

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31<sup>ST</sup> DAY OF AUGUST, 2018

BEFORE

THE HON'BLE MR. JUSTICE BUDIHAL R.B.

**CRIMINAL PETITION NO.739/2017**

**C/W**

**CRIMINAL PETITION NO.474/2017**

**IN CRIMINAL PETITION NO.739/2017**

**BETWEEN**

MR. R KASHINATH  
S/O LATE MR. N.S. RAJAGOPLA  
AGED ABOUT 58 YEARS  
RESIDING AT NO.22/2 RATNA VILAS ROAD  
BASAVANAGUDI  
BENGALURU - 560004

... PETITIONER

(BY SRI SRINIVASA RAGHAVAN V., ADV.)

**AND**

1. STATE OF KARNATAKA  
BY BASAVANGUDI POLICE STATION,  
JAYNAGAR SUB DIVISION  
BENGALURU  
REPRESENTED BY ITS  
STATE PUBLIC PROSECUTOR  
HIGH COURT BUILDING  
DR. B.R. AMBEDKARVEEDHI  
BENGALURU - 560001
2. MR. C.G. GURUCHARAN

S/O MR. C.R. GOPALKRISHNA  
 AGED 36 YEARS  
 RESIDING AT NO 751, 5<sup>TH</sup> CROSS,  
 10<sup>TH</sup> MAIN,  
 BANASHANKARI 1ST STAGE,  
 2<sup>ND</sup> BLOCK  
 BENGALURU - 560050

... RESPONDENTS

(BY SRI VIJAYAKUMAR MAJAGE, ADDL.SPP, FOR R1;  
 SRI R. RAVI, ADV., FOR R2)

THIS CRIMINAL PETITION IS FILED U/S.482 OF  
 CR.P.C., PRAYING TO QUASH THE IMPUGNED ORDER  
 DATED 23.12.2016 PASSED BY THE II A.C.M.M.,  
 BENGALURU IN CR. NO.207/2014 (ANNEXURE-A).  
 CONSEQUENTLY TO QUASH THE ENTIRE PROCEEDINGS  
 IN CR. NO.207/2014 BEFORE THE II A.C.M.M.,  
 BENGALURU.

**IN CRIMINAL PETITION NO.474/2017**

**BETWEEN**

1. SMT. VIDYA R. KASHINATH  
 W/O. SRI R. KASHINATH,  
 AGED ABOUT 56 YEARS,  
 OCCUPATION: HOUSEHOLD WORK,  
 RESIDING AT NO.22/2,  
 RATNA VILAS ROAD,  
 BASAVANAGUDI,  
 BENGALURU-560 004.
2. MS. SHALINI W/O. LATE RAMKIRAN  
 D/O. SRI R. KASHINATH,  
 AGED ABOUT 30 YEARS,  
 OCCUPATION: HOUSEHOLD WORK,  
 RESIDING AT NO.22/2,  
 RATNA VILAS ROAD,  
 BASAVANAGUDI,

BENGALURU-560 004.

3. SMT. PRIYANKA KASHINATH  
D/O. SRI R. KASHINATH,  
W/O. MR. RAMALINGESHWARMOPATI,  
AGED ABOUT 27 YEARS,  
OCCUPATION: HOUSEHOLD WORK,  
RESIDING AT NO.22/2,  
RATNA VILAS ROAD,  
BASAVANAGUDI,  
BENGALURU-560 004.
4. P.S. KIRAN KUMAR  
S/O. SRI P. SATYANARAYANA GUPTA,  
AGED ABOUT 45 YEARS,  
OCCUPATION: BUSINESS,  
RESIDING AT NO.140,  
7<sup>TH</sup> MAIN, 4<sup>TH</sup> CROSS,  
JAYANAGAR II BLOCK,  
BENGALURU-560 011,  
  
RESIDING AT NO.22/2,  
RATNA VILAS ROAD,  
BASAVANAGUDI,  
BENGALURU-560 004.
5. M.S. RAJESH  
S/O. LATE M.N. SRIRAMA CHANDRA,  
AGED ABOUT 41 YEARS,  
OCCUPATION: BUSINESS,  
RESIDING AT NO.10,  
KANKAPURA ROAD,  
BASAVANAGUDI,  
BENGALURU-560 004.
6. K.A. UMESH  
S/O. MR. K.S. ASHOK KUMAR,  
AGED ABOUT 40 YEARS,  
OCCUPATION: BUSINESS,  
RESIDING AT NO.344,

MYSORE MAIN ROAD,  
NEW GUDDADAHALLI,  
BENGALURU-560 026.

