



CNR: KAHC010580552026

NC: 2026:KHC:45249
WP No. 26165 of 2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF AUGUST, 2026

BEFORE

THE HON'BLE MR. JUSTICE M.NAGAPRASANNA

WRIT PETITION NO. 26165 OF 2026 (GM-RES)

BETWEEN:

1. VIJAY,
S/O SHANKAR,
AGED ABOUT 29 YEARS,
R/AT 10/2, 1ST MAIN ROAD,
3RD CROSS, PADARAYANAPURA,
BANGALORE- 560026.
2. ARJUN,
S/O LATE SAMPATH,
AGED ABOUT 31 YEARS,
R/AT NO.158, VALMIKI NAGAR,
2ND MAIN, 10TH CROSS, TOLL GATE,
BANGALORE 560026.
3. MURALI,
S/O VENKATAMUNIYAPPA,
AGED ABOUT 36 YEARS,
R/AT NO. 01, INDIAN PUBLIC SCHOOL,
BEHIND SAHAKAR, KOLAR- 563101.
4. SAMRUDDI MANJUNATHA,
S/O LATE VENKATARAMAPPA,
AGED ABOUT 45 YEARS,
R/AT NO.66 SAI KUTEERA,

Digitally signed
by
PADMAVATHI
B K

Location: High
Court of
Karnataka



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DUO RESIDENCY, 1ST A CROSS,
JAKKUR PLANTATION,
BANGALORE- 560064.

...PETITIONERS

(BY SRI. ANIKETH.K, ADVOCATE)

AND:

1. STATE OF KARNATAKA
BY STATION HOUSE OFFICER,
VEMAGAL POLICE STATION,
KOLAR DISTRICT-563157.
REP. BY STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDING,
BENGALURU-560001.
2. HEAD CONSTABLE,
POLICE OFFICER,
VEMAGAL POLICE STATION,
KOLAR DISTRICT-563 157.

...RESPONDENTS

(BY SMT. DEEPTHI ALVA, HCGP FOR R-1 & R-2)

THIS WP IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA READ WITH SECTION 482 OF CRPC/ SECTION 528 OF BNSS PRAYING TO QUASH THE ENTIRE PROCEEDINGS IN C.C. NO. 32783 OF 2026 PENDING ON THE FILE XLII ACJM, BANGALORE REGISTERED FOR THE OFFENCE PUNISHABLE UNDER SECTION 171(E) AND 171(H) READ WITH SECTION 34 OF IPC AS PER ANNEXURE-A PURSUANT TO THE REGISTRATION OF FIRST INFORMATION REPORT IN CRIME NO. 64 OF 2023 DATED 20.03.2023 AND COMPLAINT DATED 20.03.2023 AS PER ANNEXURES-B & C IN SO FAR AS THE PETITIONERS ARE CONCERNED IN THE INTEREST OF JUSTICE AND EQUITY.



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

CORAM: **HON'BLE MR. JUSTICE M.NAGAPRASANNA**

ORAL ORDER

The petitioners are before this Court, seeking the following prayers:

"i) Issue a writ of certiorari or any other writ thereby quashing the entire proceedings in C.C. No. 32783 of 2026 pending on the file XLII ACJM, Bangalore registered for the offence punishable under Section 171(E) and 171(H) read with section 34 of IPC as per ANNEXURE-A pursuant to the registration of First Information report in Crime no. 64 of 2023 dated: 20.03.2023 and complaint dated: 20.03.2023 As per Annexure - B & C in so far as the Petitioners are concerned in the interest of Justice and Equity.

ii) Issue any other writ or order or direction which the Hon'ble Court deems fit to grant on the facts and circumstances of the case in the interest of justice and equity."

2. Heard Sri.Aniketh K, learned counsel appearing for the petitioners, Smt.Deepthi Alva, learned HCGP appearing for the respondents and have perused the material on record.

3. Learned counsel appearing for the petitioners would submit that the issue in the *lis* stands covered by the judgment



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rendered by this Court in Crl.P.No.8176/2026 disposed on 23.06.2026, wherein it has held as follows:

"The petitioner is before the Court calling in question a proceedings in C.C.No.694/2025 registered for offences punishable under Section 171E of the Indian Penal Code, 1860 ('the IPC' for short) and Section 130 of the Representation of People Act, 1951 and 1988.

2. Heard Sri. S.G. Rajendra Reddy, learned counsel appearing for the petitioner and Smt. Rashmi Patel, learned High Court Government Pleader appearing for respondent No.1.

3. The petitioner is arrayed as accused No.1 in a complaint registered on 03.06.2024, which becomes a crime in crime No.141/2024 for the afore-quoted offences against the petitioner and another. It is the case of the prosecution that the complainant, a member of the flying squad alleges that someone was distributing cash, inducing them to cast votes in favour of one S.P. Dinesh, an independent candidate, and the complainant along with his staff rushed to the spot and found one lady and another person allegedly distributing cash. On enquiry revealed that the names of the said persons were one Shasikala, M.G. and Beeresh. Shasikala/accused No.1, the petitioner is said to be wearing a badge in the name of the candidate S.P. Dinesh and found Rs.30,000/- in her bag, a mobile phone and an election ID card. This led to the registration of the crime, the Police conduct investigation and file a charge sheet. Filing of the charge sheet has driven the petitioner to this Court in the subject petition.

4. Sri. S.G. Rajendra Reddy, learned counsel appearing for the petitioner submits that it does not even make an iota of an offence for it to become offence punishable under Section 171E of the IPC. Moreover, the offence under Section 171E of the IPC being a non cognizable offence, there is no permission taken from the learned Magistrate prior to registration of the crime. He would on these grounds, seek quashment of the proceedings.



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5. The learned High Court Government Pleader would however refute the submission contending that the petitioner has been found while distributing cash. Therefore, she must come out clean in a full blown trial. She would seek dismissal of the petition.

6. The afore-narrated facts are not in dispute. A *suo motu* complaint comes to be registered against the petitioner. The complaint reads as follows:

"ಗೆ,

ಪೊಲೀಸ್ ಇನ್ಸ್‌ಪೆಕ್ಟರ್
ಹೊನ್ನಾಳಿ ಪೊಲೀಸ್ ಠಾಣೆ
ಹೊನ್ನಾಳಿ.

ಮಾನ್ಯರೇ,

ವಿಷಯ: ದಿನಾಂಕ: 3.6.2024 ರಂದು ತಾಲ್ಲೂಕು ಪಂಚಾಯ್ತಿ ಕಛೇರಿಯ ಮುಂದೆ ತುಮ್ಮಿರಕಟ್ಟೆ ರಸ್ತೆಯ ಪಕ್ಕದಲ್ಲಿ ಕಾನೂನುಬಾಹಿರವಾಗಿ ನೂರು ಮೀ ಒಳಗೆ ಮತದಾನ ಮಾಡಲು ಬರುವವರಿಗೆ ಹಣವನ್ನು ಹಂಚುತ್ತಿದ್ದ ಶಶಿಕಲಾ ಹಾಗೂ ಬೀರೇಶ್ ರವರ ವಿರುದ್ಧ ಕಾನೂನು ಕ್ರಮ ಜರುಗಿಸುವ ಕುರಿತು.

