioner news channel has been running a program with regard to the allegations of corruption and illegal financial dealings, as well as interference in the day-to-day administration of the State Government by the family members of the present Chief Minister Sri.B.S.Yediyurappa. It is alleged that the first telecast of the program by the title "Raja Parivarada Rochaka Vrutanta" was aired on 2.9.2020, containing a three-minute audio conversation between Sri. B.S.Vijeyendra, s/o Sri. B.S.Yeddyurappa and reporter of Power TV.

2.3. It is alleged that the said audio clipping which was put out in the public domain for the consumption of the people of the State, is an exposé with regard to the collection of Rs.12,00,00,000/- from one Sri. Chandrakantha Ramalingam, who is Respondent No.4 herein, a contractor was carrying out works with the Bangalore Development Authority (BDA) by one Sri. Shashidhara Maradi, the grandson of the Chief Minister.

2.4. It is alleged that in the said episode, certain WhatsApp messages between the contractor Sri. Chandrakantha Ramalingam and Sri. Shashidhara Maradi was also telecast.

2.5. It is also alleged that subsequently under the very same head another episode was telecast on 17.09.2020 with regard to certain amounts of money alleged to be collected from the same contractor Sri. Chandrakant Ramalingam by the Chief Minister's son and grandson.

2.6. This information being provided with regard to money trails of various companies located and/or incorporated in Kolkata, West Bengal, it is stated that in the said episode, the information of one company by name M/s Belgravia Enterprises Limited, a company owned by the family members of the present Chief Minister was also discussed, details relating to money laundering as well as the formation of Benami companies and

transfer of ill-gotten money by various members of the family of Chief Minister were also discussed or made.

2.7. The Petitioner contends that this exposé by the Power TV channel got the attention of not only people of the State of Karnataka but also the entire nation. The same was also taken up by the leaders of the opposition party including the leaders of opposition in the legislative assembly and legislative council.

2.8. On this basis, it is contended that the present dispensation in the State headed by Shri. B.S.Yediyurappa has lost the confidence of the people of Karnataka, accordingly 'No confidence motion' was moved in the State legislature which is

admitted on 24.09.2020 by the Speaker of the House. The matter was debated at length. In both Legislative house and council, the Ruling Members were unable to reply or respond to the allegations.

2.9. It is alleged that in order to overcome the above, the very contractor Sri. Chandrakant Ramalingam who had voluntarily provided and shared the details of the manner in which money was illegally and by corrupt means obtained from him by the family members of Chief Minister become a turncoat, under pressure and influence of the ruling class in the State.

2.10. Sri. Chandrakant Ramalingam filed a complaint before the 3rd Respondent-

police alleging that the Petitioner had promised to use his good office with the Commissioner of BDA to ensure the release of money due to the Complainant Sri. Chandrakant Ramalingam from the BDA and in this regard had made tall claims with regard to his contacts in the State Government as well as Central Government and in this regard, the Petitioner is stated to have demanded 5% of the amount as commission.

2.11. It is alleged that on 28.06.2020 the BDA cleared Rs.7,79,00,000/- out of the total pending bills of Rs.124,00,00,000/- and on such clearance, the Petitioner is stated to have approached Sri. Chandrakant Ramalingam for his commission. Despite resistance, the Complainant Sri.

Chandrakant Ramalingam out of fear for his life and reputation is stated to have paid Rs.25 lakhs to Petitioner in cash on 22.08.2020.

2.12. It is in this background it is alleged that the complainant-Respondent No.4 was surprised to see the telecast of the program in the Petitioner's channel on 2.09.2020, as also subsequent episodes aired by the POWER TV with regard to the work done by the company.

2.13. In the Complaint, it is alleged that various conversations between the Complainant and Petitioner are all tutored conversations extracted from the Complainant; none of the statements made is true.

2.14. It is on the basis of the said Complaint that crime No.135/2020 came to be registered for offences punishable under Section 506, 120B, 465, 384 and 419 of IPC.

2.15. It is contended that immediately thereafter investigation was transferred to 3rd Respondent- City Crime Branch (CCB) by order of the Commissioner of Police, Bangalore city for the purpose of investigation. As part of the investigation, Respondent No.3-CCB made an application before the jurisdictional Magistrate for conducting a search in the premises of the office of POWER TV channel. Another application for permission to search the premises and residence of the anchor of the POWER TV

channel Sri.Rehman Hasan was also made.

2.16. It is alleged that even before the investigation had been transferred to the CCB, K.P.Agrahara police before whom the Complaint had been registered had without even a search warrant conducted a search in the residential premises of the Petitioner on the morning of 28.09.2020, during which search the phone of the Petitioner's wife was confiscated, and she was subjected to ill-treatment. However, no panchanama or property form was drawn with regard to the said seizure. It is alleged that said mobile phone was illegally snatched from the hands of the wife of the Petitioner and continues to be in the custody of K.P.Agrahara police

towards which the Petitioner has caused notice dated 28.09.2020.

