



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF JULY, 2025

BEFORE

THE HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

CRIMINAL PETITION NO. 8782 OF 2025 (482(Cr.PC) / 528(BNSS))

BETWEEN:

1. MR. NARENDRA BABU
S/O MR. T.R. RAME GOWDA,
AGED ABOUT 64 YEARS,
R/O NO. 310, HBCS,
NEXT TO VICTORIA HAVEN APARTMENTS,
DOMLUR,
BENGALURU – 560 071.
2. MR. YATHISHCHANDRA SHETTY,
S/O K.P. JAYASHEELA SHETTY,
AGED ABOUT 59 YEARS,
R/O NO. 107/H, BSR MEGHANA APARTMENT,
202/A, 1ST FLOOR, 17TH 'B' MAIN,
KORAMANGALA 6TH BLOCK,
BENGALURU 560 095.

...PETITIONERS

(BY SRI. BHARATH KUMAR V.,ADVOCATE)

AND:

1. STATE OF KARNATAKA
THROUGH STATION HOUSE OFFICER,
S.J PARK POLICE STATION,
BENGALURU.
REPRESENTED BY STATE PUBLIC PROSECUTOR,
HON'BLE HIGH COURT OF KARNATAKA,
AMBEKDAR VEEDHI,
BENGALURU - 560 001.
2. MR. LATHESH KUMAR,
POLICE INSPECTOR,
ANNAPOORNESHWARI NAGAR POLICE STATION,
BENGALURU.
REPRESENTED BY STATE PUBLIC PROSECUTOR,
HON'BLE HIGH COURT OF KARNATAKA,





AMBEKDAR VEEDHI,
BENGALURU - 560 001.

...RESPONDENTS

(BY SRI. B.N. JAGADEESHA, ADDL.SPP)

THIS CRL.P IS FILED U/S.482(FILED U/S.528 BNSS) CR.P.C PRAYING TO QUASH THE FIR BEARING NO.69/2025 REGISTERED WITH THE RESPONDENT NO.1 S.J.PARK POLICE STATION WHEREIN THE PETITIONERS HEREIN ARE ARRAIGNED AS ACCUSED NO.1 AND 2 RESPECTIVELY FOR THE ALLEGED OFFENCE U/S.36 OF THE KARNATAKA EXCISE ACT 109 OF THE KARNATAKA POLICE ACT AND SEC.7 AND 21 OF CIGARETTES AND OTHER TOBACCO PRODUCTS ACT (COTPA) ACT 2003 (ANNEXURE A AND A1), PENDING BEFORE THE HONBLE 48th ADDL. CMM COURT, NRUPATHUNGA ROAD BENGALURU CITY.

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

ORAL ORDER

In this petition, petitioners seek for the following reliefs:-

“ a) Quash the FIR baring No.69/2025 registered with the Respondent No.1 S.J.Park Police Station; wherein the Petitioners herein are arraigned as Accused NO.1 and 2 respectively for the alleged offence under Section 36 of the Karnataka Excise Act, 109 of the Karnataka Police Act and Section 7 and 21 of the Cigarettes and Other Taobacco Products Act (COTPA) Act 2003 (Annexure-A and A1), pending before Hon'ble 48th Addl. CMM Court, Nrupatunga Road, Bangalore City.

b. Grant such other relief that this Hon'ble Court may deem fit in the facts of the present matter.”



2. Heard learned counsel for the petitioners and learned Addl.SPP for the respondents - State and perused the material on record.

3. A perusal of the material on record will indicate that the 1st petitioner is running a Bar and Restaurant under the name and style "Lovers Night Bar and Restaurant" and on 19.06.2025, a raid was conducted at the said premises, pursuant to which, the respondents filed the impugned complaint dated 20.06.2025 registered as FIR in Crime No.69/2025 for offences punishable under Section 36 of the Karnataka Excise Act, Section 109 of Karnataka Police Act and Sections 7 and 21 of the COTPA Act, 2003. In this context, it is relevant to state that all the aforesaid offences being non-cognizable offences, it is incumbent upon the respondents to obtain necessary permission from the learned Magistrate as mandated under Section 155(2) of Cr.P.C. / Section 174(2) of BNSS, 2023 and as held by this Court in ***Vaggeppa Gurulinga Jangaligi Vs. State of Karnataka – ILR 2020 KAR 630; Sri.Krishnappa M.T. and another Vs. State of Karnataka and another – Crl.P.No.13215/2023 dated 07.11.2024*** and



***Sri.L.S.Tejasvi Surya Vs. State of Karnataka and Ors -
Crl.P.No.9961/2021 dated 15.02.2022.***

4. In ***Vaggeppa's case supra***, a co-ordinate Bench of this Court held as under:

“ 16. Therefore, this Court time and again has quashed the proceedings initiated against the accused persons in respect of non-cognizable offence on the ground that the mandatory provisions of Section 155(1) and (2) of Cr. P.C., are not complied with. However, this Court has not laid down any guidelines for the Learned Magistrates as to how and in what manner they have to pass the Order under Section 155(2) of Cr. P.C., when a requisition is submitted to the Learned Magistrate seeking permission to investigate the non-cognizable offence.

