



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 2ND DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE RAVI V HOSMANI

WRIT PETITION NO. 47699 OF 2017 (GM-RES)

C/W

WRIT PETITION NO. 49024 OF 2017 (GM-RES)

IN WP No. 47699/2017:

BETWEEN:

1. SRI B NAGARAJA SHETTY
S/O LATE K.SANJEEVA SHETTY,
AGED ABOUT 60 YEARS,
R/O SRI RAM, BEJAI CHURCH ROAD,
MANGALORE - 575 004.
2. SMT. SADHANA N SHETTY
W/O B NAGARAJA SHETTY,
AGED ABOUT 55 YEARS,
R/O "SRI RAM", BEJAI CHURCH ROAD,
MANGALORE - 575 004.

...PETITIONERS

Digitally signed (BY SRI SUYOG HERELE E., ADVOCATE)

by ANUSHA V

Location: High
Court of
Karnataka

AND:

1. THE STATE OF KARNATAKA
THROUGH SUB-INSPECTOR OF POLICE,
BANGALORE SOUTH POLICE STATION,
MANGALORE, DAKSHINA KANNADA,
REP BY STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA,
BANGALORE - 560 001.
2. SRI VALERIAN RODRIGUES
S/O LATE LAZARUS RODRIGUES,
AGED ABOUT 58 YEARS,



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R/AT 'KINGS CORNER' APTS,
BENDOO, MANGALORE - 575 001.

...RESPONDENTS

(BY SMT. SOWMYA R., HCGP FOR R1;
SRI S.B. SUMAN, ADVOCATE FOR
SRI S.G.BHAGAVAN, ADVOCATE FOR R2)

THIS WP IS FILED UNDER ARTICLES 226 & 227 OF THE
CONSTITUTION OF INDIA, PRAYING TO QUASH THE ORDER
DATED 27.9.2017 IN CRL.R.P.NO.144/2015 C/W
CRL.R.P.NO.145 /2015 AND IN ORDER DATED 26.3.2012 IN
P.C.R.NO.52/2011 AND ENTIRE PROCEEDINGS IN
C.C.NO.287/2012 (P.C.R.NO.52/2011) ON THE FILE OF THE II
ADDL. C.J.M. MANGALORE VIDE ANNEX-A AND A1.

IN WP NO. 49024/2017:

BETWEEN:

MRS. METILDA FERNANDES
W/O. LATE PERCIVAL J. FERNANDES,
AGED ABOUT 60 YEARS,
R/AT NO.14-139,
MILAGRES CROSS ROAD,
HAMPANKATTA, MANGALORE-575 001.

...PETITIONER

(BY SRI SUYOG HERELE E., ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
THROUGH SUB-INSPECTOR OF POLICE,
BANGALORE SOUTH POLICE STATION,
MANGALORE, DAKSHINA KANNADA,
REP BY STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA,
BANGALORE-560 001.



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2. SRI VALERIAN RODRIGUES
S/O. LATE LAZARUS RODRIGUES,
AGED ABOUT 58 YEARS,
R/AT 'KINGS CORNER' APTS.,
BENDOOOR, MANGALORE - 575 001.

...RESPONDENTS

(BY SMT. SOWMYA R., HCGP FOR R1;
SRI S.B. SUMAN, ADVOCATE FOR
SRI S.G.BHAGAVAN, ADVOCATE FOR R2)

THIS WP IS FILED UNDER ARTICLES 226 & 227 OF
THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE
ORDER DATED 27.9.2017 IN CRL.RP.NO.144/2015 C/W
CRL.R.P.NO.145/2015 AND IN ORDER DATED 26.3.2012 IN
P.C.R.NO.52/2012 AND ENTIRE PROCEEDINGS IN
C.C.NO.287/2012 ON THE FILE OF THE II ADDL. CJM,
MANGALORE VIDE ANNEX-A AND A1.

THESE PETITIONS, COMING ON FOR , THIS DAY, ORDER
WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE RAVI V HOSMANI

ORAL ORDER

Challenging order dated 27.09.2017 passed in Crl.R.P.
no.144/2015 and connected with Crl.R.P.no.145/2015 and
order dated 26.03.2012 passed by II Addl. C.J.M., Mangalore in
PCR no.52/2011 as well as entire proceedings in CC



no.287/2012 on file of II Addl. C.J.M., Mangalore, these two writ petitions are filed.

2. Sri Suyog Herele E, learned counsel for petitioners submitted that petitioners were accused no.2 to 4 in PCR no.52/2011 filed by respondent no.2 - complainant alleging that he and his wife were residents of Mangalore, while accused no.1 to 5 were partners of M/s. Premier Homes - builders and vendors of Apartments - Blue Heaven constructed at SL Mathias Road, Falnir, Mangalore. When flats were offered for sale, complainant and his wife intended to purchase. Accused no.1 and 2 representing M/s. Premier Homes offered to sell Flat nos.101 and 102 for Rs.11,90,000/- each. An agreement of sale was entered into between complainant and accused no.1 and 2 on 20.05.1997. As per agreement, accused had assured completion of construction and handing over of flats by December, 1998. Apart from consideration for flats, accused had also collected separate amounts towards car park, electricity connection, building tax, legal fee and generator charges. Thus, complainant had paid total amount of Rs.25,90,000/- for two flats. However, accused failed to



complete construction and entered into Joint Development Agreement with accused no.6 and 7 - Partners of M/s. Marlan Infrastructures on 14.10.2010. It was further alleged that accused no.1 to 7 had assured to complete construction and handover flats, but failed to do so. Complainant later came to know that accused had sold Flat no.102 to one Roshan Stevan Colaco for Rs.36,96,000/- and received Rs.12,00,000/- as advance. Complainant later came to know of sale of Flat no.101 to Mrs.Veena Vas by accused for Rs.36,96,000/-. From Roshan Colaco and Mrs.Veena Vas, complainant came to know that accused had suppressed prior sale of Flats no.101 and 102 to complainant. Thus, accused had in furtherance of their common intention, dishonestly and fraudulently induced complainant to part with Rs.25,90,000/-, executed sale deed on 20.05.1997 in favour of complainant, but failed to deliver flats. They had also fraudulently entered into agreement with Roshan Colaco and Mrs.Veena Vas based on false documents and by forgery with intent of cheating complainant and thereby committed offences punishable under Sections 420, 468 read with Section 34 of Indian Penal Code, 1860 (**IPC**).



