

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 15TH DAY OF FEBRUARY, 2022

BEFORE

THE HON'BLE MR.JUSTICE S. SUNIL DUTT YADAV

CRIMINAL PETITION No.9961/2021

BETWEEN:

SHRI L.S. TEJASVI SURYA

... PETITIONER

(BY SRI S.S. SRINIVASA RAO, ADVOCATE A/W
SRI SUDHARSAN SURESH, ADVOCATE)

AND:

1. STATE OF KARNATAKA
BY SIDDAPURA POLICE STATION
#3, 1ST MAIN ROAD, 1ST BLOCK
JAYANAGAR EAST, JAYANAGAR
BENGALURU
KARNATAKA - 560 29.
2. OFFICER (FLYING SQUAD)
173, JAYANAGARA CONSTITUENCY &
BENGALURU SOUTH
PARLIAMENTARY CONSTITUTENCY,
26, JAYANAGARA 2ND BLOCK,
BENGALURU CITY,
KARNATAKA - 560 011.

3. SHRI H R CHANNAKESHA
EXECUTIVE ENGINEER,
K SHIP DIVISION
OLD KAKKERI ROAD,
K P PETE,
MANDYA
KARNATAKA - 571 426.

... RESPONDENTS

(BY SRI S. VISHWA MURTHY, HCGP)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482
OF CR.P.C., PRAYING TO:

(1) QUASH THE FIR NO.51/2019 DATED 18.04.2019
REGISTERED IN SIDDAPURA P.S., BENGALURU IN C.C.
NO.3077/2020, PENDING BEFORE THE II A.C.M.M., AT
BENGALURU ANNEXED AS ANNEXURE-A AT PAGE NOS.13-16.

(2) QUASH THE CHARGE SHEET DATED 02.07.2019 IN FIR
NO.51/2019 FILED BY SIDDAPURA P.S., BENGALURU IN C.C.
NO.3077/2020 BEFORE THE II A.C.M.M., BENGALURU ANNEXED
AS ANNEXURE-D AT PAGE NOS.24-29.

(3) QUASH THE ENTIRE PROCEEDINGS ARISING OUT OF
C.C. NO.3077/2020 PENDING BEFORE THE II A.C.M.M., AT
BENGALURU.

(4) QUASH THE ORDER DATED 17.11.2021 IN C.C.
NO.3077/2020 PENDING ON THE FILE OF THE II A.C.M.M.,
BENGALURU ISSUING NON-BAILABLE WARRANT AGAINST THE
PETITIONER, ANNEXED AS ANNEXURE-E AT PAGE NOS.30-33.

THIS CRIMINAL PETITION COMING ON FOR ORDERS THIS
DAY, THE COURT, MADE THE FOLLOWING:

ORDER

Learned High Court Government Pleader accepts
notice for the respondents.

2. Petitioner has sought for quashing of the proceedings pursuant to F.I.R. No.51/2019. Petitioner has also sought for quashing of the charge sheet dated 02.07.2019 and also for quashing the entire proceedings arising out of C.C.No.3077/2020 pending before the II Additional Chief Metropolitan Magistrate, Bangalore.

3. The petitioner submits that pursuant to the information made out by a counsel to the 2nd respondent on 17.04.2019, the 2nd respondent filed a complaint before the 1st respondent on the same day. The allegation made out was that one Sri. Narayanappa had got printed about 2000 copies of pamphlets on behalf of the petitioner herein who was the BJP candidate and distributed the same without mentioning name and address of the printer and publisher and accordingly, committed offence under Section 127A of the Representation of People Act, 1951 (for short 'the Act') and action was sought for as regards the said offence. It is submitted that information was then made out to the Magistrate as per Annexure-C requesting for permission to

commence investigation. On the basis of written requisition at Annexure-C, Magistrate has endorsed the word 'permitted'.

4. It is submitted that such endorsement is not in consonance with the requirement under Section 155(2) of Cr.P.C and is clearly in violation of the directions passed by this Court in the case of **Vaggeppa Gurulinga Jangaligi (Jangaligi) vs. The State Of Karnataka - ILR 2020 KAR 630.**

5. It is further submitted that though the offences made out in the FIR were 127(2) and 127A of the Act and 171F of IPC, the charge sheet that came to be filed after investigation only made out offence of Section 127A of the Act. Accordingly, it is submitted that the proceedings consequent to the permission given by the Magistrate requires to be set aside on the sole ground that the order is not in consonance with the requirements of Section 155(2) of Cr.P.C.

