

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 04TH DAY OF JULY, 2023

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.531 OF 2022

R

BETWEEN:

DR.ASHOK V.,
S/O C.M.VENKATESHWARA

WORKING AS DISTRICT OFFICER
OFFICE OF THE BACKWARD
CLASSES WELFARE DEPARTMENT
DC BUILDING
CHIKKABALLAPURA DISTRICT – 562 103.

... PETITIONER

(BY SRI SANDESH J.CHOUTA, SR.ADVOCATE A/W
SRI M.S.DEVARAJU, ADVOCATE)

AND:

1 . THE STATE BY
HON'BLE LOKAYUKTHA OF KARNATAKA
M.S.BUILDING
DR.B.R.AMBEDKAR VEEDHI
BENGALURU – 560 001.

2 . MR. SYED MALIK PASHA

... RESPONDENTS

(BY SRI B.B.PATIL, SPL.P.P FOR R-1;
R-2 SERVED)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO SET ASIDE / QUASH THE ORDER DATED 07.12.2021 PASSED BY THE PRL.DISTRICT AND SESSIONS JUDGE, CHIKKABALLAPURA IN PCR.NO.5/2021 (ANNEXURE-A) REGISTERING THE CASE AS PRIVATE COMPLAINT AND REFERRING THE MATTER UNDER SEC.156(3) OF CODE OF CRIMINAL PROCEDURE TO THE POLICE INSPECTOR, ACB, CHIKKABALLAPURA FOR INVESTIGATION AND REPORT BY 08.02.2022 AND CONSEQUENTLY THE FIR IN CR.NO.8/2021 BEFORE THE ACB POLICE, CHIKKABALLAPURA, (ANNEXURE-B) IN SO FAR AS THIS PETITIONER IS CONCERNED, BY ALLOWING THIS PETITION.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 27.06.2023, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioner is before this Court calling in question order dated 07-12-2021 passed by the Principal District & Sessions Judge, Chikkaballapura in P.C.R.No.5 of 2021 referring the matter for investigation under Section 156(3) of the Cr.P.C., to the Police Inspector of the then Anti Corruption Bureau for offences

punishable under Sections 403, 409, 120-B of the IPC and Sections 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 ('the Act' for short).

FACTS:

2. The 2nd respondent is the complainant who claims to be a RTI Activist. The complainant appears to have some grievance upon M/s. Srisai Ram Enterprises and several other business entities which are carrying on business in Chitamani Town and regular suppliers to various Government Departments and hostels coming within the Backward Classes Welfare Department. The 2nd respondent sought certain information under the Right to Information Act, 2005 from the Backward Classes Welfare Department and the Department had furnished certain information to the 2nd respondent. Based on the documents secured under the Right to Information Act the 2nd respondent does not choose to register a complaint before the jurisdictional police of the wing of the then Anti Corruption Bureau, but chooses to register a private complaint against several officers and four suppliers, the first of whom is the petitioner/accused No.1, District Officer and other four

suppliers to the Departments. On registration of the complaint before the learned Sessions Judge, under Section 200 of the Cr.P.C., the learned Sessions Judge refers the matter under Section 156(3) of the Cr.P.C., to the jurisdictional Police of the Anti Corruption Bureau in terms of the order impugned dated 07-12-2021 directing report to be filed before 08-02-2022. The reference of the matter by the learned Sessions Judge for conduct of investigation by the Anti Corruption Bureau, is what drives the petitioner to this Court in the subject petition. This Court in terms of its order dated 03-02-2022 grants an interim order of stay which is subsisting even as on date. Therefore, no further investigation has taken place in the case at hand against any of the accused.

3. Heard Sri Sandesh J. Chouta, learned senior counsel appearing for the petitioner and Sri B.B. Patil, learned Special Public Prosecutor appearing for respondent No.1.

SUBMISSIONS:

The petitioner's:

4. The learned senior counsel would submit that the very registration of private complaint is contrary to law as there is no

avertment in the private complaint that there has been compliance with Section 154 (1) and 154(3) of the Cr.P.C. The private complaint could not have been entertained by the learned Sessions Judge directly without checks and balances under the Act being fulfilled; he would submit that the private complaint is not supported by an affidavit as held by the Apex Court in the case of **PRIYANKA SRIVASTAVA** reported in **(2015) 6 SCC 287**. He would further contend that there is no approval by the Competent Authority under 17A of the Prevention of Corruption Act. He would submit that entire proceedings are a mockery of law and, therefore, should be obliterated.

