



IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 28TH DAY OF NOVEMBER, 2023

BEFORE

THE HON'BLE MR JUSTICE SHIVASHANKAR AMARANNAVAR

CRIMINAL PETITION NO. 102630 OF 2023

BETWEEN:

1. RAJASHEKHARA S/O SHARNABASAPPA TONGALI,
AGE. 70 YEARS, OCC. RETIRED EMPLOYEE,
R/O. CTS. 2591 AND 2818/2, 2ND CROSS,
HIREPETE, OLD HUBBALLI, HUBBALLI,
PIN CODE-580024.
2. DEEPAK S/O RAJASHEKHARA TONGALI,
AGE. 37 YEARS, OCC. ADVOCATE,
R/O. CTS. 2591 AND 2818/2, 2ND CROSS,
HIREPETE, OLD HUBBALLI, HUBBALLI,
PIN CODE-580024.
3. CHETAN S/O RAJASHEKHARA TONGALI,
AGE. 33 YEARS, OCC. EMPLOYEE,
R/O. CTS. 2591 AND 2818/2, 2ND CROSS,
HIREPETE, OLD HUBBALLI, HUBBALLI,
PIN CODE-580024.

... PETITIONERS

(BY SRI. SACHIN C. ANGADI, ADVOCATE)

AND:

1. STATE OF KARNATAKA,
THROUGH OLD HUBBALLI P.S., HUBBALLI,
R/BY ITS STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA, DHARWAD.
2. BASAVARAJ S/O SANGAPPA TONGALE,
AGE. 50 YEARS, OCC. BUSINESS,
R/O. 2ND CROSS, HIREPETE,
OLD HUBBALLI, HUBBALLI, PIN CODE-580024.

... RESPONDENTS

(BY SRI. P.N. HATTI, HCGP FOR R1;
SRI. VIDYASHANKAR G. DALWAI, ADVOCATE FOR R2)





THIS CRIMINAL PETITION IS FILED U/SEC.482 OF CR.P.C. SEEKING TO ALLOW THIS PETITION AND QUASH ENTIRE PROCEEDINGS IN CC NO.1586/2020 REGISTERED BY THE OLD HUBBALLI POLICE STATION IN CRIME NO.75/2020 REGISTERED BY THE OLD HUBBALLI POLICE STATION IN CRIME NO.75/2020 FOR THE OFFENCE P/U/SEC. 323, 504, 506, 34 OF IPC, PENDING ON THE FILE OF 4TH ADDL. CIVIL JUDGE AND JMFC HUBBALLI.

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

ORDER

Petitioners have sought for quashing of entire proceedings in C.C.No.1586/2020 (Old Hubballi Police Station in Crime No.75/2020) registered for offences punishable under Sections 323, 504, 506 r/w Section 34 of Indian Penal Code (hereinafter referred to as 'IPC', for brevity) pending on the file of the IV Additional Civil Judge and JMFC, Hubballi.

2. Heard learned counsel for petitioners, learned counsel for respondent No.2 and learned High Court Government Pleader for respondent No.1-State.

3. Respondent No.2 has filed first information and on the basis of the same, case came to be registered in N.C.No.2/2020 for offences punishable under Sections



323, 504, 506 r/w Section 34 of IPC. The Police Sub-Inspector has sought permission of the jurisdictional Magistrate to register case and to conduct investigation as per his requisition dated 29.05.2020. After receiving the intimation dated 29.05.2023 from the IV Additional Civil Judge and JMFC, Hubballi, the case came to be registered in Crime No.75/2020 of Old Hubballi Police Station against petitioners for offences punishable under Sections 323, 504, 506 r/w Section 34 of IPC. After investigation charge sheet came to be registered against petitioners/accused Nos.1 to 3 for offences under Sections 323, 504, 506 r/w Section 34 of IPC. On the basis of said charge sheet case came to be registered against these petitioners in C.C.No.1586/2020 pending on the file of the IV Additional Civil Judge and JMFC, Hubballi. Petitioners have sought for quashing of proceedings in the said case.