7. SMT. G. ANITA  
W/O. MR. GIRIDHAR,  
AGED ABOUT 53 YEARS,  
OCCUPATION: HOUSEHOLD WORK,  
RESIDING AT NO.550/03,  
GARUTHMAN PARK,  
BASAVANAGUDI,  
BENGALURU-560 004.
8. K.S. GOVINDARAJU  
S/O. MR. SREERAMLU,  
AGED ABOUT 55 YEARS,  
OCCUPATION: BUSINESS,  
RESIDING AT NO.21,  
KANCHANGANGA,  
9<sup>TH</sup> CROSS, ASHOKNAGAR,  
BANASHANKARI 1<sup>ST</sup> STAGE,  
BENGALURU-560 050.
9. SMT. RADHAKAR  
W/O. MR. P. SUDHAKAR,  
AGED ABOUT 57 YEARS,  
OCCUPATION: HOUSEHOLD WORK,  
RESIDING AT NO.2368,  
19<sup>TH</sup> CROSS, K.R. ROAD,  
BANASHANKARI II STAGE,  
BENGALURU-560 070.
10. DR. A. SANATHKUMAR  
S/O. MR. A.S. THARAKARAM SETTY,  
AGED ABOUT 59 YEARS,  
OCCUPATION: BUSINESS,  
RESIDING AT NO.7/1628,  
4<sup>TH</sup> CROSS, SOUTHERN EXTN.,  
KOLLEGALA-571 440.

11. SMT. PUSHPA  
W/O. MR. B.S. CHANDRASEKAR GUPTA,  
AGED ABOUT 70 YEARS,  
OCCUPATION: HOUSEHOLD WORK,  
RESIDING AT NO.749,  
15<sup>TH</sup> MAIN, 7<sup>TH</sup> CROSS,  
SRINIVASANAGAR,  
BENGALURU-560 050.
12. SMT. SUBHA SATISH  
W/O. MR. P.R. SATISH,  
AGED ABOUT 51 YEARS,  
OCCUPATION: HOUSEHOLD WORK,  
RESIDING AT NO.2293,  
21<sup>ST</sup> CROSS, K.R. ROAD,  
BANASHANKARI II STAGE,  
BENGALURU-560 070.
13. SMT. MEENA PRASAD  
W/O. MR. SIVA PRASAD,  
AGED ABOUT 58 YEARS,  
OCCUPATION: HOUSEHOLD WORK,  
RESIDING AT NO. 492-B,  
7<sup>TH</sup> CROSS, 7<sup>TH</sup> BLOCK (W),  
JAYANAGAR,  
BENGALURU-560 082.
14. G. RAMESH KUMAR  
S/O. A. SUBRAMANIAN,  
AGED ABOUT 55 YEARS,  
OCCUPATION: BUSINESS,  
RESIDING AT NO. 279-A,  
16<sup>TH</sup> MAIN, IV "T" BLOCK,  
JAYANAGAR,  
BENGALURU-560 041.
15. SMT T.K. LALITHA  
W/O. SRI T.R. KASHINATH,  
AGED ABOUT 65 YEARS,  
OCCUPATION: HOUSEHOLD WORK,

RESIDING AT NO.27/36,  
2<sup>ND</sup> FLOOR, 3<sup>RD</sup> CROSS,  
10<sup>TH</sup> MAIN, 1<sup>ST</sup> BLOCK,  
JAYANAGAR,  
BENGALURU-560 041.