The Lokayukta's:

5. The learned Special Public Prosecutor Sri B.B. Patil representing the Karnataka Lokayukta would, however, seek to refute the submissions to contend that the learned Sessions Judge has referred the matter for investigation and once the matter is referred under Section 156(3) of the Cr.P.C., the respondent has no choice but to register a crime and continue the investigation. That is what is exactly the Anti Corruption Bureau then had done. He

would contend that the matter is to be investigated into as there are complaints of corruption at every place as indicated in the private complaint. He would seek dismissal of the petition.

6. The 2nd respondent/complainant has been served long ago and has remained unrepresented in these proceedings.

7. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record. In furtherance whereof, the issues that fall for consideration are **three fold**.

ISSUES:

First Fold: Whether the private complaint was maintainable without it supported by an affidavit of the Complainant?

Second Fold: Whether compliance with Section 17A of the Prevention of Corruption Act, 1988 as amended in 2018, is mandatory?

Final Fold: Whether rigor of Section 17A of the Prevention of Corruption Act, 1988 is applicable to private complaints filed

invoking Section 200 of the Cr.P.C. for offences punishable under the provisions of the Prevention of Corruption Act, 1988 against public servants?

UNFOLDING OF ISSUES:

FIRST FOLD:

Whether the private complaint was maintainable without it supported by an affidavit?

8. The second respondent is an RTI activist is not in dispute as the documents secured under the Right to Information Act form the fulcrum of the allegations. The allegations are made against several accused, one of whom is the petitioner, who is sought to be arrayed as accused No.1 pursuant to the reference made by the learned Sessions Judge under Section 156(3) of the Cr.P.C., upon the complaint filed by the 2nd respondent which on reference becomes a crime in Crime No.8 of 2021. The moment crime is registered, the subject writ petition is preferred and investigation is interdicted. Therefore, there is no progress in the investigation.

9. The issue now is with regard to entertainment of the private complaint itself. To consider the said issue, it is germane to notice Section 154 of the Cr.P.C. Section 154 of the Cr.P.C., runs as follows:

"154. Information in cognizable cases.—(1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, 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:

Provided that if the information is given by the woman against whom an offence under Section 326-A, Section 326-B, Section 354, Section 354-A, Section 354-B, Section 354-C, Section 354-D, Section 376, Section 376-A, Section 376-AB, Section 376-B, Section 376-C, Section 376-D, Section 376-DA, Section 376-DB, Section 376-E or Section 509 of the Indian Penal Code (45 of 1860) is alleged to have been committed or attempted, then such information shall be recorded, by a woman police officer or any woman officer:

Provided further that—

- (a) *in the event that the person against whom an offence under Section 354, Section 354-A, Section 354-B, Section 354-C, Section 354-D, Section 376, Section 376-A, Section 376-AB, Section 376-B, Section 376-C, Section 376-D, Section 376-DA, Section 376-DB, Section 376-E or Section 509 of the Indian Penal Code (45 of 1860) is alleged to have been committed or attempted, is temporarily or permanently mentally or physically disabled, then such information shall be recorded by a police*

officer, at the residence of the person seeking to report such offence or at a convenient place of such person's choice, in the presence of an interpreter or a special educator, as the case may be;

- (b) the recording of such information shall be videographed;*
- (c) the police officer shall get the statement of the person recorded by a Judicial Magistrate under clause (a) of sub-section (5-A) of Section 164 as soon as possible.*

(2) A copy of the information as recorded under sub-section (1) shall be given forthwith, free of cost, to the informant.

(3) Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub-section (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence.

(Emphasis supplied)

Section 154 mandates that the complainant should first approach the jurisdictional Police by registering a complaint under Section 154(1) of the Cr.P.C., and if no crime is registered by the jurisdictional Police, he should approach the Superintendent of Police under Section 154(3) of the Cr.P.C. The words 'jurisdictional

police' should be read as 'police wing of the Lokayukta', the 'Superintendent of Police' would mean 'Superintendent of police of the Lokayukta'. Compliance of the aforesaid is mandatory as private complaint under Section 200 of the Cr.P.C., cannot become the first resort of a complainant except in certain cases where law itself directs private complaint to be registered. Yet another mandatory requirement is elucidated by the Apex Court. The elucidation is with regard to the private complaint to be accompanied by an affidavit sworn to by the complainant to the contents of the complaint, failing which, such complaints would not become entertainable before the concerned Court. The Apex Court in the case of **PRIYANKA SRIVASTAVA v. STATE OF U.P.**¹ has held as follows:-

