

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF APRIL 2019

BEFORE

THE HON'BLE MRS. JUSTICE K.S.MUDAGAL

WRIT PETITION NOS.20224-20242/2019 (GM-RES)

BETWEEN:

1. VACHAN
S/O GANESH SHETTY
AGED ABOUT 32 YEARS
R/AT NETHRAVATHI HOUSE
DHARMASTHALA VILLAGE
BELTHANGADY TALUK – 574 216
2. MOHANA
S/O LATE SHESHAPPA GOWDA
AGED ABOUT 46 YEARS
R/AT MUKKUDA HOUSE
CHIBIDRE VILLAGE, KAKKINJE
BELTHANGADY TALUK – 574 228
3. HARISH RAI
S/O ANANDA RAI
AGED ABOUT 41 YEARS
R/AT SULYAGUTTU HOUSE
KENYA VILLAGE AND POST
SULYA TALUK – 574 232
4. SUJITH P.V.
S/O VISHWANATH
AGED ABOUT 42 YEARS
RESIDING OPPOSITE TO
ST.PHILOMINA COLLEGE
PUTTUR KASABA VILLAGE
PUTTUR TALUK – 574 202

4. NONAYYA
S/O LOKAYYA MOOLYA
AGED ABOUT 45 YEARS
R/AT ADARSHA NAGARA
JANATHA HOUSE
KALMANJA VILLAGE
BELTHANGADY TALUK – 574 240
6. JOY
S/O LATE H.S.MASCARENHAS
AGED ABOUT 49 YEARS
R/AT JOY'S COMPOUND
UJIRE VILLAGE
BELTHANGADY TALUK – 574 240
7. RAZAK
S/O R.U.IDDINABBA
AGED ABOUT 52 YEARS
R/AT YERNODI HOUSE
UJIRE VILLAGE
BELTHANGADY TALUK – 574 240
8. ASHRAF
S/O ISMAIL
AGED ABOUT 34 YEARS
R/AT KUNTINI HOUSE
LAILA VILLAGE
BELTHANGADY TALUK – 574 214
9. RAJESH
S/O MUTTHAPPA KUMBARA
AGED ABOUT 35 YEARS
R/AT VIVEKANANDA NAGARA
LAILA VILLAGE
BELTHANGADY TALUK – 574 214
10. JAYANANDA
S/O MAHABALA
AGED ABOUT 41 YEARS
R/AT YENIRU HOUSE

BARAYA KANYADI VILLAGE
BELTHANGADY TALUK – 574 240

11. GANESH
S/O RADHAKRISHNA NAIK
AGED ABOUT 31 YEARS
R/AT KALLAKERE HOUSE
MELANTHABETTU VILLAGE
BELTHANGADY TALUK – 574 214
12. KESHAVA
S/O SOMANNA
AGED ABOUT 39 YEARS
R/AT VIVEKANANDA NAGARA
LAILA VILLAGE
BELTHANGADY TALUK – 574 214
13. RAJU MESTRI
S/O THAMBA MESTRI
AGED ABOUT 61 YEARS
R/AT NEAR LAILA
RAGHAVENDRA MATA
LAILA VILLAGE
BELTHANGADY TALUK – 574 214
14. RAVI
S/O SHEKARA
AGED ABOUT 34 YEARS
R/AT DAYLATTA HOUSE
NIDLE VILLAGE
BELTHANGADY TALUK – 574 216
15. KRISHNA PRAKASH
S/O LATE VENKATRAMANA BHAT
AGED ABOUT 45 YEARS
R/AT KILINGAARU HOUSE
UJIRE VILLAGE
BELTHANGADY TALUK – 574 240
16. RONALD
S/O LATE JOSEPH

AGED ABOUT 45 YEARS
R/AT MATADA GUDDA HOUSE
ODILNALA VILLAGE
BELTHANGADY TALUK – 574 214

17. APPU
S/O LATE MONAPPA NAIK
AGED ABOUT 45 YEARS
R/AT JOOJI ARALI HOUSE
UJIRE VILLAGE
BELTHANGADY TALUK – 574 240
18. ASHOKA
S/O BABU
AGED ABOUT 30 YEARS
R/AT PADDANADADKA HOUSE
VENUR VILLAGE
BELTHANGADY TALUK – 574 242
19. PRASHANTH
S/O RAJU
AGED ABOUT 30 YEARS
MANJIBETTU HOUSE,
PADANGADY VILLAGE
BELTHANGADY TALUK – 574 217 ...PETITIONERS

(BY SRI RAKSHITH KUMAR, ADVOCATE)

AND:

1. THE GOVERNMENT OF KARNATAKA
HOME DEPARTMENT
VIDHANASOUDHA
BENGALURU – 560 001
BY IS SECRETARY
2. THE COMMISSIONER OF POLICE
PANDESHWAR ROAD
MANGALORE
D.K.DISTRICT – 575 001

3. THE COMMISSIONER OF POLICE
D.C.I.B. BUNDER
MANGALORE – 575 001
4. THE CIRCLE INSPECTOR OF POLICE
BELTHANGADY CIRCLE
BELTHANGADY – 574 214
5. STATION HOUSE OFFICER
BELTHANGADY POLICE STATION
BELTHANGADY TALUK
D.K.DISTRICT – 574 214

...RESPONDENTS

(BY SRI S.RACHAIAH, HCGP)

THESE WRIT PETITIONS ARE FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA R/W SECTION 482 OF CR.P.C. PRAYING TO QUASH THE ENTIRE PROCEEDINGS IN C.C.NO.3230/2018 PENDING BEFORE THE PRINCIPAL CIVIL JUDGE AND JMFC, BELTHANGADY ETC.

