

IN THE HIGH COURT OF KARNATAKA, BENGALURU

DATED THIS THE 31ST DAY OF JANUARY, 2018

BEFORE

THE HON'BLE MR.JUSTICE K. N. PHANEENDRA

CRL.P. NO.4610 /2017

BETWEEN

Ashwathappa,
S/o. Narasappa,
Aged about 53 years,
R/o. Old Kumbara Street,
Pavagada Town, Tumkur-572 101.

...PETITIONER

(By Sri K. Chandrashekara, Adv.)

AND

1. State of Karnataka
By Pavagada Police, Rep. by SPP,
High Court Building,
Bengaluru-560 001.
2. Dr. Sowmyalatha S.K.,
D/o. Not known
Aged about Major,
Dy.S.P. Madugiri Sub-Division,
Madugiri, Tumkur-572 132.

...RESPONDENTS

(By Sri Sandesh J. Shouta, SPP-II.)

THIS CRIMINAL PETITION IS FILED U/S.482 OF CRPC. PRAYING TO QUASH THE ENTIRE PROCEEDINGS IN CC NO.504/2012 (CR.NO.156/2012 OF PAVAGADA POLICE) ON THE FILE OF THE CIVIL JUDGE & JMFC, PAVAGADA FOR THE OFFENCE P/U/S.78(3) OF KARNATAKA POLICE ACT.

THIS CRL.P COMING ON FOR ADMISSION ALONG WITH IA NO.1/2017FOR STAY, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

Heard the learned counsel for the petitioner and the learned SPP-II for the first respondent - State. Perused the records.

2. The factual aspects discloses that on the credible information received by the Dy.SP, that some people are playing Matka gambling near Kote Anjaneya Swamy temple, Pavagada, Tumkur, the first respondent - Police, on 2.12.2016 rushed to the spot with the panch witnesses and other staff and found that some people were indulged in gambling called Matka. After seeing the Police, all of them ran away from the spot. After ascertaining the names of some persons and also the persons who were caught by the Police, completed the investigation and laid charge sheet u/s.78(3) of the Karnataka Police Act.

3. It is relevant to state that this court had an occasion to deal with the provision of Section 78(3) of Karnataka Police Act in a case reported in **20144)** **KCCR 3355** [MOIN BASHA KURNOOLI VS. THE STATE OF KARNATAKA BY COWL BAZAAR Police STATION, BELLARY] and ultimately with a detailed judgment, this court has held that the offence u/s.78(3) of the Karnataka Police Act is a non-cognizable offence and Section 155(2) of Cr.P.C. is mandatory and the Police have no jurisdiction to investigate the matter without taking permission of the learned Magistrate to investigate the matter as contemplated u/s.155(2) of Cr.P.C.

4. In this particular case, though the charge sheet has already filed, there is no indication either in the charge sheet or in the FIR that the Police have followed the said legal mandate, according to Section 155(2) of Cr.P.C., therefore, the entire proceedings requires to be quashed as prayed for. Hence, the following:

ORDER

The Petition is allowed. Consequently, the proceedings in CC No.504/12 arising out of Crime No.156/2012 of Pavagada Police pending on the file of the Civil Judge and JMFC, Pavagada for the offence punishable under section 78(3) of Karnataka Police Act, is hereby quashed.

**Sd/-
JUDGE**

PL*