IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 22ND DAY OF DECEMBER, 2020

BEFORE

THE HON'BLE MR. JUSTICE JOHN MICHAEL CUNHA

WRIT PETITION NO.5043 OF 2019(GM-RES)

BETWEEN

SRI B S YEDDYURAPPA
S/O SIDDALINGAPPA
AGED 75 YEARS
FORMER CHIEF MINISTER OF THE
STATE OF KARNATAKA
MEMBER OF LEGISLATIVE ASSEMBLY
RESIDING AT
NO.381, 6TH CROSS, 80 FEET ROAD
RMV II STAGE, DOLLARS COLONY
BANGALORE

...PETITIONER

(BY SRI.C.V.NAGESH, SENIOR ADVOCATE A/W
SRI.SANDEEP PATIL, ADVOCATE)

AND

1. STATE OF KARNATAKA
THROUGH KARNATAKA
LOKAYUKTA POLICE
BANGALORE CITY
REPRESENTED BY ITS
SPECIAL PUBLIC PROSECUTOR

2. SRI VASUDEVA REDDY
S/O P NARAYANAPPA
AGED ABOUT 61 YEARS,
R/AT NO.401, SATPAGIRI NILAYA
NEXT TO VAKIL GARDENIA APARTMENTS
OUTER RING ROAD,
BELANDUR
BANGALORE-560103

...RESPONDENTS

(BY SRI.VENKATESH S ARBATTI, SPECIAL PP FOR R1;
SRI.K.V.DHANANJAY, ADVOCATE FOR R2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION R/W SECTION 482 CR.P.C PRAYING TO QUASH THE PRIVATE COMPLAINT IN PCR NO.51/2013 PRESENTED BEFORE XXIII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE AND PRESENTLY PENDING ON THE FILE OF LXXXI ADDITIONAL CITY CIVIL & SESSIONS JUDGE AT BANGALORE CITY VIDE ANNX-A. AND QUASH THE ORDER OF REFERENCE MADE UNDER SECTION 156(3) OF CR.P.C. DATED 18.02.2015 IN PCR NO. 51/2013 PASSED BY THE XXIII ADDITIONAL CITY CIVIL & SESSIONS JUDGE AND PRESENTLY PENDING ON THE FILE OF LXXXI ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, VIDE ANN-B AND QUASH THE FIR IN CRIME NO. 11/2015 DATED 21.02.2015 REGISTERED BY THE KARNATAKA LOKAYUKTA POLICE BANGALORE, R-1 FOR THE OFFENCES UNDER SECTION 13(1)(d) R/W SECTION 13(2) PREVENTION OF CORRUPTION ACT, 1988, AND ALL FURTHER & CONSEQUENTIAL PROCEEDINGS THERETO PENDING ON THE FILE LXXXI ADDITIONAL CITY CIVIL & SESSIONS JUDGE AND SPECIAL JUDGE, BENGALURU VIDE ANNE-C.

THIS WRIT PETITION COMING ON FOR DICTATING ORDERS, THIS DAY, THROUGH PHYSICAL HEARING / VIDEO CONFERENCING HEARING, THE COURT MADE THE FOLLOWING:

O R D E R

This petition is filed under Articles 226 and 227 of the Constitution of India read with section 482 Cr.P.C. The reliefs claimed in the petition are to quash (a) the private complaint in PCR.No.51/2013 (Annexure-'A'); (b) the order of reference made under section 156(3) of Cr.P.C. dated 18.02.2015 by the XXIII Addl. City Civil & Sessions Judge and Special Judge, Bengaluru (Annexure-'B'); and (c) the FIR No.11/2015 dated 21.12.2015 registered by the Karnataka Lokayukta Police (respondent No.1) for the offence under sections 13(1)(d) read with 13(2) of Prevention of Corruption Act, 1988 and all further and consequential proceedings pending on the file of LXXI Additional City Civil & Sessions Judge and Special Judge, Bengaluru (Annexure-'C').

2. The primary contention urged in the course of arguments by learned Senior Counsel Sri.C.V.Nagesh is that, in respect of the very same FIR, accused No.1 Sri.Raghunath Vishwanath Deshpande had preferred W.P.No.8885/2015 and this court vide order dated 09.10.2015 quashed the FIR and in

view of this order, investigation against the petitioner based on the very same FIR is illegal and amounts to abuse of process of court.

