HONOURABLE DR. JUSTICE D.NAGARJUN

CRIMINAL PETITION No. 12064 of 2018

ORDER:

This Criminal Petition is filed under Section 482 of the Code of Criminal Procedure challenging the orders dated 16.07.2018 in Criminal Revision Petition No.210 of 2017 on the file of Metropolitan Sessions Judge, Hyderabad.

2. The brief facts as can be gathered from the record available before the Court are as under:

i) The petitioner herein, who is retired Assistant Manager of A.P.State Cooperative Bank, has filed a complaint on 18.05.2012 to the Additional Director General of Police, CID, A.P., Hyderabad alleging that he has been in possession of agricultural land to an extent of Ac.20.00 guntas in Sy.Nos.97, 98 (part), 99 of Yellampet Village and in Sy.No.90 of Dabilpura Village of Medchal Mandal of Ranga Reddy District having purchased the same by selling their ancestral properties situated at their native villages and also from his salary savings and thereafter developed the said land by taking loans from banks.

ii) In the month of February, 2004 the petitioner intended to sell his agricultural land to perform his daughter's marriage but as he has no sufficient money, he approached Mallesh of Athvel Village of Medchal Mandal and Surapuraju, who are dealing engaged in land dealings and shown his land to them apart from requesting them to arrange loan. On that Mallesh and Surapuraju have arranged Rs.50 lakhs to the petitioner through Chandu and Santhi, for which they have retained his pattadhar passbooks bearing Patta Nos.94, 206, 896 and book serial Nos.35126 and 2891, 97262 and 289328, 375686 and 398913 respectively of agricultural land to an extent of Ac.8.20 guntas in Sy.No.90 of Dabilpura Village, Sy.No.99 of Yellampet Village and apart from that they have obtained his signatures on three blank cheques bearing Nos.0269030, 069031, 069032 of Andhra Pradesh State Cooperative Bank Limited of Narayanaguda Branch and also obtained the signatures of his wife on some blank papers.

iii) On the same day of arranging loan of Rs.50 lakhsMallesh asked for a hand loan of Rs.44 lakhs with a promise to return by the date of marriage of petitioner's daughter. On that the petitioner has advanced Rs.44 lakhs to Mallesh, who has acknowledged the receipt of the same. But Mallesh failed to return the money, even after informing him that the marriage of petitioner's daughter was fixed in May, 2004. Due to continuous requests, Mallesh stated that he can arrange further loan and insisted to give a cheque of Rs.10 lakhs in favour of his son Deva and also one signed blank stamp paper. As there was no option, the petitioner issued a cheque and blank signed stamp paper as demanded by Mallesh, upon which he arranged Rs.10 lakhs loan.

iv) Since the petitioner is unable to repay loan to Chandu, on many occasions Chandu came to the house of the petitioner and picked up quarrel by threatening that he would grab his land if the petitioner fails to pay the amount. Unable to bear the harassment, the petitioner decided to sell his agricultural land and handed over his original land vide document bearing No.6683 of 1986 of SRO Medchal and pattadar passbook to Suraparaju pertaining to Ac.6.03 guntas in Sy.No.90 of Dabilpur Village for showing it to Baggas, but Surparaju did not return the said original documents till today.

v) During the year 2006, Suraparaju, Mallesh and Nani (friend of Suraparaju) brought Ms. Bagga Infrastrucutres Limited represented by its Managing Director Sri Guru Charan

Singh Bagga as they were interested in acquiring 100 acres of land at Yellampet and Dabilpur villages. The petitioner proposed to sell his entire Ac. 20.00 guntas of land, but initially due to some reasons, the petitioner decided to sell an extent of Ac. 3.12 guntas of land (in Sy.No.99 Ac.1.03 guntas, in Sy. No.97 and 98 Ac.1.09 guntas and in Sy. No.90 Ac.1.00 guntas) @ Rs.1.50 crores per acre to M/s.Baggas, for which Guru Charan Singh paid an advance of Rs.50 lakhs by way of cheques through Surapuraju. Further, Mallesh and Surapuraju promised that balance of sale consideration of Rs.4 crores would be paid at the time registration.

v) On 06-07-2006, the petitioner registered Ac.3.12 guntas of land in favour of Baggas family members, on the same day Bagga's paid the petitioner an amount of Rs.25 lakhs by way of cheque and Rs.10 lakhs in the form of cash through Mallesh and Surapuraju, but the petitioner never directly interacted with Baggas in any manner in the above sale transaction. Further, Mallesh and Surapuraju promised that the remaining amount of Rs.4.15 crores would be paid by Baggas at the time of purchase of remaining land.

vi) Later Chandu and his wife Shanthi filed civil cases against the petitioner in R.R. District Court for not repaying their loan amount. During October, 2006, Chandu with the help of Venkatesh Dabilpara, Srinivas Reddy r/o. Gundla Pochampally and others illegally trespassed into agriculture land of the petitioner and occupied the same as the petitioner did not return his loan amount. When the petitioner questioned Mallesh, Surapuraju, Nani, they brought Bhanu Kiran, Mangali Krishna Group for settling the land issue of the petitioner with Chandu and Baggas. The above persons settled the land issue without the knowledge and physical presence of the petitioner and they all came to amicable settlement by paying an amount of Rs.1 crore to Chandu for withdrawing civil case against the petitioner and vacate illegal occupation of Chandu from the land of the petitioner. After receiving the petitioner's loan amount from Baggas, Chandu acknowledged the receipt of same, as promised by Chandu and Shanthi, they did not withdraw the civil suit which was pending against the petitioner and his wife, but only vacated illegal occupation from the land of the petitioner. From that time onwards Surapuraju, Mallesh, Rupesh, Prithviraj representative of Baggas, P.Nani Narasimha Rao, Chandu, Mangali Krishna, Bhanu Kiran and his associates formed themselves into a vicious gang and developed criminal intention to grab entire agriculture land of the petitioner as he is residing alone with his wife and not having any local support and strength of his family members.