ಈ ಮೇಲ್ಕಂಡ ವಿಷಯಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ ಸಹಾಯಕ ಚುನಾವಣಾ ಅಧಿಕಾರಿಗಳ ಆದೇಶ ಸಂಖ್ಯೆ:ನಂ.ಇಎಲ್‌ಎನ್. ಸಿಆರ್/71/2023-24 ದಿನಾಂಕ: 02.05.2024 ರಂತೆ ಹೊನ್ನಾಳಿ ತಾಲ್ಲೂಕಿನ ನೈರುತ್ಯ ಪಧವೀಧರ ಕ್ಷೇತ್ರ ಹಾಗೂ ಶಿಕ್ಷಕರ ಕ್ಷೇತ್ರದ ಫ್ಲೈಯಿಂಗ್ ಸ್ಕ್ವಾಡ್ (Flying squad) ಹಾಗೆ ರಾಯನಿರ್ವಹಿಸುತ್ತಿದ್ದು. ಈ ದಿನ 03.06.24 ರಂದು ಸುಮಯ 9-35 ಗಂಟೆ ಸಮಯದಲ್ಲಿ ತಾಲ್ಲೂಕು ಪಂಚಾಯ್ತಿ ಕಛೇರಿಯ ಮುಂದೆ ತುಮ್ಮಿರಕಟ್ಟೆ ರಸ್ತೆಯ ಪಕ್ಕದಲ್ಲಿ ವ್ಯಾನಿಟೆ ಬ್ಯಾಗ್‌ನಲ್ಲಿ ಹಣವನ್ನು ಇಟ್ಟುಕೊಂಡಿದ್ದು, ಪಕ್ಷೇತರ ಅಭ್ಯರ್ಥಿ ಎಸ್.ಪಿ. ದಿನೇಶ್ ರವರ ಪರವಾಗಿ ಮತಹಾಕಲು ಒತ್ತಾಯಿಸಿ ಉದ್ದೇಶ ಪೂರಕವಾಗಿ ಹಣವನ್ನು ಹಂಚುತ್ತಿದ್ದಾರೆಂದು ಹೊನ್ನಾಳಿ ಉಪವಿಭಾಗಾಧಿಕಾರಿಗಳು ತಿಳಿಸಿದ ಮೇರೆಗೆ ನಾವುಗಳು ಸದರಿ ಸ್ಥಳದಲ್ಲಿದ್ದ ಮಹಿಳೆಯನ್ನು ಮತ್ತು ಪುರುಷನನ್ನು ಚುನಾವಣಾ ಕರ್ತವ್ಯದಲ್ಲಿದ್ದ ಮಹಿಳಾ ಪೊಲೀಸ್ ಪರಿಶೀಲಿಸಿದಾಗ ಸದರಿ ಮಹಿಳೆಯ ಹೆಸರು ಶಶಿಕಲಾ ಬಿನ್ ಗಂಗಾಧರಪ್ಪ ಮಾದಾಪುರ ಗ್ರಾಮ ನ್ಯಾಮತಿ ತಾಲ್ಲೂಕು ಎಂದು ತಿಳಿಸಿದ್ದು ಸದರಿ ಮಹಿಳೆಯ ಬ್ಯಾಗ್‌ನಲ್ಲಿ ಮತದಾರರಿಗೆ ಹಂಚಲು ಇರಿಸಿದ್ದ 30,000/- (ಮೂವತ್ತು ಸಾವಿರ ನಗದು ಹಣ) ವಿವೋ ಕಂಪೆನಿಯ ಮೊಬೈಲ್ ಸ್ಮಾರ್ಟ್ ಫೋನ್ ಹಾಗೂ ಚುನಾವಣಾ ಐ.ಡಿ. ಕಾರ್ಡ್ ಹಾಗೂ ಸದರಿ ಮಹಿಳೆಗೆ ಸಹಕಾರ ಕೊಡುತ್ತಿದ್ದ ಬೀರೇಶ್ ತಂದೆ ಬಸಪ್ಪ, 29 ವರ್ಷ, ಬಸವನಹಳ್ಳಿ ನ್ಯಾಮತಿ ತಾಲ್ಲೂಕು ಎಂದು ತಿಳಿಸಿದ್ದು ಸದರಿಯವರು ಚುನಾವಣೆ ನಡೆಯುತ್ತಿರುವಾಗ ಕಾನೂನು ಬಾಹಿರವಾಗಿ ಪಕ್ಷೇತರ ಅಭ್ಯರ್ಥಿಯ ಪರವಾಗಿ (ಎಸ್. ದಿನೇಶ್) ಮತದಾರರಿಗೆ ಮತಹಾಕಲು ಹಣದ ಆಮಿಷ ಒಡ್ಡಿ ಹಣವನ್ನು ಹಂಚುತ್ತಿದ್ದು ವ್ಯಕ್ತಿಯನ್ನು ಪರಿಶೀಲಿಸಲಾಗಿ ಆತನ ಬಳಿ ರೀಯಲ್‌ಮೀ ಸ್ಮಾರ್ಟ್ ಫೋನ್ ಇದ್ದು ಮತ್ತು ಒಂದು ಬೈಕ್ ಕೀ ಗೊಂಚಲು ಇದ್ದು ಮುಂದಿನ ಕ್ರಮಕ್ಕಾಗಿ ಪಂಚರುಗಳ



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ಸಮಕ್ಷಮ ಪಂಚನಾಮೆ ಮೂಲಕ ಅಮಾನತ್ತು ಪಡೆಸಿಕೊಂಡಿದ್ದು ಸದರಿಯವರ ವಿರುದ್ಧ ಕಾನೂನು ಕ್ರಮ ಜರುಗಿಸಲು ಕೋರಿಕೊಳ್ಳುತ್ತೇನೆ. ಇದರೊಂದಿಗೆ ಮೂಲ ಪಂಚನಾಮೆ, ಅಮಾನತ್ತು ಪಡಿಸಿದ ನಗದು ಹಣ ಹಾಗೂ ಇತರೆ ಅಮಾನತ್ತು ಮಾಡಿದ ವಸ್ತುಗಳನ್ನು ಅರ್ಜಿಯೊಂದಿಗೆ ಮುಂದಿನ ಕ್ರಮಕ್ಕಾಗಿ ಸಲ್ಲಿಸಿರುತ್ತೇನೆ. ಸದರಿ ಮಹಿಳೆಯು ಮತಕೇಂದ್ರದಿಂದ 100 ಮೀಟರ್ ಒಳಗೆ ಪಕ್ಷೇತರ ಅಭ್ಯರ್ಥಿಯ ಬ್ಯಾಡ್ಜ್ ಧರಿಸಿ ಮತದಾರರಿಗೆ ಹಣ ಹಂಚುತ್ತಾ ಮತ ಚಲಾಯಿಸಲು ಒತ್ತಾಯಿಸಿ ಚುನಾವಣಾ ನೀತಿ ಸಂಹಿತೆ ಉಲ್ಲಂಘಿಸಿರುತ್ತಾರೆ.