I am unable to accept this submission for more than one reason.

3(i) Firstly, by order dated 09.10.2015 passed in W.P.No.8885/2015, the entire complaint or the FIR is not quashed. To be precise, the order passed by this Court reads as under:-

> *"The complaint dated 05.07.2013 so far this petitioner herein is concerned, registered in PCR.No.51/2013 and the order dated 18.02.2015 passed by the XXIII Additional City Civil and Special Judge for Prevention of Corruption Act at Bangalore in referring the matter for investigation under section 156(3) of Cr.P.C. are hereby quashed."*

3(ii) Secondly, the order passed in favour of accused No.1 does not enure to the benefit of the petitioner.

From the reading of the complaint, I find that distinct and separate allegations are made against the petitioner (accused No.2) which read as under:-

> *The then Deputy Chief Minister Mr. B.S. Yediyurappa has also recklessly denotified land, disregarding the fact that the possession was taken and land was allotted to entrepreneurs.*

This allegation *prima facie* discloses a cognizance offence insofar as the petitioner is concerned which needs to be investigated.

3(iii) The petitioner herein is sought to be prosecuted for the independent act of denotification. Though in para 12 of the private complaint it is generally stated that,

> *"12. … The present Complaint has been filed as against Accused No.1 in the capacity of a Former Minister of Industries, Government of Karnataka and his position as aforesaid has seized Accused Nos.1 to 2 are not public servants and as could be seen from the records produced herein, Accused Nos. 1 to 10 have acted dishonestly and fraudulently and in conspiracy with each other to loot the valueable lands for their personal benefits, have indulged in acts of manipulation of records, exercise of undue influence, cheating, which are made punishable under Section 120-B, 420 and 406 of Indian Penal Code and Accused N.1 being a Public Servant from 2000 and 2005 in the capacity of Minister of Industries, Government of Karnataka, has misused his official powers in facilitating large scale misuse of land by Accused persons and also for his personal gain in the form of stakes in various companies that Accused No.1 benefited and has thus committed the offences punishable under Section 13(1)(d) and 13(1)(d) r/w 13(2) of Prevention of*

Corruption Act 1988 in addition to the various offences under the Penal code as aforesaid."

(sic)

The circumstances narrated in the complaint and the various documents produced in support thereof clearly disclose that accused Nos.1 and 2 were occupying the public office, at different point of time, in different capacities and therefore, the general allegations made in para 12 of the private complaint cannot be construed to mean that the petitioner herein is sought to be implicated for the alleged offences solely on the basis of the conspiracy as contended by the learned Senior Counsel appearing for the petitioner. A reading of the complaint clearly indicate that the petitioner herein is sought to be prosecuted for the independent act of denotification of the land done by him during his tenure as the Deputy Chief Minister.

3(iv) It also needs to be noted that along with the complaint, a large number of documents are produced by the complainant which clearly disclose that the petitioner herein was nominated as the Deputy Chief Minister on 03.02.2006 and continued to act as such until 08.10.2007 whereas accused No.1

was the Minister for Industries Minister during the period from 17.12.1994 to 20.01.1998 and again from 17.10.1999 to 28.05.2004. Therefore, the contention urged by learned Senior Counsel appearing for petitioner that in view of dismissal of the complaint against accused No.1, FIR registered against the petitioner is also liable to be set-aside is not a sound argument and cannot be accepted.

3(v) Fourthly, it is now well settled that the inherent powers under section 482 of Cr.P.C. can be exercised to give effect to an order under the Code to prevent abuse of process of the court or to otherwise secure the ends of justice. The inherent powers under this section should not be exercised to stifle a legitimate prosecution. The High Court should normally refrain from giving a prima facie decision in a case where all the facts are incomplete and hazy; more so, when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of such magnitude that they cannot be seen in their true perspective without full material. In *MADHAVRAO JIWAJIRAO SCINDIA vs.*

SAMBHAJIRAO CHANDROJIRAO ANGRE reported in *1988 Criminal Law Journal 853*, it is held that,

> *"... The legal position is well settled that when a prosecution at the initial stage is asked to quashed, the test to be applied by the Court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue."*

3(vi) Tested on the touchstone of the above settled legal principle, the allegations made in the above complaint and the material produced in support thereof prima facie make out ingredients of the offences alleged against the petitioner. In that view of the matter, the contention urged by the learned Senior Counsel for petitioner that in view of quashing of the FIR registered against accused No.1, the proceedings initiated against the petitioner deserve to be quashed are legally untenable.

