



CNR: KAHC010845482025

NC: 2026:KHC:51051
WP No. 39695 of 2025

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

WRIT PETITION NO.39695 OF 2025 (GM-RES)

BETWEEN:

MR. P.L.G. MANU
S/O. LATE P.P. LUKE,
AGED ABOUT 71 YEARS,
RESIDING AT 'JAREIN MANSION',
AQUEM, MARGAO, GOA-403601.

...PETITIONER

(BY SRI. B.K. SAMPATH KUMAR, SENIOR COUNSEL APPEARING FOR
SRI. SURAJ S., ADVOCATE)

AND:

1. STATE OF KARNATAKA
REPRESENTED BY THE
HULIMAVU POLICE STATION,
REPRESENTED BY THE S.P.P.
HIGH COURT BUILDING,
AMBEDKAR VEEDI,
BANGALORE-560 001.
2. MR. R. JAYAVELU
S/O MR. RAMAMURTHY
AGED ABOUT 68 YEARS
R/AT NO.501/a4, 9TH MILE STONE
HULIMAVU, BENGALURU-560 012.

(AMENDMENT CARRIED OUT AS PER ORDER DT: 13.03.2026)

...RESPONDENTS

(BY SRI. ARUNA SHYAM, SENIOR COUNSEL APPEARING FOR
FOR SRI. DARSHAN R., ADVOCATE FOR R.2;
SRI. SANDESH J. CHOUDA, SENIOR COUNSEL APPEARING FOR
SRI. AJAY J.N., ADVOCATE FOR PROPOSED
APPLICANT IN I.A.NO.2/2026;
SMT. DEEPTHI ALVA, HCGP FOR R.1.)

Digitally
signed by
VANDANA S
Location:
High Court
of Karnataka



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THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA READ WITH SECTION 528 OF THE BHARATIYA NAGARIK SURAKSHA SANHITA, 2023, PRAYING TO QUASH THE IMPUGNED ORDER DATED 17.09.2025 IN CRL.REV.PET. NO.198/2025 (ANNEXURE-A) PASSED BY THE HON'BLE CITY CIVIL AND SESSIONS JUDGE, BANGALORE (CCH-66), ETC.

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

CORAM: HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

ORAL ORDER

In this petition, petitioner seeks for the following reliefs:-

(i) Issue a writ of certiorari or any other appropriate writ, order or direction quashing the impugned order dated 17.09.2025 in Crl.Rev.Pet.No.198/2025 (Annexure-A) passed by the Hon'ble City Civil and Sessions Judge, Bangalore (CCH 66);

(ii) Issue a writ of certiorari or any other appropriate writ, order or direction quashing the impugned order dated 27.03.2025 in C.C.No.13613/2009 (Annexure-B) passed by the Hon'ble III Additional Chief Judicial Magistrate at Bangalore.

(iii) Consequently, issue a Writ of Mandamus or any other appropriate order or direction allowing the application filed by the petitioner in C.C.No.13613/2009 under Section 322 of the Cr.P.C., as prayed for therein (Annexure-F).



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(iv) Grant such other reliefs as this Hon'ble Court deems fit considering the facts and circumstances of the case in order to meet the ends of justice.

2. The petitioner is arraigned as accused No.1 in C.C.No.13613/2009 pending before the Trial court, in which, the 2nd respondent is the *de facto* complainant for alleged offences punishable under Sections 380, 406, 420, 468, 471 and Section 120B IPC. The petitioner filed an application dated 14.03.2024 under Section 322 Cr.P.C., *interalia* contending that the ingredients attracting the offence under Section 406 IPC were not made out and the Trial court (III ACMM, Bangalore), which is a Special Court for offences punishable under Sections 403 to 409 IPC did not have inherent jurisdiction to entertain and adjudicate upon the proceedings against the petitioner and the matter be stayed and referred to the Chief Metropolitan Magistrate, Bangalore, for proceeding further in the matter. The said application having been opposed by the 1st respondent – State, the Trial court proceeded to pass the impugned order dated 27.03.2025 rejecting the application filed by the petitioner, who filed a Revision petition in CrI.Rev.P.No.198/2025 before the Revisional / Sessions court



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which dismissed the said Revision petition vide impugned order dated 17.09.2025, thereby confirming the order of the Trial court. Aggrieved by the impugned orders passed by the Trial court and Revisional / Sessions court, petitioner is before this Court by way of the present petition.

3. During the pendency of the present petition, accused No.5 – Sri.Alben P.Mathew @ Altin Mathew filed an Intervention application I.A.No.2/2026 seeking to intervene as additional respondent No.3 to the present petition and for other reliefs. The said application is opposed by the 1st respondent – State and the 2nd respondent - *de facto* complainant, while the petitioner has not contested / opposed the said application.

4. Heard learned Senior counsel for the petitioner and learned Senior counsel for the 2nd respondent as well as learned Senior counsel for the Intervening applicant in I.A.No.2/2026 and the learned HCGP for 1st respondent and perused the material on record.

5. In addition to reiterating the various contentions urged in the petition and referring to the material on record, learned Senior



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counsel for the petitioner submitted that the petitioner is not guilty of any of the offences alleged against him including the offence under Section 406 IPC which is triable exclusively by the Trial court which is a Special court to try offences falling under Sections 403 to 409 IPC. It was submitted that since the offence under Section 406 is not made out as against the petitioner, the Trial court did not have inherent jurisdiction to entertain and adjudicate upon the said offence, as a result of which, the remaining offences were not capable of being adjudicated upon by the Trial court which was required to place the matter before the Chief Metropolitan Magistrate, Bangalore, to proceed further in the matter. It was further submitted that under these circumstances, petitioner filed the instant application under Section 322 Cr.P.C. which was erroneously dismissed by the Trial court and confirmed by the Revisional court by recording erroneous findings which were contrary to facts and law and as such, the impugned orders passed by both the Courts deserve to be set aside and the application filed by the petitioner deserves to be allowed. In support of his submissions, learned Senior counsel for the petitioner places reliance upon the following judgments:-



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- (i) Delhi Race Club (1940) Ltd., & Ors., vs. State of Uttar Pradesh & Ors., - (2024) 10 SCC 690;*
- (ii) S.N.Vijayalakshmi & others vs. State of Karnataka & others – 2025 SCC OnLine SC 1575;*
- (iii) Arshad Neyaz Khan vs. State of Jharkhand & Another – AIR 2025 SC 4620;*
- (iv) R.Kalyani vs. Janak C.Mehta & others – (2009) 1 SCC 516;*
- (v) Sharif Ahmed & Anr. Vs. State of Uttar Pradesh & Anr. – AIR 2024 SC 2420;*
- (vi) V.P.Shrivatsava vs. Indian Explosives Ltd., & others – (2010) 10 SCC 361;*
- (vii) Hardeep Singh vs. State of Punjab and others – (2014) 3 SCC 92;*
- (viii) Anil Rai vs. State of Bihar – (2001) 7 SCC 318.*
- (ix) State of Punjab vs. Pritam Chand and others – (2009) 16 SCC 769;*
- (x) Shailesh Kumar Singh alias Shailesh R.Singh vs. State of Uttar Pradesh & others – Crl.A.No.2963/2025 dated 14.07.2025;*
- (xi) State Through Special Cell Central Bureau of Investigation) vs. Navjot Sandhu alias Afsan Guru & others – (2003) 6 SCC 641.*

6. Per contra, learned Senior counsel for the 2nd respondent submits that the petitioner having approached this Court seeking quashing of the entire proceedings by preferring



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CrI.P.No.3782/2009, withdrew the said petition with liberty to file a discharge application before the Trial court and having done so, the petitioner was neither entitled to file an application under Section 322 Cr.P.C. nor challenge the impugned orders by way of the present petition, which is not maintainable and the same was liable to be dismissed. It was also submitted that having challenged the impugned order passed by the Trial court rejecting the application under Section 322 Cr.P.C. by preferring a Revision petition under Section 397 Cr.P.C., which was also dismissed by the Sessions court , the petitioner is not entitled to challenge the orders of the Trial court and Revisional court and the present petition is not maintainable on this ground also. It was further submitted that the necessary ingredients to attract Section 322 Cr.P.C., had not been made out by the petitioner and the said provision is confined to want of forum-competence and not to test whether the ingredients of offence are made out and where a genuine jurisdictional question does arise under Section 322 Cr.P.C., it is either a territorial or forum question of fact and not an assertion that the ingredients are absent as sought to be urged by the petitioner whose claim was liable to be rejected. It was also



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submitted that apart from the fact that both the Courts had come to the *prima facie* conclusion that the ingredients of Section 406 IPC had been disclosed which cannot be reopened at this stage, neither valid nor sufficient ground had been made out by the petitioner in the application filed by him which was rightly rejected by the trial court and correctly confirmed by the Revisional / Sessions court by passing the impugned orders, which do not warrant interference by this Court in the present petition, which is liable to be dismissed. In support of his submissions, learned Senior counsel for the 2nd respondent places reliance upon the following judgments:-