2.17. The jurisdictional Magistrate after considering the said application, by an order dated 28.09.2020 issued a search warrant subject to the conditions stipulated therein. On the basis of the said search warrant, it is alleged that a platoon of police headed by the Deputy commissioner of Police-1 (Crime), two Assistant Commissioners of Police and three inspectors with a posse of policemen entered the office premises of the Petitioner and conducted a search from 5 p.m. to 3.45 a.m. on the next day morning and during such search, it is alleged that they seized the main storage server, kartavya server, social media

servers, FTP server, FTP servers, 20 laptops used by the staff of the POWER TV, four CCTV storage DVRs.

2.18. As regards this, panchanama was drawn stating that search went on from 16.40 hours to 19.45 hours on 28.09.2020 and the seizure of four DVRs and few laptops and charging cables were shown.

2.19. Another panchanama was drawn showing that mahazar was conducted from 9.30 p.m on 28.09.2020 till 1.30 a.m. on 29.09.2020 and in the said panchanama it is shown that the servers and the user ID and login information with regard to systems, desktops were voluntarily handed over, on the basis of the notice

issued by the Inspector of Police at 9.30 p.m. on 28.09.2020.

2.20. It is alleged that the investigating police have coerced and obtained from the staff of POWER TV channel, the passwords for the servers and desktops and the same have been changed by the Authorities.

2.21. Live transmission that was being carried out at the time of the raid was forcibly shut down at 10.55 p.m. on 29.09.2020, and from that time till now the channel and premises have been locked since in the absence of seized equipment, TV channel could not be telecast and be in operation.

2.22. It is alleged that much prior to the above highhanded illegal investigation carried

out by the Respondent-police/CCB, the Petitioner was served with a notice under Section 91 of Cr.P.C. on 5.9.2020.

2.23. In the said notice, a request had been made to remove/delete from the YouTube channel of the Petitioner videos relating to the family members of the Chief Minister. The Petitioner is stated to have replied to the said notice by way of letter dated 8.09.2020 stating that there was lack of jurisdiction in the issuance of such notice and the same was contrary to and violated the fundamental freedom of speech guaranteed to the Petitioner under the Constitution.

3. **The Complaint:**

3.1. In the Complaint, it is alleged that Complainant, Respondent No.4, Sri.

Chandrakant Ramalingam, the Director of Ramalingam Construction Company Private Limited which carries on construction activities and has obtained tenders from various departments of the State Government and Central Government, some of which through BDA. In respect of four different contracts awarded to the said company, an amount of Rs.140 crores was due to the company by the BDA.

3.2. In the month of June 2020, it is alleged that the Petitioner requested the Complainant to meet him at the office of POWER TV, when inquired as to why, the Petitioner is stated to have informed the Complainant that he wanted to put up some advertisement hoardings in

Yelahanka-AP Border toll road which has been developed by the company of the Respondent No.4, and during the said meeting the Petitioner is stated to have claimed to be close to Sri. Amit Shah, Hon'ble Minister of Home Affairs, Government of India and he has stated that he would help Respondent No.4 in getting work done from Central, as well as State Government.

3.3. In this connection, it is alleged that the Petitioner had persuaded Respondent No.4 to discuss with him about the tender floated by New Mangalore Port Trust, Mangalore ('NMPT' for short) on 24.09.2019.

3.4. It is alleged that the Petitioner immediately picked up his phone and

called one Sri. Paritosh Bala, Chief Engineer (Civil) of NMPT identifying himself to be an officer working in the office of Sri. Amit Shah, Hon'ble Home Minister and directed him to issue the tender to Ramalingam Construction Private Limited; however, Respondent No.4 received a letter dated 29.06.2020 from NMPT disqualifying Ramalingam Construction Company on the ground that Respondent No.4 tried to influence the tender awarding authority.

3.5. It is further alleged that the Petitioner forced Respondent No.4 to divulge and give him details regarding amounts pending before various departments, that the Petitioner had informed Respondent No.4 of him being aware of Rs.140 crores

liable to be paid by the BDA to Respondent No. 4's company and had informed Respondent No.4 that if he were to pay 5% of the amount as commission, he would get the payments made, this offer is stated to have been refused by Respondent No.4.

3.6. On 26.08.2020 the BDA is stated to have cleared Rs.7.79 crores from the above Rs.140 crores pending bills towards which the Petitioner is stated to have demanded 5% of the amount. However, at the pressure of the Petitioner and due to the threats held out by the Petitioner, Respondent No.4 is stated to have made payment of Rs.25,00,000/- in cash to the Petitioner on 22.08.2020.

3.7. Subsequently, on 2.09.2020, Respondent No.4 was surprised to see the programme telecast on POWER TV channel wherein there were several allegations made referring to the works undertaken by Respondent No.4's company and linking the said company to some politicians and their family members who had no connection with the work executed by the company, and it is during this time, Respondent No.4 came to know of various conversations between Respondent No.4 and the Petitioner having been recorded by the Petitioner.

3.8. These conversations have been denied by Respondent No.4 on the ground that the same are tutored conversations. It is alleged that starting from June 2020, till

today the Petitioner has been continuously deceiving Respondent No.4 to extract money from him and he has been used as a tool to further the channel's interest and make false allegations against people of repute, and in this connection Respondent No.4 had requested the jurisdictional police to take necessary action against the Petitioner for cheating by impersonation, false evidence, forgery, harming reputation, extortion, criminal conspiracy under IPC, as well as under the Information Technology Act.

