



CNR: KAHC010019732019

CRL.P NO. 506/2019 (482(Cr.PC) /
528(BNSS))

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

[MR ISMAIL VS. STATE BY HAL POLICE STATION]

15.07.2026

(VIDEO CONFERENCING / PHYSICAL HEARING)

CORAM: HON'BLE MR. JUSTICE D K SINGH
and
HON'BLE MR. JUSTICE T.M.NADAF

ORAL ORDER

(PER: HON'BLE MR. JUSTICE D K SINGH)

On the conflict of Judgments of the learned Single Judges of this Court in **MR.PRAVEEN KUMAR.M.S VS. STATE OF KARNATAKA¹, P.N.CHANDRASHEKAR AND OTHERS VS. STATE OF KARNATAKA²** and **SMT.KAVYA VS. STATE OF KARNATAKA³**, the learned Single Judge has referred this matter to the Division Bench to consider the following questions of law:

(i) *Whether the investigation carried on by Sub-Inspector of Police and laid charge*

¹ Crl.P.No.1398/2017 dated 28.03.2022

² Crl.P.No.7589/2019 dated 28.06.2022

³ Crl.P.No.8827/2019 dated 22.01.2020



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sheet thereafter after investigation, is violative of Section 13(2) of Immoral Trafficking (Prevention) Act, 1956⁴?

*(ii) If an investigation which is carried out without first registering the FIR, the same would fall foul of the decision of the Apex Court in the case of **LALITHA KUMARI VS. GOVERNMENT OF UTTAR PRADESH AND OTHERS**⁵?*

2. The question of law i.e., whether the investigation conducted by an Officer below the rank of Inspector of Police under Section 13(2) of the ITP Act would vitiate the trial, is no more *res-integra* in view of the authoritative pronouncement by the Supreme Court in **R.A.H.SIGURAN VS. SHANKARE GOWDA ALIAS SHANKARA AND ANOTHER**⁶.

⁴ 'the ITP Act', for short

⁵ (2014) 2 SCC 1

⁶ (2017) 16 SCC 126



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3. In **R.A.H.SIGURAN** supra, the Supreme Court relying on the judgment in **H.N.RISHBUD VS. STATE (UT OF DELHI)**⁷, held that on a police report vitiated by the breach of a mandatory provision relating to the investigation, there can be no doubt that the result of the trial which follows it cannot be set-aside unless the illegality in the investigation can be shown to have brought about a miscarriage of justice.

4. Further, the Supreme Court in the case of **R.A.H.SIGURAN** supra has followed the Judgment in **UNION OF INDIA VS. T.NATHAMUNI**⁸. Paragraph Nos.12 and 13 of the said judgment have been extracted in **R.A.H.SIGURAN**, which would read as under:

"12. It is clear that in the case of investigation under the Delhi Special Police Establishment Act, an officer below the rank of Inspector cannot investigate without the order of a competent Magistrate. In the present case, order of the Special Judge was obtained by filing an application. That order dated 24-9-2009 shows that it was passed on request and in the interest

⁷ AIR 1955 SC 196 : (1955) 1 SCR 1150

⁸ (2014) 16 SCC 285



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of justice, investigation pursuant to such order did not suffer from want of jurisdiction and hence, in the facts of the case, the High Court erred in law in interfering with such investigation more so when it was already completed.

13. The question raised by the respondent is well answered by this Court in a number of decisions rendered in a different perspective. The matter of investigation by an officer not authorised by law has been held to be irregular. Indisputably, by the order of the Magistrate investigation was conducted by the Sub-Inspector, CBI who, after completion of investigation, submitted the charge-sheet. It was only during the trial, objection was raised by the respondent that the order passed by the Magistrate permitting the Sub-Inspector, CBI to investigate is without jurisdiction. Consequently, the investigation conducted by the officer is vitiated in law. Curiously enough the respondent has not made out a case that by reason of investigation conducted by the Sub-Inspector a serious prejudice and miscarriage of justice has been caused. It is well settled that invalidity of the investigation does not vitiate the result unless a miscarriage of justice has been caused thereby."

5. Thus, even if the investigation was carried out by the Police Officer who was not mandated under the provisions of Section 13(2) of the ITP Act, the trial which follows the investigation cannot be set-aside, unless the



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illegality in the investigation has resulted in a miscarriage of justice.