17. In the cases referred above, invariably the Learned Magistrates have passed the orders on the requisition submitted by the SHO of the Police Station by writing a word “permitted” or “permitted to investigate”. This Court has held that making such an endorsement on the requisition submitted by the Police is not passing orders and there is no application of judicious mind in permitting the Police Officer to take up the investigation for non-cognizable offence.

18. Under these circumstances, this Court felt it necessary to lay down some guidelines for the benefit of our Judicial Magistrates as to how they have to approach and pass orders when requisition is submitted by the SHO of



Police Station seeking permission to investigate into the non-cognizable offence. The provision of Section 155(1) and (2) of Cr. P.C., referred above make it very much clear that the SHO of the Police Station on receiving the information regarding the commission of non-cognizable offence, his first duty is to enter or cause to be entered the substance of such commission in a book maintained by such Officer and then refer the informant to the Magistrate. This is the requirement of Section 155(1) of Cr. P.C. Once the requisition is submitted to the Magistrate, it is for the Jurisdictional Magistrate to consider the requisition submitted by the SHO of Police Station and pass necessary order either permitting the Police Officer to take up the investigation or reject the requisition. Section 155(2) of Cr. P.C., specifically provides that no Police Officer shall investigate the non-cognizable case without the order of the Magistrate having power to try such case or commit such case for trial. Therefore, passing an "order" by the Magistrate permitting the Police Officer to investigate the non-cognizable offence is an important factor. The word without the order of the Magistrate appearing in sub-Section (2) of Section 155 of Cr. P.C., makes it clear that the Magistrate has to pass an 'order' which means supported by reasons. On the other hand, in number of cases, the Jurisdictional Magistrates are writing a word 'permitted' on the requisition submitted by the Police itself which does not satisfy the requirement of Section 155(2) of Cr. P.C., Such an endorsement cannot be equated with the word 'Order'.



19. Chapter V Rule 1 of Karnataka Criminal Rules of Practice, 1968 also deals with investigation of non-cognizable case. The said provision reads as follows:—

“INVESTIGATION AND PROSECUTION

**1. Report under Section 154.—(1) On receipt of the report of the Police Officer under Section 154 of the Code, the Magistrate shall make a note on the report of the date and time of the receipt thereof and initial the same. Before initialing, the Magistrate shall also endorse on the report whether the same has been received by the post or muddam.*

2. (1) When a Magistrate directs an investigation of a case under Sections 155(2), 156(3) or 202 of the Code, he shall specify in his order the rank and designation of the Police Officer or the Police Officers by whom the investigation shall be conducted.”

20. Therefore, under Rule 1, the Magistrate shall endorse on the report whether the same has been received by post or muddam. Under Rule 2, Magistrate has to specify in his order the rank and designation of the Police Officer or the Police Officer by whom the investigation shall be conducted. Considering the mandatory requirement of Section 155(1) and (2) of Cr. P.C., and Rule 1 and 2 of Chapter V of the Karnataka Criminal Rules of Practice, this Court proceed to laid down the following guidelines for the benefit of the judicial Magistrate working in the State.

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.



ii) 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.

iii) 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.

iv) 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.

v) 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.

21. Coming to the case on hand, the SHO of Kagwad Police Station received a complaint from PSI on 23/9/2019 and SHO submitted a requisition to IV Additional JMFC, Athani, seeking permission to investigate the offence under Section 87 of the K.P. Act which is a non-cognizable offence. It is seen that the Learned Jurisdictional Magistrate has made an endorsement on the requisition which reads as follows:—

*“Perused materials. Permitted
Sd/-”*



22. Therefore, absolutely there is no application of judicious mind by the Learned Magistrate before permitting the Police to investigate the non-cognizable offence much less an order passed by the Learned Magistrate.

23. Under these circumstances, the proceedings initiated against the petitioner in CC No. 3397/2019 pending on the file of the IV Additional Civil Judge and JMFC, Athani, are liable to be quashed so far as the petitioner is concerned. Accordingly, the petition filed under Section 482 of Cr. P.C., is allowed and the said proceedings are hereby quashed as against the petitioner is concerned.

