

Karnataka High Court Guruduth Prabhu And Ors. vs M.S. Krishna Bhat And Ors. on 18 February, 1999 Equivalent citations: 1999 CriLJ 3909 Author: A Farooq Bench: Y B C.J., A Farooq JUDGMENT A.M. Farooq, J. 1. These writ appeals are directed against the common order dated 3-2-97 in Writ Petition Nos. 29498/95 to 29500/95. The respondents 8 and 9 in the writ petitions are the appellants in these writ appeals. 2. The respondents 1 to 3 in these appeals filed writ petitions alleging that the 1st petitioner/R-1 is the Chairman and Chief Executive of the Karnataka Bank Limited. The 2nd petitioner/R-2 is the Deputy General Manager (Inspection & Vigilance) and the 3rd respondent is the Asst. General Manager, (H. R. & I.R. Department) of the said Bank. The bank in question according to the writ petitioners is a banking company in the private sector and covered by the Companies Act and subject to the regulatory control of the Reserve Bank of India in so far as the banking activities are concerned. That the bank has its Memorandum of Association and Articles of Association to regulate its functionary. It includes the power of appointment of personnel to the bank which is conferred on the Board of Directors and in the matter of recruitment of subordinate staff and clerical cadre the Chairman is empowered to recruit such staff. That in respect of recruitment of clerical cadre 25% of the vacancies are permitted to be filled up by the Chairman at his discretion as per the Board Resolution No. 52 dated 4-11-88. 3. For the year 1993-94, the bank resolved to recruit clerks and the same was advertised mentioning the qualification and other requirements. The Bank received 2396 applications which included some received from the relatives of its own employees. Written Test was conducted to all the candidates who passed the degree. After written test, about 641 candidates were interviewed including 38 candidates whose qualifications were relaxed in view of the discretionary quota of the Chairman in case of employment on compassionate ground etc., That, thereafter, 132 candidates were selected on the basis of their performance in the interview and 23 candidates were recruited under the discretionary quota. According to the writ petitioners 2 of the Directors were dissatisfied with the selection and appointment on account of not accommodating some candidates recommended by them and they started finding fault with the recruitment. They also despatched complaint to the Reserve Bank of India. That the Board of Directors passed a resolution deprecating the attitude of the two Directors and in the resolution, the Board of Directors reposed full confidence in the Chairman. Thereafter, the discontented directors started giving problems to others in the Board and started approaching the Courts and according to the writ petitioners, the two discontented directors set up two unsuccessful candidates at the recruitment to file two private complaints before the JMFC. Mangalore in Private Complaint No. 99 and 100/ 1995 alleging offences under Section 167, IPC (Public servant framing a incorrect document with intent to cause injury). In both the complaints the prayer was to refer the matter for police investigation under Section 156(3) of the Cr. P.C. and the learned Magistrate straightway passed the order and those orders in the two complaints were challenged in the two writ petitions Nos. 15429 and 15451/95. This Court has granted stay of the order and later on issued rule nisi directing continuance of the stay order. It is the case of

the writ petitioners that two directors who are aggrieved by the selection and appointment of clerks set up 3 more unsuccessful candidates to file complaints before the Chief Magistrate. The said complaints are also similar to the earlier mentioned complaints and the prayers was also the same. The learned Magistrate before whom these complaints were filed also conceded to the prayer in the complaints and referred the matter to the police under Section 156(3) of the Cr. P.C. 4. The writ petitioners with the above facts in the writ petition contended that even if the entire complaint is taken as a whole it does not disclose the commission of any cognizable offence and no ingredient of an offence under Section 167 of the IPC is made out by the complainants. They contended that no complaint could have been filed against them alleging an offence under Section 167, IPC in view of Section 46(1) of the Banking Regulations Act, 1949. The writ petitioners prayed for quashing of the impugned orders passed by the learned Magistrates and to dismiss the complaints. 5. The learned single Judge after elaborately considering the materials on record and after hearing the counsel for the writ petitioners and the counsel for the appellants allowed the writ petitions and quashed the complaints pending before the Magistrate as prayed for by the writ petitioners. In this appeal, the appellants have challenged the said order. 6. The matter has come up for preliminary hearing and we have heard the learned counsel for the appellants, respondents 1 to 3 and also the Addl. Govt. Advocate, for the other respondents. 7. It was contended by the learned counsel appearing for the appellants that the learned single Judge ought not to have interfered with the order passed by the learned Magistrate referring the complaints to the police under Section 156(3) of the Cr. P.C. for investigation. According to the appellants, the power of the police to investigate to a complaint when it has been referred to it by the Court cannot be questioned in writ jurisdiction before this Court. It is also contended that the writ petition itself was not maintainable. 8. We find from the impugned order passed by the learned single Judge that the learned single Judge has elaborately discussed the matter and has relied upon the judgment of the Apex Court to come to the conclusion that the complaint filed by the appellants does not make out any offence and the learned Magistrates ought not to have allowed the police to investigate the same by referring under Section 156(3) of the Cr. P.C. when prima facie no offence is made out. It was even conceded before the learned single Judge by the Senior Counsel appearing for the complainants that the averments made in the complaints except one in W.P.No. 15451/95 were very cryptic with a generalised statement as to the preparation of a false document without giving material particulars of what the document was and how the same was incorrect or meant to cause any injury to any one. The complainants relied upon the following paragraph from one of the complaints which according to the complainants are the most relevant allegation which spells out the offence alleged against the writ petitioners. The learned single Judge has also culled out the said paragraph and for better appreciation we also feel it necessary to cull out that portion in this order also. That the complainant submits that the accused No. 2 had submitted a false report to the Reserve Bank of India with an intention to defraud the public in his letter dated 13-1-1995 addressed to the Joint