3(vii) Finally, it is now well settled that, at the stage of referring the complaint for investigation or for that matter for the purpose of taking cognizance, the court is not required to

"sieve the complaint through a cullender of finest gauzes" for testing the ingredients of offence charged against the petitioner. It is held by Hon'ble Supreme Court in *RAJESH BAJAJ vs. STATE NCT of Delhi and others, (1999) 3 SCC 259* that,

> *"9. It is not necessary that a complainant should verbatim reproduce in the body of his complaint all the ingredients of the offence he is alleging. Nor is it necessary that the complainant should state in so many words that the intention of the accused was dishonest or fraudulent. Splitting up of the definition into different components of the offence to make a meticulous scrutiny, whether all the ingredients have been precisely spelled out in the complaint, is not the need at this stage. If factual foundation for the offence has been laid in the complaint the court should not hasten to quash criminal proceedings during investigation stage merely on the premise that one or two ingredients have not been stated with details. For quashing an FIR (a step which is permitted only in extremely rare cases) the information in the complaint must be so bereft of even the basic facts which are absolutely necessary for making out the offence. In State of Haryana vs. Bhajan Lal this Court laid down the premise on which the FIR can be quashed in rare cases. The following observations made in the aforesaid decisions are a sound reminder:*
>
> > *'103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in*

> *embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.'"*

3(viii) In the light of the above legal and factual position, the first contention raised by the learned Senior Counsel for the petitioner based on the order passed in favour of accused No.1 in W.P.No.8885 of 2015 does not help the petitioner to seek quashment of the complaint and the FIR (Annexures A & C) registered against him. As a result, this contention is rejected.

4. The next contention urged by learned Senior Counsel appearing for petitioner that the order of reference is bad for non-production of sanction under section 197 Cr.P.C., and section 19 of the Prevention of Corruption Act, 1988 also does not merit acceptance. The averments made in the complaint go to show that, as on the date of the order passed by the Special Court referring the complaint for investigation under section 156(3) of Cr.P.C., the petitioner ceased to hold the post of Deputy Chief Minister. Law is now well settled that *"the*

protection under the concerned provisions would not be available to a public servant after he has demitted his office or retired from service".

5. Learned Senior Counsel appearing for petitioner has placed reliance on the decision in *ANIL KUMAR and others vs. M.K. AIYAPPA and another, (2013) 10 SCC 705,* wherein it is held that,

> *"15. … the word 'cognizance' has a wider connotation and is not merely confined to the stage of taking cognizance of the offence. When a Special Judge refers a complaint for investigation under Section 156(3) Cr.P.C., obviously, he has not taken cognizance of the offence and, therefore, it is a pre-cognizance stage and cannot be equated with post-cognizance stage. When a Special Judge takes cognizance of the offence on a complaint presented under Section 200 Cr.P.C. and the next step to be taken is to follow up under Section 202 Cr.P.C. Consequently, a Special Judge referring the case for investigation under Section 156(3) is at pre-cognizance stage."*

> *21. … Once it is noticed that there was no previous sanction, as already indicated in various judgments referred to hereinabove, the Magistrate cannot order investigation against a public servant while invoking powers under Section 156(3) Cr.P.C. The above legal position, as already indicated, has been clearly spelt out in State of U.P. v. Paras Nath Singh*

(2009) 6 SCC 372 and Subramanian Swamy v. Manmohan Singh (2012) 3 SCC 64 cases."

(underlining supplied)

6. In *MANJU SURANA vs. SUNIL ARORA & Others, (2018) 5 SCC 557,* the Hon'ble Supreme Court has held as under:

> *"43. We have given a thought to the respective pleas of the parties. No doubt the process under Section 156(3) Cr.P.C. is only one of investigation. The larger question, of whether any such direction can be issued without prior sanction has been referred to a larger Bench. Were the appellant to succeed and were the matter to go back to the Magistrate and the Magistrate after application of mind forms an opinion to direct investigation by the police, it would be always open to the Magistrate to include the name of Respondent No.1 if such material is found against him."*