"10. At this stage, it is apposite to state that the third respondent, if we allow ourselves to say so, have possibly mastered how to create a sense of fear in the mind of the officials who are compelled to face criminal cases. After the High Court had quashed the earlier proceeding, the third respondent, in October 2011, filed another application under Section 156(3) CrPC against V.N. Sahay, Sandesh Tripathi and V.K. Khanna alleging criminal conspiracy and forging of documents referring to three post-dated cheques and eventually it was numbered as Complaint Case No. 344 of 2011, which gave rise to FIR No. 262 of 2011 under Sections 465, 467, 468, 471, 386, 506, 34 and 120-B IPC. Being not satisfied with the same, on 30-10-2011,

¹ (2015) 6 SCC 287

he filed another application under Section 156(3) against the present appellants alleging that there has been undervaluation of the property. It was numbered as Complaint Case No. 396 of 2011 wherein the trial Magistrate directed SHO to register FIR against the present appellants. Pursuant to the said order, FIR No. 298 of 2011 was registered.

11. At this juncture, it is imperative to state that the third respondent made the officials agree to enter into a one-time settlement. The said agreement was arrived at with the stipulation that he shall withdraw various cases filed by him on acceptance of the one-time settlement. As the factual matrix would reveal, the third respondent did not disclose about the initiation of Complaint Cases Nos. 344 and 396 of 2011. On 28-11-2011, the one-time settlement was acted upon and the third respondent deposited Rs 15 lakhs.

12. At this stage, it is apt to mention that V.N. Sahay and two others approached the High Court of Allahabad in Writ (C) No. 17611 of 2013 wherein the learned Single Judge heard the matter along with application under Section 482 CrPC in CrI. Misc. No. 13628 of 2010. We have already reproduced the relevant part of the order passed [V.N. Sahai v. State of U.P. Criminal Misc. No. 13628 of 2010, order dated 27-5-2013 (All) sub nom PNB Housing Finance Ltd. v. Debts Recovery Appellate Tribunal, Writ-C No. 17611 of 2013] , therein. Be it noted, the writ petition has also been disposed of by the High Court by stating thus:

"Heard Mr Manish Trivedi, learned counsel for the petitioner, Mr Vivek Kumar Srivastava, learned counsel appearing on behalf of Respondent 3 and the learned AGA.

It is submitted by the learned AGA that in the present case investigation has been completed and final report has been submitted, considering the same, this petition has become infructuous.

The interim order dated 2-12-2011 is hereby vacated.

Accordingly, this petition is disposed of."

"29. At this stage it is seemly to state that power under Section 156(3) warrants application of judicial mind. A court of law is involved. It is not the police taking steps at the stage of Section 154 of the Code. A litigant at his own whim cannot invoke the authority of the Magistrate. A principled and really grieved citizen with clean hands must have free access to invoke the said power. It protects the citizens but when pervert litigations takes this route to harass their fellow citizens, efforts are to be made to scuttle and curb the same.

30. In our considered opinion, a stage has come in this country where Section 156(3) CrPC applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of the said Act or under Article 226 of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores.

31. We have already indicated that there has to be prior applications under Sections 154(1) and 154(3) while filing a petition under Section 156(3). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. The warrant for giving a direction that an application under Section 156(3) be supported by an affidavit is so that the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with law. This will deter him to casually invoke the authority of the Magistrate under Section 156(3). That apart, we have already stated that the veracity of the same can also be verified by the learned Magistrate, regard being had to

the nature of allegations of the case. We are compelled to say so as a number of cases pertaining to fiscal sphere, matrimonial dispute/family disputes, commercial offences, medical negligence cases, corruption cases and the cases where there is abnormal delay/laches in initiating criminal prosecution, as are illustrated in Lalita Kumari [(2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR.

32. The present lis can be perceived from another angle. We are slightly surprised that the financial institution has been compelled to settle the dispute and we are also disposed to think that it has so happened because the complaint cases were filed. Such a situation should not happen.

33. At this juncture, we may fruitfully refer to Section 32 of the SARFAESI Act, which reads as follows:

"32. Protection of action taken in good faith.—
No suit, prosecution or other legal proceedings shall lie against any secured creditor or any of his officers or manager exercising any of the rights of the secured creditor or borrower for anything done or omitted to be done in good faith under this Act."

