



NC: 2026:KHC:53407
CRL.P No. 11027 of 2022

CNR: KAHC010503252022

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE RAVI V HOSMANI

CRIMINAL PETITION NO. 11027 OF 2022

BETWEEN:

- 1 . MR. ANIL KUMAR LOBO
S/O MINGEL LOBO,
AGED ABOUT 44 YEARS,
CHAIRMAN, MCC BANK LTD.,
HAMPANKATTA,
MANGALORE - 575 001.
- 2 . MR. SAVIL PRAKASH MASCARENHAS
S/O EVEREST MASCARENHAS,
AGED ABOUT 54 YEARS,
R/AT FLAT NO.404,
MARCEILA CASTLE,
SILVA CROSS ROAD,
KANKANADY,
MANGALORE-575 002.
- 3 . MR. ELIAS SANCTIS
S/O. LATE MARIO SANCTIS,
AGED ABOUT 56 YEARS,
R/AT D.NO. 1-T-24/20,
GREEN CLIFF APARTMENT,
PADAVINANGADY, KAVOOR,
MANGALORE-575 015.
- 4 . MR. BENEDICT IVAN D'SOUZA
S/O. LATE JOSEPH D SOUZA,
AGED ABUT 54 YEARS,
R/AT NANDIGUDDA ROAD,
BISHOP COMPOUND,
ATTAVARA,
MANGALORE-575 001.

Digitally signed
by ANUSHA V
Location: High
Court of
Karnataka



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- 5 . MRS. ANNA MARIO LOBO
W/O MR. ANIL KUMAR LOBO,
AGED ABOUT 39 YEARS,
MANGALURU CITY,
MANGALURU-575 002.
- 6 . MR. JOSEPH M. ANIL PATRAO
S/O JOCHIM PATRAO,
AGED ABOUT 56 YEARS,
DIRECTOR, MCC BANK LTD.,
HAMPANKATTA,
MANGALORE-575 001.
- 7 . MR. SUNIL MENEZES
S/O ANTONY MENEZES,
AGED ABOUT 50 YEARS,
GENERAL MANAGER,
MCC BANK LTD.,
HAMPANKATTA,
MANGALORE-575 001.

...PETITIONERS

[BY SRI JAYAKUMAR S. PATIL, SR. COUNSEL FOR
SRI ABHISHEK MARLA M.J., ADVOCATE]

AND:

- 1 . THE STATE OF KARNATAKA
THE INSPECTOR OF POLICE
CYBER ECONOMIC AND NARCOTIC
(CEN) POLICE STATION,
MANGALORE CITY,
REP BY STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA,
BANGALORE-560 001.
- 2 . GERARD TOWERS
S/O LATE L.D.S. TOWERS,
MAJOR,
MEMBER MCC BANK LTD.,
MEMBERSHIP NO.13391,



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R/AT RETREAT,
D.NO.15-22-1313,
LOWER BENDORE,
KANKANADY POST,
MANGALORE-575 002.

3 . EUGENE LOBO
S/O BERNARD LOBO,
MAJOR,
MEMBER MCC BANK LTD.,
MEMBERSHIP NO.37595,
R/AT NEAR HOSMANE,
BEHIND GOVT. BOARD SCHOOL,
CAPITANIO SCHOOL ROAD,
KANKANADY,
MANGALORE-575 002.

4 . STEEVEN R D'SOUZA
S/O LATE BONIFACE D'SOUZA,
AGED ABOUT MAJOR,
MEMBER MCC BANK LTD.,
MEMBERSHIP NO.38798,
R/AT HUOSE NO.5-29/1,
POYYABAIL HOUSE,
NEERMARGA,
PADU POST,
MANGALURU-575 029.

...RESPONDENTS

(BY SRI MAHESHA P., HCGP FOR R1;
SRI AMAR CORREA, ADVOCATE FOR R3
SRI B.J.ROHIT GOWDA, ADVOCATE FOR R2 & R4)

THIS CRL.P IS FILED U/S.482 CR.P.C PRAYING TO QUASH THE ENTIRE PROCEEDINGS AGAINST THE PETITIONERS PENDING BEFORE THE II ADDITIONAL SENIOR CIVIL JUDGE AND C.J.M., MANGALORE, D.K., IN PCR.NO.25/2022 (ANNEXURE-A) AND ALSO QUASH THE FIR IN CR.NO.88/2022 (ANNEXURE-C), REGISTERED BY CYBER, ECONOMIC AND NARCOTIC CRIME POLICE, MANGALURU FOR THE OFFENCE P/U/S 403, 405, 409, 418, 120B R/W 34 OF IPC AGAINST THE PETITIONER.



