IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF JUNE, 2023

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BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPPASANNA

WRIT PETITION No.11186 OF 2023 (GM-RES)

BETWEEN:

SRI. VIJESH PILLAI
S/O GOVINDAN C
AGED ABOUT 40 YEARS
KEYILLATH KADAMBERI
TALIPARAMBA, KANUL
KANNUR
KERALA – 670 562.

... PETITIONER

(BY SRI. SATYANARAYANA CHALKE S., ADVOCATE)

AND:

1 . THE STATE OF KARNATAKA
REPRESENTED BY
THE STATION HOUSE OFFICER
K.R.PURAM POLICE STATION
BENGALURU – 560 036.
REPRESENTED BY THE HCGP
HIGH COURT BUILDINGS
AMBEDKAR VEEDHI
BENGALURU – 560 001.

2 . SWAPNA SURESH
W/O SUKUMARAN SURESH
AGED ABOUT 42 YEARS

R/AT NO.401, 4TH FLOOR
A-3 HOMES, ANUP LAYOUT
HOODI
BENGALURU – 560 049.

... RESPONDENTS

(BY SRI. MAHESH SHETTY, HCGP. FOR R-1)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 OF THE CONSTITUTION OF INDIA READ WITH SECTION 482 OF THE CR.P.C., PRAYING TO CALL FOR THE RECORDS OF IN CRIME NO.NCR.142/2023 OF K R PURAM POLICE STATION ON THE FILE OF X ADDL. CHIEF METROPOLITAN MAGISTRATE, AT BENGALURU.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 05.06.2023, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioner is before this Court calling in question registration of a crime in Crime No.116 of 2023 by the K.R.Puram Police Station for offence punishable under Section 506 of the IPC.

2. Facts adumbrated are as follows:-

The 2nd respondent is the complainant and petitioner is the accused. The 2nd respondent seeks to register a complaint on 11-03-2023 against the petitioner alleging that the petitioner has threatened and intimidated the complainant. The complaint is

brought before the K.R.Puram Police Station upon which the Station House Officer seeks permission of the X Additional Chief Metropolitan Magistrate at Bengaluru to register a crime under Section 506 of the IPC for criminal intimidation in the light of the fact that Section 506 of the IPC is a non-cognizable offence and for a non-cognizable offence permission of the Magistrate would be imperative under Section 155 of the Cr.P.C., The learned Magistrate on receipt of requisition permits the crime to be registered on perusal of requisition. On the crime being registered, the petitioner has knocked at the doors of this Court in the subject petition not on the issue of merit of the matter but on non-application of mind on the part of the learned Magistrate granting permission.

3. Heard Sri Satyanarayana S.Chalke, learned counsel appearing for the petitioner and Sri Mahesh Shetty, learned High Court Government Pleader appearing for respondent No.1.

4. The learned counsel appearing for the petitioner would contend with vehemence that the learned Magistrate has erred on two counts – one, permission granted on a requisition made by the Station House Officer is erroneous as it is the informant who has to

go before the learned Magistrate and seek permission. Sub-section (2) of Section 155 Cr.P.C., permits the learned Magistrate to grant permission. Such grant of permission should be on application of mind. He would contend that the learned Magistrate has just accorded permission without any further observation. Therefore, the proceedings are vitiated.

5. On the other hand, the learned High Court Government Pleader would seek to support the action of the learned Magistrate contending that it is not required for the learned Magistrate to pass an elaborate order while granting permission to register a FIR and seeks dismissal of the petition.

6. I have given my anxious consideration to the submission made by the respective learned counsel and have perused the material on record.

7. A complaint comes to be registered before the K.R. Puram Police Station alleging intimidation or threatening the life of the complainant. The complaint reads as follows:

> *"Sub: Complainant against Mr.Vijesh Pillai for threatening me to life.*

With regard to the above mentioned subject I would like to bring to you kind attention that a gentleman from kerla named Vijesh Pillai came to meet me at Zuri Hotel, Bengaluru initially asking me for an interview and told me he wants to meet me and discuss above the same. Last Saturday, I went with family to the hotel I mentioned with my family and these after 5 minutes of police introduction, he said was sent by the party secretary, Mr. Govindan to settle the issue between Hon'ble CM of kerala, his family and as a settlement amount they will provide 301 crores INR to leave Bengaluru in a weeks time and go absconding. It I do not agree to the same then he will have to look for alternative option like charging false case against me by putting contrabands is my baggage while traveling or will kill me so that all issues will settle down. They will also do harm to my family member to teach me a lesson, the has given me week time to think and decide.

I hereby request the authorities to please take necessary action to protect me and my family from this threat for life as I have a small son going to school.

I humbly prays to your goodself office to provide me with protection to body and life.

Kerala police used to provide the same in Kerala when I was there."

(Emphasis added)

The complainant when approached K.R.Puram Police Station, a non-cognizable report is made and a requisition is taken to the learned Magistrate to register a crime on such non-cognizable report as the

facts would lead to an offence under Section 506 of the IPC. Section 506 of the IPC reads as follows:

> *"**506. Punishment for criminal intimidation**.— Whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;*
>
> ***if threat be to cause death or grievous hurt, etc**.— and if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or imprisonment for life, or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both."*

Section 506 deals with criminal intimidation. The ingredients of criminal intimidation are found in Section 503 of the IPC. Whoever threatens another with any injury to his person, reputation or property with intent to cause alarm to that person is said to have criminally intimated the victim. Therefore, the complaint did make out certain ingredients of Section 503. Since Section 506 is an offence that is non-cognizable, permission of the Magistrate would be required under Section 155 of the Cr.P.C., to register a crime. Section 155 of the 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."*
>
> *(Emphasis supplied)*