vii) During the year April, 2007, when the younger daughter's marriage of the petitioner was settled and arrangements were going Nani, Bhanu, Mangali Krishna came to the house situated at Filmnagar and induced and promised the petitioner to look after all legal affairs and ensure that the matter will be settled with Baggas and forced the petitioner to give his original document for securing a loan of Rs.1 crore and on inducement of Nani and others the petitioner gave his sale deed bearing document No.2827/84, patta pass book, title deeds etc, pertaining to Ac.2.20 guntas of land in Sy. No. 99 of Yellampet village. Later Nani and Bhanu insisted that a civil suit is pending against the property for which document was given to them and asked the petitioner to give another clear document, but they did not return previous original sale deed document, patte-pass book, title deeds of the petitioner pertaining to sale deed bearing document No.2827/84. In this issue Nani and Bhanu many times insisted and threatened the petitioner to kill and forced the petitioner to give GPA in their favour for selling the 3 acres of land in sy.no.90 of Dabeerpur village and also acting on behalf of them in all the matters. 10 days prior to the marriage younger daughter of the petitioner, Bhanu, Nani and Mallesh came to the house of the petitioner at Filmnagar and threatened the petitioner and his family members with dire consequences if the petitioner do not accept for their demand for issuing GPA in their favour the petitioner and his wife would not be alive to see their daughter's marriage and they will also spoil lives. Under above life threat the petitioner and his family members were left with no other choice except to give GPA to Nani on the threatening of Bhanu Kiran, Mangali Krishna and his associates.

viii) On 12-04-2007, Nani and Mallesh came to the house of the petitioner and forcibly took petitioner and his wife Sowbhagyavathi to Moosapet Sub-Registrar Office, where Nani and forcibly obtained the signature of petitioner's wife on GPA documents which was in favour of Nani pertaining to 3 acres of land vide link document bearing No.7731/88 of SRO Medchal and he forcibly obtained signatures on another GPA documents which was in favour of Nani's brother-in-law Venkata Sai Srinivas @ Sai, though the petitioner and his wife have informed about executing the documents to Nani and others that out of three acres one acre was already registered in favour of Baggas on 06-07-2006, but they did not care about this issue and Mallesh signed as witness in this GPA document. As mentioned in the GPA Nani did not pay Rs.30 lakhs to the petitioner, but only mentioned it in the GPA document. Later also even after requesting Nani to pay Rs.10 lakhs for meeting marriage expenses of petitioner's daughter, did not pay a single pie to the petitioner.

ix) On 20-04-2007, without invitation of the petitioner Mallesh, Nani banu Kinh Mangaly Krishna and their associates attended marriage of the petitioner's daughter at Sridhar Function Hall at Khairatabad only to threaten the petitioner and family members and to keep the petitioner under constant threat. In the month of October, 2007 the petitioner along with his wife Sowbhagyavathi went to the flat of Nani at Madhuranagar, Hyderabad with a request to return the original document No.2827/1984 of the petitioner, but Nani abused in most filthy language and threatened the petitioner with dire consequences to eliminate them with the help of Bhanu Kiran and Mangali Krishna and forget about original documents of the petitioner or else they won't be alive. Due to fear of life the petitioner did not complain this matter to anyone. As Nani, Bhanu, Mangali Krishna, Mallesh, Surapuraju who developed evil eye to grab land of the petitioner illegally in any manner, the petitioner thought it would be better to approach directly to Bagga's representatives Rupesh, Prithvi Raj through BVD Raju to clear all litigation pertaining to entire land of the petitioner. There Rupesh and Prithvi Raju assured the petitioner that they would clear all litigation and build Villas in the land of the petitioner and insisted the petitioner to enter into development agreement with Baggas, as such the petitioner was left with no other choice except to enter into the development agreement with Bagga Infrastructure Ltd., represented by Sri Gurucharan Singh Bagga, upon which they paid Rs.55 lakhs as advance. During this transaction, the petitioner came to know through BVD Raju that Surapuraju pledged the original documents bearing No.6683/1986 of SRO Medchal and pattadhar pass book with some financier. Further, BVD Raju Stated to the petitioner that Surapuraju pledged his original document pertaining to land to an extent Ac.6.03 guntas and for the purpose of release of the same he took Rs.25 lakhs from out of the advance paid by Baggas. Later the petitioner came to know that BVD Raju got released said original documents and handed over to Baggas. All my land documents were acquired by Bagga for development but they did not take any steps.

x) Later Baggas colluded and conspired together with Chandu, Shanthi, Nani. Surapuraju, Mallesh, BVD Raju by joining hands with factionist Bhanu Kiran, Mangali Krishna and others with a criminal intention to grab entire agriculture land of the petitioner. During the year October 2009, Chandu again trespassed into agriculture land of the petitioner with the help of Shanthi, Nani, Surapuraju, Mallesh, BVD Raju Bhanu Kiran, Manganeshto grab the entire land of the petitioner, when garden manager of the petitioner Subba Raju and his family members objected to their criminal acts, Chandu, Shanthi, Nani, Surapuraju, Mallesh, BVD Raju, Bhanu Kitan, Mangali Krishna threatened and assaulted Subba Raju and his family members and others destroyed the grapes garden of the petitioner situated at Yellampet, ploughed the entire land of the petitioner and taken away wires, stones etc., When the petitioner questioned the illegal acts of above persons of Chandu, Nani, Surapuraju, immediately Bhanu Kiran, Mangali Krishna interfered and threatened the petitioner by showing revolver, due to threat to our lives the petitioner did not complain the matter to police. Therefore the petitioner requested to take necessary action against Chandu, Shanthi, Surapuraju, Mallesh, BVD Raju, Baggas represented by Guru Charan Singh, Rupesh, Prithviraj Bhanu Kiran, Mangali Krishna, Nani and his brother in law Venkata Sai Srinivas and others, who collectively conspired together and induced and forced the petitioner to hand over original documents of the petitioner with a false promise that they would purchase property of the petitioner, but later when the petitioner insisted them to return original documents of the petitioner, they all deceived and threatened the petitioner and his wife with dire consequences by showing revolver that they would eliminate at any time and warned them not to complain to any person.

xi) Based on the said complaint, a case in Crime No.36 of 2012 was registered for the offence under Sections 420, 386, 406, 506, 447, 148, 120-B read with Section 34 of the Indian Penal Code and Section 25 (1-A) of the Arms Act. The Police, CID, Hyderabad have recorded the statements of witnesses and filed final report stating that accused Nos.1 and 2 have committed offence under Sections 467, 468 and 471 read with Section 34 of the Indian penal Code and accused Nos.1 to 4 and 9 to 12 have committed the offence punishable under Sections 120-B, 384, 420, 506 of the Indian Penal Code.