4. Sri.A.S. Ponnanna, learned Senior Counsel instructed by Sri.Ravikumar.B.K, learned counsel appearing for the Petitioner submitted that:

- 4.1. There is no ground made out in the Complaint filed by the Respondent No.4 against the Petitioner inasmuch as Respondent No.4 has made false claims.
- 4.2. The Complaint as filed is motivated, is filed at the instance of the family members of the present Chief Minister inasmuch as the filing of the same is post the telecast by Petitioner's channel.
- 4.3. The Complaint as filed is on account of political vendetta, the Complaint has been filed at the instance of politicians;
- 4.4. The filing of the Complaint and the manner in which investigation has been carried out amounts to malicious prosecution inasmuch as the Respondent-Authorities have dealt with the matter in a very highhanded

manner and the Petitioner is being made to undergo criminal prosecution only because the Petitioner's channel had telecast material which was not palatable to the Chief Minister and/or his family members;

4.5. The investigation carried out by the 3rd Respondent-CCB is *nonest* inasmuch as the CCB is not a police station and therefore, CCB could not have carried out any investigation, and the steps taken by the CCB police are contrary to the applicable law and cannot be relied upon.

4.6. The Family members of the Chief Minister are making use of the resources of the State to settle their grievance with the Petitioner;

4.7. There is no nexus between the allegations made and the Petitioner herein. All the allegations made are baseless. The Petitioner allegedly contacted Respondent No.4 in the month of June 2020 and it is only in the fourth week of June 2020 that the Petitioner is stated to have persuaded Respondent No.4 to discuss with him about the tender floated by NMPT. Thus, he submitted that the discussion itself having taken place during the fourth week of June 2020, the question of NMPT issuing letter dated 29.06.2020 disqualifying the company of the Respondent No.4 for that reason would not at all arise.

4.8. It is contended that the Petitioner has never claimed that he was working in the office of Sri. Amit Shah, the Hon'ble

Minister for Home Affairs. Hence, the question of any impersonation as alleged or otherwise would not arise.

4.9. There was never any conversation between the Petitioner and the Respondent No.4 as regards the amounts due by BDA to the Petitioner. Hence, the question of the Petitioner demanding that he be paid 5% of the amount as a commission is also baseless.

4.10. If at all the averments in the Complaint are taken at face value and believed and if Respondent NO.4 had allegedly made payment of Rs.25 lakhs in cash to the Petitioner on 22.8.2020, the Complaint having been filed on 24.09.2020 is belated which itself proves the said contention,

inasmuch as Respondent No.4 is stated to have waited for more than a month to file his Complaint and the Complaint having been filed post the telecast would indicate that reference to a payment dated 22.8.2020 is completely misconceived.

4.11. The allegation that the conversation between the Petitioner and Respondent No.4 have been tutored by the Petitioner also cannot be believed on the ground that if the same were to be true, then Respondent No.4 ought to have taken action against the Petitioner at that point of time. He submitted that the conversation between the Petitioner and Respondent No.4 are genuine conversations that they had at that point in time.

4.12. The information furnished by Respondent No.4 to the Petitioner was voluntary in nature, hence the question of now contending that the conversations are tutored or otherwise is completely false.

4.13. The Petitioner being a journalist engaged in the business of operating a TV channel, has carried out his work in a proper manner. It is only in order to stifle the voice of the free press that the present Complaint has been filed since the news reported by the channel was unpalatable to the Chief Minister and his family.

4.14. On the above grounds, Sri. Ponnanna, learned Senior counsel would submit that the Complaint is required to be quashed by allowing the writ petition, as also several

directions sought for by the Petitioner in the writ petition ought to be issued.

5. Per contra Sri.C.V.Nagesh, learned Senior counsel instructed by Sri. P N Manmohan, learned counsel appearing for the Complainant-Respondent No.4 submitted that:

5.1. The Complaint as filed is proper and genuine. Respondent No.4 was dragged into the matter to achieve the business interest of the Petitioner and to increase TRP of the channel belonging to the Petitioner.

5.2. All these aspects which have been argued are required to be investigated and the submissions made by Sri. A.S. Ponnanna, learned Senior counsel is more in the

nature of defence which is required to be established during the course of the trial.

5.3. The offence of impersonation is clear from the fact that Petitioner had picked up the phone and spoken to one Parithosh Bala, Chief Engineer (Civil) of NMPT identifying himself as an officer working in the office of Sri. Amit Shah, Hon'ble Home Minister. This is sufficient to establish the offence of impersonation subject to trial.

5.4. Respondent No.4 would during the course of investigation produce the documents and notings made by NMPT in its files including the letter dated 29.06.2020 received by Respondent No.4 disqualifying Respondent No.4 on account of the above call made by the Petitioner. The veracity

of the same, he submits would be established during the course of investigation and/or trial.

5.5. The Petitioner has also indulged himself in offence of extortion inasmuch as there is a demand made by the Petitioner for payment to be made by Respondent No.4 to the Petitioner and fearing for his life, Respondent No.4 has made payment of a sum of Rs.25 lakhs in cash to the Petitioner. The details thereto would also be produced by Respondent No.4 during the course of the trial.