- (i) Krishnan & Anr., vs. Krishnaveni and Anr., - (1997) 4 SCC 241;**
- (ii) Dharam Pal vs. Ramshri – AIR 1993 SC 1361;**
- (iii) Simrikhia vs. Dolley Mukherjee – (1990) 2 SCC 437;**
- (iv) Deepti vs. Akhil Rai – (1995) 5 SCC 751;**
- (v) Saroja Kanta Behera vs. State of Odisha – 2026 SCC OnLine ORI 6450;**
- (vi) Asim Shariff vs. National Investigation Agency – (2018) 3 SCC 493;**
- (vii) S.W.Palanitkar & others vs. State of Bihar and another – (2002) 1 SCC 241;**



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(viii) Baba Abdul Khan & others vs. Smt.A.D.Sawant, JMFC, Nagpur and others – 1994 SCC OnLine Bom 612;

(ix) Shankar Malharrao Deshmukh vs. State of Maharashtra – (1997) 2 Mh.L.J. 163;

(x) Mahendar Goyal vs. Kadamba International - 2013 SCC OnLine Mad 3508 (Full Bench);

(xi) Kumari Seema Jha and others vs. State of Jharkhand and Another – 2015 SCC OnLine Jhar 5632;

(xii) Smt.Padira Vidyavathi vs. Public Prosecutor, Hyderabad & others – 2020 SCC OnLine AP 5083;

7. Learned HCGP for the 1st respondent – State would support the impugned orders and submits that there is no merit in the petition and that the same is liable to be dismissed.

8. Learned Senior counsel for the Intervening applicant – accused No.5 would reiterate the submissions made by the learned Senior counsel for the petitioner and contend that the Intervening applicant – accused No.5 is identically / similarly situated as that of the petitioner – accused No.1 and that the impugned orders be set aside and the application filed by the petitioner under Section 322 Cr.P.C. deserves to be allowed.



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9. I have given my anxious consideration to the rival submissions and perused the material on record.

10. A perusal of the material on record will indicate that it is an undisputed fact that in the instant proceedings initiated against petitioner – accused No.1, intervening applicant – accused No.5 and other accused persons, at the instance of the 2nd respondent – *de facto* complainant in the impugned proceedings, which have been initiated against the accused persons for alleged offences punishable under Sections 380, 406, 420, 468, 471 r/w Section 120B IPC; the petitioner filed the instant application dated 14.03.2024 invoking Section 322 Cr.P.C. as hereunder:-

**“APPLICATION UNDER SECTION 322 OF THE CODE OF
CRIMINAL PROCEDURE, 1973 ON BEHALF OF
ACCUSED NO. 1**

The undersigned humbly submits as follows:

1. It is submitted that the Complainant Police have submitted a Chargesheet in the above matter for the alleged offences under Sections 380, 406, 420, 468, 471, 120(B) of the Indian Penal Code, 1860 against the Accused. In fact, since a false Chargesheet was filed against Accused No. 11 in the above case although there were no allegations and/or material whatsoever against him, the Hon'ble High Court of



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Karnataka was pleased to quash this case against him vide its Order dated 19.02.2024 in Crl. Pet. No. 577/2023.

2. It is submitted that this Hon'ble Court is a special Court having jurisdiction to try offences falling under Sections 403 to 409 of the Indian Penal Code, 1860. Thus, in case any of the offences under the said sections are not made out from the material on record, this Hon'ble Court has no jurisdiction to deal with the matter and the matter must be tried before the jurisdictional Magistrate.

3. It is further submitted that the instant matter is at the stage of hearing before Charge / framing of Charges and hence, it is at a pre-trial stage wherein the stage of "inquiry" into the alleged offences is under progress. It is the settled position in Law that Trial is distinct from an inquiry and must necessarily succeed it and Trial commences only on Charges being framed. It is further trite in Law that the stage of inquiry commences on the Chargesheet being filed by the Police and continues until the Trial commences with Charges having been framed.

4. In the instant matter, from a plain reading of the complaint, FIR, Chargesheet and documents annexed thereto and taking them at their face value, it is prima facie seen that it is nobody's case that anything was ever entrusted to any of the Accused by anyone. It is not the case of the Complainant that any property or dominion over property was ever entrusted in any manner by him or anyone else in M/s. Shashi Distilleries Pvt. Ltd. to all or any



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of the Accused. Further, even by a liberal reading of the material on record, there is no allegation that such entrusted property was dishonestly misappropriated or converted by the Accused to their own use or that the Accused dishonestly used or disposed of that property in violation of any direction of Law prescribing the mode in which such trust was to be discharged or any legal contract (express or implied) that was made by touching discharge of such trust or willfully caused any other person so to do or omit. Thus, the essential ingredients of the alleged offence of Criminal Breach of Trust as set out in Section 405 of the Indian Penal Code, 1860 being totally absent and wholly missing from the evidence before this Hon'ble Court, this Hon'ble Court has no inherent jurisdiction to inquire into this matter and/or to try the case or commit it for trial since the alleged offence under Section 406 of the Indian Penal Code, 1860 is not made cut by any stretch of the imagination.

5. It is humbly submitted that the same goes to the root of the matter and further proceedings before this Hon'ble Court must be immediately stayed, failing which, grave prejudice shall be caused to this Accused. Thereafter, in terms of Section 322 of the Cr.P.C., this Hon'ble Court may be pleased to submit this case with a brief report explaining its nature to the Hon'ble Chief Metropolitan Magistrate, Bangalore or to such other Magistrate having jurisdiction, as the Hon'ble Chief Metropolitan Magistrate, Bangalore directs.



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6. It is further submitted that this Application is being filed for the aforesaid bonafide reasons and not to delay the matter or the framing of Charges. This Accused humbly reserves his rights to address further grounds, rely on additional documents and citations at the time of consideration of this Application.

WHEREFORE, *it is humbly prayed that this Hon'ble Court may be pleased to stay these proceedings and submit the case to the Hon'ble Chief Metropolitan Magistrate, Bangalore, in the interest of justice."*

11. As can be seen from the aforesaid application, it is the specific contention of the petitioner that the Trial court was a Special court having jurisdiction to try offences falling under Sections 403 to 409 IPC (including 406) and in case, any of the said offences had not been made out from the material on record, the Trial court did not have jurisdiction and the matter would necessary have to be tried before the jurisdictional Magistrate; in this context, it would be necessary to extract Section 322 Cr.P.C., which reads as under:-

322. Procedure in cases which Magistrate cannot dispose of.— *(1) If, in the course of any inquiry into an offence or a trial before a Magistrate in any district, the evidence appears to him to warrant a presumption—*



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(a) that he has no jurisdiction to try the case or commit it for trial, or

(b) that the case is one which should be tried or committed for trial by some other Magistrate in the district, or

(c) that the case should be tried by the Chief Judicial Magistrate, he shall stay the proceedings and submit the case, with a brief report explaining its nature, to the Chief Judicial Magistrate or to such other Magistrate, having jurisdiction, as the Chief Judicial Magistrate directs.

(2) The Magistrate to whom the case is submitted may, if so empowered, either try the case himself, or refer it to any Magistrate subordinate to him having jurisdiction, or commit the accused for trial.

12. The said application was opposed by the 1st respondent – State and the petitioner filed written arguments dated 27.05.2024 as hereunder:-

“WRITTEN ARGUMENTS OF ACCUSED NO. 1 ON THE APPLICATION FILED BY HIM UNDER SECTION 322 OF THE CODE OF CRIMINAL PROCEDURE, 1973

The undersigned humbly submits as follows:

1. It is submitted that the Complainant Police have submitted Chargesheet in the above matter for the alleged offences under Sections 380, 406, 420, 468, 471, 120(B) of the Indian Penal Code, 1860 against the Accused. At the



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stage of Hearing before Charge, the subject matter application was filed by the 1st Accused.

2. It is submitted that since a false Chargesheet was filed against Accused No. 11 in the above case although there were no allegations and/or material whatsoever against him, the Hon'ble High Court of Karnataka was pleased to quash this case against him vide its Order dated 19.02.2024 in Crl. Pet. No. 577/2023. The allegation being of criminal conspiracy by the 11th Accused with Accused Nos. 1 to 10, the entire case falls to the ground against all the Accused since the Complainant himself has expressly admitted that there is no material against Accused No. 11 in the false Chargesheet filed in this matter with whom the others are supposed to have conspired criminally. This also raises serious doubts about the bonafides of the Police, the manner in which the investigation was carried out and the authenticity and reliability of the Chargesheet that has been filed in the instant matter to aid the Complainant in his malafide endeavours.