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3. It was submitted, on 26.03.2012, learned Magistrate ordered for registration of case and for issuance of summons to accused. Challenging said order, accused no.3, 4 and 5 filed CrI.P.no.3804/2012 before this Court. Same was disposed of on 02.07.2015 by relegating them to avail remedy under Section 397 of Code of Criminal Procedure, 1973 (**CrPC**). While CrI.R.P.no.144/2015 was filed by accused no.3 to 5, accused no.2 filed CrI.R.P.no.145/2015 before IV Addl. District and Sessions Judge, Dakshina Kannada, Mangalore. They were clubbed together and dismissed by order dated 27.09.2017, leading to these petitions.

4. At outset, it was submitted, complaint filed in year 2012 in respect of alleged incident of year 1997 suffered from inordinate delay. It was submitted, complaint averments indicated that dispute between complainant and accused was about failure to deliver Flats as per sale deed. Relying on ratio in **R. Nagender Yadav v. State of Telangana and Anr.**, reported in **(2023) 2 SCC 195**, it was submitted, dispute being civil in nature, but sought to be given colour of criminality only to exert pressure would be liable to be quashed



on ground of abuse of process. It was submitted, learned Magistrate mechanically rejected 'B' report and took cognizance of offences on 26.03.2012. Said order being non-compliant with requirement of application of mind and recording of reasons as held by this Court in **Dr. Ravikumar v. KMC Vasantha and Anr.**, reported in **ILR 2018 KAR 1725**.

5. It was submitted, petitioners had ceased to be partners of M/s. Premier Homes at time of filing complaint. In fact same was taken note of by this Court in **Crl.P.no.588/2013 [2019:KHC:10272]**. Therefore, initiation of proceedings against petitioners would be abuse of process. It was further submitted, with regard to very same transaction, complainant had earlier filed complaint before Police on 15.10.2002, which was closed with endorsement that dispute was civil in nature. Same was not challenged. On other hand, complainant had filed OS no.77/2011 and also approached Consumer Forum. It was submitted, suit for specific performance came to be decreed and presently pending in challenge before this Court. It was submitted, consumer complaint came to be dismissed by observing that complainant



could not be permitted to resort to multiple remedies. Suppressing same, complainant filed private complaint leading to impugned proceedings. In view of above, impugned proceedings were liable to be quashed as abuse of process of law.

6. Learned counsel further contended that complaint in PCR no.52/2011 was filed directly before Magistrate, without first approaching jurisdictional Police and Superintendent of Police mandated under Section 156 (3) of CrPC. On above grounds, sought for allowing petitions.

7. Smt.Sowmya R., learned HCGP appeared for respondent no.1. While, Sri SB Suman, learned counsel appearing for Sri SG Bhagavan, advocate for respondent no.2 - complainant opposed petitions. It was submitted, even if impugned order dated 26.03.2012 were to be held as not in conformity with requirements laid down by this Court in **Dr.Ravikumar's** case (supra), same would not justify quashing of entire proceedings for failure to record reasons by learned Magistrate. Learned counsel prayed for remitting matter back to learned Magistrate in such event.



8. Relying upon decision of Hon'ble Supreme Court in case of **Shivshankar Singh v. State of Bihar and Anr.**, reported in **(2012) 1 SCC 130**, it was submitted in case of earlier complaint was not decided on merits, there would be no bar against filing of one more complaint. It was submitted, complainant having paid entire consideration and having waited for substantial period of time for delivery of Flats was cheated by accused by sale of those Flats to others. Therefore, complaint was tenable and prayed for dismissal of petitions.

9. Heard learned counsel and perused material on record.

10. Though several contentions are urged in support of challenge of orders/proceedings, contention about non-compliance with Section 154 (3) of CrPC before filing private complaint would go to root of matter and therefore, taken upfront. Perusal of impugned private complaint indicates absence of averment about complainant having approached jurisdictional Police and thereafter Superintendent of Police and remaining unsuccessful in having complaint registered as mandated by Section 154 (3) of CrPC. In **Priyanka Srivastava**



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v. State of U.P. reported in **(2015) 6 SCC 287**, compliance with Section 154 (3) of CrPC prior to approaching Magistrate has been held mandatory. Same is reiterated even in **Anurag Bhatnagar v. State (NCT of Delhi)** reported in **2025 SCC OnLine SC 1514**, referring to **Sakiri Vasu v. State of U.P.** reported in **(2008) 2 SCC 409**. Hence, petitions would succeed on this ground alone.

11. Accordingly, petitions are **allowed**, order dated 27.09.2017 passed in Crl.R.P. no.144/2015 and connected with Crl.R.P.no.145/2015 and order dated 26.03.2012 passed by II Addl. C.J.M., Mangalore in PCR no.52/2011 as well as entire proceedings in CC no.287/2012 on file of II Addl. C.J.M., Mangalore, stand **quashed**.

Sd/-
(RAVI V HOSMANI)
JUDGE

GRD
List No.: 1 Sl No.: 14