In the present case, we are obligated to say that the learned Magistrate should have kept himself alive to the aforesaid provision before venturing into directing registration of the FIR under Section 156(3) CrPC. It is because Parliament in its wisdom has made such a provision to protect the secured creditors or any of its officers, and needless to emphasise, the legislative mandate has to be kept in mind."

(Emphasis supplied)

The Apex Court has emphasized the fact that private complaint without accompanying an affidavit should not be entertained as accountability and responsibility of making frivolous statements in

the complaint would vanish, if they are not sworn to by the affidavit. The law is further reiterated by the Apex Court in the case of **BABU VENKATESH v. STATE OF KARNATAKA**², wherein it is held as follows:

"....

21. We find that in the present case, though civil suits have been filed with regard to the same transactions and though they are contested by the respondent No. 2 by filing written statement, he has chosen to file complaint under Section 156(3) of the Cr.P.C. after a period of one and half years from the date of filing of written statement with an ulterior motive of harassing the appellants. We find that, the present case fits in the category of No. 7, as mentioned in the case of State of Haryana v. Bhajan Lal (supra).

22. Further we find that, the present appeals deserve to be allowed on another ground.

23. After analyzing the law as to how the power under Section 156(3) of Cr.P.C. has to be exercised, this court in the case of Priyanka Srivastava v. State of Uttar Pradesh² has observed thus:

"30. In our considered opinion, a stage has come in this country where Section 156(3) CrPC applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming

² 2022 SCC OnLine SC 200

when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of the said Act or under Article 226 of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores.

31. We have already indicated that there has to be prior applications under Sections 154(1) and 154(3) while filing a petition under Section 156(3). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. The warrant for giving a direction that an application under Section 156(3) be supported by an affidavit is so that the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with law. This will deter him to casually invoke the authority of the Magistrate under Section 156(3). That apart, we have already stated that the veracity of the same can also be verified by the learned Magistrate, regard being had to the nature of allegations of the case. We are compelled to say so as a number of cases pertaining to fiscal sphere, matrimonial dispute/family disputes, commercial offences, medical negligence cases, corruption cases and the cases where there is abnormal delay/laches in initiating criminal prosecution, as are illustrated in *Lalita Kumari [(2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524]* are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR."

24. This court has clearly held that, a stage has come where applications under Section 156(3) of Cr.P.C. are to be supported by an affidavit duly sworn by the complainant who seeks the invocation of the jurisdiction of the Magistrate.

25. This court further held that, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also verify the veracity of the

allegations. The court has noted that, applications under Section 156(3) of the Cr.P.C. are filed in a routine manner without taking any responsibility only to harass certain persons.

26. This court has further held that, prior to the filing of a petition under Section 156(3) of the Cr.P.C., there have to be applications under Section 154(1) and 154(3) of the Cr.P.C. This court emphasizes the necessity to file an affidavit so that the persons making the application should be conscious and not make false affidavit. With such a requirement, the persons would be deterred from causally invoking authority of the Magistrate, under Section 156(3) of the Cr.P.C. In as much as if the affidavit is found to be false, the person would be liable for prosecution in accordance with law.

27. In the present case, we find that the learned Magistrate while passing the order under Section 156(3) of the Cr.P.C., has totally failed to consider the law laid down by this court.

28. From the perusal of the complaint it can be seen that, the complainant/respondent No. 2 himself has made averments with regard to the filing of the Original Suit. In any case, when the complaint was not supported by an affidavit, the Magistrate ought not to have entertained the application under Section 156(3) of the Cr.P.C. The High Court has also failed to take into consideration the legal position as has been enunciated by this court in the case of *Priyanka Srivastava v. State of U.P. (supra)*, and has dismissed the petitions by merely observing that serious allegations are made in the complaint.

29. We are, therefore, of the considered view that, continuation of the present proceedings would amount to nothing but an abuse of process of law."

(Emphasis supplied)

In the light of the law as laid down by the Apex Court in the afore-quoted judgments and on the bedrock of such elucidation, the

complaint so registered by the complainant, insofar it is germane is required to be noticed.