ವಂದನೆಗಳೊಂದಿಗೆ,

ತಮ್ಮವಿಶ್ವಾಸಿ

ಸಹಿ

ಶಶಿಧರ್ ಸಿ.ಯು.

(Flying Syhad Team)

ನೈರುತ್ಯ ಪಧವೀಧರ ಹಾಗೂ ಶಿಕ್ಷಕರ ಕ್ಷೇತ್ರ

ಹೊನ್ನಾಳಿ ತಾ: ದಾವಣಗೆರೆ ಜಿ:

ಹುದ್ದೆ:ಕೃಷಿ ಅಧಿಕಾರಿ

ರೈತ ಸಂಪರ್ಕ ಕೇಂದ್ರ, ಸಾಸ್ತಿಹಳ್ಳಿ-1

ಹೊನ್ನಾಳಿ ತಾಲ್ಲೂಕು.

ದಿನಾಂಕ: 3.06.2024 ರಂದು ಮಧ್ಯಾಹ್ನ 12-00 ಗಂಟೆಗೆ ರಾಣಿಯಲ್ಲಿದ್ದ ಪಿಕ್ಯಾದುದಾರರು ನೀಡಿದ ಪಿಕ್ಯಾದು ಹಾಗೂ ಅಮಾನತ್ತು ಪಂಚನಾಮೆ, ಅಮಾನತ್ತುಪಡಿಸಿದ ವಸ್ತುಗಳನ್ನು ಹಾಜರುಪಡಿಸಿದ್ದು ಸ್ವೀಕರಿಸಿಕೊಂಡು ರಾಣಾ ಕ್ರೈಂ ನಂ: 141/2014 ಕಲಂ, 171 (ಇ) ಐ ಪಿ ಸಿ 130 ಆರ್.ಪಿ.ಆಕ್ಟ್ 1951 ರೀತ್ಯಾ ಪ್ರಕರಣ ದಾಖಲಿಸಿರುತ್ತೇನೆ.

ಸಹಿ/

ಪೊಲೀಸ್ ಉಪ ನಿರೀಕ್ಷಕರರು

ಹೊನ್ನಾಳಿ ಪೊಲೀಸ್ ಠಾಣೆ"

The Police conduct investigation and file a charge sheet.
The summary of the charge sheet reads as follows:

"17. ಕೇಸಿನ ಸಂಕ್ಷಿಪ್ತ ಸಾರಾಂಶ

ಸಹಾಯಕ ಚುನಾವಣಾ ಅಧಿಕಾರಿಗಳ ಆದೇಶ ಸಂಖ್ಯೆ NO:ELN/CR/71/2023-24 ದಿನಾಂಕ-02.05.2024 ರ ಆದೇಶದಂತೆ ಹೊನ್ನಾಳಿ ತಾಲ್ಲೂಕಿನ ನೈರುತ್ಯ ಪಧವೀಧರ ಕ್ಷೇತ್ರ ಮತ್ತು ಶಿಕ್ಷಕರ ಕ್ಷೇತ್ರಕ್ಕೆ ಸಂಬಂಧಪಟ್ಟಂತೆ ದಿನಾಂಕ-03.06.2024 ರಂದು ಹೊನ್ನಾಳಿ ಟೌನ್ ನ ತಾಲೂಕು ಪಂಚಾಯ್ತಿ ಕಚೇರಿಯ ಕೊಠಡಿಯಲ್ಲಿ ಮತಗಟ್ಟೆ ಸಂಖ್ಯೆ-27 ರಲ್ಲಿ, ಮತದಾನ ನಡೆಯುತ್ತಿದ್ದಾಗ ಕಾಲಂ ನಂ 12 ರಲ್ಲಿ ಕಂಡ



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ಆರೋಪಿತರಿಬ್ಬರು ದಿನಾಂಕ-03.06.2024 ರಂದು ಬೆಳಿಗ್ಗೆ, 09.30 ಗಂಟೆಯಿಂದ 09.45 ಗಂಟೆಯ ಒಳಗಾಗಿ ಕಾನೂನು ಬಾಹಿರವಾಗಿ ಚುನಾವಣಾ ನೀತಿ ಸಂಹಿತೆಯನ್ನು ಉಲ್ಲಂಘನೆ ಮಾಡಿ ಮತದಾನ ನಡೆಯುವ ಮತಕೇಂದ್ರದಿಂದ 100 ಮೀಟರ್ ಒಳಗೆ ನಿಂತುಕೊಂಡು ಚುನಾವಣೆಗೆ ಪಕ್ಷೇತರ ಅಭ್ಯರ್ಥಿಯಾಗಿ ಸ್ಪರ್ಧಿಸಿದ್ದ ಎಸ್ ಪಿ ದಿನೇಶ್ ರವರ ಬ್ರಾಡ್ ಅನ್ನು ಎ1 ಆರೋಪಿಯು ತನ್ನ ಮೈ ಮೇಲೆ ಧರಿಸಿ ಎಸ್ ಪಿ ದಿನೇಶ್ ರವರಿಗೆ ಮತ ಹಾಕುವಂತೆ ಮತ ಕೇಂದ್ರಕ್ಕೆ ಬರುವ ಮತದಾರರಿಗೆ ಹಣ ಹಂಚಿಕೆ ಮಾಡಿ ಲಂಚಗುಳಿತನದ ಆರೋಪವೆಸಗಿರುವುದು ತನಿಖೆಯಿಂದ ದೃಢಪಟ್ಟ ಮೇರೆಗೆ ಆರೋಪಿತರುಗಳ ವಿರುದ್ಧ ಕಲಂ 171(ಇ) ಐಪಿಸಿ ಮತ್ತು ಕಲಂ 130 ರೀಪ್ರೆಸೆಂಟೇಷನ್ ಆಫ್ ಪೀಪಲ್ ಆಕ್ಟ್ 1951 ರ ರೀತ್ಯಾ ಘನ ನ್ಯಾಯಾಲಯಕ್ಕೆ ದೋಷಾರೋಪಣಾ ಪಟ್ಟಿಯನ್ನು ಸಲ್ಲಿಸಿಕೊಂಡಿರುತ್ತದೆ."

The issue now would be whether this would make out the ingredients of the offence under Section 171E of the IPC or Section 130 of the Representation of People Act.

7. The issue need not detain this Court for long or delve deep into the matter. Considering the very same offences, this Court in Crl.P.No.4135/2023 disposed on 10.01.2025 has held as follows:

"3. The facts, in brief, germane are as follows:-

The 1st respondent around 2.30 p.m. conducts a search in the house of the petitioner. At about 6.30 p.m. the 2nd respondent/ Member of Flying Squad appointed for the purpose of conduct of searches in connection with the then ensuing Karnataka Legislative Assembly elections, registers a complaint against the petitioner alleging offence punishable under Section 171E of the IPC. The 1st respondent itself registers a non-cognizable report and presented the same before the learned Magistrate. The learned Magistrate on presentation of a non-cognizable report, as the offence alleged was under Section 171E of the IPC, permits registration of crime in terms of sub-section (2) of Section 155 of the Cr.P.C.. It then becomes a crime in Crime No.65 of 2023 which is now numbered as Crime No.1125 of 2023 for the aforesaid offence. The registration of crime is what has driven the petitioner to this Court in the subject petition.