... PETITIONERS

(BY SRI P. PRASANNA KUMAR, ADV.)

**AND**

1. STATE OF KARNATAKA  
BY BASAVANGUDI POLICE STATION,  
JAYANAGAR SUB-DIVISION,  
BENGALURU,  
REPRESENTED BY ITS  
STATE PUBLIC PROSECUTOR,  
HIGH COURT BUILDING,  
DR. B.R. AMBEDKAR VEEDHI,  
BENGALURU-560 001.
2. SRI C.G. GURUCHARAN  
S/O. MR. C.R. GOPALKRISHNA,  
AGED ABOUT 36 YEARS,  
OCCUPATION: BUSINESS,  
RESIDING AT NO.751,  
5<sup>TH</sup> CROSS, 10<sup>TH</sup> MAIN,  
BANSHANKARI 1<sup>ST</sup> STAGE,  
2<sup>ND</sup> BLOCK,  
BENGALURU-560 050.

... RESPONDENTS

(BY SRI VIJAYAKUMAR MAJAGE, ADDL. SPP., FOR R1;  
SRI R. RAVI, ADV., FOR R2)

THIS CRIMINAL PETITION IS FILED U/S.482 OF  
CR.P.C., PRAYING TO QUASH THE ORDER DATED  
23.12.2016 PASSED BY THE II A.C.M.M., BANGALORE IN  
CR.NO.207/2014 (PRODUCED VIDE ANNEXURE-A)  
THEREBY TAKING COGNIZANCE AGAINST THE  
PETITIONERS FOR THE OFFENCES P/U/SS 420, 465, 468,

471, 477A R/W 120(B) OF IPC AND ORDERING TO REGISTER CRIMINAL CASE AND ISSUE SUMMONS AND CONSEQUENTLY QUASH THE ENTIRE PROCEEDINGS IN CR.NO.207/2014 ON THE FILE OF II A.C.M.M., BANGALORE.

THESE PETITIONS COMING ON FOR FINAL HEARING THIS DAY, THE COURT MADE THE FOLLOWING:

### **ORDER**

Since these two petitions are in respect of the same crime number and since common law and facts are involved in these petitions they were taken up together to dispose of them by this common order.

2. The first petition is filed by accused No.1 praying to quash the impugned order dated 23.12.2016 passed by the II Additional Chief Metropolitan Magistrate at Bengaluru in Crime No.207/2014. Consequently, to quash the entire proceedings in Crime No.207/2014. Connected petition is filed by accused Nos.2, 3, 4, 5, 6, 7, 8 9, 10, 11, 12, 14, 15 and 16 praying to quash the order dated 23.12.2016 passed by the II Additional Chief Metropolitan Magistrate at

Bengaluru in Crime No.207/2014 thereby taking cognizance against the petitioners for the offences punishable under Sections 420, 465, 468, 471, 477A read with Section 120B of IPC.

3. Brief facts of the case as narrated in the petition:

Accused Nos.3 and 4 are daughters of accused Nos.1 and 2. Accused No.3 was married to one Ramkiran on 01.07.2009 as per Hindu customs. From the wedlock, daughter by name Riya is born on 31.12.2011. The 2<sup>nd</sup> respondent herein filed a complaint before the police making allegation against the accused persons. The contents of the complaint in brief are that the accused persons have committed the offences of cheating and forgery, forgery for the purpose of cheating, using a forged document, knowing or having reason to believe that the same is forged one, criminal conspiracy among certain other offences are