Aggrieved by the action of the Police in deleting the names of accused Nos. 5 to 8 from FIR No.36 of 2012, the petitioner has filed protest petition vide Crl.M.P.No.2213 of 2016. Learned VI Additional Chief Metropolitan Magistrate, Hyderabad has allowed the said petition vide order dated 08.03.2017 and thereby cognizance of the offence under Sections 420, 386, 406, 506, 447, 448, 120-B read with Section 34 of the Indian Penal Code against accused Nos.5 to 8. Aggrieved by taking cognizance against them, accused Nos.6 to 8 have filed Criminal Revision Petition No.210 of 2017 before the learned Metropolitan Sessions Judge, Hyderabad has passed order dated 16.07.2018 by setting aside order dated 08.03.2017 passed by VI Additional Chief Metropolitan Magistrate, Hyderabad taking cognizance against accused Nos.5 to 8. Aggrieved by the same, the petitioner herein has filed the present criminal petition on the following grounds:

a) The Petition filed by Accused Nos.5 to 8 is only an attempt to subvert the criminal justice system by evading prosecution for crimes where a bare perusal of the record discloses that a case is made out against them. When, the material on record including statements of witnesses recorded under Section 161 of the Code of Criminal Procedure make out a case against the Accused Nos. 5 to 8, it was improper for the Revision Court to pass the impugned order. The Revision Court failed to appreciate that the final beneficiaries and the persons who acted in the crime could not have been removed from the crime without trial and leading evidence to prove their innocence.

b) The Court below failed to appreciate that the order under challenge considered all submissions and statements made and arrived at the conclusion that Accused Nos.5 to 8 were also to be prosecuted as a case was made out against them.

c) The court below failed to give any importance to the statements that were considered in the order under challenge without assigning adequate reasons for the same. The Court below failed to appreciate that there was ample material on record to show as to who are the final beneficiaries of the entire transaction but the same were disregarded without assigning adequate reasons for the same and without any basis.

d) The court below failed to appreciate that the fact of pending civil litigation does not mitigate against the accusations of a criminal nature that were raised by the petitioner against Accused Nos. 5 to 8. The Court below failed to appreciate that the scope and ambit of the civil and criminal proceedings was different and there is no bar for criminal proceedings to be conducted parallel to each other and at the same time.

e) The Court below ought to have appreciated that while the civil suits decide the title of the property, the criminal actions alleged deal directly with the manner in which the dispute arose and the actions of the accused while dealing with the Petitioner's property and as such A5-8 ought to have been prosecuted in that regard.

f) The order under challenge was passed at the cognizance stage and recorded the consideration of submissions and statements that made out a case against Accused Nos.5 to 8 and therefore ought not to have been set aside.

g) The Court below ought to have appreciated that while the civil suits decide the title of the property, the criminal actions alleged deal directly with the manner in which the dispute arose and the actions of the accused while dealing with the Petitioner's property and as such Accused Nos. 5 to 8 ought to have been prosecuted in that regard.

3. Now, the point for determination is whether the orders dated 16.07.2018 passed in Criminal Revision Petition No.210 of 2017 on the file of Metropolitan Sessions Judge, Hyderabad, can be set aside?

4. The petitioner herein by name P. Chiranjeevi Raju has filed a complaint before CID Police, Hyderabad against Chandu, Shanti, Surapuraju, Mallesh, BVD Raju, Guru Charan Singh Bagga, Rupesh, Prithviraj, Bhanu, Mangali Krishna, Nani and Venkata Surya Srinivas and others alleging that they have collectively conspired together, induced the de-facto complainant who is the petitioner herein forcing to handover possession original land documents with false promise that they would purchase their property, but deceived them and threatened him and his wife with dire consequences by showing the revolver stating that they will eliminate them at any time and not to complaint to anybody. Basing on the said complaint, police CID have registered a case in Crime No.36 of 2012 for the offences under Sections 420, 386, 406, 506, 447, 448, 120-B read with 34 IPC and Section 25(1-A) of the Arms Act against 12 persons.

5. The petitioner is the owner of an agriculture land to the extent of Acs.20.00 of which he has agreed to sell part of the land and requested Mr. Mallesh. However, he has availed Rs.50 lakhs in 2004 from said Chandu and his wife Smt. Shanti. The said transaction was mediated by Mallesh and Suraparaju. At the time of advancing of the money, the signatures of the petitioner and his wife were taken on blank papers and also taken three cheques etc, including pattadar passbook. However, when Rs.50 lakhs were advanced to the petitioner by Chandu, Mallesh has borrowed an amount of Rs.44 lakhs promising to pay at the time of marriage of petitioner's daughter. At the time of marriage, though Mallesh has failed to arrange Rs.44 lakhs, he has arranged Rs.10 lakhs by taking a cheque in the name of Mallesh.

6. When Chendu has pressurized the petitioner to discharge his loan amount, the petitioner agreed to sell Ac.3.12 guntas to Baggas Infrastructure Limited being represented by Guru Charan Singh Bagga, who is the Managing Director of M/s. Baggas Infrastructure Limited. The said Guru Charan Singh Bagga was introduced by Suraparaju. The said Guru Charan Singh Bagga agreed to purchase the said land @ Rs.1.50 crores per acre and paid Rs.50 lakhs as advance to the petitioner. On

06.07.2006, Ac.3.12 guntas were registered, however, cheque of Rs.25 lakhs and cash of Rs.10 lakhs was given by promising that the rest of money will be paid at the time of sale of remaining land.

7. Chandu and Shanti who have advanced Rs.50 lakhs to the petitioner have filed O.S.No.651 of 2006 and 652 of 2006 on the file of IV Additional District Judge, Ranga Reddy, L.B. Nagar, alleging that the petitioner has executed agreement of sale of part of the agriculture land. Chandu and Shanti have filed by manipulating the blanks documents which were signed by the petitioner at the time of borrowing Rs.50 lakhs from Chandu.

8. As the Chandu and Shanti have filed civil suits against the petitioner, a settlement was arrived at which was participated by Suraparaju, Bhanu Kiran, Murali Krishna, on account of settlement M/s. Bagga Infrastructure has paid Rs.1 crore to Chandu and his wife and withdraw the civil suit against the petitioner. However, civil suits were not withdrawn. It is also alleged in the complaint that Bhanu Kiran, Murali Krishna, Suraparaju, Rupesh, Guru Charan Singh Bagga, Pritviraj conspired to grab the petitioner's land and eliminate them for

illegal gains as the petitioner was living with his with without much support from any corner. Accordingly, Bhanu Kiran, Murali Krishna, Nani forcibly took away the original sale deed and pattadar passbooks in respect of the lands from the petitioner to an extent of Ac.2.00 in Sy.No.99 and sought securing a loan of Rs.1 crore.

