



CNR: KAHC010138702021

NC: 2026:KHC:50133
CRL.P No. 2728 of 2021

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 15TH DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE H.P.SANDESH

CRIMINAL PETITION NO.2728 OF 2021

BETWEEN:

1. SUBIN K. THOMAS
S/O EASOW THOMAS
AGED ABOUT 39 YEARS
R/AT NO.329, 3RD FLOOR
10TH 'A' MAIN ROAD
CLASSIC LAYOUT
BENGALURU-560068.

WORKING AT NIPPON INDIA MUTUAL FUND
(FORMERLY RELIANCE MUTUAL FUND)
HAVING ITS REGIONAL OFFICE
AT NG-1 AND 1A, GROUND FLOOR
MANIPAL CENTRE, 47
DICKENSON ROAD
BENGALURU-560 042.

Digitally signed
by DEVIKA M
Location: HIGH
COURT OF
KARNATAKA

...PETITIONER

(BY SRI. CHINMAY J. MIRJI, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
BY VIVEKNAGAR POLICE, BENGALURU
REPRESENTED BY STATE PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA
BENGALURU, KARNATAKA-560 001.



CNR: KAHC010138702021

NC: 2026:KHC:50133
CRL.P No. 2728 of 2021

2. MR. SUDHEER KUMAR POBBATHI
S/O RAMAPPA
AGED ABOUT 40 YEARS
R/AT NO.403, TIRUMALA
RESIDENCY SITE NO.25, 26
8TH CROSS, ANUGRAH LAYOUT
B. NARAYANAPURA
BENGALURU CITY-560016
WORKING AT
M/S SUREWAVES MEDIA TECH PVT. LTD.

...RESPONDENTS

(BY SRI. SUHAS GOWDA M., HCGP FOR R1;
SRI. ANISH ACHARYA &
SRI. SHASHANK NAGENDRAN, ADVOCATES FOR R2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C PRAYING TO QUASH THE QUASH THE ENTIRE PROCEEDINGS AGAINST THE PETITIONER IN THE COMPLAINT DATED 03.12.2020 AND THE FIR REGISTERED BY THE RESPONDENT NO.1 POLICE IN CR.NO.170/2020 (PENDING BEFORE THE IV ADDL.C.M.M., BENGALURU) AGAINST THE PETITIONER FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 408, 409, 418, 420, 467, 468, 474, 471, 477A, 120(B) R/W SECTION 34 OF IPC AND SECTIONS 66, 66(C) AND 66(D) OF I.T. ACT AT ANNEXURES-A AND B, PENDIGN BEFORE THE IV ADDL. CHIEF METROPOLITAN MAGISTRATE, BENGALURU.

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

CORAM: HON'BLE MR. JUSTICE H.P.SANDESH



CNR: KAHC010138702021

**NC: 2026:KHC:50133
CRL.P No. 2728 of 2021**

ORAL ORDER

Heard learned counsel for the petitioner, learned High Court Government Pleader for respondent No.1 and learned counsel for respondent No.2.

2. The prayer sought in this petition invoking Section 482 of Cr.P.C. is to quash the entire proceedings invoked against the petitioner in the complaint dated 03.12.2020 and registration of the FIR in Crime No.170/2020 for the offences punishable under Sections 408, 409, 418, 420, 467, 468, 474, 471, 477A, 120-B read with Section 34 of IPC and Sections 66, 66(C) and 66(D) of the Information Technology Act, 2008 in respect of Annexures-A and B.

3. Learned counsel for the petitioner in his argument would vehemently contend that the petitioner is merely a back office employee of Nippon. A bare perusal of the complaint goes to show that there is no allegation against the petitioner anywhere in the complaint. Further, there are no specific allegations made against the petitioner and the petitioner has not been involved in the said transaction between Nippon and



NC: 2026:KHC:50133
CRL.P No. 2728 of 2021

CNR: KAHC010138702021

the respondent No.2-company and the petitioner has neither interacted with the respondent No.2-company nor with the accused Nos.1 to 3. The counsel would vehemently contend that respondent No.2-company themselves admitted that all the amounts have been credited to the Citibank account of the respondent No.2-company and the respondent No.2-company has received the same and there is no dispute with regard to the same. Neither the petitioner nor Nippon in any way committed the alleged offences as alleged in the complaint. The respondent No.2-company has further admitted that money has been siphoned off/embezzled by Mr. Jagadish M.S. and Mr. Deepak B., i.e., accused Nos.1 and 2. The counsel also vehemently contend that this petitioner has been falsely implicated without any specific allegations. The counsel also would contend that there has been major lapse and negligence in the functioning of the respondent No.2-company and its financial team. There cannot be any accusation against this petitioner on account of lapses on the part of respondent No.2 and question of this petitioner conspiring with other accused is nothing but an allegation made with an intent to arm twist the



CNR: KAHC010138702021

Nippon and the petitioner to pay them the amounts misappropriated by the accused Nos.1 and 2, who happens to be the employees of the respondent No.2-company. The counsel also vehemently contend that the entire complaint reveals that respondent No.2-company has not provided any details with regard to role of this petitioner and when such being the case, question of arraying this petitioner as accused does not arise. The counsel also vehemently contend that the company has not been made as a party and the petitioner is an employee and question of seeking the relief against this petitioner, that too, by way of initiating criminal prosecution does not arise. The counsel for the petitioner also brought to notice of this Court, at the time of investigation, the Investigating Officer also has to take note of ingredients of the offence under Sections 408 and 420 of IPC and the same has to be considered by the Investing Officer during the course of investigation while submitting the report.