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THIS PETITION IS HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 05.08.2026, THIS DAY, THE COURT, PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE RAVI V HOSMANI

CAV ORDER

Challenging entire proceedings in PCR no.25/2022 on file of II Additional Senior Civil Judge and CJM, Mangalore, DK, for offences punishable under Sections 403, 405, 409, 418, 120B read with Section 34 of Indian Penal Code, 1860 (**IPC**), arising out of Crime no.88/2022 registered by CEN Crime Police Station, Mangaluru, this petition is filed.

2. Sri Jayakumar S Patil, learned Senior Counsel appearing for Sri Abhishek Marla M.J., advocate for petitioners submitted that petitioners were accused no.1 to 7 (**petitioners**) in PCR no.25/2022 filed by respondents no.2 to 4 (**complainants**) on 14.07.2022 stating that they were members of Mangalore Catholic Co-operative Bank Ltd. (**Bank**) since 30 years and that in collusion with accused no.6 (Director of Bank) and accused no.7 (General Manager of Bank) during his tenure as Chairman of Bank, accused no.1 sanctioned loans to his friends - accused no.2 and 3 and got substantial part of



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loan amount transferred to account of accused no.5 (his wife) and M/s. Mike Electronics (**ME**) his business concern. He failed to disclose that accused no.2 had earlier stood as guarantor for his loan.

3. Further, in collusion with accused no.7, he got sanctioned three loans i.e. for Rs.38 Lakhs, Rs.84 Lakhs and Rs.75 Lakhs totaling to Rs.1,97,00,000/-. It was alleged that out of Rs.38 Lakhs loan sanctioned to accused no.2 vide loan account BLT 20160002 from Kulshekhar Branch, Rs.6,70,000/- was transferred to SB-3761 joint account of accused no.1, 2 and 5 and Rs.5 Lakhs each transferred to accounts of accused no.1 and 5. Likewise, out of Rs.84 Lakhs loan sanctioned to accused no.2 vide loan account no.BLT 20190001 from Kulshekhar Branch, Rs.40 Lakhs was transferred into joint account of accused no.1, 2 and 5, while Rs.6 Lakhs transferred into IDBI Bank account no.1117651100000602 of ME, Rs.10,35,000/- to SB-2590 of accused no.1 and Rs.5 Lakhs into Syndicate Bank account no.01062180001802 belonging to accused no.5. And from Rs.75 Lakhs loan sanctioned to accused no.2 vide loan account BLT 20200003, Rs.39,40,000/-



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was got transferred to IDBI Bank Acc. no.1117651100000602 belonging to ME.

4. Further, sanction of two loans to accused no.4 from Morgansgate Branch and repaying them himself during his tenure as Director of Bank also indicated personal interest of accused no.1. And in another such instance vide loan accounts no.BLT 20200001 and BLT 20200002, accused no.1 sanctioned loan of Rs.1,65,00,000/- (Rupees One Crore and Sixty Five Lakhs) to accused no.3 at Founders Branch of Bank, from which amount was immediately transferred onto various accounts of accused no.1 and 5. On 31.08.2020 a part of it was transferred to account of accused no.1 in Corporation Bank. And on 15.09.2021, Rs.10 Lakhs each were transferred directly to Account SB-2590 of accused no.1 and Account no.3099 of accused no.5. Even in these transactions, accused no.1 had not disclosed his personal interest.

5. Allegation against accused no.6 was that as Director of Bank he facilitated sanction of loan of Rupees Five Crores to Mr.Francis Alfred Concessao and his wife Mrs.Doriss his business partners in Real Estate project under a Joint



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Development Agreement (**JDA**). It was alleged that accused no.6 had got them to return loan amount to him on ground that they were ineligible for loan.

6. It was stated all above loans were got sanctioned without disclosure of their interest and which constituted corrupt practices and punishable offences under Sections 109 (12) and 109 (15) of Karnataka Co-operative Societies Act, 1959 (**KCS Act**). Accused no.1, 6 and 7 being in position of trust qua Bank misused positions by colluding with accused no.2 to 5, caused wrongful loss to Bank by sanctioning and diverting funds for personal and business purposes, constituting misappropriation, breach of trust, cheating and conspiracy, besides contravention of Sections 109 (12) and 109 (15) of KCS Act. It was stated that after inspection, Reserve Bank of India (**RBI**) flagged illegalities and corrupt practices of accused and about failure to take action. Therefore, on 14.04.2022, complaint was filed with Mangalore North (Bunder) Police Station. As no action was taken, complainants approached Commissioner of Police, Mangalore on 18.04.2022, who directed it to be lodged before CCB. And though complaint



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disclosing cognizable offences was filed with CCB, Mangalore on 18.05.2022, Instead of registering FIR, they forwarded copy to Deputy Registrar of Co-operative Societies, Mangalore (**DRCS**) for audit investigation and who after seeking explanation, forwarded it to Joint Director.