9. Further, all of them pressurized the petitioner and his wife to execute a GPA for settling all the disputes. On 12.04.2007, Nani and Mallesh forcibly took the petitioner to the officer of Sub-Registrar, Moosapet, where the petitioner's wife was forced to execute GPA in favour of Nani in respect of Ac.3.00 of land for a sum of Rs.30 lakhs which was not paid. Another GPA was also executed forcibly in favour of Srinivas, brother-in-law of Nani, in respect of other Ac.3.00 of land.

10. The said nani who has got the GPA from the petitioner has sold the land in favour of Bagga's family represented by Shevender Singh Bagga, Manmeeth Singh Bagga, as per the conspiracy. However, no money was paid in favour of the petitioners either by Nani or by Bagga family. One Mr. BVD Raju has taken the petitioner to the Baggas stating that they will settle all legal affairs and threatened them and got executed

Ac.3.00 of land to Baggas stating that Baggas will spent huge for settlement of land disputes. They also got executed more documents in favour of Smt. Sanjog Gour and others in respect of Ac.1.20 guntas of land in Sy.No.90, another document in favour of Manmeeth Singh Bagga to an extent of Ac.1.20 guntas in Sy.No.90 by mentioning that they will pay Rs.20 lakhs but no amount has been paid. These two documents were presented before the Sub-Registrar, but the Sub-Registrar has declined to register as there were some legal disputes. When the Sub-Registrar has refused to documents to register, Rupesh Shah and Prithviraj forced the petitioner and his wife to sign on blank papers and created development agreement with Baggas Infrastructure Limited represented by Guru Charan Singh Bagga for developing the lands of the petitioner for construction of villas. Petitioner was paid Rs.55 lakhs of which Rs.25 lakhs were taken by Raju forcibly stating that he will get the original sale deed released from Arjun Reddy a financier. Accordingly, BVD Raju though not released the original docuemtns, they wee given to Baggas in stead of giving them to the petitioner. It is stated that on account of conspiracy of all the persons relating to Baggas Infrastructure Limited, with Bhanu Kiran, Muralikrishna, Nani and others, petitioner was put to wrongful loss of about Rs.15 cores.

11. Police on completion of investigaton filed charge sheet by deleting the names of A5 to A8, who are the respondents herein. Aggrieved by the same, the petitioner filed Crl.M.P.No.2213 of 2016 on the file of VI Additional Chief Metropolitan Magistrate, Hyderabad and on considering the same, the orders were passed on 08.03.2017 that as per the statemet of the petitioner and his wife offences made out against respondent Nos.5 to 8and thereby cognizance is taken against them. Aggrieved by the said taking of cognizance, dated 08.03.2017, the respondents herein filed Crl.R.P.No.210 of 2017 on the file of the Metropolitan Sessions Judge, Hyderabad. The said revision petition was allowed on 16.07.2018 setting aside the orders passed by the learned Magistrate in Crl.M.P.No.2213 of 2016. Aggrieved by the said order, the present criminal petition is filed by the de-facto complainant.

12. It is submitted by the learned counsel for the petitioner that the orders passed by the revisional Court are erroneous as it has exceeded the scope of revision and the revisional Court has decided the revision as if it has been deciding the appeal.

The statements of the de-facto complainant and his wife under Section 161 Cr.P.C., makes a case against A5 to A8. However, the revisional Court without considering the same has allowed the revision petition.

13. Learned counsel for the petitioner has placed an authority decided between **Nupur Talwar vs. Central Bureau of Investigation, Delhi and another**[1], wherein the Hon'ble Supreme Court at paras 19, 21 and 22 held as under:

> "19. The correctness of the order whereby cognizance of the offence has been taken by the Magistrate, unless it is perverse or based on no material, should be sparingly interfered with. In the instant case, anyone reading the order of the Magistrate taking cognizance, will come to the conclusion that there has been due application of mind by the Magistrate and it is a well-reasoned order. The order of the High Court passed on a criminal revision under Sections 397 and 401 of the Code (not under Section 482) at the instance of Dr. Mrs Nupur Talwar would also show that there has been a proper application of mind and a detailed speaking order has been passed.
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> 21. We feel constrained to observe that at this stage, this Court should exercise utmost restrain and caution before interfering with an order of taking cognizance by the Magistrate, otherwise the holding of a trial will be stalled. The superior courts should maintain this restrain to uphold the rule of law and sustain the faith of the common man in the administration of justice.
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> 22. Reference in this connection may be made to a three-Judge Bench decision of this Court in *India Carat (P) Ltd.* v. *State of Karnataka* [(1989) 2 SCC 132 : 1989 SCC (Cri) 306] . Explaining the relevant principles in para 16, Natarajan, J. speaking for the unanimous three-Judge

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[1] (2012) 2 SCC 188

Bench, explained the position so succinctly that we would rather quote the observation as under: (SCC pp. 139-40)

> "16. The position is, therefore, now well settled that upon receipt of a police report under Section 173(2) a Magistrate is entitled to take cognizance of an offence under Section 190(1)(*b*) of the Code even if the police report is to the effect that no case is made out against the accused. The Magistrate can take into account the statements of the witnesses examined by the police during the investigation and take cognizance of the offence complained of and order the issue of process to the accused. Section 190(1)(*b*) does not lay down that a Magistrate can take cognizance of an offence only if the investigating officer gives an opinion that the investigation has made out a case against the accused. The Magistrate can ignore the conclusion arrived at by the investigating officer and independently apply his mind to the facts emerging from the investigation and take cognizance of the case, if he thinks fit, in exercise of his powers under Section 190(1)(*b*) and direct the issue of process to the accused."

These well-settled principles still hold good. Considering these propositions of law, we are of the view that we should not interfere with the concurrent order of the Magistrate which is affirmed by the High Court."

Learned counsel has also cited another authority reported in **Dharam Pal and others vs. State of Haryana and another**[2], wherein the Hon'ble Supreme Court held at paras 33 and 34 as under:

33. As far as the first question is concerned, we are unable to accept the submissions made by Mr Chahar and Mr Dave that on receipt of a police report seeing that the case was triable by Court of Session, the Magistrate has no other function, but to commit the case for trial to the Court of Session, which could only resort to Section 319 of the Code to array any other person as accused in the trial. In other words, according to Mr Dave, there could be no

[2] (2014) 3 SCC 306

intermediary stage between taking of cognizance under Section 190(1)(b) and Section 204 of the Code issuing summons to the accused. The effect of such an interpretation would lead to a situation where neither the Committing Magistrate would have any control over the persons named in column 2 of the police report nor the Sessions Judge, till the Section 319 stage was reached in the trial. Furthermore, in the event the Sessions Judge ultimately found material against the persons named in column 2 of the police report, the trial would have to be commenced de novo against such persons which would not only lead to duplication of the trial, but also prolong the same.