24. Registry is directed to forward the copy of the order to the Director of Karnataka State Judicial Academy, Bengaluru, for information and necessary action.

25. Registry is also directed to circulate the copy of the order to all the judicial Magistrates in the State to follow guidelines laid down in the order.”

5. In ***M.T.Krishnappa’s case supra***, a co-ordinate Bench of this Court held as under:

‘9. The offences alleged are the ones punishable under Section 504 and 34 of the IPC. They are admittedly non cognizable. Therefore, a non-cognizable report was rendered by the jurisdictional police, after interaction on 24.08.2020. The Station House Officer then travels to the Court of the Magistrate seeking permission for registration of a crime for offences punishable under Sections 504 and 34 of the IPC, since the offences alleged were non-cognizable, the nod of the Magistrate under Section 155(2)



of the Cr.P.C. was imperative. The learned Magistrate passes the following order:

"The PSI of Turuvekere Police Station approached with requisition seeking permission to proceed with the investigation of non-cognizable case.

It is mentioned that the complainant lodged the written information about alleged insult caused by the proposed accused persons.

As per Section 155(2) of Cr.P.C., there is a bar for the police officer to proceed with the investigation of the non-cognizable case without the order of a Magistrate having jurisdiction to try the case or commit the case for trial.

When, police officer received, the information about non- cognizable case, then necessarily seek from permission the Jurisdictional magistrate to proceed with the investigation.

By considering the request and information of the complainant, it is revealed that the information in a non-cognizable case is received by the police officer. In the interest of justice, it is proper to accord permission to proceed in accordance with Law."

The learned Magistrate records that the Police Officer receives the information about a non-cognizable offence, then necessarily has to seek permission from jurisdictional Magistrate, to proceed with the investigation. This is the procedure that is narrated in the order. The so called application of mind by the learned Magistrate is only in the words "By considering the request and information of the complainant, it is revealed that the information in a non-cognizable case is received by the police officer. In the interest of justice, it is proper to accord permission to proceed in accordance with Law."



10. *The afore-quoted words of the learned Magistrate can by no stretch of imagination be an order, which bears application of mind.*

11. *The learned Additional State Public Prosecutor seeks to defend this action on the score that it is a lengthy order and it does bear application of mind. I decline to accept the said submission as what is required in law, while the Magistrate grants permission to register a crime, is application of mind, which is ostensibly absent in the afore-quoted paragraph. Therefore, it is not an order that has even a semblance of application of mind. It is rather shocking that Magistrates while granting permission, do not apply their mind and callously grant permission to register the crime while passing orders under Section 155(2) of the Cr.P.C. These acts of passing orders, which bear no reasons or application of mind, have resulted in docket explosion before this Court. Therefore, time and again this Court has directed the Magistrates not to indulge in passing of such orders. The Magistrates are still passing the same orders, as if it is a frolicsome act.*

12. *In the case at hand, the afore-quoted paragraph is the reason. It is in fact an order which has no reasons. Merely passing lengthy orders, only to fill up the pages, will not mean an order on application of mind. **It is the application of mind that is necessary in law and not application of ink; it is not the flow of ink on the paper that is necessary in law, but flow of content depicting such application of mind.***



6. In ***L.S.Tejasvi Surya's case supra***, a co-ordinate Bench of Court held as under:

"Learned High Court Government Pleader accepts notice for the respondents.

2. *Petitioner has sought for quashing of the proceedings pursuant to F.I.R. No.51/2019. Petitioner has also sought for quashing of the charge sheet dated 02.07.2019 and also for quashing the entire proceedings arising out of C.C.No.3077/2020 pending before the II Additional Chief Metropolitan Magistrate, Bangalore.*

3. *The petitioner submits that pursuant to the information made out by a counsel to the 2nd respondent on 17.04.2019, the 2nd respondent filed a complaint before the 1st respondent on the same day. The allegation made out was that one Sri. Narayanappa had got printed about 2000 copies of pamphlets on behalf of the petitioner herein who was the BJP candidate and distributed the same without mentioning name and address of the printer and publisher and accordingly, committed offence under Section 127A of the Representation of People Act, 1951 (for short 'the Act') and action was sought for as regards the said offence. It is submitted that information was then made out to the Magistrate as per Annexure-C requesting for permission to commence investigation. On the basis of written requisition at Annexure-C, Magistrate has endorsed the word*



'permitted'.