4. The learned counsel for the petitioner Kum. Keerthana Nagaraj would submit that the offence under Section 171E of the IPC is non-cognizable and, therefore, the jurisdictional Police ought to have referred the informant to the Magistrate and jurisdictional police themselves have not sought permission to register the crime. This is the procedural violation that the petitioner projects. She would place reliance upon the judgment of the coordinate Bench of this Court in **B.S. YEDIYURAPPA v. STATE OF KARNATAKA - (2020) 4 KCCR 2649.**



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5. Per contra, the learned Additional State Public Prosecutor would refute the submissions by placing reliance upon the judgment rendered by this Court in **VIJESH PILLAI v. STATE OF KARNATAKA – 2023 SCC OnLine KAR 32** wherein it is held that either the informant or the Station House Officer can seek permission to register the crime and it need not be the informant alone. In that light he would submit that the permission granted by the learned Magistrate at the instance of the 1st respondent cannot be invalidated. He would submit, even on merits of the matter that Section 171E of the IPC is found in the case at hand.

6. The learned counsel for the petitioner would join issue in contending that there are no ingredients of Section 171E of the IPC found in the case at hand. Therefore, even on merits of the matter, the learned counsel would seek quashment of proceedings.

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

8. The afore-narrated facts are not in dispute. The search that is conducted in the house of the petitioner leads to registration of a complaint. The complaint reads as follows:

“ರವರಿಗೆ

ಆರಕ್ಷಕ ನಿರೀಕ್ಷಕರು

ಮಲ್ಲೇಶ್ವರಂ ಪೊಲೀಸ್ ಠಾಣೆ ಬೆಂಗಳೂರು

ಮಾನ್ಯರೇ,

ವಿಷಯ: ಗಾಂಧಿನಗರ ವಿಧಾನ ಸಭಾ ಕ್ಷೇತ್ರದ ಬಿಜೆಪಿ ಪಕ್ಷದ ಸಂಭವನೀಯ ಅಭ್ಯರ್ಥಿ ಶ್ರೀ ಕೃಷ್ಣಯ್ಯ ಶೆಟ್ಟಿ ಎಂಬುವವರ ಮಲ್ಲೇಶ್ವರಂ ಮನೆಯಲ್ಲಿ ಮತದಾರರಿಗೆ ಹಂಚಿಕೆ ಮಾಡಿ ಮತಗಳ ಆಮಿಷವೊಡ್ಡಲು ಸಂಗ್ರಹಿಸಿದ್ದ ದಿನಸಿ ದಾಸ್ತಾನುಗಳ ಕುರಿತು ದೂರು ದಾಖಲಿಸಿ ಕಾನೂನು ಕ್ರಮವಹಿಸುವ ಬಗ್ಗೆ.

ಉಲ್ಲೇಖ: ದಿನಾಂಕ: 01-04-2023 ರಂದು ಸದರಿ ಸ್ಥಳಕ್ಕೆ ಭೇಟಿ ನೀಡಿ ದಿನಸಿ ದಾಸ್ತಾನುಗಳನ್ನು ಪರಿಶೀಲಿಸಿರುವ ಮೇರೆಗೆ.

ಮೇಲ್ಕಂಡ ವಿಷಯಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ, 2023 ಕರ್ನಾಟಕ ವಿಧಾನಸಭಾ ಚುನಾವಣೆಗಳನ್ನು ನಡೆಸುತ್ತಿರುವ ಅಂಗವಾಗಿ ನಂ.157, ಮಲ್ಲೇಶ್ವರಂ ವಿಧಾನಸಭಾ ಕ್ಷೇತ್ರದಲ್ಲಿ ಸಂಭವಿಸಬಹುದಾದ ಚುನಾವಣೆ ನೀತಿ ಸಂಹಿತೆಗಳನ್ನು ಉಲ್ಲಂಘನೆಯಾಗದಂತೆ ಚುನಾವಣೆ ನಡೆಸುವ ಸಂಬಂಧ ಮುಖ್ಯ



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ಚುನಾವಣಾಧಿಕಾರಿಯವರಿಂದ ರಚಿತವಾಗಿರುವ Model code of Conduct (MCC) ಕಾರ್ಯಕ್ಕೆ ನೋಡಲ್ ಅಧಿಕಾರಿಗಳ ನೇತೃತ್ವದಲ್ಲಿ ಕಾರ್ಯ ನಿರ್ವಹಿಸುತ್ತಿರುವುದು ಸರಿಯಷ್ಟೆ

ಗಾಂಧಿನಗರ ವಿಧಾನ ಸಭಾ ಕ್ಷೇತ್ರದ ಬಿಜೆಪಿ ಪಕ್ಷದ ಸಂಭವನೀಯ ಅಭ್ಯರ್ಥಿಯಾದ ಶ್ರೀ ಕೃಷ್ಣಯ್ಯ ಶೆಟ್ಟಿ ಎಂಬುವವರ ಮನೆಯಲ್ಲಿ ಮತದಾರರಿಂದ ಮತಗಳನ್ನು ಗಳಿಸಲು ಆಮಿಷವೊಡ್ಡಲು ಅಕ್ರಮವಾಗಿ ದಿನಸಿ ದಾಸ್ತಾನುಗಳನ್ನು ಸಂಗ್ರಹಿಸಿರುವ ಬಗ್ಗೆ ಮಾನ್ಯ ನೋಡಲ್ ಅಧಿಕಾರಿಗಳಿಗೆ ಬಲ್ಲ ಮೂಲಗಳಿಂದ ದೂರು ಬಂದ ಹಿನ್ನೆಲೆಯಲ್ಲಿ ಮಾನ್ಯ ನೋಡಲ್ ಅಧಿಕಾರಿಗಳು ಕರ್ತವ್ಯದಲ್ಲಿದ್ದ FST -05 ತಂಡಕ್ಕೆ ನೀಡಿದ ಆದೇಶದಂತೆ ನೋಡಲ್ ಅಧಿಕಾರಿಗಳ ನೇತೃತ್ವದಲ್ಲಿ ಮಲ್ಲೇಶ್ವರಂ ಪೊಲೀಸ್ ಠಾಣೆಯ ಇನ್ಸ್‌ಪೆಕ್ಟರ್ ರವರೊಂದಿಗೆ ಜಂಟಿಯಾಗಿ ಉಲ್ಲೇಖದ ದಿನಾಂಕದಂದು ಮಲ್ಲೇಶ್ವರಂ, 10 ನೇ ಮೈನ್, 17 ನೇ ಕ್ರಾಸ್‌ನಲ್ಲಿರುವ ಮನೆ ನಂ: 50 ರ ಮನೆಯಲ್ಲಿ ಖುದ್ದ ಪರಿಶೀಲಿಸಲಾಯಿತು. ಸ್ಥಳದಲ್ಲಿ ಲಕ್ಷಾಂತರ ರೂಪಾಯಿ ಬೆಲೆ ಬಾಳುವ ದಿನಸಿ ದಾಸ್ತಾನುಗಳನ್ನು ಸಂಗ್ರಹಿಸಿರುವುದು ಕಂಡುಬಂದಿರುತ್ತದೆ. ದಾಸ್ತಾನುಗಳನ್ನು ಸಂಗ್ರಹಿಸಿರುವುದಕ್ಕೆ ಅನುಮತಿ/ರಸೀದಿ/ಇತ್ಯಾದಿ ದಾಖಲಾತಿಗಳನ್ನು ಕೇಳಿದಾಗ ಸಂಗ್ರಹದಾರರು/ಅವರ ಕಡೆಯವರು ಯಾವುದೇ ದಾಖಲೆಗಳನ್ನು ನೋಡಲ್ ಅಧಿಕಾರಿಗಳಿಗೆ ಹಾಜರುಪಡಿಸಿರುವುದಿಲ್ಲ.