34. The view expressed in Kishun Singh case [Kishun Singh v. State of Bihar, (1993) 2 SCC 16 : 1993 SCC (Cri) 470] , in our view, is more acceptable since, as has been held by this Court in the cases referred to hereinbefore, the Magistrate has ample powers to disagree with the final report that may be filed by the police authorities under Section 173(2) of the Code and to proceed against the accused persons dehors the police report, which power the Sessions Court does not have till the Section 319 stage is reached. The upshot of the said situation would be that even though the Magistrate had powers to disagree with the police report filed under Section 173(2) of the Code, he was helpless in taking recourse to such a course of action while the Sessions Judge was also unable to proceed against any person, other than the accused sent up for trial, till such time evidence had been adduced and the witnesses had been cross-examined on behalf of the accused."

Learned counsel also cited another authority in **Sunil Bharti Mittal vs. Central Bureau of Investigation**[3], wherein the Hon'ble Apex Court at paras 48 to 50 has held as under:

"48. Sine qua non for taking cognizance of the offence is the application of mind by the Magistrate and his satisfaction that the allegations, if proved, would constitute an offence. It is, therefore, imperative that on a complaint or on a police report, the Magistrate is bound to

[3] (2015) 4 SCC 609

consider the question as to whether the same discloses commission of an offence and is required to form such an opinion in this respect. When he does so and decides to issue process, he shall be said to have taken cognizance. At the stage of taking cognizance, the only consideration before the court remains to consider judiciously whether the material on which the prosecution proposes to prosecute the accused brings out a prima facie case or not.

49. Cognizance of an offence and prosecution of an offender are two different things. Section 190 of the Code empowered taking cognizance of an offence and not to deal with offenders. Therefore, cognizance can be taken even if offender is not known or named when the complaint is filed or FIR registered. Their names may transpire during investigation or afterwards.

50. Person who has not joined as accused in the charge-sheet can be summoned at the stage of taking cognizance under Section 190 of the Code. There is no question of applicability of Section 319 of the Code at this stage (see SWIL Ltd. v. State of Delhi [(2001) 6 SCC 670 : 2001 SCC (Cri) 1205]). It is also trite that even if a person is not named as an accused by the police in the final report submitted, the court would be justified in taking cognizance of the offence and to summon the accused if it feels that the evidence and material collected during investigation justifies prosecution of the accused (see Union of India v. Prakash P. Hinduja [(2003) 6 SCC 195 : 2003 SCC (Cri) 1314]). Thus, the Magistrate is empowered to issue process against some other person, who has not been charge-sheeted, but there has to be sufficient material in the police report showing his involvement. In that case, the Magistrate is empowered to ignore the conclusion arrived at by the investigating officer and apply his mind independently on the facts emerging from the investigation and take cognizance of the case. At the same time, it is not permissible at this stage to consider any material other than that collected by the investigating officer."

Learned counsel further relied on the judgment in **Gangadhar Janardan Mhatre vs. State of Maharashtra and**

others[4], wherein the Hon'ble Apex Court has held at paras 8 and 9 as under:

> **8.** In *Abhinandan Jha* v. *Dinesh Mishra* [AIR 1968 SC 117 : 1968 Cri LJ 97 : (1967) 3 SCR 668] this Court while considering the provisions of Sections 156(3), 169, 178 and 190 of the Code held that there is no power, expressly or impliedly conferred, under the Code, on a Magistrate to call upon the police to submit a charge-sheet, when they have sent a report under Section 169 of the Code, that there is no case made out for sending up an accused for trial. The functions of the magistracy and the police are entirely different, and the Magistrate cannot impinge upon the jurisdiction of the police, by compelling them to change their opinion so as to accord with his view. However, he is not deprived of the power to proceed with the matter. There is no obligation on the Magistrate to accept the report if he does not agree with the opinion formed by the police. The power to take cognizance notwithstanding formation of opinion by the police which is the final stage in the investigation has been provided for in Section 190(1)(*c*).
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> 9. When a report forwarded by the police to the Magistrate under Section 173(2)(i) is placed before him several situations arise. The report may conclude that an offence appears to have been committed by a particular person or persons and in such a case, the Magistrate may either (1) accept the report and take cognizance of the offence and issue process, or (2) may disagree with the report and drop the proceeding, or (3) may direct further investigation under Section 156(3) and require the police to make a further report. The report may on the other hand state that according to the police, no offence appears to have been committed. When such a report is placed before the Magistrate he has again option of adopting one of the three courses open i.e. (1) he may accept the report and drop the proceeding; or (2) he may disagree with the report and take the view that there is sufficient ground for further proceeding, take cognizance of the offence and issue process; or (3) he may direct further investigation to be made by the police under Section 156(3). The position is, therefore, now well settled that upon receipt of a police report under Section 173(2) a Magistrate is entitled to take cognizance of an offence

[4] (2004) 7 SC 768

under Section 190(1)(b) of the Code even if the police report is to the effect that no case is made out against the accused. The Magistrate can take into account the statements of the witnesses examined by the police during the investigation and take cognizance of the offence complained of and order the issue of process to the accused. Section 190(1)(b) does not lay down that a Magistrate can take cognizance of an offence only if the investigating officer gives an opinion that the investigation has made out a case against the accused. The Magistrate can ignore the conclusion arrived at by the investigating officer and independently apply his mind to the facts emerging from the investigation and take cognizance of the case, if he thinks fit, exercise his powers under Section 190(1)(b) and direct the issue of process to the accused. The Magistrate is not bound in such a situation to follow the procedure laid down in Sections 200 and 202 of the Code for taking cognizance of a case under Section 190(1)(a) though it is open to him to act under Section 200 or Section 202 also. [See India Carat (P) Ltd. v. State of Karnataka [(1989) 2 SCC 132 : 1989 SCC (Cri) 306 : AIR 1989 SC 885] .] The informant is not prejudicially affected when the Magistrate decides to take cognizance and to proceed with the case. But where the Magistrate decides that sufficient ground does not subsist for proceeding further and drops the proceeding or takes the view that there is material for proceeding against some and there are insufficient grounds in respect of others, the informant would certainly be prejudiced as the first information report lodged becomes wholly or partially ineffective. Therefore, this Court indicated in Bhagwant Singh case [(1985) 2 SCC 537 : 1985 SCC (Cri) 267 : AIR 1985 SC 1285] that where the Magistrate decides not to take cognizance and to drop the proceeding or takes a view that there is no sufficient ground for proceeding against some of the persons mentioned in the first information report, notice to the informant and grant of opportunity of being heard in the matter becomes mandatory. As indicated above, there is no provision in the Code for issue of a notice in that regard."