5.6. There is no political vendetta in the matter the allegations made are genuine grievances of the Complainant.

- 5.7. There is no ground made out in the Petition for quashing the Complaint filed by Respondent No.4 against the Petitioner inasmuch as Respondent No.4 has made a proper and valid grievance.
- 5.8. The Complaint as filed is not influenced by the family members of the present Chief Minister. Hence, there is no manner of political vendetta. The Complaint is a genuine grievance of the Complainant.
- 5.9. The investigation is carried out by the authorities; Respondent No.4 has nothing to do with it.
- 5.10. CCB is a specialised investigating agency and taking into account the nature of crimes committed by the Petitioner, the specialised agency rather than the regular

police were more competent to investigate into the offence.

5.11. On the above grounds, Sri. C V Nagesh, learned Senior counsel would submit that the Complaint as filed is required to be investigated, the Petitioner has not made any ground for quashing of the same, all averments and allegations made in the Petition as also during arguments are in the nature of defences which are to be established during the course of the trial, as such the Petition as filed is liable to be dismissed.

6. Shri. Dhyan Chinnappa, learned Senior counsel and Addl. Advocate General appearing for Respondents No.1 to 3 submitted that:

6.1. All the allegations made against the State as regards highhanded investigation are completely false inasmuch as he submitted that the Respondent-police have conducted the search in furtherance of a valid search warrant issued by the jurisdictional police, on the conduct of the search the incriminating material were seized, panchanama drawn up and furnished to the Petitioner herein.

6.2. The allegation being one of recording various conversation on the sly by the Petitioner and these conversation being stored in the servers i.e. data server, main server and telecast as also streamed on social media channels like Facebook and YouTube. Allegation being that the conversations are streamed using

Facebook and YouTube, the material having been stored in the social media server was also required to be seized.

6.3. There is nothing extraordinary in the steps taken by the CCB police, and the steps are normal in nature. The items seized would be returned to the Petitioner once the investigation in respect thereto is completed.

6.4. The notice dated 5.9.2020 calling upon the Petitioner to remove certain episodes from YouTube channel was made as per the court order enclosed with the letter dated 5.9.2020. He states that the Petitioner knowingly has not produced the said court order, but the court order is one passed/issued by Devanahalli Court

wherein the Petitioner's channel is one of the defendants. Notice dated 5.9.2020 has nothing to do with the Complaint of Respondent No.4 dated 24.09.2020. They are independent proceedings which have been initiated.

6.5. As regards the Facebook and YouTube, user ID and password, he submits that the said user ID and password were voluntarily handed over by the Petitioner so as to enable the videos available on the website to be maintained in status-quo. In that since the said videos form part of the evidence, the Respondent-CCB police did not want to face a situation where the videos themselves are deleted, leaving no trace or scope for the prosecution of the Petitioner. He submits

that if at all the Complaint is alleged to have been initiated on the ground of the said telecast, then the police authorities would have removed the videos since such videos are still continuing to be available on Facebook and YouTube, the same would indicate that the Complaint and the investigation is not at the behest of the Chief Minister. The investigation has been carried out in the normal course on the basis of a complaint filed by Respondent No.4.

6.6. As regards the authority of CCB police to investigate, he relies on a decision of this Court in the case of ***N. Rajachar v. Kodandarama*** reported in **ILR 2002**

KAR 2909 paragraphs 18 to 21, which are reproduced herein for easy reference:

"18. *The learned S.P.P. however has produced a copy of the Government notification to show the creation of certain posts in the Police Department for the proper implementation of law and order and sanctioning of important posts and also different branches. As far as this notification is concerned, there cannot be any dispute but as stated above, the question is very limited as to whether the CCB and CCB (F and M) are police stations. Therefore, this notification does not in any way confer any power on the Magistrate to refer the case to these officers while acting under Section 156(3) Cr. P.C.*

19. *The learned SPP however submitted that even if the Courts were to hold that the Magistrate had no power to refer the matter to the City Crime Branch and Central Crime Branch (F and M) as is done in these cases in CrI. P. 3650/90 charge sheet has already been filed and in other cases the investigation is in progress and hence the same cannot be quashed only on technical ground that the Magistrate's order is improper. He further submitted that it is only a technical defect as the CCB (F and M) after the receipt of the records from the*

Court registered each case in the concerned police station and assigned respective crime number. After complying with this requirement, the investigation was taken up. Therefore, these technical defects are deemed to have been rectified.

20. It is no doubt true in all the cases as indicated above, the authorities got registered the cases in their jurisdictional police stations and have taken up investigation, but the fact is that the Magistrate had neither the jurisdiction nor power nor authority to refer the case to these authorities. The C.C.B. and C.C.B. (F and M) are not police station and undisputedly they have no authority to register the case. On the other hand, the case has to be registered in the respective police station and thereafter only, they have to take up investigation. Hence, it is clear that the very reference is not only improper but it is illegal as the Magistrate had no power or authority under Section 156(3) Cr. P.C. as held by their Lordships in the case of Central Bureau of Investigation referred to supra. It is directly applicable to the facts of this case. For the foregoing reasons, this argument is liable to be rejected.