*3. Moreover, as held by the Apex Court in **LAWS (SC) 2024 (5) 3: Sharif Ahmed and Another vs State of Uttar Pradesh and Another**, the Investigating officer must make clear and complete entries of all columns in Chargesheet so that the Court can clearly understand which crime has been committed by which Accused and what is the material evidence available on file. The role played by each Accused in the crime should be separately and clearly mentioned in the Chargesheet for each of the Accused persons.*



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However, the same has not been done in the instant matter and the same is explicitly evident from the fact that for the first time, the Prosecution in its objections to the Application filed under Section 322 of the Cr.P.C. by this Accused has admitted that there are no allegations under Section 406 of the I.P.C. against any of the Accused except the 3rd Accused, whereas from a reading of the Chargesheet, no allegations containing the ingredients of Section 406 are forthcoming even against the 3rd Accused. It is further trite in Law that the Prosecution cannot improve upon the Chargesheet in its objections to an application and it cannot make claims that are not found in the Chargesheet.

4. The objections filed by the Prosecution are also on the mistaken premise that the 1st Accused cannot claim that the prosecution has to be split up against him since there are no allegations under Section 406 of the I.P.C. against him whereas in reality, no such claim has been made by this Accused and the Application has been filed under Section 322 of the Cr.P.C. by this Accused on the ground that there are no ingredients of Section 406 of the I.P.C. against any of the Accused.

5. It is submitted that this Hon'ble Court is a special Court having jurisdiction to try offences falling under Sections 403 to 409 of the Indian Penal Code, 1860. Thus, in case any of the offences under the said sections are not made out from the material on record, this Hon'ble Court has no jurisdiction to deal with the matter and the matter must be tried before the jurisdictional Magistrate.



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6. *It is further submitted that the instant matter is at the stage of hearing before Charge / framing of Charges and hence, it is at a pre-trial stage wherein the stage of "inquiry" into the alleged offences is under progress. It is the settled position in Law that Trial is distinct from an inquiry and must necessarily succeed it and Trial commences only on Charges being framed. It is further trite in Law that the stage of inquiry commences on the Chargesheet being filed by the Police and continues until the Trial commences with Charges having been framed. What constitutes the stage of "trial" and what constitutes "inquiry" is settled by the decision of the Constitution Bench of the Apex Court in (2014) 3 SCC 92: Hardeep Singh vs State of Punjab. Thus, the said Application filed by this Accused is liable to be considered even at this stage. It is pertinent to point out that there was no progress in this matter for several years due to the stay order passed by this Hon'ble High Court of Karnataka in W.P. No. 43675/2013 as well as due to the Interim Order that was passed in W.A. No. 2873/2019. Even now, the appointment of the 2nd Special Public Prosecutor for this matter by the State Government has also been stayed in W.P. No. 103/2023, which is pending consideration.*

7. *In the instant matter, from a plain reading of the complaint, FIR, Chargesheet and documents annexed thereto and taking them at their face value, it is prima facie seen that it is nobody's case that anything was ever entrusted to any of the Accused by anyone. It is not the*



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case of the Complainant that any property or dominion over property was ever entrusted in any manner by him or anyone else in M/s. Shashi Distilleries Pvt. Ltd. to all or any of the Accused. Further, even by a liberal reading of the material on record, there is no allegation that such entrusted property was dishonestly misappropriated or converted by the Accused to their own use or that the Accused dishonestly used or disposed of that property in violation of any direction of Law prescribing the mode in which such trust was to be discharged or any legal contract (express or implied) that was made by touching discharge of such trust or willfully caused any other person so to do or omit. There is not a single allegation of entrustment against any of the Accused even in the objections filed by the Prosecution.

Thus, the essential ingredients of the alleged offence of Criminal Breach of Trust as set out in Section 405 of the Indian Penal Code, 1860 and elaborated on by the Apex Court in the decisions in **LAWS (SC) 2024 (5) 3: Sharif Ahmed and Another vs State of Uttar Pradesh and Another, (2010) 10 SCC 361: V.P. Shrivastava vs Indian Explosives Ltd. and (2009) 16 SCC 769: State of Punjab vs Pritam Chand and Others**, being totally absent and wholly missing from the material before this Hon'ble Court, this Hon'ble Court has no inherent jurisdiction to inquire into this matter and/or to try the case or commit it for trial since the alleged offence under Section 406 of the Indian Penal Code, 1860 is not made out by any stretch of the imagination.



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8. In fact, the allegation in the Complaint in this matter is of alleged theft by the 3rd Accused which is diametrically opposed to the allegation of entrustment. In case it is alleged that any property was stolen as has been done in the instant case and for which reason Section 380 of I.P.C. has been invoked, by no stretch of the imagination can it be said that any property was entrusted to the Accused, which allegations are mutually destructive to each other.

9. Moreover, it is evident from Clauses F and G of the Deed of Settlement dated 09.10.2009 between the Complainant and the 3rd Accused produced by this Accused that the Complainant himself has stated that the documents which were allegedly stolen, were in fact "handed over" to the 3rd Accused, who "lost it" and therefore, "fresh documents were executed to get over such loss". The said settlement has been acted upon as seem from the Affidavit and Order in Crl. Pet. No. 2613/2008 and has been admitted by the Complainant even in his objections to Crl. Pet. No. 577/2023. In the said settlement in Clause 5, the Complainant has agreed not to prosecute Accused Nos. 3 and 6 to 10 in the instant matter, which shows the fraudulent nature of this prosecution and that it is being solely prosecuted to harass this Accused and to avoid the consequences of illegally taking over his company, i.e. M/s. Shashi Distilleries Private Limited.

10. Furthermore, the Complainant's allegation is that the 3rd Accused who was a Director of the Complainant company stole the company documents, which is impossible of



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performance and it is akin to a father being accused of kidnapping his own child. The Law is well settled that a father being a natural guardian cannot kidnap his own child as laid down in (1993) 2 SCC 6: Chandrakala Menon (Mrs.) and Another vs Vipin Menon (Capt.) and Another.

11. Pertinently, some of the other facts that show the malicious nature of this prosecution and the collusion between the Complainant and the Police are set out herein below. It is submitted that the repeated allegations in the Complaint are that there was only an intention to cheat and intention to cause loss and no actual wrongful loss or delivery of property is alleged or claimed to have been suffered by the Complainant and hence, no case is made out. It is submitted that under Indian Law, an attempt to cheat is not an offence under Section 420 of I.P.C. such as an attempt to murder may be. Additionally, no loss could have been caused to the Complainant company as it is nobody's case that the appointment of Accused Nos. 4 to 10 as Directors of the Complainant company was approved by the Registrar of Companies, Bangalore.

12. In any case, the appointment, removal, resignation of Directors and other related issues are the subject matter of a Civil trial which is ongoing in O.S. No. 25582/2012, pending before the Hon'ble Civil Court, Mayohall Unit, Bangalore, which is evident from the Plaint and Issues framed in that suit. Also, the basis for this Complaint being the same, the effort of the Complainant to settle the Civil disputes and claims which do not involve any criminal



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*offence, by way of applying pressure through criminal prosecution, may be deprecated and discouraged by this Hon'ble Court as held in **LAWS (SC) 2024 (5) 3: Sharif Ahmed and Another vs State of Uttar Pradesh and Another***

13. It is further seen that the signatures of the 1st and 2nd Accused were sent to the state and central forensic labs for verification by the Police and despite both the reports being issued (central forensic lab report is a part of the Chargesheet) that their signatures are forged and do not match with their admitted signatures, they themselves have been arrayed as Accused herein by turning the matter on its head, which shows the preposterous nature of this prosecution.

14. It is humbly submitted that the absence of the ingredients of Section 406 of I.P.C. goes to the root of the matter and further proceedings before this Hon'ble Court must be immediately stayed, failing which, grave prejudice shall be caused to this Accused. Thereafter, in terms of Section 322 of the Cr.P.C., this Hon'ble Court may be pleased to submit this case with a brief report explaining its nature to the Hon'ble Chief Metropolitan Magistrate, Bangalore or to such other Magistrate having jurisdiction, as the Hon'ble Chief Metropolitan Magistrate, Bangalore directs, for further proceedings.

WHEREFORE, *it is humbly prayed that this Hon'ble Court may be pleased to allow the Application filed by the 1st*



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Accused under Section 322 of Cr.P.C., in the interest of justice.”

13. A perusal of the impugned order passed by the Trial court will indicate that having come to the conclusion that it was a specially designated court to try offences punishable under Sections 403 to 409 IPC, the Trial court proceeded to examine the merits of the matter in relation to all alleged offences viz., Sections 380, 406, 420, 468, 471 and 120B IPC without appreciating that the application filed by the petitioner under Section 322 Cr.P.C. was restricted to Section 406 IPC and not in relation to other offences; in this context, it is relevant to state that the various contentions urged by the petitioner in the application and written submissions referred to supra have not been considered or appreciated by the Trial court while passing the impugned order, which is bereft of any proper or cogent / valid reasons as to why it was rejecting the application filed by the petitioner; similarly, having referred to various judgments relied upon by the petitioner, the trial court does not assign valid or cogent reasons as to why the same were not applicable to the facts of the instant case, thereby indicating that the impugned order passed by the Trial court is



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clearly a cryptic, laconic, unreasoned and non-speaking order warranting interference by this Court in the present petition.