Learned counsel also relied on the judgment in **Minu Kumari and another vs. State of Bihar and others**[5], wherein the Hon'ble Supreme Court at para 11 has held as under:

> "11. When a report forwarded by the police to the Magistrate under Section 173(2)(i) is placed before him several situations arise : the report may conclude that an offence appears to have been committed by a particular person or persons and in such a case, the Magistrate may either (1) accept the report and take cognizance of the offence and issue process, or (2) may disagree with the report and drop the proceeding, or (3) may direct further investigation under Section 156(3) and require the police to make a further report. The report may on the other hand state that according to the police, no offence appears to have been committed. When such a report is placed before the Magistrate he again has option of adopting one of the three courses open i.e. (1) he may accept the report and drop the proceeding; or (2) he may disagree with the report and take the view that there is sufficient ground for further proceeding, take cognizance of the offence and issue process; or (3) he may direct further investigation to be made by the police under Section 156(3). The position is, therefore, now well settled that upon receipt of a police report under Section 173(2) a Magistrate is entitled to take cognizance of an offence under Section 190(1)(b) of the Code even if the police report is to the effect that no case is made out against the accused. The Magistrate can take into account the statements of the witnesses examined by the police during the investigation and take cognizance of the offence complained of and order the issue of process to the accused. Section 190(1)(b) does not lay down that a Magistrate can take cognizance of an offence only if the investigating officer gives an opinion that the investigation has made out a case against the accused. The Magistrate can ignore the conclusion arrived at by the investigating officer and independently apply his mind to the facts emerging from the investigation and take cognizance of the case, if he thinks fit, exercise his powers under Section 190(1)(b) and direct the issue of process to the accused. The Magistrate is not bound in such a situation to follow the procedure laid down in Sections 200 and 202 of the Code for taking cognizance of a case under Section

[5] (2006) 4 SCC 359

> 190(1)(a) though it is open to him to act under Section 200 or Section 202 also. (See India Carat (P) Ltd. v. State of Karnataka [(1989) 2 SCC 132 : 1989 SCC (Cri) 306 : AIR 1989 SC 885].”

14. It is submitted by the learned counsel for the petitioner that if the learned Magistrate has taken cognizance basing on the material, the revisional Courts are not supposed to interfere unless it is perverse. The Courts have got power to include anybody’s name as an accused even though police after completing the investigation filed charge sheet deleting their names.

15. Learned counsel for the respondents/accused has cited authority in **Kamlapati Trivedi vs. State of West Bengal**[6], wherein the Hon’ble Supreme Court at paras 50, 51 and 53 has held as under:

> “50. Sections 169 and 170 do not talk of the submission of any report by the police to the Magistrate, although they do state what the police has to do short of such submission when it finds at the conclusion of the investigation (1) that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate (Section 169) or (2) that there is sufficient evidence or reasonable ground as aforesaid (Section 170). In either case the final report of the police is to be submitted to the Magistrate under sub-section (1) of Section 173. Sub-section (3) of that section further provides that in the case of a report by the police that the accused has been released on his bond (which is the situation envisaged by Section 169), the Magistrate shall make “such order for the discharge of such bond or

[6] (1980) 2 SCC 91

otherwise as he thinks fit". Now what are the courses open to the Magistrate in such a situation? He may, as held by this Court in *Abhinandan Jha* v. *Dinesh Mishra* [(1967) 3 SCR 668 : AIR 1968 SC 117 : 1968 Cri LJ 97] :

(1) agree with the report of the police and file the proceedings; or

(2) not agree with the police report and
  (*a*) order further investigation, or
  (*b*) hold that the evidence is sufficient to justify the forwarding of the accused to the Magistrate and take cognizance of the offence complained of.

51. The appropriate course has to be decided upon after a consideration of the report and the application of the mind of the Magistrate to the contents thereof. But then the problem to be solved is whether the order passed by the Magistrate pertains to his executive or judicial capacity. In my opinion, the only order which can be regarded as having been passed by the Magistrate in his capacity as the supervisory authority in relation to the investigation carried out by the police is the one covered by the course 2(a). The order passed by the Magistrate in each of the other two courses, that is, (1) and (2)(b), follows a conclusion of the investigation and is a judicial order determining the rights of the parties (the State on the one hand and the accused on the other) after the application of his mind. And if that be so, the order passed by the Magistrate in the proceeding before us must be characterised as a judicial act and therefore as one performed in his capacity as a Court.

53. For a tribunal to be acting as a Court, it is not necessary that the parties must have a right of hearing or adducing evidence at every stage of the proceedings before it. This is specially true of Courts constituted as such by the legislature. Reference may here be made to interlocutory orders issuing temporary injunctions or staying proceedings in a subordinate Court or dispossession of a party by civil Courts at the instance of a plaintiff or appellant and in the absence of the opposite party which comes into the picture later on after it is served with a notice. And even subsequent to the appearance of the party adversely affected, the existence

of a prima facie case would tilt the scales against it so that the order earlier passed in favour of the other party is confirmed till the conclusion of the case on merits, even though the case may finally be decided otherwise and the interlocutory order found to be unjust and then vacated. And yet it can hardly be argued that the presiding officer of the Court does not act as a Court when passing such an order. Really, the right to adduce evidence and be heard is to be taken into consideration as being available at one stage of the proceedings or the other. Thus in the case of an order passed by a Magistrate under sub-section (3) of Section 173 of the Code in agreement with the police report does not Call for any hearing or the production of any evidence on the part of the accused, as it goes in his favour. If the Magistrate, on the other hand, disagrees with the report submitted by the police and takes cognizance of the offence, the accused comes into the picture and thereafter shall have the right to be heard and to adduce evidence in support of his innocence. Viewed in this context, all orders passed by a Magistrate acting judicially [such as orders of bail and those passed under sub-section (3) of Section 173 of the Code discharging an accused or orders taking cognizance of the offence complained of] are parts of an integral whole which may end with a definitive judgment after an inquiry or a trial, or earlier according to the exigencies of the situation obtaining at a particular stage, and which involves, if need be, the adducing of evidence and the decision of the Magistrate on an appreciation thereof. They cannot be viewed in isolation and given a character different from the entire judicial process of which they are intended to form a part."