Section 155 has four parts to it. Sub-section (1) directs that when information is given to an officer in charge of a police station of the commission of a non-cognizable offence, he should enter the substance of the information and refer the informant to the Magistrate. Therefore, what could be gathered from the said provision is that on a non-cognizable offence the informant has to be referred to the learned Magistrate. Sub-section (2) directs that no investigation on a non-cognizable offence can take place without the written order of the Magistrate. Sub-section (4) relates to

amalgam of a cognizable and a non-cognizable offence and if it is an amalgam the rigour of Section 155(1) and (2) would lose its significance. The entire issue now revolves around the aforesaid provisions of law. In the case at hand upon receipt of the afore-quoted complaint, the Station House Officer records a non-cognizable report and sends a requisition to the learned Magistrate seeking to register a crime. The learned Magistrate passes the following order:

> ***"Perused the requisition seeking permission to register FIR in non-cognizable case. Permitted to register and investigate in accordance with law."***
>
> *(Emphasis added)*

Therefore, the order is perused and permitted. Except saying perused, the requisition and permitted investigation or registration of FIR, there is no indication of any application of mind on the part of the learned Magistrate. This Court in plethora of cases has been emphasizing the fact that Magistrates should not permit registration of FIR by usage of words "permitted", "perused permitted" or even "permitted registration of FIR". All these illustrations of granting permission on the face of it suffers from want of application of

mind. Permitting registration of a FIR cannot be a frolicsome act on the part of the Magistrate. The Magistrate exercises power under sub-section (2) of Section 155 of the Cr.P.C., In doing so, it cannot be that he could pass orders which do not bear a semblance of application of mind. This Court in ***VAGGEPPA GURULINGA JANGALIGI v. STATE OF KARNATAKA***[1] following all the earlier judgments rendered on the issue has held as follows:

> *"**3.** The petitioner has stated that the complaint is misconceived, and the alleged offence is non-cognizable as per the Code of Criminal Procedure, 1973. Therefore, the Police have no authority to investigate the crime. It is further submitted that the Police have not complied with mandatory requirement of Section 155 of Cr. P.C. When the officer-in-charge of the Police Station received information regarding commission of non-cognizable offence, he shall enter the same in a book to be maintained by the said officer and refer the informant to he Magistrate. Further, sub-Section (2) of Section 155 of Cr. P.C., mandates that no Police Officer shall investigate a non-cognizable case without order of a Magistrate having power to try such case or commit such case for trial. The petitioner has further stated that there is no iota of evidence that the above said mandatory requirement are complied with. There is no speaking order by the jurisdictional Magistrate permitting the Police to take up investigation. Therefore, the proceedings initiated against the petitioner who is arrayed as accused No. 4 in the charge sheet are liable to be quashed.*

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[1] *ILR 2020 KAR 630*

5. *The Learned Counsel for the petitioner submitted that the offence punishable under Section 87 of the K.P. Act is non-cognizable one and therefore, as per Section 155(1) of Cr. P.C., the informant PSI ought to have been referred to the jurisdictional Magistrate and the jurisdictional Magistrate ought to have passed the order, permitting the concerned Police to take up investigation of the case and these are the mandatory requirements of the provisions under Section 155(1) and 155(2) of Cr. P.C. which are not followed in the present case. Therefore, the proceedings initiated against the petitioner are vitiated and are liable to be quashed.*

8. It is not in dispute that the alleged offence punishable under Section 87 of the K.P. Act is a non-cognizable offence. When the report is received by the SHO of Police Station in respect of commission of non-cognizable offence, the SHO has to follow the mandatory procedure prescribed under Section 155(1) and 155(2) of Cr. P.C. Therefore, it is necessary to refer the said provision. Section 155 of Cr. P.C., which deal with the procedure for investigation and for taking cognizance of non-cognizable offence 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."

9. *Therefore, when the SHO of the Police Station receives a report regarding commission of non-cognizable offence, it is his duty to enter the substance of the information in the prescribed book and refer the informant to the Magistrate as required under Section 155(1) of Cr. P.C. Thereafter, the jurisdictional Magistrate is required to pass an order permitting the Police Officer to investigate the case as mandated by the provisions of Section 155(2) of Cr. P.C., stated supra. Unless, the Police Officer is permitted by an order of the jurisdictional Magistrate to investigate the non-cognizable offence, the Police Officer does not get jurisdiction to investigate the matter and file a final report or the charge sheet.*

....

11. *This Court in the case of Mukkatira Anitha Machaiah v. State of Karnataka and Another in Crl.P. 5934/2009 decided on 20/8/2013 considered the scope of Section 155(1) and (2) of Cr. P.C., has observed in para 5 as follows:—*

"5. Section 155 of Cr. P.C. deals with the procedure to be adopted in respect of an information received by the officer in charge of a police station

relating to commission of a non-cognizable offence. According to sub-section (1) of Section 155 of Cr. P.C., when an officer in charge of the Police Station receives an information as to the commission of a non-cognizable offence, he shall enter or cause to be entered the substance of the information in the prescribed book and refer the informant to the Magistrate. According to sub-section (2) of Section 155 of Cr. P.C., no police officer shall investigate a non-cognizable case without a order of a Magistrate having power to try such case or commit the case for trial. Thus reading of sub-section (1) of Section 155 of Cr. P.C. makes it clear that the duty of the SHO, who receives information as to the commission of a non-cognizable offence is only to enter or cause to be entered the substance of the information in the prescribed book and refer the informant to the Magistrate. It is for the informant to approach the jurisdictional Magistrate and seek a direction to the police for investigation. If the Magistrate on being approached by the informant, directs investigation, the Police Officer concerned would get jurisdiction to investigate the matter."