The preamble/title reads as follows:

"Complaint under Section 200 read with Section 156(3) of the Code of Criminal Procedure under Sections 403, 409, 120B of IPC and Section 13(1)(d) and 13(2) of Prevention of Corruption Act, 1988"

(Emphasis supplied)

The prayer in the complaint reads as follows:

PRAYER

In view of the aforesaid submission made herein and in the interest of the justice, it is therefore most respectfully prayed that this Hon'ble Court may graciously be pleased to:

- 1. Register the present complaint.**
- 2. To direct the jurisdictional Police to investigate the matter.**
- 3. Take cognizance of the offence, as the prima facie documents per se amount to commission of offences as indicated above.**
- 4. Summons, try and Punish the accused persons for committing the offences under Sections 403, 409, 120B of the IPC and Sections 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988.**
- 5. To call for relevant records and documents from the accused at the time this Hon'ble Court feels required.**
- 6. To take appropriate steps for prosecution and punishment of the above accused.**

or

Pass such other or further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

Date:28-11-2021
Place:Chikaballapur.

Sd/- Complainant.

Sd/- Advocate for Complainant."

(Emphasis added)

The complaint is preferred under Section 200 of the Cr.P.C., seeking a reference under Section 156(3) Cr.P.C., to take cognizance under Sections 403, 409, 120B of IPC and Section 13(1)(d) and 13(2) of the Act. The offences alleged are an amalgam of offences punishable under the Prevention of Corruption Act, 1988 and the IPC. The complaint nowhere narrates that the complainant has approached the police wing of the Lokayukta seeking registration of the complaint, without at the outset approaching the police, the private complaint could not have been registered, apart from the said fact, the private complaint ends with the signature of the complainant and the Advocate for the complainant. As required in law, there is no affidavit accompanying the private complaint. In the light of the aforesaid judgments, the private complaint could not have been entertained by the learned

Sessions Judge. This is the ***first rung of flaw*** in the entertainment of the complaint. Therefore, the first fold is answered in favour of the petitioner.

SECOND FOLD :

Whether compliance with Section 17A of the Prevention of Corruption Act, 1988 as amended in 2018, is mandatory?

10. To consider the said issue, it is germane to notice the genesis and the importance of Section 17A of the Prevention of Corruption Act, 1988. Section 17A was brought into force on 26.07.2018, it was one of those amendments to the Prevention of Corruption Act along with a slew of amendments, by the Amending Act of 2018. Section 17A runs as follows:

"17-A. Enquiry or inquiry or investigation of offences relatable to recommendations made or decision taken by public servant in discharge of official functions or duties.— No police officer shall conduct any enquiry or inquiry or investigation into any offence alleged to have been committed by a public servant under this Act, where the alleged offence is relatable to any recommendation made or decision taken by such public servant in discharge of his official functions or duties, without the previous approval -

(a) in the case of a person who is or was employed, at the time when the offence was alleged to have been

committed, in connection with the affairs of the Union, of that Government;

(b) in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of a State, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office, at the time when the offence was alleged to have been committed:

Provided that no such approval shall be necessary for cases involving arrest of a person on the spot on the charge of accepting or attempting to accept any undue advantage for himself or for any other person:

Provided further that the concerned authority shall convey its decision under this section within a period of three months, which may, for reasons to be recorded in writing by such authority, be extended by a further period of one month."

In terms of the above extracted provision of law, introduced by an amendment, no Police Officer shall conduct any enquiry, inquiry or investigation, into any offence alleged, to have been committed by a public servant under the Prevention of Corruption Act, where the alleged offence is relatable to any recommendation made or decisions taken by such public servant in discharge of his official functions or duties, without the previous approval of the competent authority.

11. Clause (a) thereof provides that in case of public servant who is or was employed in connection with the affairs of the Union at the time when the offence alleged to have been committed, the previous approval of the Central Government shall be obtained. Clause (b) likewise provides that in case of a public servant who is or was an employee in connection with the affairs of the State at the time when the offence was alleged to have been committed, the approval of the State Government shall be obtained before proceeding. Clause (c) provides that in case of any other person who comes within the definition of public servant previous approval of the competent authority to remove him from office at the time when the offence alleged to have been committed should be obtained. The narrative hereinabove cannot but indicate that the object of the Section was to protect public servants from malicious, vexatious or baseless prosecution. Therefore, if enquiry into the circumstances in which the alleged administrative or official act was done by the public servant or where malfeasance committed by the public servant which would involve an element of dishonesty or impropriety, is to be proceeded against, the

approval of the competent authority is imperative under Section 17A of the Act.