16. Learned counsel also cited an authority in **P.V. Krishna Prasad vs. K.V.N. Koteswara Rao and another**[7], wherein the Hon'ble High Court of Andhra Pradesh at paras 15 and 16 has held as under:

'15. Looking the matter even from a different angle, taking cognizance of an offence or refusing to take cognizance is an action to be done under the provisions of Sec. 190 Cr.P.C. The Magistrate will begin applying

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[7] 1990 SCC Online AP 291

judicial mind from the stage a charge-sheet is filed, or a report under Sec. 173 Cr.P.C., is submitted pursuant to a reference made under Sec. 156(3) on the basis of a private complaint. While exercising the judicial function as to or not to take cognizance of the offence in either case basing on the charge-sheet or on the report under Sec. 173 Cr.P.C. he goes through the material submitted along thereto. While so applying the mind in discharge of the judicial function, the Magistrate may or may not take cognizance and the moment he records his order, he is ceased of that matter and the remedy open to the aggrieved party is only by way of a revision or appeal. Neither acceptance nor non-acceptance of the police report can be termed as an administrative function since it is after application of judicial mind and examination of the material submitted along with the report under Sec. 173 Cr.P.C. the Magistrate makes the order under Section 190 Cr.P.C. After exercising the jurisdiction under Section 190 Cr.P.C. the Magistrate has no power to review the order in view of the provisions covered by Sec. 362 Cr.P.C.

16. Mr. Bali Reddy pointed out that as per Sec. 173(2) (ii) the 1st respondent—complainant is entitled to be communicated of the action taken by the police in pursuance of the reference under Section 156(3) Cr.P.C. Apart from Sec. 173(2) (ii) as submitted by Mr. Bali Reddy, the Supreme Court has laid down in Bhagwant Singh v. Commr. of Police ([1985 Crl.LJ. 1521 (SC).]) that the Magistrate must give notice to the informant, injured or relative of the deceased and provide him an opportunity to be heard at the time of consideration of the report filed under Sec, 173 (2), which may be resultant of a report made direct to the police or consequent to the reference under Section 156(3) Cr.P.C. That is a case where the report of the police is the resultant of a report made direct to the police and surely that benefit to the complainant cannot be denied even if it is one consequent upon the reference under Section 156(3) Cr.P.C. Any failure to comply with this is definitely a matter to be agitated before a revisional or appellate forum, and absolutely not before the Magistrate that failed in this regard."

17. On perusal of memo of evidence, the petitioner have recorded the statement of the de-facto complainant and his wife

and also recorded the statements of five eye witnesses, five circumstantial witnesses, five eye witnesses, 39 circumstantial witnesses, panch witnesses for scene of offence and confession etc. They also filed about 50 documents and finally filed charge sheet deleting the names of BVD Raju, Guru Charan Singh Bagga, Rupesh Shah, Prithviraj/A5 to A8.

18. Now it is required to be seen that whether there is any material against these four persons as per the record.

19. Section 190 Cr.P.C., defines the procedure as to taking cognizance of offences by the Magistrate, which runs as under:

> "**190. Cognizance of offences by Magistrates**. - (1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub- section (2), may take cognizance of any offence-
>
> > (a) upon receiving a complaint of facts which constitute such offence;
> >
> > (b) upon a police report of such facts;
> >
> > (c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.
>
> (2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub- section (1) of such offences as are within his competence to inquire into or try."

20. Therefore, the learned Magistrate can take cognizance of the offence upon receiving of a complaint of facts constituting

the offence and also on the report of the police. He can also take cognizance upon receiving information from any person or of his own knowledge.

21. In the case on hand, the de-facto complainant has filed a written complaint before the CID police, who have completed the investigation and filed charge sheet excluding A5 to A8. The learned Magistrate also has taken cognizance of the offences against the persons, who have shown as accused by the police i.e., A1 to A4 and A9 to A12 and issued summons against them.

22. The powers of Magistrate of taking cognizance of the offence under Section 190B Cr.P.C. have to be exercised cautiously and carefully after going through the entire material on record, as fastening of criminal liability on person will have many consequences and serious effects. Learned Magistrate is not bound by the investigation of the police. Learned Magistrate is not supposed to mechanically take the cognizance and accept the opinion of the police. He is expected to apply his mind and only after going through the entire record, he has to decide whether any cognizable offence is made out against the persons, who are shown as accused. At the same time, he has to consider if any offence is also being committed by the persons,

who are not shown as accused and basing on the material available before the Court, the learned Magistrate can issue summons to the accused, who are not shown as accused by the police. That means, even if the investigating agency has filed charge sheet stating that no case has been made out against any of the accused, the learned Magistrate can independently go through the record and the material placed before him along with the police report and can take cognizance against the persons, who are not actually shown as the accused. This view is fortified by the Hon'ble Supreme Court in **Uma Shankar Singh vs State of Bihar**[8]**.** In **Nahar Singh vs. State of U.P.**[9] the Hon'ble Apex Court has held that Magistrate can issue summons against a person not named in the FIR or charge sheet.

23. It is held by the Apex Court that for taking cognizance of the offence the Magistrate has to examine the materials available before him and can conclude that apart from those shown as accused by the police, some other persons are also involved in committing the offence. These materials need not remain confined to the police report, charge sheet or FIR. A

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[8] (2010) 9 SCC 479
[9] (2022) 5 SCC 295

statement made under Section 164 Cr.P.C., could also be considered for such purpose.

24. Learned Magistrate after taking into consideration the material placed before him by the police (Charge sheet) has considered that not only the accused, whose names were shown in the charge sheet i.e., A1 to A4 and A9 to A12, the learned Magistrate has also felt that there is incriminating material against A5 to A8 and thereby has decided to issue summons against them.

25. Now it is to be examined as to whether what is the jurisdiction of the revisional Court when cognizance is questioned in criminal revision.

26. Revisional Court is not an appellate Court. The revisional Court is not expected to analyze the material as if it is taking the cognizance like a Magistrate and decide whether taking cognizance is correct or not. The revisional Court has to see whether taking cognizance is either there is any illegality, impropriety or irregularity in taking cognizance. Learned revisional Court is not expected to get into the merits.