12. *This Court in paragraph 6 has further has observed as follows:—*

"In the case on hand, as noticed supra, upon receipt of the report submitted by the 2nd respondent, the SHO of Virajpet Police Station registered the same as NCR and submitted a requisition to the jurisdictional Magistrate seeking permission to investigate the matter, based on which, the Magistrate granted permission. Thus, the procedure adopted by the SHO is without the authority of law and the same is not contemplated under Section 155 of Cr. P.C. Therefore, the permission granted by the Magistrate on such

requisition is also without any basis, as such, the investigation carried on by the police and the charge sheet filed thereon are without the authority of law. Therefore, the prosecution launched against the petitioner is liable to be quashed. However, it is open to Respondent No. 2, who is the informant before the police to approach the jurisdictional Magistrate and seek necessary orders as contemplated under Section 155 of Cr. P.C."

13. Therefore, the SHO of the Police Station has no authority of law unless the jurisdictional magistrate permits the Police Officer for investigation of the non-cognizable offence.

14. *This Court in the case of Padubidri Members Lounge v. Director General and Inspector General of Police in W.P. Nos. 42073-75/2018 Decided on 3/10/2012, considered the mandatory provision of Section 155(1) and (2) of CrP.C., where the charge sheet was filed for the offence under Section 87 of the K.P. Act. In paragraphs 6 and 7, this Court has held as follows:--*

"6. As per the above provisions, when an Officer-in-charge of the police station receives an information with regard to commission of non-cognizable offence/s, i) he shall enter or caused to be entered the substance of the information in a book to be maintained by the said Officer in a prescribed form and ii) refer the informant to the Magistrate. Further, Sub-Section (2) of Section 155 Cr. P.C., mandates that no Police Officer shall investigate a non-cognizable offence without the order of a Magistrate having power to try such case or commit such case for trial.

7. In the instant case, police have failed to comply with the requirements of Section

155(1) and 155(2) of Cr. P.C. There is nothing on record to show that the respondents have referred the informant to the concerned Magistrate as required under Section 155(1) of Cr.P.C., or obtained necessary order as envisaged under Section 155(2) of Cr. P.C., before embarking upon investigation. Thus, on the face of it, the respondents are seen to have violated the provisions of Sections 155(1) and 155(2) of Cr.P.C."

15. *Again this Court, in the case of Veeranagouda and others vs. The State of Karnataka in Cri.P. No. 102021/2018 decided on 11/1/2019, considered the requirements of Section 155(1) and (2) of Cr. P.C., and has held in para 9 as follows:—*

> *"The Counsel appearing for the petitioner' also brought to the notice of this Court that when a requisition was given to the Magistrate, only an endorsement is made as permitted to investigate as per section 155 of Cr. P.C. on the very request letter itself and the same is not in accordance with law. The concerned Magistrate did not apply his mind and passed any considered order. On the requisition only an endorsement is made and the same is not the permission in the eye of law. Therefore in reality it is not permission at all and the prosecution has not satisfied the Court that mandatory requirements are complied before proceeding with the investigation in the matter. Legal aspect has not been complied and the same has been over looked by the Court below while ordering for registering the criminal case against the petitioners' herein. Looking to these materials it goes to show that it is the abuse of process of Court to continue the proceedings. Not only it is wasting of valuable time and energy of the*

Court. Even if the trial is proceeded with, it is a futile exercise in the matter."

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.*
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> *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."

(Emphasis supplied)

This has been the law right from 2016 as followed in the afore-quoted judgment. But, the Magistrates have not changed their

attitude of passing callous orders of granting permission which sometimes is only a one word order "permitted". Therefore, the learned Magistrates by their callous action of passing of such orders have generated huge litigation before this Court as petitions are being filed under Section 482 of the Cr.P.C., seeking quashing of such orders which grant permission bearing no application of mind. Therefore, the learned Magistrates who pass such orders have contributed/ contributing to the docket explosion before this Court. It is rather unfortunate that the learned Magistrates are contributing to the pendency of such cases in the judiciary itself. It is high time now, that the learned Magistrates should mend their ways and apply their mind to the requisitions received and then pass appropriate orders. Since no orders are being passed despite repeated orders of this Court of the kind that this Court has directed. Therefore, I deem it appropriate to invoke the power under Section 483 of the Cr.P.C., and direct correction of errors by the learned Magistrates. Section 483 of the Cr.P.C., reads as follows:

> ***"483. Duty of High Court to exercise continuous superintendence over Courts of Judicial Magistrates.—***

> *Every High Court shall so exercise its superintendence over the Courts of Judicial Magistrates subordinate to it as to ensure that there is an expeditious and proper disposal of cases by such Magistrates."*

Section 483 directs that every High Court shall so exercise its superintendence over Courts of Judicial Magistrates to ensure that expeditious and proper disposal of cases by such Magistrates. Section 483 did fall for interpretation before the Apex Court in plethora of cases. I deem it appropriate to quote a few. The Apex Court in the case of ***POPULAR MUTHIAH v. STATE***[2] has held as follows:

> ***"24. It is also significant to note that whereas inherent power of a court or a tribunal is generally recognised, such power has been recognised under the Code of Criminal Procedure only in the High Court and not in any other court. The High Court apart from exercising its revisional or inherent power indisputably may also exercise its supervisory jurisdiction in terms of Article 227 of the Constitution of India and in some matters in terms of Section 483 thereof. The High Court, therefore, has a prominent place in the Code of Criminal Procedure vis-à-vis the Court of Session which is also possessed of a revisional power.***
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> *(Emphasis supplied)*

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[2] *(2006) 7 SCC 296*

The Apex Court holds that the High Court apart from exercising its revisional or inherent power may also exercise its supervisory jurisdiction in terms of Article 227 of the Constitution of India and in some cases in terms of Section 483 of the Cr.P.C., The Apex Court again in the case of ***DHARMESHBHAI VASUDEVBHAI AND OTHERS v. STATE OF GUJARAT***[3] has held as follows:

> ***"12. The High Court, apart from exercising its supervisory jurisdiction under Articles 227 and 235 of the Constitution of India, has a duty to exercise continuous superintendence over the Judicial Magistrates in terms of Section 483 of the Code of Criminal Procedure. It reads as under:***
>
> > ***"483. Duty of High Court to exercise continuous superintendence over Courts of Judicial Magistrates.—Every High Court shall so exercise its superintendence over the Courts of Judicial Magistrates subordinate to it as to ensure that there is an expeditious and proper disposal of cases by such Magistrates."***
>
> *13. When an order passed by a Magistrate which was wholly without jurisdiction was brought to the notice of the High Court, it could have interfered therewith even suo motu. In Adalat Prasad v. Rooplal Jindal [(2004) 7 SCC 338 : 2004 SCC (Cri) 1927] , although this aspect of the matter has not been considered but having regard to the power exercised by the Magistrate under Chapters 16 and 17 of the Code, it was held: (SCC p. 343, para 14)*

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[3] *(2009) 6 SCC 576*

> *"14. But after taking cognizance of the complaint and examining the complainant and the witnesses if he is satisfied that there is sufficient ground to proceed with the complaint he can issue process by way of summons under Section 204 of the Code. Therefore, what is necessary or a condition precedent for issuing process under Section 204 is the satisfaction of the Magistrate either by examination of the complainant and the witnesses or by the inquiry contemplated under Section 202 that there is sufficient ground for proceeding with the complaint hence issue the process under Section 204 of the Code. In none of these stages the Code has provided for hearing the summoned accused, for obvious reasons because this is only a preliminary stage and the stage of hearing of the accused would only arise at a subsequent stage provided for in the latter provision in the Code. It is true as held by this Court in Mathew case [K.M. Mathew v. State of Kerala, (1992) 1 SCC 217 : 1992 SCC (Cri) 88] that before issuance of summons the Magistrate should be satisfied that there is sufficient ground for proceeding with the complaint but that satisfaction is to be arrived at by the inquiry conducted by him as contemplated under Sections 200 and 202, and the only stage of dismissal of the complaint arises under Section 203 of the Code at which stage the accused has no role to play, therefore, the question of the accused on receipt of summons approaching the court and making an application for dismissal of the complaint under Section 203 of the Code on a reconsideration of the material available on record is impermissible because by then Section 203 is already over and the Magistrate has proceeded further to Section 204 stage."*

Adalat Prasad has been followed by this Court in Everest Advertising (P) Ltd. v. State Govt. of NCT of Delhi [(2007) 5 SCC 54 : (2007) 2 SCC (Cri) 444] and Dinesh

Dalmia v. CBI [(2007) 8 SCC 770 : (2008) 1 SCC (Cri) 36] . To the same effect is the decision of this Court in S. Suresh v. Annappa Reddy [(2004) 13 SCC 424] .

14. For the reasons aforementioned, the impugned judgments cannot be sustained which are set aside accordingly. Other impugned judgments have been passed by the High Court relying on the judgment and order passed in SCRLA No. 701 of 2005. It is, however, made clear that we have not entered into the merits of the matter."

(Emphasis supplied)

The Apex Court directs the High Court that apart from exercising its supervisory jurisdiction under Articles 227 and 235 of the Constitution of India it has a duty to exercise continuous superintendence over judicial Magistrates in terms of Section 483 of the Cr.P.C. In the light of the provision and its interpretation by the Apex Court, I deem it appropriate to invoke the said power to direct the learned Magistrates to pass appropriate orders which should contain the following:

" ***(i) The learned Magistrates shall record as to who has submitted the requisition whether it is the informant or the Station House Officer and make an endorsement of receipt of requisition in a separate order sheet.***

(ii) The learned Magistrates shall not pass any order if the complaint is not enclosed to the requisition.

(iii) The learned Magistrates shall notice and examine the contents of the requisition and record a prima facie finding as to whether it is a fit case to be investigated and if it is not a fit case to be investigated, the learned Magistrates shall reject the prayer made in the requisition. To pass this order, the order of the learned Magistrates shall bear application of mind by not rendering a detailed order or detailed inquiry at that stage but it shall bear application of mind.

(iv) The learned Magistrates should forthwith stop using the words "permitted", "perused permitted" or "perused requisition permitted registration of FIR" on the requisition itself and pass separate orders and maintain a separate order sheet with regard to the grant of such permission. Granting permission on the requisition would be contrary to law.

(v) The order of the learned Magistrates shall contain all the aforesaid. Any deviation thereof from what is directed will be construed that the Magistrates are contributing to the huge pendency of cases by their callous action of passing inappropriate orders and would be viewed seriously."

(Emphasis supplied)

The aforesaid directions/guidelines have become necessary, as this Court in plethora of cases has quashed orders passed by learned Magistrates permitting registration of FIRs on the ground that they bear no application of mind. If a victim would go before the Station House Officer of a jurisdictional Police Station and seek to register a crime of being beaten up which would become an offence punishable under Section 323 of the IPC or intimidation

which would become offence under Section 506 of the IPC or any other non-cognizable offences and as a matter of fact several offences under the Karnataka Police Act which the Police themselves seek to register, all go away to the winds for the sole reason of the learned Magistrates not applying their minds while granting permission. The victim who has received blows which will become an offence under Section 323 or offence under Section 506 of the IPC or any other non-congnizable offence, will never get justice all because of the act of the learned Magistrates. Therefore, in a criminal justice system, the victim cannot be seen to be shown the doors by judicial acts. Hence, it is high time that the learned Magistrates, who would grant permission to investigate, follow the drill that is indicated hereinabove, failing which justice to a victim would become illusory.