committed by R. Kashinath S/o. Late Mr. N.S. Rajagopal, Smt. Vidya R. Kashinath W/o. R. Kashinath, Smt. Shalini R. W/o. Ramkiran D/o. R. Kashinath, Smt. Priyanka Kashinath D/o. R. Kashinath, P.S. Kiran Kumar S/o. P. Satyanarayana Gupta, M.S. Rajesh S/o. late M.N. Sriramachandra, K.A. Umesh, S/o. K.S. Ashok Kumar, Smt. G. Anita W/o. Giridhar, K.S. Govindaraju S/o. Sreeramulu, Smt. Radhkar W/o. P. Sudhakar, Dr. A. Sanathkumar S/o. A.S. Tharakaramsetty, Smt. Pushpa W/o. B.S. Chandra Shekar Guptha, Smt. Subha Satish W/o. P.R. Satish, Smt. Meena Prasad W/o. Siva Prasad, G. Ramesh Kumar S/o. A Subramanian and Smt. T.K. Lalitha W/o. T.R. Kashinath. The further allegation goes to show that along with the complainant and G.C. Ramkiran, 18 others who are named in the subject column were the partners of M/s. R.K. Estates, which is doing the business of acquisition of land and its development. R. Kashinath the first person in the subject column has

been managing the affairs and day-to-day transactions of the said firm. Upon the homicidal death of C.G. Ramkiran, the strength of the partners of M/s. R.K. Estates came to be reduced to 19. Upon the death of his brother C.G. Ramkiran, R. Kashinath the first accused person named in the subject column in active collusion with 2<sup>nd</sup> to 18<sup>th</sup> named in the complaint created a forged and fabricated deed of retirement dated 12.10.2013 as if he had retired from partnership business establishment of M/s. R.K. Estates. Consequently his alleged retirement from the partnership firm was taken place on 12.02.2013. The petitioners have also created a deed of reconstitution of the partnership dated 13.10.2013. The further averments are that, in order to make it appear like the complainant had really retired from the partnership business establishment, accused No.1-R. Kashinath in active collusion with 17 others mentioned in the complaint have deposited a sum of Rs.34.00 lakhs into

the account of complainant. He got knowledge of the deposit of the sum made after the receipt of reply to the legal notice. Hence, on the basis of these allegations the complainant requested the police that the accused persons have committed the offences under Sections 420, 465, 468, 470, 477A 120B read with Section 34 of IPC and made the request to investigate this matter and to take appropriate action. On the basis of the said complaint, a case came to be registered in Crime No.207/2014 for the said offences.

4. The matter was investigated by the police and ultimately police have filed 'B' final report to the Court. Then the protest petition said to have been filed by the complainant, thereafter the learned Chief Metropolitan Magistrate recorded the sworn statements of the complainant and other witnesses and ordered to register a criminal case and to issue the process to the petitioners.

5. Being aggrieved by the same, challenging the illegality and correctness of the said order of the Chief Metropolitan Magistrate, the petitioners are before this Court in these two petitions.

6. Heard the arguments of the learned counsel appearing on behalf of the petitioners in both the petitions, so also the arguments of the learned counsel appearing for respondent No.2-complainant and the learned Addl. SPP on behalf of respondent No.1.

7. Learned counsel appearing for the petitioners in both the petitions made the submission that when the 'B' Summary Report was filed by the police, the learned Magistrate has not at all taken any decision on the said 'B' Summary report whether he has accepted or rejected 'B' Summary report. Therefore, it is contention of the learned counsel for the petitioners that without making it clear passing such order and proceeding in the matter is illegal. The further

contention of the learned counsel for the petitioners is that even without taking cognizance in the matter, the learned Magistrate allowed the complaint and recorded the sworn statements of the complainant and other witnesses and thereafter on the basis of the same, he proceeded to pass orders for registering a criminal case and issuance of process as against the petitioners.

8. Even on merits also it is the contention of the learned counsel for the petitioners that no such offence as alleged in the complaint has taken place. In this connection, learned counsel draws the attention of this Court to the documents that were produced wherein so far as partners are concerned, regarding retirement the column No.18 is pertaining to the 2<sup>nd</sup> respondent which is left blank without containing signature of anybody. Therefore, there is no question of accused persons doing forgery signature of respondent No.2-complainant. They have also made the

submission that Rs.34.00 lakhs were credited into the account of respondent No.2-complainant, he withdrew the amount and utilized the same. Therefore it is contention of learned counsel that the complaint itself goes to show that the complainant was retired from the firm and there was no such offence committed. Hence, on these grounds learned counsel for the petitioners submitted that the order passed by the learned Magistrate ordering for registering criminal case and for issuance of process to the petitioners is illegal and against the well established provisions of the law. Hence, it is submitted to allow both the petitions.