Chief Officer, Reserve Bank of India, Department of Supervision, Nrupathunga Road, Bangalore-560 002, stating that for clerical appointment response from first class graduates was poor and hence non-first class graduates were considered for the said post. The complainant submits that there were nearly 2,000 eligible candidates have applied for the said post and this fact was deliberately suppressed to defraud others and also with an intention to deceive and commit fraud on the public the accused No. 2 with the direction of accused No. 1 submitted a false report to the Reserve Bank of India. On a plain reading of the complaint it is obvious that the complainants in those complaints have been set up by the two directors who had grievance against the selection of the clerks by the Board of Directors and Chairman as alleged by the writ petitioners. The main allegation in the complaints is that the documents in reference which is a report submitted to the Reserve Bank of India in the form of Bank's letter dt. 13-1-95 is a fabricated report. It is the contention of the complainants that 2000 applications were received by the Board from eligible candidates against 130 vacancies in the clerical cadre and the mentioned made by the appellants in the report that there was poor response for the post itself show that the writ petitioners (accused in the complaint) wanted to create an impression through the above mentioned letter that there was poor response and such alleged falsehood amounts to an offence under Section 167, IPC. As rightly observed by the learned single Judge, the question whether the response to the advertisement calling for applications against 130 clerical vacancies and receiving 2000 applications could be considered to be a poor response is a matter of perception which is bound to vary from person to person and would also depend upon the number expected by the Bank. We are unable to find anything wrong with the letter addressed by the writ petitioners which is relied upon by the complainants/appellants to allege the offence under Section 167, IPC against the writ petitioners. Moreover, certain writ petitions were filed before this Court in W.P.Nos. 23935 to 23941/95 challenging some of the appointments and this Court while disposing of those writ petitions held that since the appointments are already made and the persons have taken charge of their course, the counsel for the petitioners in those writ petitions were not interested in setting aside the appointments already made. As rightly held by the learned single Judge the alleged documents in the complaint were already prepared by the time this Court disposed of those writ petitions and upholding the appointment orders. Therefore, the validity of the document and the action taken thereon has been upheld by this Court. 9. The entire complaint as noticed earlier is an attack on the Directors and the Chairman who were responsible for the selection and appointment of the candidates and the materials could have been supplied to the complainants only by persons who were in the helm of affairs of the Bank. As contended by the respondents/writ petitioners, the complainants have been clearly set up by the Directors who are not happy with the selection made by the Chairman and other Directors. There is absolutely no material at least prime facie even to imagine that some offence is committed by the accused named in the complaint. We have carefully gone through the averments made in the complaints and we find that even if the entire allegations are taken into