8. Insofar as the submission of the learned counsel for the petitioner that the informant should be sent to the learned Magistrate seeking permission and not the Station House Officer would again become unacceptable though not completely but at least partially. This Court in the case of ***ANAND SINGH v. STATE***

OF KARNATAKA in ***Crl.P.No.3082 of 2007, disposed on 22.10.2008,*** has held that the informant should be referred to the learned Magistrate with a requisition seeking permission to investigate the case. This is further followed by another co-ordinate Bench in ***PRAVEEN BASAVANNEPPA SHIVALLI v. STATE OF KARNATAKA AND OTHERS***[4] where this Court has held as follows:

> *"**11.** The Karnataka Police Manual, which does not have statutory force, but contains the guidelines to the Department Officers, in Chapter XXVII, Order 1211 relating to non cognizable cases states as follows:*
>
> > ***"1211. (1) When a Police Officer finds it necessary to lay information before a Magistrate in a non cognizable case, he may, under Clause (b) of Sub-Section(1) of Section 190 of the Code of Criminal Procedure, make a report to the Magistrate in writing of the facts which constitute such offence.***
> >
> > *(2) if there are persistent complaints against a particular individual, which legally fall under the category of a non-cognizable offence, the following action may be taken-*
> >
> > *(a) Obtain orders of the competent court to register the N.C. case and investigate and/or*
> >
> > *(b) initiate action under Section 110 Cr. P.C. if there is persistent commission of non-cognizable offence by a given individual resulting in breach of peace."*

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[4] *2016 SCC OnLine Kar 4070*

12. *Concededly, there was no other complaint against the petitioner and hence, clause 2(b) supra, is not attracted.*

13. *In the case of Anand Singh v. State of Karnataka, (Crl. P. No. 3082/2007, decided on 22.10.08), this Court has held, "that under S. 155 of Cr. P.C., the police officer has no authority to approach the Magistrate with a requisition seeking permission to investigate the case."*

14. *In Mukkatira Anitha Machaiah v. State of Karnataka, (Crl. P. No. 5934/2009 decided on 20.08.2013), the 2nd respondent - informant, having submitted a complaint, SHO registered a case and submitted a requisition to the Magistrate to accord permission to investigate the matter. With reference to the said requisition, permission was granted by the Magistrate. Investigation was made and the charge-sheet was filed. to quash the charge-sheet and all related proceedings, a criminal petition under S. 482 Cr. P.C. was filed. By noticing that the procedure adopted by the SHO is without authority of law and holding that same is not contemplated under S. 155 Cr. P.C. and that, therefore, the permission granted by the Magistrate on such a requisition is also without any basis and as such the investigation carried and the charge-sheet filed thereon by the police was held to be without authority of law and the prosecution launched was quashed.*

15. *In the case or Dr. Gururaj v. State of Karnataka, (CRL.P. 100046/2014, decided on 22.01.2014), a complaint was filed before the police alleging abusive words used and life threat given by the petitioners and about the robbery of some gold ornaments. Police registered the case for the offences under Ss. 504, 506 and 392 of IPC and conducted the investigation. It was found that the offences punishable under Ss. 504 and 506 of IPC are only made out. A charge-sheet was filed and the learned Magistrate took cognizance of the offences punishable under Ss. 504 and 506 of IPC, registered the criminal case and ordered issue of summons to the accused. The said action was assailed by filing a petition under S. 482 Cr. P.C. on the ground that the police are empowered to investigate the offences but if the police arrive at the conclusion that only non cognizable offences are made out, then, they can file a report and the Magistrate has to look into the matter and find out,*

whether cognizance can be taken for the non cognizable offences or whether it requires any further investigation, by referring the matter to the police to reinvestigate the case under S. 202 of Cr. P.C. Reliance was placed on the decisions in the cases of (i) Mam Chand v. State, 1999 Crl. L.J. 1592 and (ii) P. Kunhumuhammed v. State of Kerala, 1981 Crl. L.J. 356. Having considered the matter and finding that the police have submitted charge-sheet for the offences under Ss. 504 and 506 of IPC and the Magistrate without application of mind and without perusing the charge-sheet papers to ascertain whether the report submitted by the police has to be treated as a complaint under S.2(h) of Cr. P.C. or whether under S. 202 Cr. P.C. further investigation is required, has passed the impugned order, the case was remitted to the Magistrate and the criminal petition was disposed of accordingly.

16. 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 these 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.

17*. The question as to how, in what manner and to what extent, the inherent power under S. 482 of the Code can be exercised for quashing the registration of FIR/charge-sheet/complaint etc. is no more res integra. In State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 535, the propositions of law has been laid down in para 102. The relevant proposition for this case is at SI. No. (4) and the same reads as follows:*

> *"(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a*

> *Police Officer without an order of a Magistrate as contemplated under S. 155(2) of the Code."*
> *(emphasis supplied)*
>
> ***18. Statutory safeguard given under S.155(2) Cr. P.C. must be strictly followed, since the same has been conceived in public interest and as a guarantee against frivolous and vexatious investigations.***
>
> ***19. 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."***
>
> *(Emphasis supplied)*

Though the afore-quoted judgments of the co-ordinate benches of this Court have held that it is the informant who has to approach the Magistrate and not the Station House Officer, what is necessary to be noticed is, what this Court holds in ***PRAVEEN BASAVANNEPPA SHIVALLI*** *(supra)* referring to the Police Manual which mandates that a Police Officer finding it necessary to lay information before a Magistrate in a cognizable offence, may make a report in writing of such facts which constitute such offence. Therefore, it becomes necessary to notice the interpretation rendered by several High Courts of the very provision that has fallen for consideration in the case at hand.