4. Learned counsel for the petitioner in support of his argument relies upon judgment of the Apex Court in **DELHI RACE CLUB (1940) LIMITED AND OTHERS vs. STATE OF**



UTTAR PRADESH AND ANOTHER reported in **(2024) 10 SCC 690** and brought to notice of this Court paragraph Nos.54 and 55. In paragraph No.54, the Apex Court held that when dealing with a private complaint, the law enjoins upon the Magistrate a duty to meticulously examine the contents of the complaint so as to determine whether the offence of cheating or criminal breach of trust as the case may be is made out from the averments made in the complaint. The Magistrate must carefully apply its mind to ascertain whether the allegations, as stated, genuinely constitute the specific offences. In paragraph No.55 also, an observation is made that the two offences cannot coexist simultaneously in the same set of facts. They are antithetical to each other.

5. The counsel also relies upon order passed by this Court in **Crl.P.No.201262/2023** dated **24.08.2023** and brought to notice of this Court paragraph No.6, wherein discussion was made that every citizen has a right, not to be prosecuted frivolously for offences that have not been committed, since an unnecessary trial of the accused amounts to unwanted harassment in view of ratio laid down in the case



of **R. KALYANI VS. JANAKI C. MEHATA** reported in **(2009) 1 SCC 516**. The counsel also brought to notice of this Court discussion made in **ANEETA HADA VS. M/S. GODFATHER TRAVELS AND TOURS** reported in **(2012) 5 SCC 661** with regard to company has not been arrayed as accused. The counsel also relied upon paragraph No.11 of the judgment, wherein **Aneeta Hada's** case was discussed. The counsel also relied upon paragraph No.13 of the judgment, wherein also discussion was made with regard **Aneeta Hada's** case.

6. The counsel also relied upon order passed in **Crl.P.No.2978/2024** dated **23.04.2024** and brought to notice of this Court paragraph No.7, wherein an observation is made that since the petitioners herein are being held vicariously liable for the acts committed by the company, unless the company is arrayed as accused to the proceedings, the petitioners cannot be prosecuted for the alleged offences. The Trial Court has failed to appreciate this aspect of the matter and has issued summons to the petitioners without taking cognizance of the alleged offences against the



CNR: KAHC010138702021

petitioners. Hence, there cannot be any prosecution against these petitioners.

7. Per contra, learned counsel appearing for respondent No.2-complainant brought to notice of this Court, the allegations made in the complaint and so also brought to notice of this Court column No.10 of the FIR, wherein allegation is made against the petitioner i.e., Nippon India Mutual Fund regarding transfer of amount in favour of accused Nos.1 and 2 in the name of Sure Waves. When specific allegations are made against Citibank as well as Nippon India Mutual Fund that colluding with the officials an amount of Rs.3,11,00,000/- was transferred and committed breach of trust.

8. The counsel in respect of contention of learned counsel appearing for the respondent No.2 brought to notice of this Court paragraph No.26 of the complaint, wherein a criminal liability of Nippon India Mutual Fund is stated that Mr.Jagadish found loopholes in the procedures of Nippon and colluded with the Nippon India Mutual Fund personnel in Bangalore Branch, to redeem the company funds from its Nippon account simply through the email instructions sent by Mr. Jagadish to



NC: 2026:KHC:50133
CRL.P No. 2728 of 2021

Mr.Karthik Gowda, Branch Operations In-charge and his colleagues, without obtaining the duly signed transactions slips or email indemnity instructions from the Authorized Signatories of the company. Further, these redemptions were made to Sure Wave's Citibank account, which was not even registered with company's Nippon Mutual Fund investment portfolio. The counsel also brought to notice of this Court the allegation made in paragraph No.27 of the complaint with regard to Nippon's Information Memorandum applicable for the company's accounts with them does not allow redemption of funds without the signed transaction slip by the authorized signatories. Further, counsel would contend that on further queries made by the Finance Director, Nippon Manager-Branch Operations has also accepted through his email, that as per their process, email instructions cannot be accepted unless a formal request comes from the company on its letter head, duly signed by Authorized Signatories along with the list of employees email IDs, who are authorized to send instructions over email. Clearly, Nippon had not followed its own norms as no such request was submitted to them by the authorized signatories of



CNR: KAHC010138702021

the company and Nippon acted merely on the instance of Mr.Jagdish's email. The counsel also brought to notice of this Court paragraph No.28 of the complaint, wherein also specific allegations are made against this petitioner. The counsel also would vehemently contend that without any authorized signatory's instructions, question of redeeming the amount does not arise. The counsel also vehemently contend that in the complaint, specific allegations are made, but not as contended by counsel appearing for the petitioner. Hence, it is a matter of investigation and there cannot be quashing of complaint.