consideration no offence is made out by the complainant let alone an offence under Section 167, IPC. It is contended by the learned counsel appearing for the appellants that when once the Magistrate has referred the matter to the police under Section 156(3) of the Code of Criminal Procedure and the police is seized of the matter and investigation is started, this Court neither under Section 482 of the Code of Criminal Procedure nor under Article 226 of the Constitution of India is entitled to interfere with the police investigation and quash the investigation. 10. Let us first consider whether the learned Magistrate had jurisdiction to refer the matter for Police investigation under Section 156(3), Cr. P.C. 156. Police Officer's power to investigate cognizable case.- (1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII. (2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate. (3) Any Magistrate empowered under Section 190 may order such an investigation as above-mentioned. Sub-section (1) of Section 156 confers on the police unrestricted power to investigate a cognizable offence without the order of a Magistrate or without a formal first information report. The police are entitled to investigate cognizable offence either on information under Section 154 or on their own motion, on their own knowledge or from other reliable information. This statutory right to investigate cognizable offence cannot be interfered with or controlled by the Courts including the High Court. It is open to the Court to take or not to take action when the police prefer a chargesheet after investigation. But the Court's function does not begin until the chargesheet is filed. Under Sub-section (2) police can investigate any offence taking the matter to be a cognizable offence although ultimately charges are filed for a non-cognizable offence since while investigating a cognizable offence, the police are not debarred from investigating any non-cognizable offence arising out of the same facts and including it in the report to be filed by them under Section 173, Cr. P.C., Sub-section (3) empowers the Magistrate to refer and direct the police to investigate a cognizable offence. But there is a restriction on the Magistrate before directing the police to investigate under Sub-section (3), the Magistrate should form an opinion that the complaint filed by the complainant before him disclose a cognizable offence. When the allegation made in the complaint does not disclose cognizable offence, the Magistrate has no jurisdiction to order police investigation under Sub-section (3) In the present case, the learned Magistrate without applying his mind had directed an investigation by the police. Such an order which is passed without application of mind is clearly an order without jurisdiction. Therefore, the order passed directing the police to investigate under Sub-section (3) of Section 156, Cr. P.C, passed without jurisdiction is liable to be quashed by this Court either under Section 482, Cr.P.C, or under Article 226 of the Constitution of India. We find from the materials on record, the learned Magistrate has not at all applied his mind before directing police investigation under Section 156(3), Cr. P.C If the Magistrate had applied his

mind, the Magistrate could have found that no cognizable offence is made out even if the entire allegations made in the complaint are accepted. We have already come to the conclusion that none of the complaints filed by the complainants disclose a cognizable offence alleged under Section 167, IPC. On this count alone the direction given by the Magistrate is liable to be quashed. The Hon'ble Supreme Court in *State of Haryana v. Bhajan Lal* has held that the High Court could either exercise its power under Article 226 of the Constitution of India or under Section 482, Cr. P.C and quash the investigation to prevent abuse of the process of law or to secure the end of justice. It has been held that where uncontroverted allegations made in the complaint do not disclose the commission of a cognizable offence justifying an investigation by police, the High Court is empowered to quash such an investigation. 11. Sub-section (3) of Section 156 Cr. P.C, empowers Magistrate to order an investigation. Under Section 157(1), Cr. P.C. an officer in charge of a Police Station having reason to suspect the commission of an offence which he is empowered under Section 156, Cr.P.C. to investigate should send a report to the Magistrate empowered to take cognizance of the offence upon a Police report and should proceed in person or depute one of his prescribed deputies to proceed to the spot to investigate under Section 157(1)(a) when the offender is named and if the case is not of a serious nature the officer need proceed in person or depute his subordinate. Under Section 157(1)(b) if it appears to such Police Officer that there is no sufficient ground for entering on an investigation he shall not investigate the case and the officer should inform the complainant under the prescribed manner. Thus, the Police Officer who is empowered to investigate on the information received by him of the commission of a cognizable offence can decide whether there is no sufficient ground for entering into an investigation and if there is no sufficient ground he should not investigate the case. But once the Magistrate orders an investigation under Section 156(3), Cr. P.C. the Police Officer is bound to investigate the matter and there is no question of his deciding not to investigate. Thus, by an order of the Magistrate under Section 156(3) the discretion given to the Police Officer under Section 157 is taken away. It is therefore very important that the Magistrate applies his mind and finds that the allegations made in the complaint filed under Section 200, Cr. P.C, before him disclose an offence. If every complaint filed under Section 200, Cr.P.C, is referred to the police under Section 156(3) without application of mind about the disclosure of an offence, there is every likelihood of unscrupulous complainants in order to harass the alleged accused named by them in their complaints making bald allegations just to see that the alleged accused are harassed by the police who have no other go except to investigate as ordered by the Magistrate. Therefore, it is mandatory for the Magistrate to apply his mind to the allegations made in the complaint and in only cases which disclose an offence, the Magistrate gets jurisdiction to order an investigation by the police if he does not take cognizance of the offence. In the present case, the learned Magistrate without applying his mind has blindly ordered the investigation under Section 156(3) and the said order is, therefore, without jurisdiction. We have also found in this case that the complaints filed by the complainants is manifestly tainted with mala fides and

instituted maliciously with an ulterior motive for wreaking vengeance on the accused with a view to spike them due to private and personal grudge. When such is the circumstance which is disclosed from the materials on record, it is not only empowers this Court to interfere in the interest of justice, but it is the duty of this Court to nip such an investigation in the bud. The learned single Judge was, therefore, right in allowing the writ petitions and quashing the investigation in each one of the complaint referred by the Magistrate to the Police. We find that there is no merit in these writ appeals. These writ appeals are accordingly dismissed with cost of Rs. 5000-00 in each of the writ appeals.