7. It was alleged that since accused were attempting to flee away from country to avoid investigation and as police/authorities under KCS Act failed to take effective action private complaint was filed annexing copies of records and details of above transactions, before II Addl. Senior Civil Judge and CJM at Dakshina Kannada for directing registration of FIR and appropriate legal action against accused. It was submitted that on 01.09.2022 after perusing complaint, affidavit documents and records, learned Magistrate directed CEN Crime PS Mangalore to register FIR and commence investigation for offences punishable under Sections 403, 405, 409 and 418 read with Sections 120B and 34 of IPC, and Sections 109 (12) and 109 (15) of KCS Act. In pursuance of same, FIR in Crime no.88/2022 was registered for said offences against accused no.1 to 7. Aggrieved thereby this petition was filed.



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8. Learned Senior Counsel urged four main contentions against impugned proceedings. *Firstly*, about non-filing of affidavit along with private complaint, held mandatory by Hon'ble Supreme Court in **Priyanka Srivastava and Anr. v. State of Uttar Pradesh & Ors.** reported in **(2015) 6 SCC 287**, which would be fatal and consequently vitiating order taking cognizance by learned Magistrate and directing registration of FIR and investigation.

9. *Secondly*, on ground that complaint dated 14.04.2022 filed with CCB/CEN Branch, Mangalore was rightly forwarded to DRCS as he was Competent Authority to examine allegations under Sections 63 to 68 of KCS Act. It was submitted during pendency of statutory enquiry initiated, complainants filed private complaint, which would not be justified. Further, on 15.09.2022 DRCS filed enquiry report stating that no illegality was committed by petitioners. Therefore, filing of private complaint was abuse of process of law.

10. *Thirdly*, Section 111 (2) of KCS Act prohibited initiation of prosecution without prior sanction of Director of



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Cooperative Audit in respect of matters arising out of Audit; and from Registrar in respect of other matters. Since complaint allegations were purely in respect of matters relating to Co-operative Society, initiation of proceedings would be barred. And *lastly* that complaint lacked essential ingredients of offences alleged and was liable for quashing.

11. Sri Mahesha P, learned HCGP for respondent no.1-State, supported impugned order passed by learned Magistrate and opposed petition.

12. Sri BJ Rohit Gowda, learned counsel for respondents no.2 and 4 and Sri Amar Correa, learned counsel for respondent no.3, also opposed petition. It was submitted non-filing of affidavit was a curable defect and not fatal. It was submitted, though Hon'ble Supreme Court in **Babu Venkatesh and Ors. v. State of Karnataka and Anr.** reported in **(2022) 5 SCC 639**, had held filing of affidavit to be mandatory, in later decision in case of **SN Vijayalakshmi and Ors. v. State of Karnataka and Anr.**, reported in **2025 SCC OnLine SC 1575**, it was held non-filing of affidavit was curable and could be rectified before substantive orders are passed in



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proceedings. It was alternatively submitted that since proceedings were still in initial stage, complainants would file affidavit and cure defect.

13. It was submitted referring to **Sakiri Vasu v. State of U.P.**, reported in **(2008) 2 SCC 409**, in **Anurag Bhatnagar and Anr. v. State (NCT of Delhi) and Anr.**, reported in **2025 SCC OnLine SC 1514**, it was held remedies under Sections 154 (1) and 154 (3) of CrPC must ordinarily be exhausted first, but bypassing would be non-fatal procedural irregularity.

14. It was further submitted Hon'ble Supreme Court in **Sarah Mathew v. Institute of Cardio Vascular Diseases by its Director & Ors.**, reported in **(2014) 2 SCC 62**, clarified that '*cognizance*' involved application of judicial mind with a view to proceeding in accordance with law, where Magistrate merely directs investigation under Section 156 (3) of CrPC without proceeding under Sections 200 or 202 of CrPC or issuing process under Section 204 of CrPC, such order is ordinarily before taking cognizance (i.e., at pre-cognizance stage). It was nextly submitted, statutory bar on prosecution



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under Section 111 (2) of KCS Act would not apply to IPC offences.

15. And enquiry report filed by DRCS on 15.09.2022 could not be relied as scope of enquiry was not about criminal offences. It was submitted, allegation of involvement of accused in embezzlement of public funds was serious offence and complaint contained specific allegations with essential ingredients for offences alleged and their veracity would be matter for investigation/trial. On above grounds sought dismissal.

16. Heard learned counsel and perused material on record.

17. This petition is by accused no.1 to 7 challenging order of taking cognizance, registration of FIR and entire proceedings for offences punishable under Sections 403, 405, 409, 418, 120B read with Section 34 of IPC.

18. Main grounds urged are non-filing of affidavit; filing of second complaint when action in pursuance of earlier complaint was in vogue; bar against prosecution without prior



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sanction under Section 111 (2) of KCS Act; and absence of essential ingredients for offences alleged.

