



CRL.P No. 4187 of 2022
C/W
CRL.P No. 3691 of 2022

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF AUGUST, 2022

BEFORE

THE HON'BLE MR JUSTICE M.NAGAPRASANNA

CRIMINAL PETITION NO. 4187 OF 2022

C/W

CRIMINAL PETITION NO. 3691 OF 2022

IN CRIMINAL PETITION NO. 4187 OF 2022

BETWEEN:

MR.MANJUNATHA M.K.,
S/O KRISHNAPPA,
AGED ABOUT 35 YEARS,
R/AT GUNDAPPA BADAVANE,
CHINTHAMANI TOWN,
CHIKKABALLAPURA – 563 125.

...PETITIONER

(BY SRI.RAJESHA SHETTIGARA., ADVOCATE)

AND:

STATE OF KARNATAKA
BY CHINTHAMANI TOWN P.S.,
CHIKKABALLAPURA,
REPRESENTED BY SPP
HIGH COURT OF KARNATAKA,
BENGALURU – 560 001.

...RESPONDENT

(BY SRI K.S.ABHIJITH, HCGP)





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THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO QUASH THE ENTIRE PROCEEDINGS OF C.C.NO.1222/2021 ARAISED FROM CR.NO.129/2020 PENDING ON THE FILE OF THE PRINCIPAL CIVIL JUDGE AND JMFC, CHINTHAMANI, CHIKKABALLAPURA AS AGAINST THE PETITIONER FOR OFFENCE P/U/S.78(3) OF THE KARNATAKA POLICE ACT 1963 SEC.66-D OF THE IT ACT AND SEC.419, 420 AND 34 OF IPC VIDE ANNEXURE-D.

IN CRIMINAL PETITION NO. 3691 OF 2022

BETWEEN:

1. MR. NAVEEN V.,
S/O VENKATESH P.N.,
AGED ABOUT 30 YEARS
R/AT KUNTIGADDE
NEAR OORUMUNDE
CHINTHAMANI TOWN
CHIKKABALLAPURA – 563 125.
2. MR. SULEMAN KHAN
S/O AZIZ KHAN
AGED ABOUT 26 YEARS
R/AT WARD NO.30, AGRAHARA
CHINTHAMANI TOWN
CHIKKABALLAPURA – 563 125.

...PETITIONERS

(BY SRI RAJESHA SHETTIGARA., ADVOCATE)



CRL.P No. 4187 of 2022
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AND:

STATE OF KARNATAKA
BY CHINTHAMANI TOWN P.S.,
CHIKKABALLAPURA
REPRESENTED BY SPP
HIGH COURT OF KARNATAKA
BENGALURU – 560 001.

...RESPONDENT

(BY SRI K.S.ABHIJITH, HCGP)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO QUASH THE ENTIRE PROCEEDINGS OF CHARGE SHEET NO. 24/2021 DATED 24.02.2021 FILED BY THE RESPONDENT POLICE IN CRIME NO. 129/2020 PENDING ON THE FILE OF PRINCIPAL CIVIL JUDGE AND JMFC, CHINTHAMANI, CHIKKABALLAPURA, AS AGAINST THE PETITIONER FOR OFFENCES PUNISHABLE U/S 78(3) OF THE KARNATAKA POLICE ACT, 1963, SECTION 66D OF THE IT ACT AND SECTION 419, 420 AND 34 OF IPC OF IPC VIDE ANNEXURE C.

THESE CRIMINAL PETITIONS COMING ON FOR ADMISSION THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The petitioners in both these petitions call in question the proceedings in Crime No.129/2020 pending before the Principal Civil Judge and JMFC, Chintamani, Chkkaballapura, registered for the offences punishable under Section 78(3) of the Karnataka Police Act, 1963 and Section 66D of Information



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Technology Act, 2008 and Sections 419 and 420 read with Section 34 of IPC.