9. Per contra, learned counsel appearing for respondent No.2-complainant made the submission that after the 'B' Summary report was filed by the police the protest petition was filed by the complainant under Section 200 of Cr.P.C. in the form of a private complaint. He also made the submission that even if

there is no specific mention by the learned Magistrate that he has rejected or accepted the 'B' Summary report, even then it would not come in the way to the learned Magistrate proceeding in the matter. It is his further submission that the sworn statements of the complainant and other witnesses were recorded and after considering the sworn statements and also the documents produced by respondent No.2-complainant before the learned Magistrate, after finding that there is prima facie material the learned Magistrate proceeded to pass the order for registering the criminal case and also ordered to issue of process. Therefore, it is the submission of the learned counsel for the complainant that proper procedure has been followed by the learned Magistrate and no illegality has been committed in coming to the said conclusion. Therefore, there is no merit in the contention raised by the other side and the petitions are liable to be dismissed.

10. Learned Addl. SPP during the course of arguments made the submission that there is no specific order passed by the learned Magistrate whether he has accepted or rejected the 'B' Summary report and he has proceeded with the matter even in absence of such order. But, so far as recording the sworn statements and passing an order in the absence of cognizance is concerned, learned Addl. SPP made the submission that no such specific mention is made, but it is a case of deemed cognizance because when the learned Magistrate accepted the sworn statement and finds that there is sufficient prima facie material to proceed in the matter, which goes to show that he has taken cognizance in the matter. Hence, he submitted that there is no merit in the petitions and the petitions be rejected.

11. I have perused the grounds urged in both the petitions, the contents of the complaint filed by



respondent No.2 before the police, F.I.R. and the 'B' Summary report submitted by the police after investigating and also I have perused the order passed by the learned Magistrate to register a criminal case and for issuance of process as against the petitioners. I have also perused the decision relied upon by the learned counsel appearing for the petitioners in respect of their contentions. Petitioners are also relied upon the decision of this Court dated 27.11.2017 passed in Crl.P. No.536/2017, wherein the learned Judge has referred even to the decision of the Hon'ble Apex Court reported in **(1980) SCC 91** rendered in the case of **Kamalpati Trivedi and State of West Bengal**. Looking to the materials placed on record, admittedly even according to the respondents herein, there is no specific order by the learned Magistrate on the 'B' Summary report submitted in the case. Even there is no mention whether the learned Magistrate has looked into the contention of 'B' Summary report or not and without

that he proceeded in the matter to record the sworn statements of the complainant and his witnesses. Apart from that, it is also their contention that there is no specific order appearing in the order sheet that before calling the complainant as well as his witnesses to give sworn statements before the Court whether the learned Magistrate has taken cognizance or not. Therefore, these are the legal infirmity in the case. Looking to the order of the learned Magistrate and looking to the principle in the decision relied upon by the learned counsel for the petitioners unless these legal infirmities are complied with, it cannot be said that the order passed by the learned Magistrate is legal and valid. Therefore, the matter requires remittal to the learned Magistrate by setting aside the order passed which is challenged in the petitions. Hence, both the petitions are allowed. The impugned order dated 23.12.2016 passed by the learned Magistrate ordering to register the criminal case and for issuance of the process to the

accused persons is hereby set aside. Matter is remitted to the concerned learned Magistrate Court with a direction to follow the procedure and then proceed in the matter in accordance with law. The accused persons are not required to appear before the learned Magistrate Court until further orders.

The other contentions of both the parties, regarding merit of the case of the petitioners were concerned, are kept open.

Since the main petitions are disposed of, application No.2/2017 filed CrI.P.474/2017 does not survive for consideration and accordingly, the same is disposed of.

**Sd/-  
JUDGE**

Sbs\*