12. The importance of Section 17A is also considered by the Apex Court in the case of **YASHWANT SINHA v. CENTRAL BUREAU OF INVESTIGATION**³. The Apex Court though did not consider as to how the previous approval of the competent authority has to be taken, but considered the amendment and its importance in the following paragraphs:

"117. In terms of Section 17-A, no police officer is permitted to conduct any enquiry or inquiry or conduct investigation into any offence done by a public servant where the offence alleged is relatable to any recommendation made or decision taken by the public servant in discharge of his public functions without previous approval, inter alia, of the authority competent to remove the public servant from his office at the time when the offence was alleged to have been committed. In respect of the public servant, who is involved in this case, it is clause (c), which is applicable. Unless, therefore, there is previous approval, there could be neither inquiry or enquiry or investigation. It is in this context apposite to notice that the complaint, which has been filed by the petitioners in Writ Petition (Criminal) No. 298 of 2018, moved before the first respondent CBI, is done after Section 17-A was inserted. The complaint is dated 4.10.2018. Para 5 sets out the relief which is sought in the complaint which is to register an FIR under various provisions. Paras 6 and 7 of the complaint are

³ (2020) 2 SCC 338

relevant in the context of Section 17-A, which read as follows:

"6. We are also aware that recently, Section 17-A of the Act has been brought in by way of an amendment to introduce the requirement of prior permission of the Government for investigation or inquiry under the Prevention of Corruption Act.

7. We are also aware that this will place you in the peculiar situation, of having to ask the accused himself, for permission to investigate a case against him. **We realise that your hands are tied in this matter, but we request you to at least take the first step, of seeking permission of the Government under Section 17-A of the Prevention of Corruption Act for investigating this offence and under which, "the concerned authority shall convey its decision under this section within a period of three months, which may, for reasons to be recorded in writing by such authority, be extended by a further period of one month".**

(emphasis supplied)

118. Therefore, the petitioners have filed the complaint fully knowing that Section 17-A constituted a bar to any inquiry or enquiry or investigation unless there was previous approval. In fact, a request is made to at least take the first step of seeking permission under Section 17-A of the 2018 Act. Writ Petition (Criminal) No. 298 of 2018 was filed on 24.10.2018 and the complaint is based on non-registration of the FIR. There is no challenge to Section 17-A. Under the law, as it stood, both on the date of filing the petition and even as of today, Section 17-A continues to be on the statute book and it constitutes a bar to any inquiry or enquiry or investigation. The petitioners themselves, in the complaint, request to seek approval in terms of Section 17-A but when it comes to the relief sought in the writ petition, there was no relief claimed in this behalf.

119. Even proceeding on the basis that on petitioners' complaint, an FIR must be registered as it purports to disclose cognizable offences and the Court must so direct, will it not be a futile exercise having regard to Section 17-A. I am, therefore, of the view that though otherwise the petitioners in Writ Petition (Criminal) No. 298 of 2018 may have made out a case, having regard to the law actually laid down in Lalita Kumari [Lalita Kumari v. State of U.P., (2014) 2 SCC 1: (2014) 1 SCC (Cri) 524], and more importantly, Section 17-A of the Prevention of Corruption Act, in a review petition, the petitioners cannot succeed. However, it is my view that the judgment sought to be reviewed, would not stand in the way of the first respondent in Writ Petition (Criminal) No. 298 of 2018 from taking action on Ext. P-1, complaint in accordance with law and subject to first respondent obtaining previous approval under Section 17-A of the Prevention of Corruption Act."

(Emphasis supplied)

In the light of Section 17A creating a protective filter for vexatious and frivolous prosecution and complaints to pass muster to the rigors of Section 17A, I am of the considered view that it must be observed with complete strictness bearing in mind public interest, and protection available to such officers against whom offences are alleged, failing which many a time it would result in a vexatious prosecution. This cannot however, be considered as a protective shield for the guilty, but a safeguard for the innocent. Therefore, its observance becomes mandatory. In the light of no

approval granted for registering the impugned crime by the competent authority, the very registration of crime tumbles down. Therefore, the *second fold* is answered in favour of the petitioner.

FINAL FOLD:

Whether rigor of Section 17A of the Prevention of Corruption Act, 1988 is applicable to private complaints filed invoking Section 200 of the Cr.P.C. for offences punishable under the provisions of the Prevention of Corruption Act, 1988 against public servants?