ಮತದಾರರ ಮತಗಳನ್ನು ಸೆಳೆಯುವ ಉದ್ದೇಶದಿಂದ ಮೇಲ್ಕಂಡ ದಿನಸಿ ದಾಸ್ತಾನುಗಳನ್ನು ಅಕ್ರಮವಾಗಿ ಸಂಗ್ರಹಿಸಿರುವುದು ಪ್ರಜಾ ಪ್ರತಿನಿಧಿ ಕಾಯ್ದೆ ಮತ್ತು ಐಪಿಸಿ ಕಲಂಗಳನ್ನು ಉಲ್ಲಂಘಿಸಿದಂತಾಗಿರುವುದರಿಂದ ಈ ದಾಸ್ತಾನುಗಳನ್ನು ಸಂಗ್ರಹಿಸಿರುವವರ ವಿರುದ್ಧ ಪ್ರಜಾ ಪ್ರತಿನಿಧಿ ಕಾಯ್ದೆ ಹಾಗೂ ಐ.ಪಿ.ಸಿ. ಕಾಯ್ದೆ ಪ್ರಕಾರ ಕಾನೂನು ಕ್ರಮವಹಿಸಲು ಈ ಮೂಲಕ ಕೋರಿದೆ

ಸಹಿ/-

[ಶ್ರೀ ಸಿ ವಿ ಲಕ್ಷ್ಮಣಪ್ಪ]

FST-05 ತಂಡ

ಸಹಾಯಕ ಅಭಿಯಂತರರು, ಬಿಬಿಎಂಪಿ,

ಪಾರ್ಡ್ ನಂ: 76, ಗಾಯತ್ರಿ ನಗರ,"

The crux of the complaint is that in the house of the petitioner, he had stored illegal ration worth several lakhs of rupees, for which the petitioner failed to produce any documents. It is alleged that the grains was stored for distribution during the elections, to woo the voters. Based upon the said complaint, permission is sought from the hands of the learned Magistrate. Permission is granted for registration of crime.

9. The issue whether the informant has to go to the learned Magistrate to seek permission or the Station House Officer need not be gone into, as in the opinion of the Court, the offence under Section 171E is not even attracted in the case at hand. Section 171E of the IPC reads as follows:



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"171-E. Punishment for bribery.—Whoever commits the offence of bribery shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both:

Provided that bribery by treating shall be punished with fine only.

Explanation.—“Treating” means that form of bribery where the gratification consists in food, drink, entertainment, or provision.”

For an offence to become punishable under Section 171E of the IPC which is the punishment for bribery, the ingredients as necessary under Section 171B are required to be present. Section 171B of the IPC reads as follows:

"171-B. Bribery.—(1) Whoever—

- (i) gives a gratification to any person with the object of inducing him or any other person to exercise any electoral right or of rewarding any person for having exercised any such right; or
- (ii) accepts either for himself or for any other person any gratification as a reward for exercising any such right or for inducing or attempting to induce any other person to exercise any such right,

commits the offence of bribery:

Provided that a declaration of public policy or a promise of public action shall not be an offence under this section.

(2) A person who offers, or agrees to give, or offers or attempts to procure, a gratification shall be deemed to give a gratification.

(3) A person who obtains or agrees to accept or attempts to obtain a gratification shall be deemed to accept a gratification, and a person who accepts a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done, shall be deemed to have accepted the gratification as a reward.”

Section 171B mandates that any person who gives gratification to any person with an object of inducing any other person to exercise electoral right or any person accepts either for himself or for other person any gratification is said to be committing the offence of bribe.



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10. What is found in the case at hand is not distribution of ration by the petitioner but stock of ration. This, unless the petitioner is caught distributing or anybody else receiving such distribution of ration, would not attract the ingredients of Section 171B of the IPC for it to become an offence under Section 171E of the IPC.

11. This Court in the case of **SHRI YUVARAJ v. THE STATE OF KARNATAKA**¹, held as follows:

"....

3. The learned counsel for the petitioner would submit that the issue in the case at hand stands covered by the judgment rendered by the Co-ordinate Bench of this Court in Crl.P.No.1560/2024, disposed of on 05.04.2024, wherein the co-ordinate Bench of this Court has held as follows:

"2. Learned counsel for the Petitioner vehemently argues that the proceedings are liable to be voided because:

- i) What all has been alleged in the FIR/Charge Sheet do not disclose commission of any offence and the ingredients of the alleged offences are lacking; therefore, the matter would fit into one of the postulates in **STATE OF HARYANA vs CHOWDHARY BHAJAN LAL, AIR 1992 SC 604** which has been reiterated in **M/S NEEHARIKA INFRASTRUCTURES PVT. LTD. Vs. STATE OF MAHARASHTRA AND OTHERS, 2021 SCC OnLine 315**.
- ii) The order of the learned Magistrate which grants permission which occurs at page No.33 of the PETITION is as cryptic as can be and further it does not disclose any application of mind nor it is reasoned.

3. Learned Addl. SPP appearing for the Respondent – State vehemently opposes the Petition contending that by looking to the entire material of charge Sheet filed by the police after investigation, it cannot be said that the proceedings are unsustainable. If petitioner faces the trial, no prejudice would be caused to her and that the same would do justice to herself and to the public interest. Even otherwise, petitioner can tap the provisions for discharge or the like, at the hands of learned Magistrate himself, instead of pressing this petition. So contending, he seeks dismissal of the Writ Petition.

4. Having heard the learned counsel for the parties and having perused the Petition papers, this Court is inclined to grant indulgence in the matter for the following reasons:

¹ Crl.P.No.7180 of 2024 dated 08.08.2024



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(a) Chapter IXA came to be added to the statute book namely IPC, 1860 by way of amendment, with intent to bring purity in election process. It seeks to make punishable under the ordinary penal law, bribery, undue influence & personation, and certain other malpractices at elections not only to the Legislative bodies, but also to membership of public authorities where the law prescribes a method of election. Further, it intends to debar persons guilty of malpractices from holding positions of public responsibility for a specific period. This chapter has to be read along with the relevant provisions of the Representation of People Act, 1951 as it contains additional penalties for certain offences, e.g., sections 171E to 171F of this Code. Thus a conviction under section 171E or section 171F of IPC amounts to a disqualification u/s.8 of RP Act, 1951. This chapter comprises of both a dictionary clause and penal provisions.