14. A perusal of the impugned order passed by the Sessions / Revisional court will indicate that upto paragraph-41 of the impugned order, the contentions of both sides have been recorded by the Court; despite doing so, from paragraph-42 onwards, absolutely no reasons are assigned as to why the impugned order passed by the Trial court was being confirmed by the Revisional / Sessions Court; on the other hand, while considering the rival contentions, the Revisional court also has gone beyond the scope and ambit of the application filed by the petitioner under Section 322 Cr.P.C., which was restricted to the offence punishable under Section 406 IPC and has scrutinised / evaluated the material by referring to all the offences viz., Sections 380, 406, 420, 468, 471 r/w 120B IPC, thereby clearly traversing beyond the scope and ambit of the dispute in controversy between the parties and consequently, the impugned order passed by the Sessions court / Revisional court also deserves to be quashed; in other words, the impugned order passed by the Sessions Court is also cryptic,



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laconic, unreasoned and non-speaking order warranting interference by this Court in the present petition.

15. While dealing with the provisions contained in Section 322 Cr.P.C., the Maharashtra High Court in the case of ***Shankar Malharrao Deshmukh vs. State of Maharashtra – 1997(2) Mh.L.J.163***, held as under:-

“6. Before dealing with the case relied on by the learned Magistrate, it may be necessary to set out the relevant provisions of Sections 322, 323 and 325 of the Criminal Procedure Code. They are as under :

"S.322. Procedure in cases which Magistrate cannot dispose of -

(1) If, in the course of any inquiry into an offence or a trial before a Magistrate, in any district, the evidence appears to him to warrant as presumption

-

(a) that he has no jurisdiction to try the case or commit it for trial, or

(b) that the case is one which should be tried or committed for trial by some other Magistrate in the district, or,

(c) that the case should be tried by the Chief Judicial Magistrate he shall stay the proceedings and submit the case, with a brief report explaining its nature, to the Chief Judicial Magistrate or to such other Magistrate, having jurisdiction, as the Chief Judicial Magistrate directs.

(2) The Magistrate to whom the case is submitted may, if so empowered, either try the case himself, or refer it to any Magistrate, subordinate to him having jurisdiction, or commit the accused for trial.



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S.323. *Procedure when, after commencement of inquiry or trial, Magistrate finds case should be committed -*

(1) If, in any inquiry into an offence or a trial before a Magistrate, it appears to him at any stage of the proceedings before signing judgment that the case is one which ought to be tried by the Court of Session, he shall commit it to that Court under the provisions hereinbefore contained and thereupon the provisions of Chapter XVIII shall apply to the commitment so made.

S.324.

S.325 *Procedure when Magistrate cannot pass sentence sufficiently severe. -*

(1) Whenever a Magistrate is of opinion, after hearing the evidence for the prosecution and the accused, that the accused is guilty, and that he ought to receive a punishment different in kind, form or more severe than, that which such Magistrate is empowered to inflict, or, being a Magistrate of the second class, is of opinion that the accused ought to be required to execute a bond under S. 106, he may record the opinion and submit his proceedings and forward the accused to the Chief Judicial Magistrate to whom he is subordinate.

(2) When more accused than one are being tried together, and the Magistrate considers it necessary to proceed under sub-s. (1), in regard to any of such accused, he shall forward all the accused, who are in his opinion guilty, to the Chief Judicial Magistrate.

(3) The Chief Judicial Magistrate to whom the proceedings are submitted may, if he thinks fit, examine the parties and recall and examine any witness who has already given evidence in the case and may call for and take any further evidence, and shall pass such judgment, sentence or order in the case as he thinks fit, and as is according to law."

7. Now, on reading these Sections 322 to 325, it will appear that applicability of Sections 322 to 325 is



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depending upon certain conditions. Section 322 applies before commencement or in course of any inquiry or trial and is wide enough to include the cases of lack of jurisdiction, defective jurisdiction or local or territorial jurisdiction, or other cases in which the Magistrate is of the opinion from the facts disclosed in the police report or other evidence the case should be tried by the Chief Judicial Magistrate. Section 323 applies after commencement of inquiry or trial and that too at any stage of proceedings before signing the judgment. This section empowers the Magistrate to commit the case to Court of Session, if it appears to him that the case is one which ought to be tried by the Court of Session.

Section 325, however, applies when the Magistrate on finding an accused guilty is of opinion that the punishment should be (i) different from that which he can inflict or (ii) should be more severe than he can inflict, he should, without convicting the accused, submit the case to the Chief Judicial Magistrate to whom he is subordinate for his order.

8. The learned counsel for the petitioners fairly accepts the position that though the charge sheet is filed the inquiry or trial has not yet commenced into the offences alleged against the petitioners. That means, the impugned order can very well fall within the ambit of Section 322 of the Criminal Procedure Code.



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9. Now in order to bring the case under the ambit of Section 322 of Criminal Procedure Code (for short the Code) there must be shown to exist following conditions, i.e. (i) lack of jurisdiction, (ii) defective jurisdiction/legal or territorial, and (iii) in ability to inflict adequate punishment for any other sound reason, to which the Chief Judicial Magistrate is empowered.

It is, therefore, incumbent on the Magistrate to give adequate reasons to exercise his powers under Section 322(1)(c) of the Code. Merely quoting the section and observing that, ".... taking into consideration the gravity of the offences and public importance of the cases, these cases are required to be transferred to the Court of Chief Judicial Magistrate for trial" is by itself not a sufficient compliance of provisions of Section 322 of the Code. The reason assigned by the learned trial Magistrate for transfer of the cases to the Court of Chief Judicial Magistrate is not only but also suffers from patent illegality under the express provisions of Section 322 of the Code.

Secondly, Section 322 of the Code does not empower the Magistrate to transfer the case, even if the aforesaid conditions are fulfilled, to the Court of Chief Judicial Magistrate for trial. What section requires is that, the Magistrate, in such a case, shall stay the proceeding in the first hand and secondly, submit the case with brief report explaining it's nature to the Chief Judicial Magistrate or to such other Magistrate having jurisdiction, as the Chief



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Judicial Magistrate directs. In no cases, the Magistrate can straight way commit or transfer the case or cases to the Court of Chief Judicial Magistrate under Section 322 of the Code.”

16. The petitioner has filed written submissions by way of brief note dated 07.09.2026 as hereunder:-

*1. This Petition has been filed challenging the Order dated 17.09.2025 passed by the Hon'ble City Civil and Sessions Judge (CCH 66), Bangalore (**Annexure A**), wherein it has dismissed the Crl.Rev.Pet. No. 198/2025 (**Annexure K**) filed by the Petitioner and also being aggrieved by the Order dated 27.03.2025 passed by the Hon'ble III Additional Chief Judicial Magistrate at Bangalore (Hon'ble Trial Court) in C.C. No. 13613/2009 (**Annexure B**), wherein the Application filed by the Petitioner under Section 322 of the Cr.P.C. (**Annexure F**) at the stage of Hearing before Charge has been erroneously rejected by the Hon'ble Trial Court.*

*2. It is submitted that the 1st Respondent Police have submitted a Chargesheet (**Annexure E**), which was taken cognizance of by the Hon'ble Trial Court in C.C. No. 13613/2009 for the alleged offences punishable under the following Sections of the Indian Penal Code, 1860 against Accused Nos. 1 to 11:*

- i) Section 380 - Theft in Dwelling House, etc.*
- ii) Section 406 - Punishment for Criminal Breach of Trust*



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- iii) Section 420 - Cheating and dishonestly
Inducing delivery of property
- iv) Section 468 - Forgery for purpose of
Cheating
- v) Section 471 - Using as genuine a forged
document or electronic record
- vi) Section 120-B - Punishment of Criminal
Conspiracy

3. It is submitted that the Hon'ble Trial Court is a **special Court** having jurisdiction to try offences falling under **Sections 403 to 409 of the Indian Penal Code, 1860**. Thus, in case any of the offences under the said sections are not made out from the material on record, the Hon'ble Trial Court has no jurisdiction to deal with the matter and the matter must be tried before the jurisdictional Magistrate, who has jurisdiction to try the remaining offences.