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

ORDER

Whether continuation of the proceedings in C.C.No.3230/2018 on the file of Principal Civil Judge and J.M.F.C., Belthangady amounts to abuse of process of Court is the question involved in these cases.

2. Belthangady police charge sheeted the petitioners as per Annexure -D in Crime No.182/2018 of

their police station for the offences punishable under Sections 78 and 80 of the Karnataka Police Act, 1963 on the basis of complaint/report of CW.1-Nagesh Kadri, Circle Inspector of Police, Belthangady police station as per Annexure-C.

3. CW.1 purportedly submitted requisition Annexure-C dated 28.07.2018 reporting that on 28.07.2018 at 4.00 p.m. Sunil Naik, Police Inspector, DCIB received information that accused are conducting gambling and indulging in gambling in Golden Recreational Club situated in S.R.Bar and Restaurant in Ujirepet, Ujire Village, Belthangady Taluk. In requisition, it is further stated that himself and his staff accompanied Sunil Naik and his staff conducted raid on the said building found the accused indulging in gambling, apprehended them with incriminating material and drew Mahazar for that.

4. It is not forthcoming in the First Information Report Annexure-C whether Station House Officer registered the said complaint and referred the complainant to the Magistrate or after receiving orders from the

Magistrate, Station House Officer, registered First Information Report Annexure-C.

5. Offence under Sections 78 and 80 of the Karnataka Police Act, 1963 are punishable with imprisonment upto one year or fine. Therefore, they are non-cognizable offence. Investigation is purportedly conducted by CW.15-Dhanapal Head Constable 2271 of Belthangady police station. Offences being non-cognizable offence, police cannot conduct investigation without following the procedure prescribed under Section 155 of Cr.P.C.

Section 155 of Cr.P.C. reads as follows:

"155. Information as to non-cognizable cases and investigation of such cases.— (1) When information is given to an officer in charge of a police station of the commission within the limits of such station of a non-cognizable offence, ***he shall enter or cause to be entered the substance of the information in a book to be kept by such officer in such form as the State Government may prescribe in this behalf, and refer the informant to the Magistrate.***

(2) No police officer shall investigate a non-cognizable case ***without the order of a Magistrate***

having power to try such case or commit the case for trial.

(3) Any police officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police station may exercise in a cognizable case.

(4) Where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non-cognizable.

6. As per charge sheet records, at the relevant time, CW.15 was Station House Officer of respondent police Station. Section 155(1) mandates that on receipt of information of commission of non cognizable offence, in-charge of such police station shall enter the substance of the information in a prescribed book and refer the informant to the Magistrate.

7. Sub section (2) of Section 155 states that no police officer shall investigate non-cognizable cases without the order of the jurisdictional Magistrate.

8. First of all, charge sheet does not indicate that CW.15 referred the informant to the Magistrate. What is

required to be referred to the Magistrate under Section 155 of Cr.P.C. is the informant and not the information.

9. As per the requisition Annexure-C filed along with First Information Report, informant was one Sunil Naik, Police Inspector of DCIB. CW.1 Nagesh Kadri, Circle Inspector of Police of Belthangady police station was not the informant. Requisition dated 28.07.2018 was purportedly submitted by CW.1 under Section 155 of Cr.P.C., Magistrate purportedly passed the order on 29.07.2018 as follows:

"Permitted

Sd/-
29.07.2018"

Endorsement of Magistrate on FIR states that FIR and complaint were received through HC 2271 of Belthangady Police Station.

10. On the basis of the charge sheet, Magistrate has taken cognizance for the offences punishable under Section 78 and 80 of the Karnataka Police Act, 1963 and issued process to the petitioners to take up trial.

11. Firstly, the requirement to refer the informant to the Magistrate is not complied. Secondly, the order of the Magistrate is not speaking order. This Court in ***Praveen Basavanneppa Shivalli v. State of Karnataka [2017(1) AKR 461]*** in paras 15 and 18 as held as follows:

"15. In the present case, 2nd respondent having acted contrary to sub-section (1) of S.155, Cr.P.C. and the learned Magistrate having not passed 'an order', instead, having made ***an entry 'permitted', being not 'an order' in the eye of law*** and in view of the prohibition contained in sub-section (2) of S.155, Cr.P.C., the investigation made and the consequential charge-sheet filed for the offences under Ss.504, 506 and 323 of IPC and the taking of cognizance of those offences and the issue of non bailable warrant in the first instance itself for proceeding further with the case against the accused are absolutely illegal. It is obvious that the police and the Magistrate have not bothered to look into S.155, Cr.P.C. before proceeding further in the matter. Non application of mind and mechanical approach to the case are apparent.

18. In the present case, as is clear from Annexure-J itself, the alleged offences being non-cognizable, in view of the safeguard provided under S.155(2), Cr.P.C. the ***police should have referred the respondent No.3 to the Magistrate.***

In the result, the writ petition is allowed and the impugned endorsement, the charge-sheet and the order taking cognizance of the offences vide Annexures-H, J and K respectively are quashed."

(emphasis supplied)

12. In this case also records do not show that the informant was referred to the Magistrate. Further Magistrate without applying mind instead of passing order made an entry to the effect "**permitted**". Therefore, the very origin of initiation of proceedings is unsustainable in law.

13. Under such circumstances, continuation of the proceedings against the petitioners amount to abuse of process of Court. Therefore, the petitions are allowed. The charge sheet Annexure-D and the proceedings in CC No.3230/2018 on the file of Principal Civil Judge & JMFC, Belthangady are hereby quashed. Liberty is reserved to the respondent police to proceed in accordance with law.

**Sd/-
JUDGE**

KSR/-