



ORDER

This petition is filed under Section 482 of Criminal Procedure Code (hereinafter referred to as the "Cr.P.C.", for brevity) praying to quash the entire proceedings in C.C.No.400/2021 pending on the file of the Additional Civil Judge and JMFC, Badami sitting at Guledagudda arising out of the Crime No.37/2020 of Guledagudda P.S. and registered for the offence punishable under Section 52-A of Waqf Act, 1995.

2. Heard the learned counsel for the petitioner and learned High Court Government Pleader for respondents.

3. The respondent No.2-Waqf Officer of Bagalkote District has filed first information before the Station House Officer of Guledagudda P.S. On the basis of the said first information, the Guledagudda Police have registered the case in Crime No.37/2020 against this petitioner for the offence under Section 52-A of the Waqf Act, 1995.



Police after completing the investigation, filed a charge sheet against this petitioner for the offence under Section 52-A of the Waqf Act, 1995.

4. Learned Additional Civil Judge and JMFC, Bagalkote, sitting at Guledgudda, took cognizance for the offence under Section 52-A of the Waqf Act, 1995 against this petitioner based on the charge sheet filed by the Guledagudda P.S. and registered C.C.No.400/2021. The petitioner has sought for quashing of the proceedings initiated against him.

5. Learned counsel for the petitioner would contend that, as the offence alleged against the petitioner is under Section 52-A of the Waqf Act, 1995, as per Section 52-A (3) of Waqf Act, the Court has to take cognizance only on the compliant made by the Board or any officer duly authorized by the State Government in this behalf. The learned Magistrate has taken cognizance based on the police report. Therefore, the proceedings



against this petitioner are bad in law. With this, he prayed to allow the petition and quash the proceedings initiated against this petitioner.

6. Considering the contention taken up by learned counsel for the petitioner, it is beneficial to extract the provisions of Section 52-A of the Waqf Act, 1995, which reads as under:

52-A. Penalty for alienation of waqf property without sanction of Board.-(1) Whoever alienates or purchases or takes possession of, in any manner whatsoever, either permanently or temporarily, any movable or immovable property being a waqf property, without prior sanction of the Board, shall be punishable with rigorous imprisonment for a term which may extend to two years:

Provided that the waqf property so alienated shall without prejudice to the provisions of any law for the time being in force, be vested in the Board without any compensation therefor.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) any offence punishable under this section shall be cognizable and non-bailable.

(3) No court shall take cognizance of any offence under this section except on a complaint made by the Board or any officer duly authorised by the State Government in this behalf.



(4) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this section.

As per Section 52-A (3) of the Waqf Act, the Court can take cognizance only on complaint made by the Board or any officer duly authorized by the State Government in this behalf.

7. The word "complaint" has been defined under Section 2(d) of Cr.P.C. which reads as under:

Section 2(d)-"complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.

8. As per the above definition, it does not include a police report. The Police report has been expressly excluded in the definition of complaint under Section 2(d) of the Cr.P.C.



9. The respondent No.2-Waqf Officer has filed first information before the Station House Officer of Guledgudda P.S. and case came to be registered against this petitioner in Guledgudda P.S. in Crime No.37/2020 for the offence under Section 52-A of the Waqf Act, 1995. The Guledgudda Police after completing investigation, filed charge sheet/report against this petitioner for the offence under Section 52-A of the Waqf Act, 1995. The learned Magistrate has taken cognizance by order dated 06.04.2021 on the basis of the charge sheet/report against this petitioner for the offence under Section 52-A of the Waqf Act, 1995. The said cognizance taken by the learned Magistrate is not on complaint but it is on Police report. As per sub section (3) of Section 52-A, the Court has to take cognizance for the offence under Section 52-A of the Waqf Act, 1995, only on the complaint. There is express legal bar engrafted in Section 52-A (3) of the Waqf Act, 1995 to take



cognizance on the police report as the term used is "complaint". The complaint as defined under Section 2(d) of the Cr.P.C. does not include a police report.

10. The Hon'ble Apex Court in the case of **STATE OF HARYANA VS. BHAJANLAL** reported in **1992 Supp (1) SCC 335**, has laid down certain guidelines whereunder the High Court can exercise powers under Section 482 of Cr.P.C and relevant direction reads as under:

"f) where there is an express legal bar engrafted in any of the provision of the code or the concerned Act (under which a criminal proceedings is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision of the code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party"

11. In view of above, taking cognizance by learned Magistrate based on police report against this petitioner for the offence under Section 52-A



Waqf Act, 1995 is bad in law. Hence, proceedings initiated against this petitioner in C.C.No.400/2021 pending on the file of Additional Civil Judge and JMFC Badami, sitting at Guledgudda are to be quashed. In the result, the following:

ORDER

The petition is allowed.

The entire proceedings in C.C.No.400/2021 pending on the file of Additional Civil Judge and JMFC Badami, sitting at Guledgudda are quashed.

The Board or any officer duly authorized by the State Government is at liberty to file complaint under Section 200 of Cr.P.C. before the judicial Magistrate having jurisdiction.

Sd/-
JUDGE

AC
CT:BCK
List No.: 1 Sl No.: 15