2. Heard Sri Rajesha Shettigara, learned counsel for the petitioners and Sri K.S.Abhijith, learned High Court Government Pleader for the respondent – State, in both the petitions.

3. The learned counsel for the petitioners submits that the issue in the case at hand stands covered by the judgment rendered by the Co-ordinate Bench of this Court in ***Crl.P.No.5759/2022***, disposed of on ***13.07.2022***, wherein this Court has held as follows:

"ORDER

Heard Sri.Rajesha Shettigara, learned counsel appearing for the petitioners and Smt.K.P.Yashodha, the learned High Court Government Pleader appearing for the respondent.

2. The petitioners are before this Court calling in question the proceedings in C.C.No.204/2022 registered for offences punishable under Section 78(III), 87 of the Karnataka Police Act, 1963.



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3. Learned counsel appearing for the petitioners submits that the issue in the lis stands covered by the judgment rendered by the Co-ordinate Bench of this Court in **Crl.P.No.7735/2019**, disposed on **26.02.2020**, wherein this Court on an identical issue has held as follows:

" 3. Though this case is listed for hearing-interlocutory application, with the consent of learned counsel appearing for both the parties, the same is taken up for final disposal.

4. On 23.09.2019 at about 8.00 a.m., respondent-police have received a credible information that two persons in M/s. P. M. Enterprises Office indulged in betting the amount to the result of India and South Africa T-20 Match which was played on 22.09.2019 and thereby collecting the amount and have cheated them. On the basis of the said information, a raid has been conducted and thereafter, the case has been registered against the petitioner/accused and other accused persons.



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5. *It is the submission of the learned Senior counsel that the registration of FIR after search, seizure and arrest of accused Nos.1 and 2 is contrary to the principles laid down by the Hon'ble Apex Court in the case of **Lalitha Kumari Vs. Government Uttar Pradesh and Others** reported in (2014) 2 SCC 1. It is his further submission that the information received was disclosing only the commission of an offence on betting and the offences registered are under Sections 79 and 80 of the Karnataka Police Act and the said offences are non-cognizable offences. The Investigating Officer without obtaining the order of permission as contemplated under Section 155(2) of Cr.P.C., he went and conducted the search and seizure without there being any warrant and permission. The said provision if it is not followed, it goes to the route of the case and the entire proceedings is nothing but an abuse of process of law. It is his further submission that the learned Magistrate has given the permission by making an endorsement 'permitted' that itself goes to show that he has not applied his mind to the information given by the informant and no*



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enquiry has been conducted as required under Section 155(2) of Cr.P.C. It is his further submission that the illegality and correctness goes to the route of the case and the continuation of the proceedings is abuse of process of law. On these grounds, he prayed to allow the petition.

6. Per contra, learned High Court Government Pleader vehemently argued and submitted that there is prima facie material as against petitioner/accused. It is not only the non-cognizable offence which has been mentioned in the FIR and he has also committed an offence under Section 420 of IPC, which is a cognizable offence, under such circumstances, Section 155 of Cr.P.C. is not applicable to the present facts on hand. It is his further submitted that at this pre-matured stage that too, when the investigation is still in progress, it is not a fit case to quash the proceedings. He further submitted that even though the learned Magistrate has made an endorsement 'permitted'. On cyclostyled paper, appears original signature that itself shows the application of mind. It is his further submitted that already the charge sheet has been filed.



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On these grounds, he prayed to dismiss the petition.

7. I have carefully and cautiously gone through the submissions made by the learned counsel appearing for both the parties and perused the records.