13. In the light of the answer to the second fold *supra*, what would unmistakably emerge is, forum be it any; proceedings be it any; if offences punishable under the Prevention of Corruption Act, 1988 / 2018 is alleged, approval under Section 17A of the Prevention of Corruption Act for registration of the crime and investigation is mandatory, except in circumstances which do not require such approval. The case at hand involves registration of a private complaint invoking Section 200 of the Cr.P.C. It is not registered before the police wing of the Investigating Agency, but before the concerned Court and the concerned Court refers the

matter for investigation, which results in immediate registration of a FIR. The offences alleged are an amalgam of offences punishable under the Prevention of Corruption Act, 1988 and the IPC. This Court has come across several cases where private complaints are preferred by the complainants where, they do not approach the Investigating Agency like the Karnataka Lokayukta, but choose an alternate route of knocking at the doors of the Magistrate or the Sessions Judge. At that stage, what the Magistrate/Sessions Judge would do, is refer the matter under Section 156 (3) for investigation. Once the matter is referred for investigation, the Police / Lokayukta would have no choice but to register a crime. What happens in this process is the protective filter for vexatious, frivolous or malicious prosecution against the public servants created by the Parliament by the amendment in the year 2018 bringing in Section 17A to the Act is rendered illusory. Therefore, such complaints, which do not accompany with prior approval under Section 17A with the private complaint or before referring the matter for investigation, should not be entertained by the Magistrate/Sessions Judge, as the case would be.

14. The case at hand forms a classic illustration of misuse and abuse of law by the 2nd respondent/complainant. If the 2nd respondent had preferred a complaint before the Karnataka Lokayukta, the complaint would have been forwarded to the competent authority seeking permission under Section 17A to register a crime and crime would have been then registered only after prior approval from the competent authority. Invoking Section 200 of the Cr.P.C., the complainants or complainant in the case at hand are seeking to circumvent the rigor of Section 17A of the Act. If this practice is permitted, it would only open gates for frivolous and vexatious litigation by the complainants.

15. In the light of the aforesaid analysis and the unfolding of issues, it becomes necessary to direct the learned Sessions Judges / Special Court who would entertain complaints against public servants filed by private persons alleging offences punishable under the provisions of the Prevention of Corruption Act, 1988 even if it is an amalgam not to entertain such complaints if they do not comply with the following:

- (i) The complaint should narrate that the complainant has made his efforts to register a crime before the Karnataka Lokayukta and no action is taken by the police on the complaint. Mere statement in the complaint would not suffice but documentary evidence to demonstrate such fact should be appended to the private complaint.**
- (ii) The private complaint should also append prior approval granted by the competent authority to register a private complaint, akin to a prior approval for an FIR to be registered by the Investigating Agency as obtaining under Section 17A of the Act. This would become a prerequisite to the concerned Court to refer the matter for investigation under Section 156(3) of the Cr.P.C.**
- (iii) The aforesaid direction (ii) would be applicable only if the offences alleged would be the ones punishable under the Prevention of Corruption Act or the allegation would be an amalgam of offences both under the Prevention of Corruption Act and the Indian Penal Code. This direction at (ii) will not be applicable if the alleged offences are only of the Indian Penal Code.**

These directions become necessary in the light of the fact that once the matter is referred for investigation the Police will have no choice but to register the crime. Therefore, such approval being appended to the private complaint is *sine qua non* for maintainability of the complaint. Such complaints shall bear scrutiny at the hands of the Magistrate or the Sessions Judge as the case would be, for compliance with the aforesaid directions. The private complaint shall also be accompanied by an affidavit of the complainant, not a verifying affidavit, but an affidavit as obtaining under the Oaths Act, 1969. It is only then the learned Sessions Judge can entertain a private complaint against public servants.

16. In the teeth of the aforesaid glaring lacunae in the very entertaining of the complaint, permitting further proceedings to continue against the petitioner would become an abuse of the process of the law and result in miscarriage of justice. Therefore, I deem it appropriate to exercise jurisdiction under Section 482 of the Cr.P.C. and obliterate the proceedings against the petitioner.

17. For the aforesaid reasons, I pass the following:

ORDER

- a. The Criminal petition is allowed.
- b. The order dated 7th December, 1021 passed by the Principal District & Sessions Judge, Chickaballapura in P.C.R.5 of 2021 arising out of Crime No.8 of 2021 stands quashed.
- c. Registry is directed to circulate this order to all the learned Sessions Judge / concerned Courts for its strict compliance.

**Sd/-
JUDGE**

nvj
CT:MJ