4. In the instant matter, from a plain reading of the complaint (**Annexure C**), FIR (**Annexure D**), Chargesheet (**Annexure E**) and documents annexed thereto and taking them at their face value, it is prima facie seen that it is nobody's case that anything was ever **entrusted** to any of the Accused by anyone. It is not the case of the 2nd Respondent herein that any property or dominion over property was ever entrusted in any manner by him or anyone else in M/s. Shashi Distilleries Pvt. Ltd. to all or any of the Accused persons. Further, even by a liberal reading of the material on record, there is no allegation that such entrusted property was dishonestly misappropriated or converted by any of the Accused to their own use or that any of the Accused dishonestly used or disposed of that



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property in violation of any direction of Law prescribing the mode in which such trust was to be discharged or any legal contract (express or implied) that was made by touching discharge of such trust or willfully caused any other person so to do or omit. There is not a single allegation of entrustment against any of the Accused that has been identified even in the objections filed by the Respondents before the Hon'Grand Trial Court or the Hon'ble Revision Court. Thus, the essential ingredients of the alleged offence of Criminal Breach of Trust as set out in Section 405 of the Indian Penal Code, 1860 and elaborated on by the Apex Court in a catena of decisions including in **(2024) 10 SCC 690: Delhi Race Club (1940) Ltd. and Others vs State of Uttar Pradesh and Others, LAWS (SC) 2025 (7) 90: S.N. Vijayalakshmi and Others vs State of Karnataka, AIR 2025 SC 4620: Arshad Neyaz Khan vs State Of Jharkhand and Another, (2009) 1 SCC 516: R. Kalyani vs Janak C. Mehta, AIR 2024 SC 2420: Sharif Ahmed and Another vs State of Uttar Pradesh and Another, (2010) 10 SCC 361: V.P. Shrivastava vs Indian Explosives Ltd. and (2009) 16 SCC 769: State of Punjab vs Pritam Chand and Others, being totally absent and wholly missing from the material before the Hon'ble Trial Court, the Hon'ble Trial Court has no inherent jurisdiction to inquire into this matter and/or to try the case or commit it for trial since the alleged offence under Section 406 of the Indian Penal Code, 1860 is not made out by any stretch of the imagination.**



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5. *The Application under Section 322 of the Cr.P.C. can be filed at any stage of the matter when the Hon'ble Magistrate has no inherent jurisdiction to decide the subject matter as in the instant case. As per the Section, it can be filed at the stage of inquiry or trial and hence, there is no question of delay in filing the said Application by the Petitioner. In fact, even Charges are yet to be framed in C.C. No. 13613/2009, which shows that the matter is still at a preliminary stage.*

6. *Hence, the matter was at a pre-trial stage wherein the stage of "inquiry" into the alleged offences was under progress when the said Application was filed by the Petitioner, who is arrayed as Accused No. 1 in C.C. No. 13613/2009. It is the settled position in Law that Trial is distinct from an inquiry and must necessarily succeed it and Trial commences only on Charges being framed. It is further trite in Law that the stage of inquiry commences on the Chargesheet being filed by the Police and continues until the Trial commences with Charges having been framed. What constitutes the stage of "trial" and what constitutes "inquiry" is settled by the decision of the **Constitution Bench** of the Apex Court in (2014) 3 SCC 92: Hardeep Singh vs State of Punjab.*

7. *The impugned Order of the Hon'ble Trial Court is an intermediary order, wherein if the Application was allowed, the proceedings before the Hon'ble Trial Court would have stopped as Section 406 of the I.P.C. would have been dropped and the matter would have been transferred to the*



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jurisdictional Magistrate having jurisdiction to try the remaining offences alleged.

8. As held by the Apex Court in **(2003) 6 SCC 641**: *State through Special Cell, New Delhi vs Navjot Sandhu @ Afshan Guru and Others*, even when there is a bar under Section 397 of the Cr.P.C., this Petition filed under Article 227 of the Constitution of India r/w Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 is maintainable and this Hon'ble Court's inherent jurisdiction to consider this matter is not affected by the provisions of Section 397(3) of the Cr.P.C., especially to prevent abuse of process or miscarriage of justice.

9. The Petitioner has not filed for discharge as falsely alleged by the Respondents in the Hon'ble Trial Court and before the Hon'ble Revision Court. It is Accused No. 4 who has filed the discharge application, which has no bearing on the Application filed by the Petitioner under Section 322 of the Cr.P.C.

10. It is not the Petitioner's case that only his case must be transferred to the jurisdictional Magistrate having jurisdiction since there are no allegations of Section 406 of the I.P.C. against him, but it is his specific case in the Application filed in C.C. No. 13613/2009 that there are no allegations of entrustment against any of the Accused in the Complaint, FIR, Chargesheet or Chargesheet documents. The Hon'ble Revision Court has misled itself into assuming that the Petitioner only wants the case in C.C. No. 13613/2009 with respect to the Petitioner to be segregated



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*on the alleged ground that there is no offence under Section 406 against the Petitioner, whereas it has quite clearly been the case of the Petitioner in all his pleadings and oral arguments at all times that there is no offence or allegation of Section 406 against **any of the Accused persons** and the case cannot go on before the Hon'ble Trial Court against any of the Accused persons.*

11. The Respondents, both before the Hon'ble Trial Court and the Hon'ble Revision Court, both in their objections and during their arguments, have not made even a whisper as to what was allegedly entrusted to any of the Accused persons by the 2nd Respondent. Thus, without the key and basic ingredient of entrustment being present in the allegations, which is the first and foremost ingredient to make out an offence under Section 406 of the I.P.C., there is no question of the invocation of the said Section against any of the Accused.

12. Both the impugned Orders do not set out as to what property was allegedly entrusted to any of the Accused by the 2nd Respondent or M/s. Shashi Distilleries Pvt. Ltd. or any details of when and where it was entrusted since there are no such allegations in the Chargesheet or anywhere else in the records.

13. Section 322 of the Cr.P.C. does not require that all the Accused must approach the Hon'ble Trial Court and any of them may seek the relief, which would then be applicable for the entire case and in respect of all Accused persons. The Hon'ble Revision Court's finding that only the Petitioner



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has approached the Court and thus his application ought to be dismissed is totally perverse and erroneous as there is no requirement in Law that all the accused persons must jointly approach the Court for relief under Section 322 of the Cr.P.C. for the application to be allowed.

14. If Section 406 of the I.P.C. is not attracted since it is nobody's case that anything was ever entrusted to any of the Accused, then the Hon'ble Trial Court has no inherent jurisdiction to inquire or try the matter as that Court gets jurisdiction only if any of the offences under Section 403 to 409 of the I.P.C. are attracted since it is a special Court. Here, since the ingredients of Section 406 of the I.P.C. are conspicuous by their absence, the Hon'ble Trial Court before whom the matter is pending has no inherent jurisdiction and any order passed by the Hon'ble Trial Court is a nullity and void ab initio and of no consequence and no useful purpose will be served by continuing the inquiry or trial in the Hon'ble Trial Court.

15. Sections 380 and 406 of the I.P.C. regarding theft and criminal breach of trust are the antithesis of each other and they cannot coexist on the same set of facts. Either one can be accused of stealing a property or such property may have been voluntarily entrusted to the accused, but a person cannot be accused of both acts simultaneously.

16. Sections 420 and 406 of the I.P.C. regarding cheating and criminal breach of trust are the antithesis of each other and they cannot coexist on the same set of facts as categorically held by the Apex Court in (2024) 10 SCC



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690: Delhi Race Club (1940) Ltd. and Others vs State of Uttar Pradesh and Others, LAWS (SC) 2025 (7) 90: S.N. Vijayalakshmi and Others vs State of Karnataka, AIR 2025 SC 4620: Arshad Neyaz Khan vs State Of Jharkhand and Another and in the Order dated 14.07.2025 passed by the Hon'ble Supreme Court of India in Criminal Appeal No.2963/2025: Shailesh Kumar Singh alias Shailesh R. Singh vs State of Uttar Pradesh and Others. Either one can be accused of inducing a person fraudulently to deliver the property with mens rea right from the outset or such property may have been voluntarily entrusted to the accused by another person and the accused then converts the property entrusted to his own use by later developing mens rea, but a person cannot be accused of both acts simultaneously.

17. Sections 380, 406 and 420 of the I.P.C. are impossible to coexist with each other on the same set of facts and they are mutually destructive of each other and the requisite ingredients of all three offences are fundamentally opposed to each other, which shows the frivolous nature and absurdity of the case of the prosecution and the same is a gross abuse of the process of Law, further proven by the fact that the case in C.C. No. 13613/2009 has been quashed by the Hon'ble High Court of Karnataka in Crl. Pet. No. 577/2023 vide its Order dated 19.02.2024 against Accused No. 11 based on the concession of the 2nd Respondent herein that there is no material in the Chargesheet against the 11th Accused,



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which is under challenge before the Apex Court but there is no stay order.

*18. The proceedings pending before the Hon'ble Trial Court are vitiated and the Petitioner is prejudiced as the Hon'ble Trial Court, without even framing Charges, despite not having inherent jurisdiction over the subject matter, has already decided prematurely in a biased manner without even trial commencing, vide the impugned Order at **Annexure B** in Para 10 on Page 16 that "The accused persons were involved in this case" and in Para 11 on Page No. 17 that "thereby the accused have committed the criminal breach of trust and cheated to the complainant company". The same impeaches the fundamental right of the Petitioner to a fair trial as guaranteed under Article 21 of the Constitution of India.*

*19. An altogether new case has been made out in Para 11 of the impugned Order at **Annexure B** to the material prejudice of the Petitioner and it has led to usurpation of jurisdiction that is not available to the Hon'ble Trial Court. In fact, the Hon'ble Trial Court holds that Accused Nos. 1 and 2 have modified the company name on Shashi Distilleries to Shashi Distilleries Private Limited on 07.06.2005, which allegation is not found anywhere in the Complaint or Chargesheet itself.*

*20. The Hon'ble Revision Court has also made out a new case not found anywhere else as it holds in the **Annexure A** order that the fund of the partnership firm appears to be utilized by the Petitioner and hence, it*



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allegedly makes out a case to hear regarding charge for the offence under Section 406 of the I.P.C., which is nobody's case and not found in the Chargesheet. In fact, the allegation in the Complaint is only of an attempt / intention to cheat and there is not a single averment or document in the Chargesheet regarding any actual loss sustained by the 2nd Respondent or the company. Additionally, no loss could have been caused to the company as it is nobody's case that the appointment of Accused Nos. 4 to 10 as Directors of the company was approved by the Registrar of Companies, Bangalore. The Hon'ble Trial Court and the Hon'ble Revision Court seem to have stepped into the shoes of the investigating authority by making new allegations not found in the records of the case, which renders the impugned Orders illegal and perverse.