8. As could be seen from the records, it indicates that on receipt of the credible information, two persons in M/S. P. M. Enterprises Office have indulged in betting the amount to the result of India and South Africa T-20 Match which was played on 22.09.2019 and a case has been registered under Sections 79 and 80 of The Karnataka Police Act. Admittedly, the said sections are non-cognizable offences in nature and the Investigating Officer knows about the non-cognizable offence has been committed by the accused, he has to follow the mandate as contemplated under Section 155(2) of Cr.P.C. and he has to obtain the necessary permission from the jurisdictional Magistrate to proceed in the matter by giving a requisition and obtain a permission. Though in the instant case, the permission has been obtained, the learned Magistrate has only



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made an endorsement to the effect 'permitted' that too, on a cyclostyled paper. That itself goes to show that without application of mind, he has passed the impugned order. As per Section 155(2) of Cr.P.C. it indicates that it is not a mere formality that the learned Magistrate has to peruse the records thereafter, by application of mind has to make an endorsement that whether investigation is required in the case or not? If he has not applied his mind, then under such circumstance, it is not going to satisfy the mandate as contemplated under Section 155(2) of Cr.P.C.

9. Be that as it may. It is alleged that the petitioner/accused has committed an offence under Section 420 of IPC but when he received the information it is noticed that the petitioner/accused and other persons have indulged in betting of the amount to the result of India and South Africa T-20 Match. There are no specific allegations which have been made against him. The said betting has been done and the persons have cheated to constitute an offence under Section 420 of IPC. In the absence of such material, mentioning of Section 420 of IPC without



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there being any material, it also does not constitute an offence as contemplated under the law.

*10. Be that as it may. If he has come to the conclusion that the petitioner/accused have cheated, then under such circumstances, he should have registered the case and thereafter he could have proceeded and made a search and seizure. If the said aspect is not done, then under such circumstances, there will be violation of mandate issued by the Hon'ble Apex Court in the case of **Lalitha Kumari (quoted supra)**.*

*11. In the said case it has been specifically observed that the registration of FIR is mandatory under Section 154. For the purpose of brevity, I quote paragraph No. 86 of the **Lalitha Kumar's case (quoted supra)** which reads as under:*

"86. Therefore, conducting an investigation into an offence after registration of FIR under Section 154 of the Code is the "procedure established by law" and, thus, is in conformity with Article 21 of the Constitution. Accordingly, the right of the accused under Article 21 of the



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Constitution is protected if the FIR is registered first and then the investigation is conducted in accordance with the provisions of law."

12. By going through the said proposition of law and the mandate of law as contemplated under Section 155(2) of Cr.P.C. it indicates that there is violation of illegality in committing the raid by the respondent police. It is a fit case to exercise the power under section 482 of Cr.P.C.

13. In that light, petition is allowed and the FIR in Crime No.177/2019 of Halasuru Gate Police Station, Bengaluru pending on the file of I Additional Chief Metropolitan Magistrate, Bengaluru for the offences punishable under Sections 79 and 80 of Karnataka Police Act and also under Section 420 read with Section 34 of IPC are hereby quashed.

I.A. No.1/2020 does not survive for consideration. Accordingly, it is disposed off."



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4. *Learned HCGP would though seek to justify the action on the score that the offence punishable under Section 66 of the Information Technology Act, 2008 also included at the time of registration of the FIR and therefore, no fault can be found with the registration of the crime, without the permission of the learned Magistrate.*

5. *This submission is what is considered negative by the co-ordinate Bench, in the afore-extracted judgment.*

6. *In the light of the order passed by the Co-ordinate Bench of this Court (supra) and for the reasons aforementioned, the following:*

ORDER

- (i) *The Criminal Petition is allowed.*
- (ii) *The proceedings in C.C.No.204/2022 arising out Crime No.139/2020 pending on the file of the Principal Civil Judge and J.M.F.C., Chikkaballapura stand quashed."*

The position of law is not disputed by the learned HCGP representing the State, in the light of the order passed by the



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Co-ordinate Bench of this Court (*supra*) and for the reasons
aforementioned, the following:

ORDER

- (i) The Criminal Petitions are allowed.
- (ii) The proceedings in Crime No.129/2020 /
C.C.No.1222/2021, pending before the Principal
Civil Judge and JMFC, Chintamani,
Chkkaballapura, stand quashed.

Sd/-
JUDGE

NVJ