6. Whether it has resulted in a miscarriage of justice or not, it has to be pleaded by the accused and the Court has to decide, whether the investigation by an Officer not authorized under Section 13(2) of the ITP Act has resulted in miscarriage of justice. Unless this miscarriage of justice is proved, the trial conducted after investigation by such a Police Officer would not get vitiated.

7. So far as the question of investigation conducted without registering FIR at the first instance is violative of Judgment in **LALITHA KUMARI** supra is concerned, this question fell for consideration before the Supreme Court in the case of **STATE OF JAMMU AND KASHMIR AND OTHERS VS. DR.SALEEM UR REHMAN**⁹. The Supreme Court in paragraph Nos.29 to 31 has held that while holding preliminary enquiry a detailed

⁹ (2022) 13 SCC 675



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enquiry is made into the allegations made against the accused, can be said to be only for the purpose of finding out a *prima facie* case for the purpose of registration of the FIR and merely because some more time is taken in conducting the preliminary enquiry before registering the FIR, the entire proceedings cannot be quashed, unless a prejudice is caused to the accused at the stage of holding preliminary enquiry and registration of FIR.

8. Unless it is shown that prejudice has been caused to the accused at the stage of holding preliminary enquiry prior to registering the FIR, which requires further investigation after registering the FIR, cannot be a sole ground to quash the entire criminal proceedings. The findings of the Supreme Court are culminated in paragraph Nos.29 to 31, which reads as under:

"29. On a close reading of Rule 3.16, it can be seen that even the same can be said to be in the interest of the accused and/or a person against whom the allegations are made and to safeguard the accused against frivolous complaints. As per Clause 3.16 only after the Preliminary Enquiry is conducted and there is a



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prima facie case found, an FIR is required to be registered. Considering the nature of offences, a detailed enquiry is required and therefore it is observed in Clause 3.16 that a PE should be completed normally within a period of six months. It is the case on behalf of the respondent and even as observed and held by the High Court in the impugned judgment and order as per the law laid down by this Court in the case of Lalita Kumari, a detailed investigation into the allegations on merits is not required by holding Preliminary Enquiry and that such enquiry is to be completed within a period of 7 days is concerned, it is to be noted that in the case of Lalita Kumari, it is not held that if the Preliminary Enquiry is not completed within a period of 7 days, the entire criminal proceedings would be void and the same are to be quashed.

30. *So far as the submission on behalf of the respondent that in the present case by conducting a preliminary enquiry, detailed investigation has been made and only thereafter the FIR is registered and that at the time of Preliminary Enquiry, investigation is not permissible since the FIR is lodged is concerned, the aforesaid submission seems to be attractive but has no substance. While holding a Preliminary Enquiry under Clause 3.16, whatever is conducted will be in the form of enquiry into the allegations to consider whether any prima facie case is made out or not which requires further investigation after registering the FIR or not. While considering the prima facie case for the purpose of registering the FIR, some enquiry/investigation is bound*



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to be there, however, the same shall be only for the purpose of finding out a prima facie case for the purpose of registration of the FIR only. Whatever enquiry is conducted at the stage of Preliminary Enquiry, by no stretch of imagination, will be considered as investigation under the code of criminal procedure which can only be after registration of the FIR.

31. Even otherwise, merely because while holding a Preliminary Enquiry a detailed enquiry is made into the allegations made against the respondent which, as observed hereinabove, can be said to be only for the purpose of finding out a prima facie case for the purpose of registration of the FIR and merely because some more time is taken in conducting the Preliminary Enquiry before registering the FIR, the entire criminal proceedings cannot be quashed. There shall not be any prejudice caused to the accused at the stage of holding Preliminary Enquiry which as observed hereinabove shall only be for the purpose of satisfying whether any prima facie case is made out with respect to the allegations made in the complaint which requires further investigation after registering the FIR or not. Therefore, the High Court has materially erred in holding and declaring Clause 3.16 as ultra vires."

9. For the afore, we are of the considered opinion that, unless and until a case is made out that the investigation conducted by the Sub-Inspector has caused serious prejudice or resulted in a miscarriage of justice,



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the mere invalidity or irregularity in the investigation cannot be a ground to hold that the entire investigation stands vitiated. Same rule applies even on the second question raised in this reference in terms of authoritative pronouncement made by the Supreme Court in ***DR.SALEEM UR REHMAN*** supra.

10. Accordingly, we answer the questions referred to us as stated afore and direct the Registry to place the records before the concerned roster Bench for adjudication.

**Sd/-
(D K SINGH)
JUDGE**

**Sd/-
(T.M.NADAF)
JUDGE**