6. Learned counsel for the petitioner would also contend that even on merits, the proceedings are liable to be quashed as the requirement under Section 127A is only as regards to the person who prints and cannot in any way lead to proceedings to be carried out as against the petitioner who was the candidate.

7. Insofar as the contention that permission given by the Magistrate is contrary to the mandate under Section 155(2) of the Act, the said contention requires to be accepted. This Court in the judgment in the case of **Vaggeppa (supra)** has pointed out the procedure to be followed while granting permission for investigation. Relevant observation made by the Coordinate Bench of this Court at paragraph No.20 is extracted hereunder:

"20. Therefore, under Rule 1, the Magistrate shall endorse on the report whether the same has been received by post or muddam. Under Rule 2, the Magistrate has to specify in his order the rank and designation of the police officer or the police officer by whom the investigation shall be

conducted. Considering the mandatory requirement of Section 155(1) and (2) of Cr.P.C. and Rule 1 and 2 of Chapter V of the Karnataka Criminal Rules Practice, this Court proceed to laid down the following guidelines for the benefit of the judicial Magistrate working in the State.

i) The Jurisdictional Magistrates shall stop hereafter making endorsement as 'permitted' on the police requisition itself. Such an endorsement is not an order in the eyes of law and as mandated under Section 155(2) of Cr.P.C.

ii) When the requisition is submitted by the informant to the Jurisdictional Magistrate, he should make an endorsement on it as to how it was received, either by post or by Muddam and direct the office to place it before him with a separate order sheet. No order should be passed on the requisition itself. The said order sheet should be continued for further proceedings in the case.

iii) When the requisition is submitted to the Jurisdictional Magistrate, he has to first examine whether the SHO of the police station has

referred the informant to him with such requisition.

iv) The Jurisdictional Magistrate should examine the contents of the requisition with his/her judicious mind and record finding as to whether it is a fit case to be investigated. If the Magistrate finds that it is not a fit case to investigate, he/she shall reject the prayer made in the requisition. Only after his/her subjective satisfaction that there is a ground to permit the police officer to take up the investigation, he/she shall record a finding to that effect permitting the police officer to investigate the non-cognizable offence.

v) In case the Magistrate passes the orders permitting the investigation, he/she shall specify the rank and designation of the Police Officer who has to investigate the case, who shall be other than informant or the complainant."

8. Clearly, the requirement that is made out is that when the requisition is submitted by the informant to the Jurisdictional Magistrate, he should make an endorsement on it as to how it was received and direct the office to place

it before him with a separate order sheet. The Court has clarified that no order should be passed on the requisition itself and that the entry to be made in that regard is to be made in the order sheet and the said order sheet should be continued for further proceedings. Further direction has been passed at sub-para (iv) of paragraph No.20 of the judgment extracted above which also requires the Magistrate to examine the contents of the requisition and record a finding as to whether it is a fit case to be investigated and that if the Magistrate finds that it is not a fit case to be investigated, he shall reject the prayer made in the requisition. It is further pointed out that only after his subjective satisfaction that there is a ground to permit the police officer to take up the investigation, he shall record a finding to that effect permitting the police officer to investigate the non-cognizable offence.

9. It is also clarified that Annexure-C is a plea made by the 2nd respondent. In accordance with the mandate under Section 155(2) of Cr.P.C., the informant is to be

referred to the Magistrate which is preceded by the officer in-charge of the police station having made out necessary entry of the substance of the information in the book kept as mandated under Section 155. The Magistrate is to examine the informant and the complaint given by him and then proceed further.

10. Clearly, the said procedure that has been laid down in the judgment referred to above has not been followed in the present case. In light of the same, the endorsement of the Magistrate dated 18.04.2019 is set aside and the matter is relegated to the stage of the informant being referred to the Magistrate in terms of the procedure prescribed under Section 155(1) of Cr.P.C. While it requires to be noticed that as per the observation in sub-para (iv) of paragraph No.20 of the judgment extracted above, the Magistrate is required to apply his mind as to whether permission for investigation needs to be granted and accordingly, it would not be appropriate in the present proceedings to address the other contentions raised by the

petitioner as regards to the proceedings to be bad in law as ingredients of Section 127A of the Act are not satisfied. The said aspect, needless to state is a matter to be considered by the Magistrate before granting permission by passing an order under Section 155(2) of Cr.P.C.

11. Accordingly, the petition is disposed off subject to observations made above.

**Sd/-
JUDGE**

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