9. In reply to this argument of learned counsel for respondent No.2, counsel appearing for the petitioner brought to notice of this Court Annexure-C, particularly Investor/Service related issues that owing to reduced staff strength at the AMC/RTA offices/closure of offices, it may not be possible to accept physical transaction from investors. As an alternative to help such investors, AMCs/RTAs will accept transaction requests sent from the registered email Ids of the unitholders/registered domain ids of institutional investors. The counsel also vehemently contend that as per Annexure-C itself, they have



CNR: KAHC010138702021

done their duties and they have not done anything against the respondent No.2-company, but the petitioner has been falsely implicated in the case.

10. Having heard learned counsel appearing for the petitioner and also learned counsel appearing for the respondent No.2, scope of quashing the complaint i.e., Annexure-B is very limited. The Court has to take note of contents of the complaint. The sum and substance of the FIR is that an allegation of criminal liability is made against this petitioner as enumerated in paragraph Nos.26, 27 and 28 of the complainant which has been mentioned above while considering the complaint. The very contention of the petitioner that there is no any specific allegation against this petitioner cannot be accepted for the reason that in paragraph Nos.26 and 27 of the complaint at Annexure-B the role of the petitioner is clearly stated. When such allegations are made in the complaint, particularly in paragraph Nos.27 and 28, the same has to be investigated by the Investigating Officer, whether there is any role on the part of Nippon or not.



11. The other contention of learned counsel for the petitioner is that company has not been made as party. But, the Court has to take note of the fact that only FIR is registered based on the complaint at Annexure-B and investigation is not yet conducted. The citations which have been relied upon by learned counsel for the petitioners is in respect of proceedings against the petitioner in a case of facing a criminal trial. No doubt, in the judgment of the Apex Court in **Delhi Race Club's** case, the Apex Court held that law enjoins upon the Magistrate a duty to meticulously examine the contents of the complaint so as to determine whether the offence of cheating or criminal breach of trust, as the case may be, is made out from the averments made in the complaint. But, in the case on hand, only complaint is filed and FIR is registered and investigation is not yet completed. Hence, question of Magistrate looking into the material does not arise with regard to whether there was cheating or criminal breach of trust, as the case may be, is made out and perused the contents of the complaint, specific accusation is made.



NC: 2026:KHC:50133
CRL.P No. 2728 of 2021

CNR: KAHC010138702021

12. The order passed by this Court in ***Crl.P.No.201262/2023*** dated 24.08.2023 is with regard to facing of criminal trial without any substance in the complaint and the same does not arise. In the said order, the judgment of ***Aneeta Hada's*** case was also referred where company has not been arrayed as accused and the same is a matter of investigation. In the case on hand, only law is set in motion by registering the FIR, whether company has to be made as party or not also to be investigated during the course of investigation and not at the stage of registration of FIR and only pre-cognizance order is passed.

13. The counsel also relied upon the order passed by this Court in ***Crl.P.No.2978/2024*** dated **23.04.2024** and brought to notice of this Court paragraph No.7 that unless the company is arrayed as an accused to the proceedings, the petitioner cannot be prosecuted for the alleged offences. The Trial Court has failed to appreciate this aspect of the matter and has issued summons to the petitioner without taking cognizance of the alleged offences against the petitioner. The said circumstances is not the factual aspects of the case on



CNR: KAHC010138702021

hand and only based on complaint at Annexure-B, law is set in motion by registering the FIR and in the complaint, an allegation is made that the persons in the petitioner-company have involved and who have been involved and whether it is the offence by the company or not is a matter of investigation. The cognizance was not taken based on the complaint. The law is also settled that at the time of quashing the FIR, Court has to look into the contents of the complaint and whether the complaint discloses committing of an offence and if the offences invoked and ingredients of the offences are also set out in the complaint is a matter of investigation by the Investigating Officer and the same has to be investigated by the Investigating Officer and here is not a case of taking of cognizance and only law is set in motion by registering the FIR and all these factors has to be considered at the time of taking cognizance. When such being the case and law is also settled that while taking cognizance and proceeding against the accused, look into the material available on record i.e., the complaint and material collected by the Investigating Officer constitute an offence or not and at this stage, the Court cannot



**NC: 2026:KHC:50133
CRL.P No. 2728 of 2021**

consider the same. Mere invoking of several sections in the complaint and FIR cannot be a ground to quash the proceedings and the same has to be investigated while filing the charge sheet and it is the duty of the Investing Officer to consider the same. Hence, at this stage, I do not find any ground to quash the FIR as contented by the petitioner and the same is a matter of investigation. Therefore, the principles laid down in the judgments referred supra by learned counsel appearing for the petitioner will not come to the aid of the petitioner to quash the proceedings initiated against the petitioner only by registering the case and the same is consequent upon pre-cognizance order and not taking cognizance.

14. In view of the discussion made above, I pass the following:

ORDER

The criminal petition is dismissed.

**Sd/-
(H.P.SANDESH)
JUDGE**

ST
List No.: 1 Sl No.: 35