21. The prejudice to the Accused persons in this case is all the more amplified by the fact that nowhere in the Complaint, FIR, Chargesheet or Chargesheet documents is it the case that the 2nd Respondent or M/s. Shashi Distilleries Pvt. Ltd. has been actually cheated and on the contrary, it is repeatedly mentioned in the Complaint that the Accused only had an intention to cheat and a common intention to cause wrongful loss but no one is alleged to have been actually cheated nor is there an allegation anywhere of wrongful loss actually being caused.

22. The Hon'ble Revision Court has failed to note that the averments in the Complaint and Chargesheet regarding the registered firm M/s Shashi Distilleries" have no bearing



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or nexus with regard to the alleged offences committed against the company "M/s. Shashi Distilleries Pvt. Ltd.", which are independent of each other without any co-relation. The Hon'ble Revision Court has misled itself by going off on a tangent about the partnership firm, which has nothing to do with the alleged offences committed purportedly in respect of the private limited company by virtue of the Board Meeting held on 14.12.2006.

*23. It is trite in Law that justice must not only be done but must be seen to be done in the matter. The Inordinate delay in the adjudication of the Application by the Hon'ble Trial Court, even after Written Arguments were filed by the Petitioner on 27.05.2024, has led to much doubt and has a tendency to shake the confidence of the general public in the judicial system as laid down in **(2001) 7 SCC 318: Anil Rai vs State of Bihar**. In the instant case, the matter was reserved for orders for months at a stretch repeatedly and the impugned Order at **Annexure B** was passed finally only on 27.03.2025. It is not humanly possible to remember all the facts and arguments in a matter after many months when the Court is overburdened with cases.*

*24. The Deed of Settlement dated 09.10.2009 between the 2nd Respondent and the 3rd Accused (**Annexure J**), which is a part of the **Additional Chargesheet dated 09.12.2025** filed by the Hulimavu Police Station in C.C. No. 13613/2009, goes to the root of the matter and takes away the foundation of the prosecution case, but it has not been considered by the Hon'ble Trial Court or the Hon'ble*



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Revision Court nor the fact that the signatures of the 1st and 2nd Accused were sent for testing and despite both the reports being issued that their signatures are forged and do not match with their admitted signatures, which makes them the victims of forgery, but they themselves have been arrayed as accused by turning the matter on its head to aid the 2nd Respondent in his nefarious designs.

25. The Hon'ble Revisional Court simply ignores the said Deed of Settlement, which sequence of events goes to the root of the matter and takes away the foundation of the allegation of theft and the Hon'ble Revision Court has failed to note the fraud being played by the 2nd Respondent, the 3rd Accused and Accused Nos. 7 to 10 on the Court as well as on the Petitioner and other Accused persons.

26. Moreover, it is evident from Clauses F and G of the said Deed of Settlement that the 2nd Respondent himself has stated that the documents which were allegedly stolen, were in fact "handed over" to the 3rd Accused, who "lost it" and therefore, "fresh documents were executed to get over such loss". The said settlement has been acted upon as seen from the Affidavit and Order in Crl. Pet. No. 2613/2008 and has been admitted by the 2nd Respondent even in his objections to Crl. Pet. No. 577/2023. In the said settlement in Clause 5, the 2nd Respondent has agreed not to prosecute Accused Nos. 3 and 6 to 10 in the instant matter, which shows the fraudulent nature of this prosecution and that it is being solely prosecuted to harass the Petitioner and some other Accused and to avoid the consequences of



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illegally taking over his company, i.e. M/s. Shashi Distilleries Private Limited.

27. Infact, it has been categorically admitted in the Application for Cancellation of Anticipatory Bail of the 2nd Accused filed in CrI. Misc. No. 4123/2026 by the 2nd Respondent himself, that the 2nd Accused, who is similarly situated in this case to the Petitioner, is a victim of forgery and that ironically he has been arrayed as an accused nonetheless, that the quashing of proceedings against the 11th Accused demonstrates the selective and motivated nature of the case and that an NBW was issued against the 2nd Accused contrary to established Law. This highlights the perversity of the prosecution case and confirms the frivolousness of it.

28. Shockingly, it is seen that although the 3rd Accused in C.C. No. 13613/2009 got sent a Legal Notice dated 18.09.2006 to the 2nd Respondent herein through his counsel, Mr. C.V. Nagesh in the same subject matter, to which the 2nd Respondent caused a Reply Notice dated 22.09.2006 to Mr. C.V. Nagesh, later Mr. C.V. Nagesh started appearing for the 2nd Respondent in all the matters against all the Accused, including in W.P. No. 43675/2013, W.P. No. 2168/2026 and even in CrI. Pet. No. 2613/2008 against the 3rd Accused himself.

29. In any case, the appointment, removal, resignation of Directors and other related issues are the subject matter of a civil trial which is ongoing in O.S. No. 25582/2012, pending before the Hon'ble Civil Court (CCH 74), Mayohall



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*Unit, Bangalore, which is evident from the Complaint and Issues framed in that suit. Also, the basis for this Complaint being the same, the effort of the 2nd Respondent to settle the civil disputes and claims which do not involve any criminal offence, by way of applying pressure through criminal prosecution, may be deprecated and discouraged by this Hon'ble Court as held in **AIR 2024 SC 2420**: Sharif Ahmed and Another vs State of Uttar Pradesh and Another.*

30. Moreover, as held by the Apex Court in the same case, the Investigating officer must make clear and complete entries of all columns in Chargesheet so that the Court can clearly understand which crime has been committed by which Accused and what is the material evidence available on file. The role played by each Accused in the crime should be separately and clearly mentioned in the Chargesheet for each of the Accused persons. However, the same has not been done in the instant matter and the same is explicitly evident from the fact that for the first time, the 1st Respondent in its objections to the Application before the Hon'ble Trial Court has admitted that there are no allegations under Section 406 of the I.P.C. against any of the Accused except the 3rd Accused, whereas from a reading of the Chargesheet, no allegations containing the ingredients of Section 406 are forthcoming even against the 3rd Accused. The Prosecution cannot improve upon the Chargesheet in its objections to an application or during oral arguments. It cannot make claims that are not found anywhere in the Chargesheet.



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31. *It is trite in Law that any order passed by a Court without inherent jurisdiction is a nullity and void ab initio. The Hon'ble Revision Court has failed to consider the said principle of Law and passed the impugned Order at **Annexure A** mechanically. No useful purpose will be served by continuing the proceedings before the Hon'ble Trial Court which has no inherent jurisdiction since none of the offences under Sections 403 to 409 of the Indian Penal Code are attracted.*

WHEREFORE, the Petitioner humbly prays that the above Petition may kindly be allowed as prayed for, in the interest of justice.”

17. So also, the 2nd respondent – *de facto* complainant has filed written arguments dated 17.09.2026 as hereunder:-

1. *The present petition under Section 528 BNSS read with Articles 227 of the Constitution of India is directed against a concurrent finding rendered by two courts below on an identical question. The chronology is as follows:*

(a) *C.C. No. 13613/2009 is pending before the Court of the III Additional Chief Judicial Magistrate (Special Court), Bengaluru, against the Petitioner and others for offences punishable under Sections 380, 406, 420, 468, 471 and 120(B) of the Indian Penal Code, 1860, on a police chargesheet.*

(b) *The Petitioner (Accused No. 1) filed an application dated 14.03.2024 under Section 322 Cr.P.C., contending*



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that since the essential ingredients of the offence under Section 405/406 IPC were, on the Petitioner's reading of the chargesheet, not made out, the Special Court, whose jurisdiction the Petitioner characterised as confined to offences under Sections 403 to 409 IPC, had no jurisdiction to proceed, and that the matter ought to be stayed and submitted to the Chief Metropolitan Magistrate under Section 322 Cr.P.C.

(c) By a reasoned order dated 27.03.2025, the learned III ACJM rejected the application, holding, on a perusal of the complaint and the chargesheet, that a prima facie case under Section 406 IPC (among the other sections) was made out against the Petitioner, and that the jurisdiction of the Court "does not extend to a single accused" so as to permit severance of the Petitioner's case from that of the co-accused tried together on the same chargesheet.