(i) The Bombay High Court in the case of ***KEDARNATH v. STATE OF MAHARASHTRA***[5] has held as follows:

> ***"4 . Thus, the grievance in a nutshell is that the police without the order from the Magistrate investigated into the offence which is non-cognizable. All that which is required to be done is to make a report to the Magistrate of having received a report of Commission of non-cognizable offence.*** *According to the present non-applicant No. 2, therefore, the action of the Investigating Officer in seeking permission for investigation into the offences was absolutely without any grounds and foundation. According to the non-applicant, as was further urged before the Court, that in the intervening period, the present applicant has already filed a private complaint before the Judicial Magistrate First Class and even examined the witnesses in which process was issued and in that background, no further investigation was warranted or permissible. The order was also challenged on account of being an unreasoned order.*
>
> …. …. ….
>
> *14. It is pertinent to note that the Additional Sessions Judge has not quashed the FIR lodged by Kedamath i.e. the applicant herein. What would remain is the FIR as a fact without any investigation, while the applicant's case for cognizable offence filed by him will be proceeded as a private case unassisted by the prosecution by State when the State Police is otherwise well acquainted and equipped with the investigating machinery. It can still happen that in the course of investigation of a non-cognizable offence, the investigating Officer may file a final report under Section 173 of Criminal Procedure Code for the offences which may be cognizable if so found to have been committed. The process of investigation which is to be commenced, therefore, cannot be throttled based on grounds such as apprehensions or propriety."*
>
> *(Emphasis supplied)*

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[5] *2005(4) Mh.LJ 833*

The High Court of Bombay notices that a report has to be made to the learned Magistrate once the Station House Officer receives a report of a non-cognizable offence.

(ii) The High Court of Allahabad in ***BRIJ LAL BHAR v. STATE OF U.P. AND OTHERS***[6] has heid as follows:

> *"5. It is opposed by the learned A.G.A. by submitting:*
>
> *1. That according to the provisions of Section 155 Cr.P.C. the information or registering N.C.R. is referred to the magistrate concerned and no police officer shall investigate a non cognizable case without the order of the magistrate having power to try such case or commit the case for trial Therefore, only incharge of the police station concerned was the competent person to get the permission from the magistrate concerned for doing the investigation of a case of non cognizable offence. The first informant was having no right to move an application under Section 155(2) There is no illegality in the impugned order dated 17.11.2005 so the same may not be set aside.*
>
> *After hearing the learned Counsel for the revisionist and the learned A.G.A. and from the perusal of the report, it appears that in the present case two important "issues" are involved as;*
>
> *(1) whether the officer in charge of the police station concerned himself is empowered to convert the report of non-cognizable offence into the report of cognizable offence upon receiving sufficient material disclosing the commission of a cognizable offence without the order of the magistrate concerned.*
>
> ***(2) Whether for getting, the order to investigate the non-cognizable case, the first informant has any right to move an application, before the magistrate concerned under Section 155(2) Cr.P.C. or it can only be moved by a police***

[6] *2006 (55) ACC 864*

officer of a police station concerned.

…. …. ….

8. Now I deal with issue No. 2. According to the provision of Section 155 Cr.P.C. only officer in charge or any police officer of a police station concerned can move an application to obtain the order for investigation from the magistrate concerned of a non cognizable case and there is no legal bar for moving such application by the first informant, Section 155(2) Cr.P.C. also envisages that no police officer shall investigate a non cognizable case without the 'order' of magistrate, here the word 'order' as mentioned above, it is relevant to deal with issue No. 2, in the wording of the provision of Section 155(2) the word 'without order' is used. Therefore, the order may be passed by the magistrate concerned on the application of a police officer concerned or on the application of the first informant also. According to the provisions of Section 154 Cr.P.C. also the case is registered on the information given to the officer in-charge of a police station, relating to the commission of a cognizable offence. In default, the first informant may move an application under Section 156(3) for passing the 'order' for doing investigation, it provides a right to the first informant to move an application on this analogy the first informant is also a competent person to move an application under Section 155(2) Cr.P.C."

(Emphasis supplied)

The High Court of Allahabad frames a specific issue with regard to getting an order to investigate, is only the right of the first informant to move the Magistrate or it can be moved by the Police Officer of a police station concerned. It is answered that it can either be the first informant or the police officer.

(iii) This is iterated by the Allahabad High Court in the case of ***KUNWAR SINGH v. STATE OF U.P. AND OTHERS***[7] wherein it has held as follows:

> *"7. From the perusal of the aforesaid statutory provision it is absolutely clear, without any ambiguity, that no non-cognizable offence can be investigated by the police without an order passed by a Magistrate.* ***It is nowhere provided under the said section as to who will apply for making an investigation under Section 155(2) Cr.P.C. of a non-cognizable offence. The Court cannot add or subtract anything in the statutory section. The court is empowered only to interpret the statute as is enacted by the legislature****. The power to amend any statutory provision is the province of the legislature and not of the courts.*
>
> ***8. In this view of the matter, when we look at Section 155(2) Cr.P.C. we find that there is nothing in the aforesaid Section as to disentitle the complainant to approach the Court with the prayer seeking his direction to direct the police to make an investigation of his N.C.R. Section 155(2) Cr.P.C. does not provide that but for the Police Officer no other person can approach the Magistrate for seeking his direction under the aforesaid Section.***
>
> *9. In this view of the matter, I am of the considered opinion that the law laid down in 1995 ACC page 254 Naveen Chandra Panday v. State is not a good law. On the contrary the said judgment is against the statutory provision. The law laid down by this Court in 2006 (55) ACC 864 Brij Lal Bhar v. State of U.P. through Principal Secretary, Lucknow and Ors. lays down the correct proposition of law."*
>
> *(Emphasis supplied)*

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[7] *2007 (57) ACC 331*

(iv) The Andhra Pradesh High Court in ***SAJJAL AGARWAL v. STATE OF A.P. AND OTHERS***[8] has held as follows:

> *"8 . In my opinion, there is no illegality or contravention of Section 155(1) Code of Criminal Procedure by any of the two Station House Officers in these cases. In case a Station House Officer receives a report containing information of commission of non-cognizable offence, then, he is bound to refer the informant/complainant to the Magistrate after entering substance of the information in general diary maintained in the police station. In such an event, the Magistrate will follow the procedure prescribed under Sections 200 - 204 Code of Criminal Procedure. After recording statement of the complainant and the witnesses present if any, on oath, it would be open for the magistrate either to dismiss the complaint under Section 203 Code of Criminal Procedure if the Magistrate is of the opinion that there is no sufficient ground for proceeding, or otherwise to issue process under Section 204 Code of Criminal Procedure to the accused.*
>
> ***9. The police officer is barred from investigating a non-cognizable case without order of a Magistrate who has power to try such case or commit such case for trial, in view of Section 155(2) Code of Criminal Procedure Argument of the Petitioners' counsel that the Station House Officer is not entitled to approach the Magistrate with a petition for permission under Section 155(2) Code of Criminal Procedure for investigating a non-cognizable case, has no legal basis. Sub-section (2) of Section 155 Code of Criminal Procedure which provides for investigation of a non-cognizable case by a police officer, is silent as who is competent to invoke the said provision before the Magistrate. It is open either to a police officer or to any complainant to approach the Magistrate under Sub-section (2) of Section 155 and seek permission of the Magistrate empowering a police officer to investigate a non-cognizable case. In my opinion, Sub-section (2) is an***

[8] *Criminal Petition No.4442/2009*

exception to Sub-section (1) of Section 155. Not only a police officer or a complainant can approach the Magistrate under Section 155(2) Code of Criminal Procedure but also the Magistrate suo motu can order a police officer to investigate a non-cognizable case.

10. It is contended by the Petitioners' counsel that the Courts below in these two cases granted permission under Section 155(2) Code of Criminal Procedure without giving any reasons for grant of such permission. In case a police officer or a complainant approaches the Magistrate for permission under Section 155(2) Code of Criminal Procedure, it is not incumbent on the Magistrate to grant the permission invariably. It is open to the Magistrate either to grant permission or refuse to grant permission. When there is such discretion vested in the Magistrate, it is desirable that the Magistrate should give reasons for empowering a police officer to investigate a non-cognizable case, so that an aggrieved party will be in a position to question the same in higher Courts and will be in a position to know for what reasons his application was considered or not considered. This Court is of the opinion that the Magistrate should not be casual in granting permission under Section 155(2) Code of Criminal Procedure simply because a police officer requested for such permission. The Magistrate has to consider entire gamut of the case and take into account whether a police officer will be in a position to collect better material during investigation than the complainant himself furnishing material in support of his case. Otherwise there is every possibility of misuse of Section 155(2) Code of Criminal Procedure in case such power is given to any unscrupulous police officer misusing his official position and harassing the named accused persons……..″

(Emphasis supplied)

The High Court of Andhra Pradesh while interpreting sub-section (2) of Section 155 of the Cr.P.C. holds that not only the Police Officer can knock at the doors of the learned Magistrate, but the informant

as well. Therefore the inference would be, it can either be the first informant or the police officer who could approach the learned Magistrate.

(v) The High Court of Kerala in ***ANTO JOSEPH v. STATE OF KERALA***[9] has held as follows:

> *"15. It was held that there was nothing in S. 155 of the Code which dis-entitles the complainant to approach the Court with the prayer seeking his direction to direct the police to make an investigation of his complaint.* ***It was further held that S.155(2) of the Code does not provide that but for the Police Officer no other person can approach the Magistrate for seeking his direction under the aforesaid Section.***
>
> *16. It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme. It is of course true that under sub-section (1) of S.155 of the Code mandates that when the information relates to a non-cognizable offence, the police has to refer the informant to the Magistrate after recording the substance of the information. However the section does not say that the order to investigate should be secured by the informant. The principle of the maxim "A Verbis Legis Non Est Recedendum" meaning that there can be no departure from the express words of law is apposite in this context. The statute requires to be interpreted without doing any violence to the language used therein. The Court cannot re-write, recast or reframe the legislation for the reason that it has no power to legislate.*
>
> *17.* ***A reading of sub-section (2) will reveal that upon information given of the commission of a non-cognizable offence, a police officer can, instead of merely***

[9] ILR 2016 (3) Ker.556

referring the informant to the Magistrate under S.155(1), report the case to the Magistrate under S.155(2), who can, under such circumstances, order such investigation, without first taking cognizance of the offence under S.190 of the Code. *Once a police officer takes up investigation of a non-cognizable case, after getting due orders, the investigation which he holds becomes an investigation under Chapter XII, and he becomes vested with all the powers bestowed on him under that Chapter including the power to file a final report. Of course, a private person may also move the learned Magistrate and secure order but the investigation can only be carried out by the officer-in-charge of the police station within whose limits the non-cognizable offence was committed. In view of the above, the contention vociferously urged by the learned Counsel cannot be sustained. It is held that no such embargo can be placed and the orders can be passed by the learned Magistrate on the motion of the complainant himself or at the instance of the Officer-in-Charge of the Police Station.*

18. However, the learned Magistrate before whom such information is placed seeking orders under S.155(2) of the Code will have to make sure that the police officer is not indiscriminately abusing his powers to commence an investigation in a non-cognizable case. The learned Magistrate is bound to form his own conclusion on the basis of the materials placed before him."

(Emphasis supplied)

(vi) Again, the Kerala High Court in the case of ***MANOJ P.JOHN v. STATE OF KERALA***[10] has held as follows:

"8. The reading of section 155 Cr.P.C. along with above decisions, clearly show that a non cognizable offence cannot be investigated by the police officer without the permission of the jurisdictional magistrate and also that such permission can be sought by a private person or the police officer concerned. ***There is nothing in the section to indicate that when an informant approach the police officer, he alone shall seek***

[10] *Crl.MC No.3221 of 2018*

permission of the Magistrate to commence investigation. In fact, an identical contention as now raised by the petitioner herein was raised in Anto Joseph case ,which was correctly rejected. Hence, the above contention of the learned counsel for the petitioner cannot survive.