(b) The offence of bribery is defined under Section 171B of IPC as under:

"171B. Bribery—

- (1) Whoever—(i) gives a gratification to any person with the object of inducing him or any other person to exercise any electoral right or of rewarding any person for having exercised any such right; or
(ii) accepts either for himself or for any other person any gratification as a reward for exercising any such right or for inducing or attempting to induce any other person to exercise any such right; commits the offence of bribery:

Provided that a declaration of public policy or a promise of public action shall not be an offence under this section.

(2) A person who offers, or agrees to give, or offers or attempts to procure, a gratification shall be deemed to give a gratification.

(3) A person who obtains or agrees to accept or attempts to obtain a gratification shall be deemed to accept a gratification, and a person who accepts a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done, shall be deemed to have accepted the gratification as a reward"

This section defines bribery as an electoral offence, primarily as the giving or accepting of a gratification either as a motive or as a reward to any person, either to induce him to stand,



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or not to stand as, or to withdraw from being a candidate or to vote or refrain from voting at an election. In terms of sub-section (2) inter alia it includes offers or agreements to offer and attempt to procure a gratification. "Gratification" is explained in section 161 as not being restricted to only pecuniary things. Section 171-B(1)(i) provides that if gratification is given to any person inducing him or any other person to exercise any electoral right, it amounts to commission of the offence of bribery.

c) In the above backdrop, let me examine the penal provision namely Section 171(E) of IPC which reads as under:

"Punishment for bribery.—Whoever commits the offence of bribery shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both: Provided that bribery by treating shall be punished with fine only."

In order to fit into the definition of 'bribery' the requirement is that there should be a person who gives or at least offers to give any gratification as a reward for exercising the electoral right or for having exercised such a right, by another person. Thus, there should be minimum two persons involved in the act, namely one who bribes or offers to bribe and the other who is bribed or offered bribe.

(d) Added to the above, it is not the case of respondents that the alleged act has been done by the person concerned for and on behalf of the petitioner herein. To put it succinctly, what emerges from the complaint is that a particular person was carrying the money and that the same has been seized since it was suspected to be used for electoral offences. All that does not amount to the offence of bribery, even if the allegations are taken at their face value, and therefore there is no scope for invoking section 171(E) of IPC, as rightly submitted by learned counsel for the petitioner.

e) The next allegation in the complaint relates to the offence punishable under section 133 of the Representation of People Act, 1951. The same reads as under:

"Penalty for illegal hiring or procuring of conveyance at elections.—If any person is guilty of any such corrupt practice as is specified in clause (5) of section 123 at or in connection with an election, he shall be punishable with imprisonment which may extend to three months and with fine."



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The above penal provision in turn refers to a corrupt practice as is specified inter alia in clause 5 of section 123 at or in connection with an election. Section 123 deals with certain acts as corrupt practices. Sub-section(5) specifies one of them, with the following text:

"(5) The hiring or procuring, whether on payment or otherwise, of any vehicle or vessel by a candidate or his agent or by any other person [with the consent of a candidate or his election agent] [or the use of such vehicle or vessel for the free conveyance] of any elector (other than the candidate himself the members of his family or his agent) to or from any polling station provided under section 25 or a place fixed under sub-section (1) of section 29 for the poll"

Employing the vehicle or vessel as contemplated in the above provision, is a sine qua non for the invocation of section 133. It is nobody's case that something of the kind exists in the allegations leveled against the person concerned and more particularly, the petitioner herein. In the absence of ingredients as specified in section 123(5), one would be miles away from the precincts of section 133 of 1951 Act.

In the above circumstances, this petition succeeds. The proceedings in Crime No.52/2023 of Nipani Town Police Station, now pending in CC No.2990/2023 on the file of learned JMFC, Nipani, for the offences punishable under sections 120(1) & 133 of Representation of People Act, 1951 and also for the offence punishable under Section 171(E) of IPC, 1860 are hereby quashed. Petitioner is set free of the subject case."

4. In the light of the order passed by the Co-ordinate Bench of this Court (supra) and for the reasons aforementioned, the following:

ORDER

- i) The Criminal Petition is allowed.
- ii) The proceedings in C.C.No.2990/2023 pending on the file of the Additional Civil Judge and J.M.F.C., Court, Nipani, qua the petitioner, stand quashed."

(Emphasis in original)

12. In light of the issue standing covered by the order passed by this Court (supra) and on finding no ingredient of Section 171E of IPC being attracted in the case at hand, the crime registered against the petitioner is rendered unsustainable. The unsustainability, leads to its obliteration.



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13. For the aforesaid reasons, the following:

ORDER

- (i) Criminal Petition is allowed.
- (ii) Crime registered in Crime No.1125 of 2023 (Old No.65 of 2023) by the Malleswaram Police Station, Bengaluru and pending before the XLII Additional Chief Metropolitan Magistrate, Bengaluru stands quashed."

The judgment is followed again in the cases of **G. RAGHU ACHAR Vs. THE STATE OF KARNATAKA** in CrI.P.No.10634/2024 disposed on 04.12.2024, has held as follows:

3. Learned counsel appearing for the petitioner submits that the issue in the *lis* stands answered by the judgment rendered by the law as elucidated in CrI.P.No.1560/2024 disposed on 05.04.2024 by the Co-ordinate Bench of this Court. The Co-ordinate Bench of this Court in the aforesaid petition, has held as follows:

"This Petition seeks quashment of the proceedings initiated vide FIR No.52/2023 registered on 10.05.2023 by Nipani Town Police which has been given CC No. 2990/2023 after taking cognizance for the offences punishable under Section 171(E) of IPC 1860 & for the offence punishable under Section 123 of Representation of People Act, 1951.

2. Learned counsel for the Petitioner vehemently argues that the proceedings are liable to be voided because:

- i) What all has been alleged in the FIR/Charge Sheet do not disclose commission of any offence and the ingredients of the alleged offences are lacking; therefore, the matter would fit into one of the postulates in **STATE OF HARYANA vs CHOWDHARY BHAJAN LAL, AIR 1992 SC 604** which has been reiterated in **M/S NEEHARIKA INFRASTRUCTURES PVT. LTD. Vs. STATE OF MAHARASHTRA AND OTHERS, 2021 SCC OnLine 315.**
- ii) The order of the learned Magistrate which grants permission which occurs at page No.33 of the PETITION is as cryptic as can be and further it does not disclose any application of mind nor it is reasoned.



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3. Learned Addl. SPP appearing for the Respondent – State vehemently opposes the Petition contending that by looking to the entire material of charge Sheet filed by the police after investigation, it cannot be said that the proceedings are unsustainable. If petitioner faces the trial, no prejudice would be caused to her and that the same would do justice to herself and to the public interest. Even otherwise, petitioner can tap the provisions for discharge or the like, at the hands of learned Magistrate himself, instead of pressing this petition. So contending, he seeks dismissal of the Writ Petition.

