



IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 30TH DAY OF MAY, 2023

BEFORE

THE HON'BLE MR JUSTICE V.SRISHANANDA

CRIMINAL PETITION NO. 104152 OF 2022



BETWEEN:

SRI. VIPUL PRAKASH PATIL,
AGED ABOUT 33 YEARS,
OCC: AGRICULTURE
R/O: OPP. SRIRAM CLINIC, JOSHI GALLI,
TASAGAON, DIST: SANGALI,
MAHARASHTRA STATE- 416406.

...PETITIONER

(BY SRI. PRAMOD KATHAVI, SENIOR COUNSEL FOR
SRI. RAMACHANDRA A. MALI, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA,
REP. BY ITS CHIKODI POLICE,
NOW REP. BY STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA,
DHARWAD BENCH,
DHARWD-580001.

2. SRI. SHIVANAND CHANNAPPA MAGADUMA,
AGED: MAJOR, OCC: AGRICULTURE,
R/O: CHINCHANI, TQ: CHIKODI,
DIST: BELAGAVI- 591201.

...RESPONDENTS

(BY SMT. GIRIJA S. HIREMATH, HCGP FOR R1,
SRI. HARSHAWARDHAN M. PATIL, ADVOCATE FOR R2)





THIS CRIMINAL PETITION IS FILED U/S 482 OF CR.P.C., SEEKING TO QUASH THE COMPLAINT AND THE FIR DTD 11.11.2022 REGISTERED IN CHIKODI P.S. CRIME NO. 242/2022, REGISTERED FOR THE OFFENCES PUNISHABLE U/S 406, 420 OF IPC AND SEC. 9 OF KARNATAKA PROTECTION OF INTEREST OF DEPOSITS IN FINANCIAL ESTABLISHMENT ACT 2004 ON THE FILE PRL. DISTRICT AND SESSIONS JUDGE, BELAGAVI INSOFAR AS THE SAME RELATE TO THE PETITIONER/ACCUSED NO. 1 HEREIN AS THE SAME BEING ILLEGAL AND NOT SUSTAINABLE IN LAW.

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

ORDER

Heard Sri.Pramod Kathavi, learned Senior counsel on behalf of Sri.Ramachandra A Mali for the petitioner and Sri.Harshawardhan M Patil, learned counsel for respondent No.2 and learned High Court Government Pleader for respondent No.1 – State.

2. Sri.Harshawardhan M Patil has filed a memo with documents. The same is taken on record.

3. This petition is filed under Section 482 of Cr.P.C. with the following prayer:



"To quash the complaint and the FIR Dtd 11.11.2022 registered in Chikodi P.S. Crime No. 242/2022, registered for the offences punishable U/s 406, 420 of IPC and Sec. 9 of Karnataka Protection of Interest of Deposits in Financial Establishment Act 2004 on the file of Prl. District and Sessions Judge, Belagavi insofar as the same relate to the petitioner/accused No. 1 herein as the same being illegal and not sustainable in law."

4. Brief facts of the case are as under:

A complaint came to be filed by Shivanand S/o Channappa Magadumma on 11.11.2022 with Chikkodi Police Station which was registered in Crime No.242/2022 under the provisions of Section 9 of Karnataka Protection of Interest Depositors in Financial Establishment Act, 2004 (for short, 'KPID Act') and under Sections 406 and 420 of IPC.

5. Gist of the complaint averments reveal that there was an offer made by Pankaj Namadev Patil and Santosh Gangaram Ghodake along with the present petitioner that if a sum of Rs.1,00,000/- is invested, they would return the amount within ten months in installments



of Rs.15,000/-. Accordingly, the complainant and others invested huge sums of money. Initially, in order to gain the confidence of the complainant and other investors, Pinomic Company, a limited liability partnership firm repaid the amount for few months and thereafter stopped paying the amount. The efforts made by the complainant and others to recover the money went in vain and left with no alternative they approached Chikkodi police and filed the complaint.

6. The police after registering the case, are investigating the matter. In the meantime, the petitioner herein has challenged the very registration of the case and sought for quashing of first information report contending that the petitioner is noway involved in the alleged fraud. The petitioner also questioned the very registration of the case by Chikkodi police inasmuch as in the absence of any preliminary satisfaction report lodged by the competent authority with the State Government, registration of case for the offence punishable under Section 9 of KPID Act or



for that matter the other IPC offences would not arise at all and therefore registration of the case would affect the personal liberty of the petitioner and also results in abuse of process of law and sought for quashing of further proceedings.

7. Reiterating the grounds urged in the petition, Sri.Pramod Kathavi, learned Senior counsel vehemently contended that having regard to the scheme of KPID Act, registration of a case by the police is impermissible unless there is a preliminary enquiry to be conducted by the competent authority based on the complaint or suo moto information and there must be a satisfactory report that the fraud has occurred in a given case resulting in further proceedings before the Special Court and registration of the case etc., and in the case on hand, Chikkodi police have directly registered the case as if it is an IPC offence without there being any satisfactory report on record and till today there is no enquiry conducted by the competent authority in the alleged fraud and therefore the very



registration of the case is bad in law and sought for quashing of further proceedings.