21. However, it cannot be said that the filing of private Complaint is not proper.

Under the circumstances, the only order that can be passed is to direct the concerned Magistrate to take up the case at the stage at which it was referred to the C.C.B. and C.C.B. (F and M) as the case may be and then consider the case in accordance with law and if the Court feels that it has to be referred to the police, it shall do so only in strict compliance of Section 156(3) Cr. P.C. and in the light of the observations made above. If such complaints are referred to the police in consonance with Section 156(3) Cr. P.C., the concerned police shall take up the matter and proceed with the investigation or deal with the case in accordance with law."

6.7. Relying on the above decision Shri Chinappa contends that the embargo under Section 156(2) is only as regards registration of Complaint and not regarding the investigation. In terms of Section 156(3), the investigation can be carried out by any authority, including 3rd Respondent-CCB. On this ground, he

submits that the above Petition is liable to be dismissed.

7. Sri.A.S.Ponnanna, learned Senior counsel in reply would submit that:

7.1. He is not alleging any malafides against the Complainant but malafides are alleged as regards the investigation carried out. He relies upon para 102 (vii) of the Judgment of the Hon'ble Apex Court in the case of ***State of Haryana v. Bhajan Lal Reported in (1992) Supp 1 SCC 335***, which is extracted hereunder for easy reference:

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and

reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

- 1. Where the allegations made in the first information report or the Complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*
- 2. Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognisable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*
- 3. Where the uncontroverted allegations made in the FIR or Complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*
- 4. Where, the allegations in the FIR do not constitute a cognisable offence but constitute only a non-cognisable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*

5. *Where the allegations made in the FIR or Complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*
6. *Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*
7. *Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."*

7.2. Relying on the above, he submits that the proceedings initiated against the Petitioner are malafide and therefore, the question of the continuation of the same would not arise.

7.3. On facts, he submits that even according to the Complaint, the BDA is supposed to

have made payment of 7.7. crores to the Respondent No.4 on 26.8.2020, however it is claimed that the Petitioner has extracted a sum of Rs.25 lakhs and Respondent No.4 paid the said sum to the Petitioner on 22.08.2020 much prior to the BDA having cleared the amount. Thus he submits that there is false statement made by the Complainant in his Complaint that after having received the money from the BDA and after several follow up by the Petitioner, unable to bear the follow up and threats of the Petitioner, Respondent no.4 made payment of a sum of Rs.25 lakhs.

7.4. He reiterated the submission that Respondent No.4 has been set up by the

family members of the Chief Minister to overcome the telecast made and to stop the Petitioner from further investigation into the matter. Lastly, he relies on the decision of the Apex Court in **Arnab Ranjan Goswami -v- Union of India and Others (W.P.(Cri.) 130/2020 DD 19.05.2020** paragraph 32 thereto which is reproduced herein:

"32.xxxx The exercise of journalistic freedom lies at the core of speech and expression protected by Article 19(1)(a). The Petitioner is a media journalist. The airing of views on television shows which he hosts is in the exercise of his fundamental right to speech and expression under Article 19(1)(a). India's freedoms will rest safe as long as journalists can speak truth to power without being chilled by a threat of reprisal. The exercise of that fundamental right is not absolute and is answerable to the legal regime enacted with reference to the provisions of Article 19(2). But to allow a journalist to be subjected to multiple complaints and to the pursuit of remedies traversing multiple states and jurisdictions when faced with successive FIRs and complaints bearing the same foundation has

a stifling effect on the exercise of that freedom. This will effectively destroy the freedom of the citizen to know of the affairs of governance in the nation and the right of the journalist to ensure an informed society. Our decisions hold that the right of a journalist under Article 19(1)(a) is no higher than the right of the citizen to speak and express. But we must as a society never forget that one cannot exist without the other. Free citizens cannot exist when the news media is chained to adhere to one position. Yuval Noah Harari has put it succinctly in his recent book titled "21 Lessons for the 21st Century": "Questions you cannot answer are usually far better for you than answers you cannot question."

8. The points that would arise for determination in this Petition are:

- (i) Whether this Court in a proceedings in exercise of Article 226 read with Section 482 of Cr.P.C can give a finding as regards false claims being made in the Complaint?**
- (ii) Whether the CCB is a police station and whether the CCB can investigate into any offence?**
- (iii) Whether once there is seizure made of certain material objects like servers, computers, etc., same can be returned**

to the person from whom the said items are seized prior to the investigation being complete?

(iv) Whether the investigating agency can retain the user name and password of social media/digital platform like Facebook and YouTube pending investigation?

(v) Whether the Petitioners have made out any ground for interference in the present matter under Article 226 read with Section 482 Cr.P.C?

(vi) What Order?

9. I answer the above points as under:

10. **Point No.(i): Whether this Court in proceedings in exercise of Article 226 read with Section 482 of Cr.P.C can give a finding as regards false claims being made in the Complaint?**

10.1. The powers which are to be exercised by this Court under Article 226, 227 of the

Constitution read with Section 482 Cr.P.C. is in a limited perspective.

10.2. The petitions of this kind which are filed challenging the registration of FIR, filing of a charge sheet, taking cognisance of a crime would have to be dealt with by this Court in such a manner as to provide for justice to the parties, however always being aware of and conscious of the fact that the proceedings are that initiated under penal enactments which would necessarily entail and require the course of the investigation to be followed and completed, so as to separate the wheat from the chaff and arrive at the truth of the matter.