4. Having heard the learned counsel for the parties and having perused the Petition papers, this Court is inclined to grant indulgence in the matter for the following reasons:

(a) Chapter IXA came to be added to the statute book namely IPC, 1860 by way of amendment, with intent to bring purity in election process. It seeks to make punishable under the ordinary penal law, bribery, undue influence & personation, and certain other malpractices at elections not only to the Legislative bodies, but also to membership of public authorities where the law prescribes a method of election. Further, it intends to debar persons guilty of malpractices from holding positions of public responsibility for a specific period. This chapter has to be read along with the relevant provisions of the Representation of People Act, 1951 as it contains additional penalties for certain offences, e.g., sections 171E to 171F of this Code. Thus a conviction under section 171E or section 171F of IPC amounts to a disqualification u/s.8 of RP Act, 1951. This chapter comprises of both a dictionary clause and penal provisions.

(b) The offence of bribery is defined under Section 171B of IPC as under:

“171B. Bribery—

(1) Whoever—(i) gives a gratification to any person with the object of inducing him or any other person to exercise any electoral right or of rewarding any person for having exercised any such right; or

(ii) accepts either for himself or for any other person any gratification as a reward for exercising any such right or for inducing or attempting to induce any other person to exercise any such right; commits the offence of bribery:

Provided that a declaration of public policy or a promise of public action shall not be an offence under this section.

(2) A person who offers, or agrees to give, or offers or attempts to procure, a gratification shall be deemed to give a gratification.



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(3) A person who obtains or agrees to accept or attempts to obtain a gratification shall be deemed to accept a gratification, and a person who accepts a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done, shall be deemed to have accepted the gratification as a reward”.

This section defines bribery as an electoral offence, primarily as the giving or accepting of a gratification either as a motive or as a reward to any person, either to induce him to stand, or not to stand as, or to withdraw from being a candidate or to vote or refrain from voting at an election. In terms of sub-section (2) inter alia it includes offers or agreements to offer and attempt to procure a gratification. “Gratification” is explained in section 161 as not being restricted to only pecuniary things. Section 171-B(1)(i) provides that if gratification is given to any person inducing him or any other person to exercise any electoral right, it amounts to commission of the offence of bribery.

c) In the above backdrop, let me examine the penal provision namely Section 171(E) of IPC which reads as under:

“Punishment for bribery.—Whoever commits the offence of bribery shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both: Provided that bribery by treating shall be punished with fine only.”

In order to fit into the definition of ‘bribery’ the requirement is that there should be a person who gives or at least offers to give any gratification as a reward for exercising the electoral right or for having exercised such a right, by another person. Thus, there should be minimum two persons involved in the act, namely one who bribes or offers to bribe and the other who is bribed or offered bribe.

(d) Added to the above, it is not the case of respondents that the alleged act has been done by the person concerned for and on behalf of the petitioner herein. To put it succinctly, what emerges from the complaint is that a particular person was carrying the money and that the same has been seized since it was suspected to be used for electoral offences. All that does not amount to the offence of bribery, even if the allegations are taken at their face value, and therefore there is no scope for invoking section 171(E) of IPC, as rightly submitted by learned counsel for the petitioner.

e) The next allegation in the complaint relates to the offence punishable under section 133 of the Representation of People Act, 1951. The same reads as under:



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"Penalty for illegal hiring or procuring of conveyance at elections.—If any person is guilty of any such corrupt practice as is specified in clause (5) of section 123 at or in connection with an election, he shall be punishable with imprisonment which may extend to three months and with fine."

The above penal provision in turn refers to a corrupt practice as is specified inter alia in clause 5 of section 123 at or in connection with an election. Section 123 deals with certain acts as corrupt practices. Sub-section(5) specifies one of them, with the following text:

"(5) The hiring or procuring, whether on payment or otherwise, of any vehicle or vessel by a candidate or his agent or by any other person [with the consent of a candidate or his election agent] [or the use of such vehicle or vessel for the free conveyance] of any elector (other than the candidate himself the members of his family or his agent) to or from any polling station provided under section 25 or a place fixed under sub-section (1) of section 29 for the poll"

Employing the vehicle or vessel as contemplated in the above provision, is a sine qua non for the invocation of section 133. It is nobody's case that something of the kind exists in the allegations leveled against the person concerned and more particularly, the petitioner herein. In the absence of ingredients as specified in section 123(5), one would be miles away from the precincts of section 133 of 1951 Act.

In the above circumstances, this petition succeeds. The proceedings in Crime No.52/2023 of Nipani Town Police Station, now pending in CC No.2990/2023 on the file of learned JMFC, Nipani, for the offences punishable under sections 120(1) & 133 of Representation of People Act, 1951 and also for the offence punishable under Section 171(E) of IPC, 1860 are hereby quashed. Petitioner is set free of the subject case."

4. In the case at hand as well, the offence alleged is the one punishable under Section 171E of the IPC, for which, the ingredients of Section 171B of the IPC is imperative. None of the ingredients that are found in Section 171B of the IPC are found in the facts of the case at hand. Therefore, I deem it appropriate to follow the law laid down by the Co-ordinate Bench of this Court *supra* and obliterate the proceedings against the petitioner.

5. For the aforesaid reasons, the following:

ORDER

(i) The petition is allowed.



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- (ii) Proceedings in C.C.No.18/2024 pending before the I Additional Civil and JMFC, Chitradurga, *qua* the petitioner."

and in the case of **SMT. LAXMI R. HEBBALKAR Vs. STATE OF KARNATAKA** in Crl.P.No.10211/2023 disposed on 24.11.2023, has held as follows:

The petitioner is before this Court calling in question crime No.67/2023 filed by the Marihal Police Station for the offence punishable under Sections 171F and 171C of the Indian Penal Code, 1860 (the 'IPC' for short), Section 7 of the Religious Institutions Prevention of Misuse Act, 1988 and Section 14 of the Child Labour (Prohibition & Regulation) Act, 1986.

2. Heard Sri. Gangadhar S. Hosakeri, learned counsel appearing for the petitioner and Smt. K.P. Yashoda, learned HCGP appearing for respondent No.1.

3. The learned counsel appearing for the petitioner would submit that the issue in the lis stands covered by the judgment rendered by the Co-ordinate Bench of this Court in the case of **DADDALA BASANAGOUDA Vs. THE STATE OF KARNATAKA**², this Court has held as follows:

"This petition is filed praying to quash the order of taking cognizance and issue of process dated 19.01.2019 and consequently pending in C.C.No.129/2019 (Yaragera Police Station in Crime No.103/2018) for the offence punishable under Section 7 of the Religious Institutions (Prevention of Misuse) Act, 1988 (for short 'of the Act') and under Section 188 of Indian Penal Code (for short 'IPC') on the file of Addl. Civil Judge (Sr. Dn) and JMFC-I at Raichur Dist: Raichur.

02. It is alleged that a flying squad member who is also the Assistant Horticulture Officer, in Zilla Panchayat has lodged a complaint before the police stating that though there was a election code of conduct was in force in respect of MLA elections, a meeting was held under the leadership of the petitioner, in the compound infront of Laxmi Venkateshwar Temple. Therefore, there is a violation of election code of conduct. On the basis of said complaint, the police have registered case for the offence punishable under Section 7 of the Act and under Section 188 of IPC and charge-sheet has been filed by the police.