7. In the course of arguments, learned Senior Counsel has relied on the decision rendered by this Court in *B.A.SRINIVASAN vs. STATION HOUSE OFFICER & Another, 2018 SCC OnLine Kar 3785,* wherein it is held that, *"Protection available to a public servant while in service should also be available after his retirement."* But this decision is set-aside by

the Hon'ble Supreme Court in *STATION HOUSE OFFICER, CBI/ACB/BANGALORE vs. B.A.SRINIVASAN & Another, (2020)2 SCC 153,* wherein considering the various decisions on the point, in paras 11, 12 and 13 of the judgment, the Hon'ble Supreme Court has held as hereunder,

> *"11. In S.A. Venkataraman vs. The State, AIR 1958 SC 107, while dealing with the requirement of sanction under the pari materia provisions of the Prevention of Corruption Act, 1947, it was laid down that the protection under the concerned provisions would not be available to a public servant after he had demitted his office or retired from service. It was stated:- (AIR p.111, para 14)*
>
> > *'14 …if an offence under Section 161 of the Penal Code was committed by a public servant, but, at the time a court was asked to take cognizance of the offence, that person had ceased to be a public servant one of the two requirements to make Section 6 of the Act applicable would be lacking and a previous sanction would be unnecessary. The words in Section 6(1) of the Act are clear enough and they must be given effect to. There is nothing in the words used in Section 6(1) to even remotely suggest that previous sanction was necessary before a court could take cognizance of the offences mentioned therein in the case of a person who had ceased to be a public servant at the time the court*

was asked to take cognizance, although he had been such a person at the time the offence was committed.'

12. <u>The law so declared by this Court has consistently been followed.</u> For example, in STATE OF PUNJAB vs. LABH SINGH, (2014) 16 SCC 807, it was observed:

'9. In the present case the public servants in question had retired on 13-12-1999 and 30-4-2000. The sanction to prosecute them was rejected subsequent to their retirement i.e. first on 13-9-2000 and later on 24-9-2003. The public servants having retired from service there was no occasion to consider grant of sanction under Section 19 of the PC Act. The law on the point is quite clear that sanction to prosecute the public servant for the offences under the PC Act is not required if the public servant had already retired on the date of cognizance by the court. In S.A. Venkataraman v. State while construing Section 6(1) of the Prevention of Corruption Act, 1947 which provision is in pari materia with Section 19(1) of the PC Act, this Court held that no sanction was necessary in the case of a person who had ceased to be the public servant at the time the court was asked to take cognizance. The view taken in S.A. Venkataraman was adopted by this Court in C.R. Bansi v. State of Maharashtra (1970) 3 SCC 537 and in Kalicharan Mahapatra v. State of Orissa (1998) 7 SCC 411 and by the Constitution Bench of this Court in K.

> *Veeraswami v. Union of India (1991) 3 SCC 655. The High Court was not therefore justified in setting aside the order passed by the Special Judge insofar as charge under the PC Act was concerned.'*
>
> *13. Consequently, there was no occasion or reason to entertain any application seeking discharge in respect of offences punishable under the Act, on the ground of absence of any sanction under Section 19 of the Act. The High Court was also not justified in observing "that the protection available to a public servant while in service, should also be available after his retirement". That statement is completely inconsistent with the law laid down by this Court in connection with requirement of sanction under Section 19 of the Act.*
>
> (underlining supplied)

8. The principles laid down in this decision squarely apply to the facts of this case. As observed by the Hon'ble Supreme Court, the law on this point is well settled. Petitioner having ceased to hold the office of Deputy Chief Minister which he was holding as on the date of commission of the alleged offence, there is no requirement of obtaining prior sanction. This view is resoundingly reiterated in *Abhay Singh Chautala vs. Central Bureau of Investigation (2011) 7 SCC 141*. In the light of this settled legal position, the argument of the learned Senior

Counsel for petitioner that the order of reference made by learned Special Judge is bad for non-production of sanction under section 19 of Prevention of Corruption Act, 1988 is rejected.