4. Learned counsel for petitioners would contend that offences alleged against these petitioners are non-cognizable offences and therefore, the Police have to seek permission of the learned Magistrate under Section 155 of



Cr.P.C for registering the case and to conduct investigation. The learned Magistrate on receipt of the requisition seeking permission to open an order sheet and continue the proceedings in the said order sheet and to pass detailed order as per directions issued by this Court in the case of the ***Vaggeppa Gurulinga Jangaligi Vs State of Karnataka***¹. He further contends that the learned Magistrate after receipt of the requisition has not passed the detailed order satisfying himself while according permission to register and investigate the case. The learned Magistrate simply issued police intimation. He submits that on perusal of the order sheet there is no mention of any order passed by the learned Magistrate according permission by detailed order. He further submits that the order sheet is not continued order sheet of permission accorded by the learned Magistrate as directed in the above referred case. In view of violation of said directions issued by this Court, proceedings against these petitioners are required to be quashed.

¹ ILR 2020 KAR 630



5. *Per contra*, learned counsel for respondent No.2 and learned High Court Government Pleader for respondent No.1-State would contend that the Police Sub-Inspector has sent requisition seeking permission to register case and to conduct investigation and only after receipt of intimation of according permission the case came to be registered and investigation was undertaken and charge sheet came to be filed. They submit that there is compliance of direction issued by this Court in the case of the ***Vaggeppa Gurulinga Jangaligi Vs State of Karnataka***. With this, they prayed to reject the petition.

6. Having heard learned counsels for parties, this Court has perused records.

7. The offences alleged against petitioners/accused Nos.1 to 3 are offences punishable under Sections 323, 504, 506 r/w Section 34 of IPC are non-cognizable offences. The said offences alleged to have been committed on 28.05.2023. On 28.05.2020, respondent No.2 has filed first information and same came



to be registered in N.C.No.2/2020 for offences punishable under Sections 323, 504, 506 r/w Section 34 of IPC. The Police Sub-Inspector has sent requisition on 29.05.2023 to the learned Magistrate seeking permission to register case and to conduct investigation. On the said requisition there is endorsement of the learned Magistrate i.e. "received on 29.05.2020 at 4 PM through PSI, Old Hubballi Police Station, Hubballi put-up O/S". There is no order sheet forthcoming in the document produced by the learned counsel for petitioners. The order sheet opened in only Old Hubballi Police Station in Crime No.75/2020. The learned Magistrate has sent police intimation to the Police Inspector, Old Hubballi Police Station according to permission to conduct raid by registering the case as alleged offences are non-cognizable offences. The contents of the said police intimation are as under:

"The Police Inspector, Old Hubballi Police Station is hereby accorded permission to conduct the raid by registering the case wherein alleged offence is non cognizable



one. Further the said Police Inspector is directed under take investigation in accordance with law as per guidelines given by the Hon'ble High Court of Karnataka in Crl.Petition No.101997/2019 between Vaggeppa Gurulingappa VS State of Karnataka"

On perusal of the said intimation, the learned Magistrate has accorded permission to conduct raid. On perusal of the said requisition the Police Sub-Inspector has not sought any permission to conduct raid. The said requisition contains intimation regarding incident happened on 28.05.2020 and receipt of complaint filed by one Sri Basavaraj S/o Sangappa Tongali. Even in the said intimation the learned Magistrate has referred to the case of the **Vaggeppa Gurulinga Jangaligi Vs State of Karnataka** and directed to the Police to follow the guidelines issued in the said case by this Court. Directions issued by this Court in the case of the **Vaggeppa**



Gurulinga Jangaligi Vs State of Karnataka reads as
under

- "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.*
- i) 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.*
- ii) 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.*
- iii) 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.

- iv) 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. There is no compliance of direction No.2 by the learned Magistrate. The learned Magistrate has not opened separate order sheet for passing an order on said requisition. The learned Magistrate has also not continued the said order sheet for further proceedings in the case, even though the learned Magistrate is aware of directions issued by this Court in the case of the **Vaggeppa Gurulinga Jangaligi Vs State of Karnataka**. The direction No.2 is not complied. Even there is no compliance of direction Nos. 3 and 4 by the learned Magistrate. The learned Magistrate simply issued police intimation without passing any order on the requisition.



9. Therefore, absolutely there is no application of judicious mind by the learned Magistrate before permitting the police to investigate non-cognizable offences.

10. Under these circumstances, the proceedings initiated against these petitioners/accused Nos. 1 to 3 in C.C.No.1586 pending on the file of the IV Additional Civil Judge and JMFC, Hubballi are liable to be quashed.

In the result, the following

ORDER

The petition is allowed.

The entire proceedings against petitioners/accused Nos. 1 to 3 in C.C.No.1586 pending on the file of the IV Additional Civil Judge and JMFC, Hubballi are hereby quashed.

Sd/-
JUDGE

DSP
CT:BCK
List No.: 1 Sl No.: 35