9. According to the petitioner, the second respondent had submitted a detailed complaint enclosing the print out of certain Facebook posts. However, when the permission was sought, none of the above materials were placed before the Magistrate. It was hence, contended that the Magistrate did not have any material before him for a proper application of mind. It was contended that, in Anto Joseph's case it was held that learned Magistrate before whom such information is placed seeking order under section 155 (2) will have to make sure that the police officer is not indiscriminately abusing his powers in commencing an investigation in a non-cognizable case.

10. It is true that there is nothing to show that either the complaint or the enclosures were placed before the Magistrate. However, the crux of the facts constituting the allegation was referred to in the application submitted by the SHO. Essentially, the very purport of the section 155 Cr.P.C. is to ensure that the power of the police officer to commence investigation is not indiscriminately used. In view of that matter, I cannot agree with the contention of the learned counsel for the petitioner that the Magistrate did not judiciously apply the mind while according permission to commence investigation."

(Emphasis supplied)

The High Court of Kerala in the afore-quoted judgments, also holds that it can either be the first informant or the police officer who can approach the Magistrate seeking permission to register an FIR on a non-cognizable offence.

(vii) In ***PRAKASH RAJ v. STATE OF KARNATAKA***[11] a co-ordinate Bench of this Court holds as follows:

> *"6.2. Section 155(2) of the Code states that in case a police officer decides to investigate, he cannot do so without the order of the Magistrate having power to try such case or commit the case for trial. That means the police officer has to approach the Magistrate for an order. Section 156 of the Code deals with power of the police officer to investigate any cognizable offence. He need not approach the Magistrate for an order as required in relation to a non-cognizable offence. To make it more clear, for investigating a non-cognizable offence, what is required is the order of the Magistrate (permission) and in respect of cognizable offence, the police officer has got every right to investigate without any kind of order or permission by the Magistrate. Since section 155(1) states that after entering the substance of the information in a book, the Station House Officer may refer the informant to the Magistrate, it is necessary to elucidate this aspect. And for this purpose section 190 of the Code needs to be referred to.*
>
> *6.3. Section 190 of the Code deals with taking cognizance of the offences by the Magistrate. A Magistrate of the First Class and a Magistrate of the Second Class specially empowered by the Chief Judicial Magistrate can take cognizance of any offence under three circumstances, namely (a) upon receiving a complaint of facts constituting an offence or offences, i.e., under section 200 of the Code (b) upon a police report under section 173 of the Code and, lastly (c) upon information received from any person other than a police officer or upon his (Magistrate's) own knowledge about commission of an offence. Now, if the purpose of referring the informant to the Magistrate as envisaged under section 155(1) is analyzed, it can be said that it is for the purpose of enabling the informant to make a complaint to the Magistrate according to section 200 of the Code if he so desires, and in that event the Magistrate may take cognizance of the offence according to section 190(a) of the Code if a case is made out. So it is clear that a person who reports to the police of an offence which is non-cognizable has every right to make a complaint according to section 200 of the*

[11] *Criminal Petition No.2394 of 2020*

> *Code.* ***At the same time it may also be stated that nothing prevents a police officer from applying to the Magistrate for an order to register FIR and proceed further according to section 155(2) of the Code. This is what is discernible if sections 155 and 190 of the Code are read."***
>
> *(Emphasis supplied)*

The co-ordinate bench deviates from the earlier principles laid down by this Court and holds that nothing prevents a Police Officer from applying to a Magistrate for an order to register FIR and proceed according to sub-section (2) of Section 155 of the Cr.P.C.

9. On a coalesce of all the judgments what would unmistakably emerge is that, it is open to a Police Officer or any complainant to approach the Magistrate under sub-section (2) of Section 155 of the Cr.P.C., to investigate a non-cognizable offence. There is nothing in the section to indicate that the informant alone should seek permission from the Magistrate to commence investigation. I deem it appropriate to concur such plethora of opinions rendered by various High Courts as what sub-section (1) mandates referring the informant to the Magistrate. Sub-section (2) remains silent as to who has to obtain permission. Therefore,

permission can either be sought by the complainant or by the Station House Officer. Wherefore, it is not necessary for the informant alone to knock at the doors of the learned Magistrate with a requisition seeking permission for registration of FIR. it could be either the informant or the Station House officer. I am in respectful agreement with the view taken by other High Courts and the co-ordinate bench of this Court in ***PRAKASH RAJ*** *(supra)*.

10. Coming to the facts of the case at hand, the learned Magistrate has granted permission as quoted hereinabove. It is in blatant violation of what is narrated and analysed in the course of the order. Therefore, I deem it appropriate to quash the order granting such permission and resultant registration of crime and direct the learned Magistrate to pass order afresh upon the requisition made bearing in mind the observations made in the course of the order. The order shall contain what is needed to contain as is observed hereinabove.

11. For the aforesaid reasons, I pass the following:

O R D E R

(i) Writ Petition is allowed.

(ii) The order and the Crime registered on the strength of the order permitting registration stands quashed.

(iii) The matter is remitted back to the hands of the learned Magistrate to pass appropriate orders in accordance with law bearing in mind the observations/guidelines laid down in the course of the order.

(iv) The Registry shall circulate this order to all the Magistrates in the State for their guidance and its strict compliance.

(v) The Registry is directed to communicate the order to the Director General and Inspector General of Police, for compliance with the guidelines laid down in the course of the order.

This Court places on record its appreciation for the able assistance rendered by Mr.Angad.K., Law Clerk cum Research Assistant.

Sd/-
JUDGE

bkp
CT:SS