8. Alternatively, Sri.Pramod Kathavi also contended that even assuming that the case as against Pinomic Ventures LLP stands established, the complaint itself is silent as to the role played by the present petitioner and therefore very registration of the case as against the present petitioner is incorrect and it affects his personal liberty and continuation of case against him is nothing but abuse of process of law and sought for quashing of further proceedings.

9. In support of his argument, he places reliance on the judgment of the Hon'ble Apex Court in the case of **Madhav Rao Jiwaji Rao SCINDIA and Another vs. Sambhanjirao Chandrojirao Angre and Others** in Criminal Appeal No.657-58 of 1986 and the judgment of the Rajasthan High Court in the case of **Jitendra Singh S/o Mahendra Singh vs. State of Rajasthan** in Criminal Revision Petition No.265/2023.



10. Per contra, learned High Court Government Pleader supports the case of the prosecution stating that the scheme of the KPID Act is for redressal of both civil and criminal actions under one roof by the Special Judge and therefore, satisfactory report is unnecessary for registration of a case and sought for dismissal of the petition.

11. She also contended that whether at all the present petitioner is responsible for the alleged fraud or not cannot be decided by this Court having regard to the scope of Section 482 of Cr.P.C. and it is for the investigating agency to investigate the matter in detail and if no material is found as against the petitioner herein, suitable report as is contemplated under Section 173 of Cr.P.C. would be filed by the investigating agency and sought for dismissal of the petition.

12. Sri.Harshawardhan M Patil, learned counsel appearing for the defacto complainant produced few documents to show that the amount received is



acknowledged by Pankaj Namadev Patil and Santosh Gangaram Ghodake.

13. He also contended that as of now, the complainant does not have any documentary proof to show that Vipul Patil has also received money from the complainant or other persons in the village. He further contended that it is for the investigating agency to find out what is the role played by the present petitioner in the alleged fraud and therefore sought for dismissal of the petition.

14. Perused the material on record meticulously in view of the rival contentions of the parties.

15. Though the parties have addressed detailed arguments on the scheme of the Act and registration of FIR, etc., this Court is of the considered opinion that in the absence of any prima facie documentary proof to hook in the present petitioner in the alleged fraud, the very registration of complaint as against the present petitioner



is unnecessary and has resulted in abuse of process of Court as is rightly contended by the learned Senior counsel for the petitioner, Sri.Pramod Kathavi.

16. The documents that are produced by Sri.Harshawardhan M Patil would no doubt make out a case that the money is received by Pankaj Namadev Patil and Santosh Gangaram Ghodake. The defacto complainant is unable to place any documentary proof whatsoever at least at this stage in order to establish the nexus between the alleged fraud and the present petitioner.

17. It is the argument of Sri.Harshawardhan M Patil that it is for the investigating agency to investigate the matter thoroughly and file appropriate report. Such an argument on behalf of the defacto complainant is far-fetched in the considered opinion of this Court.

18. In order to proceed against a person with criminal action, the complainant or the prosecuting agency must make out a prima facie material whereby some



nexus could be established to the alleged crime with a person. If such material is not available, very registration of the case against such persons would definitely amount to abuse of process of law affecting right of a citizen enshrined in Article 21 of the Constitution of India. No person shall be allowed to undergo ordeal of a criminal investigation unless there is some material which would connect the said person with the alleged crime.

19. In the case on hand, since only name of the present petitioner is taken in the complaint without there being any documentary proof to remotely establish the nexus to the alleged fraud and the present petitioner, this Court is of the considered opinion that continuation of investigation as against the present petitioner in Crime No.242/2022 would necessarily result in abuse of process of law.

20. Therefore, a case is made out by the petitioner to exercise powers vested in this Court under Section 482



of Cr.P.C. in seeking quashing of very registration of the case as against the petitioner.

21. At this stage, Sri.Harshawardhan M Patil, submits that when investigation is proceeded against other two persons and Pinomic Ventures LLP if the investigation agency were to find any material whereby the present petitioner is also involved in the alleged fraud, the investigating officer may be reserved with liberty of arraigning him as an additional accused. The said submission appears to be fair.

22. Sri.Pramod Kathavi, learned Senior counsel fairly submits that even if this Court does not reserve such liberty, the investigating officer having regard to the powers vested in him under the Code of Criminal Procedure can always arraign an additional accused if there is sufficient material to proceed against him and file appropriate report as contemplated under Section 173 of Cr.P.C. Nevertheless, he has no objection if any such



material is unearthed by the investigating agency to arraign the present petitioner as an additional accused.

23. Placing the submission of Sri.Pramod Kathavi, learned Senior counsel on record, this Court is of the considered opinion that at least for the time being registration of case as against the present petitioner needs to be quashed. Accordingly, following order is passed:

ORDER

Criminal petition is allowed.

Registration of case as against the present petitioner in Crime No.242/2022 of Chikkodi Police Station dated 11.11.2022 is hereby quashed.

However, if the investigating agency are to find any substantive material during the course of investigation whereby nexus is established between the alleged fraud and the present petitioner – Vipul Prakash Patil, this order shall not come in the way of investigating agency in



arraigning the present petitioner as an additional accused
in the case.

Ordered accordingly.

**Sd/-
JUDGE**

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List No.: 2 SI No.: 32

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