10.3. There is a restriction on the powers of this Court in terms of the above and unless a strong case is made out by the Petitioner requiring interference at the hands of this Court, such powers cannot be exercised.

10.4. The Petitioner has in the present matter sought to contend that the Complaint is malafide, there are no grounds which have been made out in the Complaint and that the same amounts to malicious prosecution.

10.5. The contentions of both the sides have been detailed hereinabove and are not required to be once again reproduced.

10.6. A perusal of the facts as detailed hereinabove and also submissions made

by all the counsels indicate that there are several aspects of the matter where the parties are at loggerheads with each other which would indicate that these aspects would have to be investigated. This Court's jurisdiction as aforesaid being limited in these kinds of proceedings, it is only in circumstances where it is *ex facie* evident that the Complaint is malafide that such a finding could be given and Complaint quashed.

10.7. In the present facts and circumstances, it cannot *ex-facie* be said that the offences alleged against the Petitioner have not been committed, I am of the considered opinion that the same would require investigation by the competent and

independent authority. Without such investigation, the truth of the matter cannot be found out.

10.8. Of course, during the course of investigation the allegations made by the Petitioner, as also the allegations made by the Complainant would have to be looked into by the investigating authority and thereafter report to be submitted.

10.9. **Thus, I answer the point No. (i) by holding that unless *exfacie* evident, this Court cannot give a finding as regards whether the allegations made in the Complaint are malafide or not. In the present case, it is not so and therefore, the investigation is**

required to be carried out to ascertain the truth of the matter.

11. Point No.(ii): Whether the CCB is a police station and whether the CCB can investigate any offence?

11.1. Sri.A.S.Ponnanna learned Senior counsel submitted that CCB is not a police station and therefore, could not have carried out investigation of any offence. In this regard he refers to Section 2(s) of Cr.P.C. which defines police station. The said provision is reproduced hereunder for easy reference.

*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;*

11.2. An examination of the said provision would indicate that a police station would have to be declared generally or specially by a State Government to be a police station. He submitted that the CCB has not been declared as such and therefore, in terms of Section 156, the CCB cannot investigate into any matter. The said Section 155 of Cr.P.C. is reproduced hereunder:

155. Information as to non-cognisable cases and investigation of such cases.

1. *When information is given to an officer in charge of a police station of the commission within the limits of such station of a non-cognisable offence, he shall enter or cause to be entered the substance of the information in a book to be kept by such officer in such form as the State Government may prescribe in this behalf, and refer the informant to the Magistrate.*
- 2) *No police officer shall investigate a non-cognisable case without the order of a Magistrate having power to try such case or commit the case for trial.*

- 3) *Any police officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police station may exercise in a cognisable case.*
- 4) *Where a case relates to two or more offences of which at least one is cognisable, the case shall be deemed to be a cognisable case, notwithstanding that the other offences are non-cognisable.*

11.3. Sri.A.S.Ponnanna, learned Senior counsel submitted that an investigation could only be carried out by a person in-charge of a police station with power to investigate any cognisable case. Since the CCB itself is not a police station, the question of a person-in-charge of the CCB or an officer attached to the CCB carrying out any investigation does not arise, and on this ground, he submitted that the entire investigation is being carried out by a

wrong authority and seeks for quashing of the investigation.

11.4. Per contra, Sri.Dyan Chinnappa, learned Senior counsel and Additional Advocate General for the Respondent-State would submit that the CCB is not a police station, but however CCB is a specialised investigative agency which has been formed for the purpose of such investigation. The CCB is manned by people having special skills who are deputed to the CCB for the purpose of conducting an investigation into certain offences requiring specialised investigation, in the State of Karnataka.

11.5. He submitted that the investigation has been referred to the CCB, the CCB can

carry out the investigation, since there is no embargo on a person otherwise than the person-in-charge of a police station to investigate.

11.6. He relied upon the decision of this Court in ***N. Rajachar v. Kodandarama*** reported in **ILR 2002 KAR 2909** paragraphs 18 to 21 which have been extracted hereinabove to contend the investigation being carried out by CCB is proper.

11.7. Sri.C.V.Nagesh, learned Senior counsel appearing for Complainant supported the contention of Sri.Dhyan Chinnappa, learned Senior counsel and AAG further submitted that insofar as the Complainant is concerned, the Complainant had filed

the Complaint with the Station House Officer, K.P.Agrahara police station and it is thereafter that an administrative order had been passed directing the transference of the file to the CCB for the purpose of investigation. He submitted that the Complainant has nothing to do with the same, probably on account of the fact that Chief Minister's family has been mentioned the matter has been transferred to the CCB which is an independent authority rather than the investigation being conducted by the local police station.

- 11.8. The above contentions would indicate that admittedly CCB is not a police station. Therefore, CCB by itself cannot register

and investigate into any matter since there is an embargo on such registration of a complaint such power is conferred only on a person-in-charge of a police station. As such, CCB not being a police station neither a person-in-charge of the CCB nor an officer forming part of CCB can register any complaint.