9. Insofar as the requirement of sanction under section 197 Cr.P.C., is concerned, the section bars cognizance and not the investigation. This plea, therefore, is liable to be rejected outright as premature. Even otherwise, the requirement of sanction under section 197 Cr.P.C., would arise only when the alleged offence is committed in discharge of official duty by the accused. In the instant case, having regard to the allegations made in the complaint and the materials produced in support thereof, prima facie it cannot be said that denotification has been ordered by the petitioner in exercise of the lawful powers vested in him. In this context, a useful reference could be made to the orders passed by this court in *Criminal Petition No.4024/2012* in *Sri.H.D.KUMARASWAMY vs. STATE OF KARNATAKA, By Lokayukta Police, Bengaluru, disposed of on*

27.07.2015, wherein considering identical set of facts, it was held that,

> *"104. Sanction is not required under Section 19 of P.C. Act if the accused does not hold the office alleged to have been abused as on the date of taking cognizance.*
>
> *105. No sanction is required to prosecute the public servant for the offences punishable under sections 120-B, 406, 409, 467, 468 and 471 of IPC. It is no part of the duty of the public servant while discharging his official duties to enter into criminal conspiracy or to indulge in criminal misconduct.*
>
> *107. Abuse or misuse of power cannot be said to be part of the official duty. No protection can be demanded by the public servant."*

The Hon'ble Supreme Court refused to interfere with the said order and the Special Leave Petition filed against the said order stood rejected. This view is followed by this Court in a recent order in Criminal Petition No.6794/2019, pronounced on 09.10.2020, in the case of *Sri.H.D.KUMARSWAMY vs. STATE OF KARNATAKA, By Lokayukta Police, Bengaluru.* In the light of this legal and factual setting, even this plea is liable to be rejected and is accordingly rejected and consequently, the entire petition is liable to be rejected as devoid of any merits.

10. Before parting with this order, another disquieting aspect brought to the notice of this Court by learned counsel for second respondent by way of Memo dated 11.12.2020 may require consideration. By the said memo, learned counsel for second respondent has sought action against the Lokayukta Police, in line with the action suggested by the Hon'ble Supreme Court in the case of *THE STATE OF KARNATAKA & Ors. vs. DHANALAKSHAMMA (Deceased) By her Legal Representatives* on *04.08.2017* in *Diary No.20776/2017,* for their failure to conclude the investigation in spite of lapse of more than five years from the date of referring the complaint for investigation under section 156(3) Cr.P.C. It is stated that, no stay was operating insofar as the investigation against the petitioner / accused No.2 is concerned from 18.02.2015 till the investigation was stayed by this Court on 02.04.2019. It is also brought to the notice of this Court that even the learned Special Judge, by order dated 15.06.2017, had specifically observed that,

> *"No stay order is received or produced before the court so far as investigation as against accused No.2 is concerned. The IO is directed*

to proceed with the investigation and to submit the Report.

Await Report by 15.09.2017."

11. Eventhough learned Special PP for respondent No.1 has sought to explain this delay by filing Objections to the said Memo inter alia contending that subsequent to the orders passed by the Special Court under section 156(3) Cr.P.C., accused No.1 approached this Court seeking to quash the FIR in W.P. No.8885/2015 and subsequently, the proceedings against accused No.1 stood quashed by orders of this court dated 09.10.2015 and on 14.01.2016, respondent No.2 / complainant approached the Hon'ble Supreme Court against the order issued in W.P.No.8885/2015 and by order dated 30.03.2017 in SLP.No.1370/2016, the Hon'ble Supreme Court dismissed the Special Leave Petition, yet the investigation insofar as petitioner / accused No.2 having not been stalled, the explanation offered on behalf of respondent No.1, in the circumstances of the case, is totally irrelevant and cannot be accepted. The circumstances noted above clearly indicate that the delay is intentional and deliberate. Though, at this juncture, it cannot be said that

respondent No.1 has succumbed to the pressure of the petitioner, who has been holding the position of the Chief Minister of the State of Karnataka, yet respondent No.1 being an independent and impartial body entrusted with the duty to investigate into the misconduct of the public servants objectively cannot give rise to an impression in the mind of the general public that it is playing into the hands of the political bigwigs. Eventhough the delay in the matter calls for action, as ordered by the Hon'ble Supreme Court in *DHANALAKSHAMMA'*s case, referred supra, but in the circumstances of the case, having regard to the fact that the investigation is still in progress, I refrain from directing any action against the Lokayukta Police entrusted with the investigation, lest it would prejudice the investigation. However, the laxity in conducting the investigation in the instant case is deprecated and to the Lokayukta Court is directed to keep watch over the investigation ordered by the Criminal Courts in respect of the misconduct of public servants and MPs and MLAs involved in the commission of criminal offences.

In the light of the above discussion and for the reasons stated above, the petition is **dismissed.**

Sd/-
JUDGE

bss.