(d) The Petitioner carried the said order in revision under Section 397 Cr.P.C. before the learned LXV Additional City Civil & Sessions Judge, Bengaluru (CCH-66), registered as Crl.R.P. No. 198/2025. Respondent No. 2 herein was heard as intervenor/applicant, having been permitted to intervene as the person aggrieved and the de facto complainant in the underlying dispute. By a detailed order dated 17.09.2025, the revisional Court dismissed the revision petition, affirming that the material on record prima facie discloses the ingredients of Section 406 IPC, and that the Petitioner's case could not be severed from the co-accused merely on an asserted want of jurisdiction.



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(e) The Petitioner now impugns both orders, that of the learned Magistrate dated 27.03.2025 and that of the learned Sessions Judge dated 17.09.2025, in the present petition invoking the inherent jurisdiction of this Hon'ble Court under Section 528 BNSS.

II. PRELIMINARY OBJECTION TO MAINTAINABILITY

2. It is respectfully submitted, as a threshold objection, that the present petition is not maintainable in the manner framed, and deserves to be dismissed in limine on this ground alone, without the necessity of entering into the merits.

3. The Petitioner's grievance, that the Section 322 application was wrongly rejected, has already been examined and rejected on merits, after full hearing, by the learned Magistrate and, on revision under Section 397 Cr.P.C., by the learned Sessions Judge. What is now sought before this Hon'ble Court, under the label of Section 528 BNSS., is in substance nothing but a second revision against the very same order on the very same ground that has already been considered and rejected by the revisional Court.

4. It is well settled that where a person has already invoked and exhausted the revisional remedy under Section 397 Cr.P.C., recourse to the inherent power under Section 482 Cr.P.C. to reagitate the identical grievance is impermissible save in the narrowest of circumstances, to prevent abuse of the process of the Court or to secure the



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ends of justice in a case of manifest miscarriage of justice. The Hon'ble Supreme Court in Krishnan v. Krishnaveni, (1997) 4 SCC 241, held that permitting a second look at an order through Section 482 Cr.P.C. after the same order has been tested in revision "may amount to circumvention of the provisions of Section 397(3)" of the Code, and that the inherent power survives only as a narrow safety valve, to be exercised sparingly so as to avoid "needless multiplicity of procedure, unnecessary delay in trial and protraction of proceedings." This view draws upon and is consistent with the earlier line of authority in Dharam Pal v. Ramshri, AIR 1993 SC 1361, Simrikhia v. Dolley Mukherjee, (1990) 2 SCC 437, and Deepti v. Akhil Rai, (1995) 5 SCC 751, all of which caution against Section 482 Cr.P.C. being used to circumvent the statutory scheme governing successive challenges to the same order.

5. In the present case, no exceptional ground of abuse of process or miscarriage of justice has been made out, or is capable of being made out, given that: (i) two courts have concurrently and independently examined the Petitioner's contention on identical facts and identical case law and found it wanting; (ii) the reasoning of both courts below correctly applies settled principles, as elaborated in Part III below; and (iii) the Petitioner does not point to any change in circumstance, any material overlooked, or any jurisdictional error going to the very competence of the courts below to have heard the matter. Mere disagreement with two concurrent, reasoned findings is not, without more,



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a ground to invoke the inherent jurisdiction of this Hon'ble Court as if it were an appellate forum re-hearing the Section 322 application afresh.

III. THE PETITION IS EQUALLY UNSUSTAINABLE ON MERITS

6. Without prejudice to the preliminary objection above, it is submitted that even on merits, the impugned orders warrant no interference, for the following cumulative reasons.

A. Section 322 Cr.P.C. is confined to want of forum-competence; it is not a provision to test whether the ingredients of an offence are made out.

7. Section 322(1) Cr.P.C. reads:

"(1) If, in the course of any inquiry into an offence or a trial before a Magistrate in any district, the evidence appears to him to warrant a presumption-
(a) that he has no jurisdiction to try the case or commit it for trial, or

(b) that the case is one which should be tried or committed for trial by some other Magistrate in the district, or

(c) that the case should be tried by the Chief Judicial Magistrate, he shall stay the proceedings and submit the case, with a brief report explaining its nature, to the Chief Judicial Magistrate or to such other Magistrate, having jurisdiction, as the Chief Judicial Magistrate directs."

8. All three limbs of Section 322(1) i.e., clauses (a), (b) and (c) are, in terms, directed to one and the same question: which Magistrate or which Court is competent, as



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a matter of forum allocation (territorial, class-of-Magistrate, or notification-based subject-matter jurisdiction), to try or commit the case. None of the three limbs speaks to, or contemplates, an inquiry into whether the material on record discloses the ingredients of the offence charged. That is an altogether distinct question, textually and conceptually, and the Code deliberately routes it through a separate and specific machinery, Sections 239 and 240 Cr.P.C. (discharge), and, at the instance of the High Court, Section 482 Cr.P.C. (quashing), each carrying its own procedural safeguards of notice, hearing and a reasoned, appealable/revisable order.

9. This is confirmed by Saroja Kanta Behera v. State of Odisha, 2026 SCC OnLine Ori 6450, where the Orissa High Court, while examining an identical species of challenge under Sections 409 and 420 IPC, held in terms: "Section 240 CrPC empowers a Magistrate to frame a charge where there is ground for presuming that the accused has committed an offence which the Magistrate is competent to try... Section 322 CrPC operates in a different field. It provides that where, in the course of an inquiry or trial, the evidence appears to warrant a presumption that the case should be tried by another Magistrate... Therefore, the competence of a Judicial Magistrate First Class to try an offence under Section 409 IPC does not preclude him from submitting the case... where the circumstances contemplated under Section 322 CrPC exist." The Court there, relying on Asim Shariff v. National Investigation



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Agency, (2018) 3 SCC 493, and S.W. Palanitkar v. State of Bihar, (2002) 1 SCC 241, confirmed that the question of whether ingredients of Sections 406/409/420 IPC are prima facie disclosed is one for the discharge/charge stage, requiring the Court to "sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case... has been made out" and is not, and cannot be, collapsed into a Section 322 jurisdictional inquiry.

10. *The same understanding of Section 322 as a narrow, forum-specific provision, distinct from a merits review, is reflected in Baba Abdul Khan v. Smt. A.D. Sawant, J.M.F.C., 1994 SCC OnLine Bom 612, where the Bombay High Court explained that Sections 322 to 325 Cr.P.C. together "deal with the powers of the Judicial Magistrate, First Class, regarding the transfer of the cases in certain situation to the file of Chief Judicial Magistrate and Sessions Judge for trial", a scheme available to specific, enumerated jurisdictional and sentencing contingencies, and to nothing else; and in Shankar Malharrao Deshmukh v. State of Maharashtra, 1997(2) Mh.L.J. 163, where the Bombay High Court held that even where the conditions of Section 322(1)(c) are genuinely fulfilled, the Magistrate must record adequate reasons and follow the two-step procedure of staying the proceedings and submitting a report, underscoring that Section 322 confers no power to short circuit the ordinary course of the case, let alone to test the sufficiency of the prosecution material.*



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11. *The historical pedigree of Section 322 Cr.P.C. reinforces this narrow reading. As explained by the Full Bench of the Madras High Court in Mahender Goyal v. Kadamba International, 2013 SCC OnLine Mad 3508, Section 322 Cr.P.C. "corresponds to Section 346 of the 1898 Code" and traces to the 41st Report of the Law Commission of India, which introduced the present clause (a) want of jurisdiction purely to remove a doubt as to whether the pre-existing provision for inter-Magistrate transfer within a district also covered jurisdictional defects; the provision was never intended, and has never been read, as a freestanding vehicle for testing the sufficiency of the prosecution case. The Full Bench further held that Section 322 Cr.P.C. is so narrowly and hierarchically confined that a Magistrate cannot even transfer a case to a Chief Judicial Magistrate outside his own territorial subordination, since "transfer by a Magistrate to a Magistrate without instructions of the Chief Judicial Magistrate or a Chief Judicial Magistrate outside the District is not envisaged in the Section." This confirms that Section 322 is a technical, administrative, forum-allocation provision operating strictly within a defined hierarchy, the very opposite of the evidence-appreciating exercise the Petitioner asks this Hon'ble Court to read into it.*

B. Where a genuine jurisdictional question does arise under Section 322, it is a territorial or forum question of fact, not an assertion that ingredients are absent, as the Respondent's own authorities illustrate.