11.9. In the present matter no complaint has been registered by the CCB police.

11.10. The power of the CCB to investigate an offence is completely a different matter, it comes into being only when the matter is referred to CCB specifically either by a court of law or by way of an administrative order passed in relation thereto. Though the said administrative order has not been produced, it is

submitted by all the parties that the matter has been referred to CCB and this reference is what is in question. A perusal of the application filed by Inspector of Police, CCB before the I Addl.CMM, Bangalore dated 28.9.2020 seeking for a warrant to search the premises of the Petitioner indicates that the further investigation in the matter has been ordered on 28.9.2020 vide G.O. Bearing No.160/Aparadha/CCB/2020 dated 25.9.2020 and he has been appointed by an order dated 28.9.2020 to carry out investigation. The said order is not in question in these proceeding nor has it been produced. Hence, in the absence of a said challenge, I am of the considered opinion that the same would continue to

apply and therefore, the transference of the matter to the CCB for the purpose of investigation cannot be faulted with, more so when it is contended that CCB will act independently without being influenced and carry out the investigation impartially even though there are certain allegations which have been made against the family members of the sitting Chief Minister.

11.11. Hence, I answer the point no. (ii) by holding that CCB is not a police station, however, the CCB being a specialised investigating agency can investigate into a particular crime which is referred to it either by judicial order of the Court or by an administrative order.

11.12. In the present case there being an administrative order passed on 25.9.2020 detailed above, the CCB would be empowered to carry out the investigation.

12. Point No. (iii): Whether once there is seizure made of certain material objects like servers, computers, etc., same can be returned to the person from whom the said items are seized prior to the investigation being complete?

12.1. It is claimed that certain items were seized during search of the premises. In the present matter as can be seen from the panchanama drawn up, the following have been seized:

1. Dell Latitude/E6430, SINo.52W7QV1
2. Dell latitude/E6430, sl.No.JVX7QV1
3. DVR-1-HIKVISION SINo.837825230, Model DS-7B16HUHI-K2
4. DVR-2-HIKVISION SINo.130177496, Model, DS-7B16HUHI-K2
5. DVR-3-HIKVISION SINo.130177715, Model, DS-7B16HUHI-K2

6. DVR-3-HIKVISION SIno. 837825212, Model, DS-7B16HUHI-K2

Admitted Exhibit Details:

- Social Edit (5)
Company: HP; Model;HP 280G3MT
Service TAG: INA 738YHXS
S/N: 00518152219999 (36B0197)
- Social Media 1 (6)
Company: Cooler Master;Model;Assembled
S/N: RC250CKKN31125200014
- Main Storage Server (For All & Ingest) (1)
Company: Cooler Master
(5 HDD SATA & 1 DDF)
S/N;RC311BRKN51174200067
(user Name: Amdinistrator;
Password: welcome@1)
- FTO Storage Server (2)
Model: HP Enterprise (Proliant DL180 Gen9)
S/N:SGH711TE3J
(user Name: Karthavya;
Password; Karthavya)
- Karthavya Main Server (3)
Company: Dell; Model: Power Edge T430
S/N: H5GJQM2; Part NO.:CN-ONT1PN-
IPS00-7CD-010A-A03 (DP/NONT1PN)
(user Name: Karthavya;
Password; Karthavya)
- Sam Kula 2ME Switcher (4)
Model: 9679110
S/N: K2M57100617

12.2. It cannot be disputed that these pieces of equipment are required for the purpose of carrying on the day-to-day business of a TV news channel.

12.3. The only reason why the above items have been seized according to Sri.Dhyan Chinnappa, learned AAG is that these pieces of equipment were used for the purpose of storing the incriminating recordings which have been complained of by the Complainant and therefore, in order to ascertain whether the recording was genuine or was created could only be done by seizing these pieces of equipment.

12.4. Sri.A.S.Ponnanna, learned Senior counsel has no objection for the seizure but however submits that continued retention

of the said equipment is causing harm and injury to the Petitioner inasmuch as the Petitioner is unable to carry out his business activities. The said submission of Sri.A.S.Ponnanna deserves to be considered.

12.5. Servers having been seized, I'am of the considered opinion that it is only the data in such servers which are required for the purpose of verification by investigating agency, the hard disk could always be cloned and after retaining the original hard disk the cloned hard disk along with servers, laptops, etc could always be returned.

12.6. The investigation is not concerned with the equipment as such, but is only concerned

with the data stored on such equipment and if the original data is retained by the investigating agency, the interest of justice would be served by returning the equipment with the cloned hard disk/s.

12.7. In this regard, the Petitioner would be at liberty to make necessary application under Section 451 r/w 452 Cr.P.C. for return of those equipment before the jurisdictional Magistrate which would consider the same on merits and as per the observations made herein.

12.8. **Hence, I answer point no. (iii) by holding that where there are material objects which are seized during a search,**

12.8.1. When a copy of those objects can be made than the copy

could be furnished to the person from whom they are seized even prior to the investigation being complete by retention of the original, like in case of servers, laptops, desktops, phones etc., after cloning the hard disk in those equipment the cloned hard disk could be handed over to the person from whom the matter is seized, and the original retained with the investigating agency for the purposes of investigation. Needless to say while dealing with electronic evidence the authorities concerned are required to

follow the guidelines laid down by the division bench of this court in its judgement dated 02.11.2018 in Madhukara Vs State of Karnataka in CrI Appeal No. 615 of 2013.