27. Considering the relevant provisions of Cr.P.C., and the authorities as observed above, the learned Magistrate has power to take cognizance of offence in respect of persons whose names are not arrayed as an accused. Law is also very much settled that learned Magistrate is expected to go through the material on record. In Crl.M.P.No.2213 of 2016 dated 08.03.2017, learned Magistrate has passed detailed orders taking into consideration the contents of the complaint and also the statements of the witnesses, the documents and concluded that there is a material against A5 to A8 to proceed. Even this Court also gone through the contents of the complaint, statements of witnesses more particularly statement of LW.1 and 2 recorded under Section 161 Cr.P.C., and other documents. It is clear that the ultimate beneficiary in the entire story is the Baggas/A2. The other accused are the persons/associates of A2 who have physically participated in all the incidents to see that ultimately the land of the petitioner is transferred in favour of the Baggas. Strangely, most of the time it is alleged that the remuneration is not paid and some time very meagre amounts were paid though huge amounts were shown in the sale deeds, GPA etc.

28. In order to achieve transferring of the land belonging to the petitioner in favour of the Baggas, the Baggas have taken the help of other accused. In any case, once learned Magistrate has taken cognizance on going through the material available by using his own wisdom, the revisional Court cannot sit as an appellate Court to decide and examine each and every document and decide whether cognizance taken is correct or not.

29. On going through the material as observed above, prima facie there is a material against the respondents/A5 to A8. The learned Magistrate has passed detailed orders explaining the reasons as to why cognizance has been taken against the persons. However, the learned revisional Court has passed orders in Crl.R.P.No.210 of 2017 dated 16.07.2018 simply by setting aside the orders of the learned Magistrate dated 08.03.2017 taking cognizance against A6 to A8. Learned revisional Court has observed at para 2 of its order as under:

> "The first thing that strikes the Court when the order of the Magistrate is seen that after narrating the facts he has not given detailed reasons as to why cognizance should be taken against A5 to A8 also. Admittedly, A5 to A8 were not involved when the de-facto complainant and his wife had taken loans from A1. They were also not in the picture when A1 obtained several blank stamp papers and other papers from them. For the realization of the so-called

> debt of Rs.50 lakhs, borrowed by the de-facto complainant in the year 2004, A1 demanded a hefty sum and he was not specific that Rs.2 crores which was given by the Baggas to purchase Ac.3.00 and odd. Thereafter, A1 and A2 filed suits for specific performance against de-facto complainant and his wife in respect of mortgaged properties. As far as these transactions are concerned, A8 came into picture when A8 was assigned the right to continue the litigation of specific performance suits filed by A1."

30. It is true that A6 to A8 are not involved when the de-facto complainant has borrowed the loan from A1, but, the contents of the complaint and the statements of PWs.1 and 2 go to show that initially they are not intending to sell the property and they approached A1 and borrowed Rs.50 lakhs, and out of those Rs.50 lakhs also Rs.44 lakhs were taken by A1 while promising that A1 will return the said amount at the time of wedding of petitioner's daughter. However, when A1 has not returned and the petitioner has demanded, A1 has again lend a loan of Rs.10 lakhs to the petitioner by taking cheque of Rs.10 lakhs. when the question of return of Rs.50 lakhs came as the Chandu and his wife started pressurizing for return of the money, there was no option for the petitioner except to sell the property in which A1 has introduced the Baggas i.e., A6. From that point onwards involvement of A6 to A8 started. In fact, according to the petitioner, though the petitioner has registered Ac.3.00 of land

to the Baggas money was not paid directly to him and he was only paid Rs.25 lakhs and rest of the money they said that they will pay at the time of registration of the other land. Similarly, the Baggas and other family members got executed sale deeds in favour of his family members from the petitioner. However, the Sub-Registrar has not accepted them, on which they got the signatures of the petitioner and his wife on blank papers and created development agreement for construction of Villas.

31. Therefore, the learned Magistrate after going through the complaint and also the statements of LWs.1 and 2 has come to right conclusion that there is material that the proposed accused were involved directly in few instances and occasions and in rest of the occasions ultimate beneficiaries are the Baggas. Therefore, there is a material against A6 to A8. In order to see that at the time of taking cognizance the Courts are not expected to go through the material meticulously to see ultimately a conviction can be recorded against the proposed accused. It is enough if there is a prima facie material against the petitioner. Truth or otherwise of the statements of the de-facto complainant and his wife and relevancy of the other documents filed and other details cannot be gone through at the stage of cognizance. The proposed accused will have an

opportunity to question the charge sheet or taking cognizance at the time of framing of charges. In case, then the Courts will have to consider the entire material and decide. They can also defend themselves during the course of trial. If there is no material at all against the petitioners/A6 to A8, then certainly taking cognizance by the learned Magistrate be questioned, but here is a case where there is a material against A6 to A8 and ultimate beneficiary is the Guru Charan Singh Bagga. Therefore, taking cognizance by the learned Magistrate is proper.

32. As already observed, the learned revisional Court has extracted para 8 and 9 of the orders of the learned Magistrate dated 08.03.2017 and observed that there is no direct involvement of A6 to A8 in obtaining GPAs by A1. In fact, on going through the contents of the complaint and statements it is clear that A6 to A8 are the ultimate beneficiaries and it is the allegation of the petitioner that he is a conspirator and he involved other accused and admittedly, though land was initially transferred in the name of some intermediary person i.e., Chendu and his wife, subsequently both of them again transferred the land in favour of Baggas and there is also

material to show that A6 to A8 are directly involved with the petitioner in extracting certain documents.

33. The revisional Court simply without assigning any reasons as to how the orders of the learned Magistrate are illegal, or how the learned Magistrtate has not followed the procedure, simply tried to analyze the facts on the basis of material and that too erroneous conclusion that the learned Magistrate is incorrect in taking cognizance. As already observed, the role of the revisional Court is not to analyze the material on record to consider as to whether the learned Magistrate has rightly taken the cognizance but the revisional Court was expected to see whether any illegality or irregularity committed by the learned Magistrate. Unfortunately, the revisional Court has not recorded any finding so far as that aspect is concerned. Therefore, it is a fit case where orders of the revision Court are required to be set aside while confirming the orders of the learned Magistrate.

34. In view of the discussion made above, the criminal petition is allowed and the orders dated 16.07.2018 of the learned Metropolitan Sessions Judge, Hyderabad in Crl.R.P.No.210 of 2017 are set aside restoring the orders dated

08.03.2017 of the Additional Chief Metropolitan Magistrate in Crl.M.P.No.2213 of 2016 in Crime No.36 of 2012.

Miscellaneous applications, pending if any, shall stand closed.

DR. D.NAGARJUN, J

Date: 19.01.2023