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12. It is instructive to contrast the present case with one where Section 322 Cr.P.C. was genuinely and properly invoked. In *Kumari Seema Jha v. State of Jharkhand*, 2015 SCC OnLine Jhar 5632, the accused pursued two entirely separate and parallel challenges in the very same complaint case: (i) a revision against rejection of their discharge application (testing whether the ingredients of Section 498-A IPC were made out on the complaint), and (ii) a separate petition challenging an order rejecting their application under Section 322 Cr.P.C. (testing whether the Ranchi court had territorial jurisdiction at all, since no part of the alleged cruelty had occurred within its limits). The Jharkhand High Court decided the Section 322/territorial-jurisdiction question strictly on the touchstone of Sections 178 and 179 Cr.P.C. i.e., where the ingredients of the offence were said to have occurred following *Amarendu Jyoti v. State of Chhattisgarh*, and held that mere receipt of threatening telephone calls at Ranchi did not, without more, confer territorial jurisdiction on the Ranchi court. That is a paradigm Section 322 case: a genuine, fact-specific dispute about where the case ought to be tried. It has nothing in common with the Petitioner's contention here, which is not that this case belongs in some other territorial forum, but that no offence under Section 406 IPC is made out at all on the merits, a discharge-stage contention dressed up, incorrectly, in the language of jurisdiction, even the accused in *Kumari Seema Jha* did not treat the discharge and Section 322 questions as interchangeable; they pursued them as two separate, independent remedies before two



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separate proceedings, precisely because the two inquiries are legally distinct, exactly as Respondent No. 2 submits here.

C. On the facts, the courts below rightly held that the ingredients of Section 406 IPC are, prima facie, disclosed and that finding cannot be reopened at this stage.

13. The learned Magistrate, on a detailed appreciation of the complaint and the chargesheet, recorded that the Petitioner and Accused No. 2, after receiving Rs. 25 lakhs each from the complainant/Respondent No. 2's company through banking channels and exiting the partnership, thereafter colluded with Accused No. 3 to misappropriate share certificates and letterheads of the firm, effected an unauthorised change in its constitution, and caused fabricated documents (Form No. 32) to be filed with the Registrar of Companies and the Excise Commissioner projecting persons who were never directors as directors of a company stated to be worth over Rs. 52 crores and, on that material, held that a prima facie case under Sections 380, 406, 420, 468, 471 and 120(B) IPC was made out. This is not a case, therefore, where the complaint is silent on entrustment or misappropriation; it is a case where the Petitioner disputes the correctness of a considered prima facie finding which is precisely the terrain of a discharge application or a full-fledged quashing petition assessed on Bhajan Lal principles, not a jurisdiction application under Section 322 Cr.P.C.



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14. *It is further submitted that the offences under Sections 406 and 420 IPC in the present case are not, on a fair reading of the chargesheet, mutually exclusive allegations resting on an identical, indivisible factual foundation. As held by the Orissa High Court in Saroja Kanta Behera (1940) Ltd. v. State of Uttar Pradesh, 2024 INSC 626, (relying on Delhi Race Club and Section 221 Cr.P.C.), the Code expressly contemplates alternative charges of criminal breach of trust and cheating where, at the threshold, it is uncertain which offence the facts ultimately proved will constitute; the precise legal characterisation is a matter for trial, not for a jurisdiction application at the inception of the case.*

D. Even accepting the Petitioner's own case at its highest, Section 322 Cr.P.C. could never have yielded the relief the Petitioner is truly after, at best a transfer, never discharge or acquittal.

15. *It is respectfully submitted that even if this Hon'ble Court were to accept, for the sake of argument, that the Special Court's jurisdiction is confined to offences under Sections 403 to 409 IPC (the Petitioner's own characterisation in paragraph 2 of the Section 322 application), the learned Magistrate has correctly held that the jurisdiction of the Court over a joint chargesheet "does not extend to a single accused" so as to permit the Petitioner alone to be severed out and sent elsewhere while the co-accused, charged on the same facts and the same chargesheet, remain to be tried before the same Court.*



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16. More fundamentally, Section 322 Cr.P.C., by its very text, results only in a stay of proceedings and a transfer/submission of the case to the Chief Judicial Magistrate. It does not, and cannot, result in discharge or acquittal of an accused. This is authoritatively settled in *Smt. Padira Vidyavathi v. Public Prosecutor, Hyderabad, 2020 SCC OnLine AP 5083*, relied upon by Respondent No. 2, where the Andhra Pradesh High Court, dealing with an identical attempt to convert a jurisdiction objection into a discharge, held: "even if the Court... has no jurisdiction to try the said case... the Court... cannot acquit the accused. At best, if the said Court finds at any stage of the case that it has no jurisdiction to try the case, under Section 322 of Cr.P.C. the Court has to stay the proceedings and submit the case with a brief report explaining its nature to the Chief Judicial Magistrate... Therefore, as per law, even when the trial Court finds in any criminal trial that it has no territorial jurisdiction to try the said case, it cannot either discharge the accused on that ground or acquit the accused on that ground. At best, it can only order for transfer of the said case to the competent Court which has jurisdiction to try the same." The same judgment also confirms, in the converse and equally relevant situation, that at the stage of discharge "the Court has to only see whether there is prima facie evidence or material to frame a charge... leaving the proof of the said allegations to be decided in the final adjudication of the case" it is not for the Court, at that stage, to weigh whether the prosecution will ultimately succeed in proving entrustment or dishonest misappropriation under Section



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406 IPC, precisely the exercise the Petitioner asks this Hon'ble Court to undertake under the guise of Section 322 Cr.P.C.

17. A transfer under Section 322 Cr.P.C., even where warranted, therefore operates only upon the forum, not upon the charge: the transferee Magistrate would in any event have to independently examine, at the charge/discharge stage, whether the very same ingredients are made out. The relief the Petitioner seeks through Section 322 Cr.P.C. is not, therefore, capable of yielding the substantive outcome the Petitioner is in truth after discharge from the Section 406 charge which only underscores that Section 322 is being invoked here as a proxy for relief it was never designed to grant.

WHEREFORE *it is most respectfully prayed that this Hon'ble Court may be pleased to dismiss the above writ petition as not maintainable and/or devoid of merit and pass such other order as this Hon'ble Court may deem fit in the facts and circumstances of the case, in the interest of justice."*

18. As stated supra, a perusal of the impugned orders passed by the Trial court and Sessions / Revisional court will clearly indicate that the various contentions urged by both sides as well as the material on record and the statutory provisions contained in Section 322 Cr.P.C. and Section 406 IPC as well as



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the judgments relied upon by the parties have not been considered by both the Courts and consequently, in order to enable both sides to urge their respective contentions before the trial court and to enable reconsideration of the matter afresh, I am of the considered opinion that the impugned orders passed by the trial court and Sessions / Revisional court deserve to be set aside and the matter remitted back to the Trial court for reconsideration afresh and in accordance with law.

19. Insofar as the Intervention application I.A.No.2/2026 filed by the Intervening applicant – accused No.5 is concerned, the same deserves to be disposed of reserving liberty in his favour to file an appropriate application under Section 322 Cr.P.C., and by directing the Trial court to dispose of the same in accordance with law after providing an opportunity to the respondents in this regard. I.A.No.2/2026 is accordingly disposed of.

20. In the result, I pass the following:-

ORDER

- (i) Petition is hereby allowed;



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(ii) The impugned order dated 17.09.2025 (Annexure-A) passed by LXV Additional City Civil and Sessions Judge, Bengaluru (CCH-66) in CrI.R.P. No.198/2025 and the impugned order dated 27.03.2025 (Annexure-B) passed by III Additional Chief Judicial Magistrate, Bengaluru in C.C.No.13613/2009 are hereby set aside;

(iii) The matter is remitted back to the Trial court for reconsideration of the application dated 14.03.2024 filed by the petitioner under Section 322 of Cr.P.C afresh and in accordance with law;

(iv) Liberty is reserved in favour of the Intervening applicant – accused No.5 in I.A.No.2/2026 to file an application under Section 322 of Cr.P.C. before the trial Court;

(v) Liberty is also reserved in favour of respondent No.2 - *de facto* complainant and respondent No.1-State to file objections/additional objections to the application filed by the petitioner under Section 322 of Cr.P.C. as well as the application under Section 322 of Cr.P.C to be filed by the intervening applicant- accused No.5;



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(vi) The Trial court is directed to reconsider the application filed by the petitioner-accused No.1 under Section 322 of Cr.P.C dated 14.03.2024 afresh and also consider the application under Section 322 Cr.P.C to be filed by the intervening applicant-accused No.5, without being influenced by the findings and observations recorded in the impugned orders passed by the Trial court and Sessions court / Revisional Court and pass appropriate orders in accordance with law, within a period of six weeks from the date of a receipt of a copy of this order;

(vii) It is made clear that while deciding the application under Section 322 of Cr.P.C filed by the petitioner-accused No.1 and the application under Section 322 of Cr.P.C to be filed by the intervening applicant-accused No.5, the learned Magistrate shall confine the consideration/scrutiny relating to the offence punishable under Section 406 of IPC insofar as the petitioner – accused No.1 and intervening applicant – accused No.5 and shall not deal with or consider any of other offences alleged against the accused persons.



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(viii) All rival contentions on all aspects of the matter are kept open and no opinion is expressed on the merits/demerits of the rival contentions.

**Sd/-
(S.R.KRISHNA KUMAR)
JUDGE**

Srl.