12.8.2. in cases where samples are sufficient for investigation, after taking necessary samples for forensic examination, the material object seized could be handed over to the person from whom the material object was seized.

12.8.3. in cases like vehicles used for commission of an offence, after

recording a mahazar and or inventory thereof,

In all the above cases the material objects could be returned by imposing such conditions as may be required to be imposed for the protection of the said material objects during the course of the trial or otherwise, including production in Court and non-disposal of the same by the person to whom it is handed over.

13. **Point No. (iv):** Whether the investigating agency can retain the user name and password of social media/digital platform like Facebook and YouTube pending investigation?

13.1. The user name and password of social media/digital platform like Facebook or YouTube is personal in nature, since without such user name and password no person can access such social media or digital platform.

13.2. Sri.A.S.Ponnanna, learned Senior counsel submitted that the said facebook and YouTube accounts are being used for the purpose of streaming or webcasting the channel of the Petitioner.

13.3. Post the requisition of the passwords by the CCB authorities during the raid the Petitioner having handed over the user name and password voluntarily, the CCB authorities have changed the passwords,

thus preventing the access by the Petitioner of the said facebook and YouTube accounts.

13.4. He submitted that the facebook and YouTube password are very much required for the Petitioner to conduct his business since general public have come to associate said accounts with the Petitioner and they would visit those sites to get update of Petitioner's channel.

13.5. Sri.Dhyan Chinnappa, learned Senior counsel and AAG submitted that the username id and password has been obtained not in the present investigation but in another investigation initiated on account of the court order passed by Devanahalli Court in a suit filed. Since

admittedly the said facebook user id and password were requisitioned on 5.9.2020 and furnished on 8.9.2020 i.e. even prior to the present Complaint being filed and investigation has commenced. Hence, he submitted that those are completely different proceedings, which are not part of the present proceedings, and they cannot be called in question.

13.6. Sri. Dhyan Chinnappa learned Senior Counsel and AAG had submitted that the Facebook and YouTube, user ID and password have been submitted by the Petitioner in pursuance of the notice dated 5.9.2020. However, on perusal of the records it is seen that the said details had been furnished on 28.09.2020 at 10.05

p.m. i.e. when the raid was in progress. Therefore, it cannot be said that the Facebook and YouTube, user ID and password have been furnished in pursuance of the notice dated 5.9.2020 which has been in turn issued on the basis of the order of Devanahalli Court. Hence, I am of the considered opinion that the Facebook and YouTube, user ID and password collected during the raid conducted arising out of the present proceedings.

13.7. Though Sri. Dhyan Chinnappa learned Senior counsel and AAG had submitted that the Facebook and YouTube, user ID and password are collected and thereafter changed so as to preserve the contents on those social media in status-quo for

the purpose of the investigation, I am of the considered opinion that the same cannot be done.

13.8. The Facebook and Youtube accounts are important aspects of the Petitioner's business to carry out his day-to-day business, the Respondent-police cannot on the ground of investigation block the same as as to come in the way of Petitioner carrying out his day-to-day business. For the purpose of investigation only the integrity of the data is required to be preserved and that can be so done by downloading the relevant content from the Facebook and Youtube account of the Petitioner in the presence of the Petitioner after conducting a proper mahazar with

the help of qualified technical persons. On such downloading, the data downloaded can be kept in safe custody for the purpose of investigation.

13.9. I answer point no. (iv) by holding that an investigating agency can not retain the user name and password of social media/digital platform like Facebook and YouTube pending investigation, the investigation agency can download the data required from such account and thereafter has to give back the changed credentials to the person who owns the said social media. The Respondents are therefore directed to handover new login credentials of

the Facebook and Youtube account of the Petitioner within seven days from the date of receipt of certified copy of the order.

14. **Point No.(v): Whether the Petitioners have made out any ground for interference in the present matter under Article 226 read with Section 482 Cr.P.C ?**

14.1. The factual matrix has been stated above and point No.1 has been answered holding that the matter requires investigation.

14.2. I am of the considered opinion that taking into consideration the facts there being allegations and counter-allegations by the Petitioner and Complainant, all these allegations would have to be investigated by the concerned authority.

14.3. **I answer Point No. (v) by holding that the Petitioners have not made out any ground for interference in the present matter under Article 226 read with Section 482 Cr.P.C at this stage the prayers as sought for by the Petitioner for quashing of the Complaint or the panchanama cannot be granted. The Petitioner would be at liberty to approach this Court once again after a charge sheet is filed.**

15. **Point No.(vi): What order?**

15.1. In view thereof the above the Petition is partly allowed as per the observations made hereinabove.

15.2. The petitioner is at liberty to approach the trial Court by filing application under Section 451 r/w 452 of Cr.P.C. for return of

the equipments seized. The application would be considered by the trial Court in terms of the observations made herein and the seized items to be returned to the petitioner on such terms and conditions as the trial Court may deem fit and proper.

15.3. Login credentials of the Facebook and Youtube account of the petitioner shall be returned to the petitioner within a period of seven days from the date of receipt of certified copy of the order.

15.4. Petitioner is permitted to furnish certified copy of the order to the respondent-police.

**Sd/-
JUDGE**

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