4. *It is submitted that such endorsement is not in consonance with the requirement under Section 155(2) of Cr.P.C and is clearly in violation of the directions passed by this Court in the case of **Vaggeppa Gurulinga Jangaligi (Jangaligi) vs. The State Of Karnataka - ILR 2020 KAR 630.***

5. *It is further submitted that though the offences made out in the FIR were 127(2) and 127A of the Act and 171F of IPC, the charge sheet that came to be filed after investigation only made out offence of Section 127A of the Act. Accordingly, it is submitted that the proceedings consequent to the permission given by the Magistrate requires to be set aside on the sole ground that the order is not in consonance with the requirements of Section 155(2) of Cr.P.C. Learned counsel for the petitioner would also contend that even on merits, the proceedings are liable to be quashed as the requirement under Section 127A is only as regards to the person who prints and cannot in any way lead to proceedings to be carried out as against the petitioner who was the candidate.*

6. *Insofar as the contention that permission given by the Magistrate is contrary to the mandate under Section 155(2) of the Act, the said contention requires to be accepted. This Court in the judgment in the case of **Vaggeppa (supra)** has pointed out the procedure to be followed while granting permission for investigation. Relevant observation made by the*



Coordinate Bench of this Court at paragraph No.20 is extracted hereunder:

"20. Therefore, under Rule I, the Magistrate shall endorse on the report whether the same has been received by post or muddam. Under Rule 2, the Magistrate has to specify in his order the rank and designation of the police officer or the police officer by whom the investigation shall be conducted. Considering the mandatory requirement of Section 155(1) and (2) of Cr.P.C. and Rule 1 and 2 of Chapter V of the Karnataka Criminal Rules Practice, this Court proceed to laid down the following guidelines for the benefit of the judicial Magistrate working in the State.

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.

ii) 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.

iii) 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.

iv) 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.

v) 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."

7. Clearly, the requirement that is made out is that 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 and direct the office to place it before him with a separate order sheet. The Court has clarified that no order should be passed on the requisition itself and that the entry to be made in that regard is to be made in the order sheet and the said order sheet should be continued for further proceedings. Further direction has been passed at sub-para (iv) of paragraph No.20 of the judgment extracted above which also requires the Magistrate to examine the contents of the requisition and record a finding as to whether it is a fit case to be investigated and that if the Magistrate finds that it is not a fit case to be investigated, he shall reject the prayer made in the requisition. It is further pointed out that only after his subjective satisfaction that there is a ground to permit the police officer to take up the



investigation, he shall record a finding to that effect permitting the police officer to investigate the non-cognizable offence.

8. *It is also clarified that Annexure-C is a plea made by the 2nd respondent. In accordance with the mandate under Section 155(2) of Cr.P.C., the informant is to be referred to the Magistrate which is preceded by the officer in-charge of the police station having made out necessary entry of the substance of the information in the book kept as mandated under Section 155. The Magistrate is to examine the informant and the complaint given by him and then proceed further.*

9. *Clearly, the said procedure that has been laid down in the judgment referred to above has not been followed in the present case. In light of the same, the endorsement of the Magistrate dated 18.04.2019 is set aside and the matter is relegated to the stage of the informant being referred to the Magistrate in terms of the procedure prescribed under Section 155(1) of Cr.P.C. While it requires to be noticed that as per the observation in sub- para (iv) of paragraph No.20 of the judgment extracted above, the Magistrate is required to apply his mind as to whether permission for investigation needs to be granted and accordingly, it would not be appropriate in the present proceedings to address the other contentions raised by the petitioner as regards to the proceedings to be bad in law as ingredients of Section 127A of the Act are not satisfied.*



The said aspect, needless to state is a matter to be considered by the Magistrate before granting permission by passing an order under Section 155(2) of Cr.P.C.

10. Accordingly, the petition is disposed off subject to observations made above.”

7. In the instant case, I am of the view that in the absence of obtaining necessary permission from the learned Magistrate as required under Section 155(2) of Cr.P.C. / Section 174(2) of BNSS, 2023 and the principles enunciated in the aforesaid judgments supra, the impugned proceedings deserve to be quashed.

8. In the result, I pass the following:-

ORDER

(i) Petition is hereby allowed.

(ii) Further proceedings arising out of FIR in Crime No.69/2025 registered by the 1st respondent - Police, pending on the file of 48th Addl.CMM court, Bangalore, for offences punishable under Sections 36 of the Karnataka Excise Act, Section 109 of Karnataka Police Act and Sections and 21 of the COTPA Act, 2003 insofar as the petitioners are concerned, are hereby quashed.



(iii) The respondents – Police are directed to release / return the seized Music Player as well as speakers back to the petitioners forthwith and immediately upon a receipt of a copy of this order.

Hand delivery of this order is permitted.

Sd/-
(S.R.KRISHNA KUMAR)
JUDGE

Srl.