19. Learned counsel for respondents is justified in submitting that as against an order of referral of complaint for investigation, an order taking cognizance by learned Magistrate would mandate application of judicial mind to contents of complaint. And said requirement would apply at both stages i.e., cognizance of an offence and cognizance of offence against accused.

20. But, petitioners are not challenging order of learned Magistrate on ground of non-application of mind. Challenge is on ground of non-filing of affidavit. In this regard, there is no dispute about legal position that decision in **Priyanka Srivastava's** case (supra) mandates filing of affidavit along with private complaint. Even though, said requirement is curable as held in **SN Vijayalakshmi's** case (supra), specific observations therein are:

"We sum up our conclusions on this score as follows:

- (i) *Directions issued in Priyanka Srivastava (supra) are mandatory;*
- (ii) *Guidelines laid down in Priyanka Srivastava (supra) operate prospectively;*



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- (iii) *Non-filing of the supporting affidavit is a curable defect **but must be cured before the Magistrate passes any substantive order on the complaint/application**, and;*
(iv) *If the Magistrate proceeds without the requisite affidavit, such order/any consequential orders/proceedings can be quashed on the sole ground of non-compliance with Priyanka Srivastava (supra)”*
(emphasis supplied)

21. In fact, even in **SN Vijayalakshmi’s** case (supra), affidavit was filed prior to Magistrate directing complaint to Police for investigation. While testing legality of an order referring complaint to police for investigation on ground of non-filing of affidavit as mandated by **Priyanka Srivastava’s** case (supra), this Court in **Kishor Piraji Kharat v. Rajeshwar Reddy Karnati Venkata** reported in **2018 SCC OnLine Kar 67**, held:

"2. Respondent No. 1 has filed a private complaint in PCR No. 1547/2016. The learned Magistrate has referred the complaint for investigation under Section 156(3) of Cr.P.C. to the jurisdictional police for investigation and report. The said order of referring the complaint to the police is called in question before the Court. Though the learned counsel has also challenged the reference order on various other grounds, in my opinion the order is not technically sound. In view of the decision rendered by the Apex Court reported in (2015) 6 SCC 287 in the case of PRIYANKA



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SRIVASTAVA v. STATE OF UTTAR PRADESH, the Apex Court has categorically observed at paragraphs 30 and 31 in the following manner:

"30. In our considered opinion, a stage has come in this country where Section 156(3) Cr.P.C. applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of the said Act or under Article 226 of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores.

31. We have already indicated that there has to be prior applications under Sections 154(1) and 154(3) while filing a petition under Section 156(3). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. The warrant for giving a direction that an application under Section 156(3) be supported by an affidavit is so that the person making the



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application should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with law. This will deter him to casually invoke the authority of the Magistrate under Section 156(3). That apart, we have already stated that the veracity of the same can also be verified by the learned Magistrate, regard being had to the nature of allegations of the case. We are compelled to say so as a number of cases pertaining to fiscal sphere, matrimonial dispute/family disputes, commercial offences, medical negligence cases, corruption cases and the cases where there is abnormal delay/laches in initiating criminal prosecution, as are illustrated in Lalita Kumari are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR."

3. In view of the above said dictum of the Apex Court, it is clear that the complainant has to file an affidavit about the efforts made by him under Sections 154(1) and 154(3) of Cr.P.C. and also the affidavit should contain the truthfulness and the contents of the complaint. In the absence of such affidavit being filed, the Magistrate gets no jurisdiction to refer the private complaint for investigation under Section 156(3) of Cr.P.C."

22. It is seen that this Court, quashed referral order, FIR and investigation therein on ground of non-filing of affidavit. Insofar as contentions urged about complaint lacking



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essential ingredients of offences, it was kept open for learned Magistrate to pass appropriate orders in accordance with law.

23. In instant case, there is no dispute about respondent-complainant failing to file affidavit prior to passing of impugned order by learned Magistrate. Thus, impugned order of referral, FIR and investigation conducted thereon would require to be quashed, by directing learned Magistrate to pass orders on tenability of complaint by examining contentions of petitioners about absence of material allegations as well as requirement of prior sanction.

24. Hence, following:

ORDER

- (i) Petition is ***allowed in part***; instead of quashing entire proceedings, order dated 01.09.2022 directing CEN Crime Police Station, Mangaluru to register FIR and investigate, registration of FIR in Crime no.88/2022 for offences punishable under Sections 403, 405, 409, 418,



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120B read with Section 34 of IPC
and investigation done in pursuance
of same stand ***quashed***;

- (ii) Learned Magistrate to pass orders
on complaint in light of observations
made hereinabove and in
accordance with law.

Sd/-
(RAVI V HOSMANI)
JUDGE

AV,GRD
List No.: 1 SI No.: 68