03. The learned Magistrate has taken cognizance and issued summons to the accused, which is challenged in this petition.

² Crl.P.No.200862/2022 disposed on 26.07.2022



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04. Heard Sri. Shivanand V. Pattanashetty, learned counsel for the petitioner and the learned High Court Government Pleader.

05. The learned counsel for the petitioner argued that taking of cognizance on the basis of complaint filed by the police in respect of offence under Section 188 of IPC is illegal, as this is contravention under Section 195 of Cr.P.C. The very invoking of Section 7 of the Act was not called for, as bare reading of Section 7 of the Act would clearly disclose that for contravention of Sections 3, 4, 5 and 6 of the Act, it is only the manager and every person connected with such religious institution are liable, but not other persons. In this regard he relied upon the decisions of Coordinate Bench of this Court in Crl.P.No.2077/2019 dated 22.04.2019 in the case of Devananda s/o Pulasinga Chowhan and another vs. State of Karnataka and another and Crl.P.No.15853/2013 dated 09.07.2019 in the case of Shivangouda Naik s/o Hanmanthraya vs. The State of Karnataka. Hence, the learned counsel for the petitioner prays to allow the petition.

06. The learned High Court Government argued that the learned Magistrate has taken properly cognizance and issued summons to the accused.

07. I have perused the said judgments. Admittedly, the complaint lodged by the complainant does not disclose that anybody made any request for the voters of persons assembled there to cast their votes in their favour. There is nothing to show that as what is the act of this petitioner in the said meeting stated to have been conducted. There is no whisper as to whether any political activities took place in the said meeting. Even the code of conduct is also not produced and what is the code of conduct is violated is also not mentioned. Apart from that, the learned Single Judge of this Court in Crl.P.No.2077/2019 dated 22.04.2019 (supra) has discussed the said offence, wherein there was a meeting in a Mahalaxmi Temple and some persons solicited votes from the members who had gathered at the Temple. But here in this case there is no such allegation of soliciting any vote for anybody an on party or making propaganda in respect of any political party. It is relevant to refer Para No.5 of Crl.P.No.2077/2019 dated 22.04.2019 in the case of Devananda s/o Pulasinga Chowhan and another vs. State of Karnataka and another which reads as under :-

"At the outset it requires to be noticed the very invoking of Section 7 of Religious Institutions (Prevention of Misuse) Act, 1988, by prosecution was not called for, inasmuch as bare reading of Section 7 of the Act would clearly disclose that for contravention of Sections 3, 4, 5 and 6 of the Act, it is the manager and every person connected with such Religious institution who would be liable to be



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punished with imprisonment for a term which may extend to five years and with fine which may extend to ten thousand rupees. It is not the case of prosecution that petitioners herein were persons incharge of religious institution or inotherwords connected to religious institution. Hence, continuation of proceedings for the said offence against petitioners would definitely be contrary to the provisions of the Act. Insofar as invoking of Section 171F of IPC against petitioners is concerned, when read with conjunction with allegation made in the complaint, same would disclose that petitioners had not solicited the votes but on the other hand it is alleged that a third party had announced one mike seeking vote on behalf of first petitioner and said person is said to have one Sri. Lakkur Wodeyar, who has not been cited as witness in charge sheet or as an accused. Hence, continuation of proceedings against petitioners for the alleged offence punishable under Section 171F of IPC would not be justifiable and even if prosecution is taken to its logical end it would not end in conviction of the accused and thereby directing the petitioners undergone the ordeal of trial would definitely be abuse of process of law."

08. Further, the Coordinate Bench of this Court in Crl.P.No.15853/2013 dated 09.07.2019 in the case of Shivangouda Naik s/o Hanmanthraya vs. The State of Karnataka, discussed the applicability of provisions of Section 188 of IPC at Para No.14 which reads as under:-

"14. In the case on hand, the records disclose that on the basis of the complaint filed by the Government official who was present at the polling booth, the respondent police have registered the FIR. But, the same is not in accordance with law. Admittedly, the complainant being a public servant has lodged a complaint before the police instead of filing it before the jurisdictional Magistrate. The allegations made in the complaint do not attract the ingredients of Section 130 of Representation of People Act, 1951, as there are no specific allegations about canvassing nearing the polling station. Therefore, initiation of proceedings on the basis of the complaint filed before the police by the election officer is contrary to law and procedure prescribed."

09. Admittedly, in this case the charge-sheet has been filed by the Yaragera Police Station, which is not permissible in view of Bar under Section 195 (1) of Cr.P.C. Therefore, taking such cognizance is bad in law. Apart from that absolutely, there is no material to show that there is contravention of Section 7 of the Act, against the petitioner. In view of the decision referred above and material placed before the Court, at this stage there is nothing to show that the said Section is applicable to the petitioner.



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10. Therefore, in my considered view, the continuation of the proceedings against the petitioner, which is contrary to the provisions of the Act and also the settled principles as they disclose that there is nothing to show that any political activities took place in the said meeting or what is the code of conduct which violated neither the enhancement for work nor any soliciting of any votes by any person much less this petitioner. This will cause undue and unnecessary hardship to petitioner. Therefore, continuation of this petition is nothing but causing abuse of process of law. Therefore, directing the petitioner to undergo process by trial and then the Court acquitting him is nothing but causing unnecessary ordeal to the petitioner. Keeping in view the settled principles of law regarding the quashing of the proceedings as stated by the Hon'ble Supreme Court in the case of Neeharika Infrastructure Private Limited vs. State of Maharashtra and others, reported in (2020) 10 SCC 118, if the present petition is considered, in my considered opinion the petition deserves to be allowed. Hence, the following;

O R D E R

The petition filed under Section 482 of Cr.P.C. is allowed.

The proceedings in C.C.No.129/2019 (Yaragera Police Station in Crime No.103/2018) for the offence punishable under Section 7 of Religious Institutions (Prevention of Misuse) Act, 1988 and under Section 188 of Indian Penal Code, 1860 on the file of Addl. Civil Judge (Sr. Dn) and JMFC-I at Raichur, is hereby quashed.

In the light of the issue standing covered by judgment rendered by the Co-ordinate Bench and the facts being undisputed, the petition stands disposed on the same terms."

In the light of the issue standing completely answered by the aforesaid said judgments and the ingredient of Section 171E of the IPC not being met even to its remotest sense, permitting further trial would become an abuse of the process of the law and result in miscarriage of justice.

8. For the aforesaid reasons, the following:

ORDER

- (i) The criminal petition is allowed.
- (ii) The proceedings in C.C.No.694/2025 pending on the file of Principal Civil Judge and JMFC, Honnali, Davangere District stand quashed."



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4. In the light of the order passed by this Court (*supra*) and for the reasons aforementioned, the following:

ORDER

- (i) The Writ Petition is allowed.
- (ii) The proceedings in C.C.No.32783 of 2026 pending before the XLII ACJM, Bangalore, stand quashed, *qua* the petitioners.

**Sd/-
(M.NAGAPRASANNA)
JUDGE**