IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF NOVEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE RAJESH RAI K

CRIMINAL PETITION NO. 5853 OF 2024

BETWEEN:

1. SRI KUMARASWAMY S.G
S/O LATE GANGHADARAPPA,
AGED ABOUT 74 YEARS,
R/AT NO. 281, MG ROAD,
VIDHYANAGARA, HASSAN
HASSAN DISTRICT,
PIN-573 202.

2. SRI HIMAVANTHAGOPAL
S/O LATE SOMEGOWDA,
AGED ABOUT 68 YEARS,
R/AT NO.404, NISARGA NILAYA,
MOTHER THERESA ROAD, VIDYANAGARA,
HASSAN, HASSAN DISTRICT,
PIN-573 202.

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Location: HIGH COURT OF KARNATAKA

3. NAGARAJU M
S/O LATE MANJEGOWDA,
AGED ABOUT 40 YEARS,
R/AT OUDARYA NILAYA,
1ST MAIN, 2ND CROSS,
VIDYANAGARA,
HASSAN, HASSAN DISTRICT,
PIN-573 202.

4. VENKATARANMU U.A.
S/O LATE ANNEGOWDA,
AGED ABOUT 55 YEARS,
R/AT RANGA NILAYA,
VIVEKANANDA ROAD,
VIDYANAGARA, HASSAN,
HASSAN DISTRICT, PIN-573 202.

5. DYAVEGWODA M
S/O MALALIGOWDA,
AGED ABOUT 65 YEARS,
R/AT MATHRU NILAYA,
JAYANAGARA, SALAGAME ROAD,
VIDYANAGARA, HASSAN
HASSAN DISTRICT,
PIN-573 202.

…PETITIONERS

(BY SRI. NISHANTH S.K, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
THROUGH HASSAN EXTENSION
POLICE STATION,
REPRESENTED BY
STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDING,
BANGALORE-560 001.

2. SRI PUTTARAJEGOWDA
S/O LATE VEERABHADREGOWDA,
AGED ABOUT 70 YEARS,
SECRETORY, COSMOPOLITAN SPORTS AND
CULTURAL ASSOCIATION
RING ROAD, CHIKKAHONNENAHALLI,
HASSAN, HASSAN DISTRICT
PIN-573202.
ALSO R/AT NO.450,
VISHWESHVARAIAH ROAD,
VIDYANAGAR, HASSAN, PIN - 573 202.

…RESPONDENTS

(BY SRI. MAHESHA P, HCGP FOR R1,
SRI. N.R. RAVIKUMAR, ADVOCATE FOR R2)

THIS CRL.P IS FILED U/S.482 OF CR.PC. PRAYING TO QUASH THE ENTIRE PROCEEDINGS PENDING ON THE FILE OF LEARNED IV ADDL.CIVIL JUDGE AND J.M.F.C AT HASSAN C.C.NO.1176/2024 FOR THE OFFENCE P/U/S 406,408,420,201 R/W 34 OF IPC AGAINST THE PETITIONERS.

THIS PETITION HAVING BEEN RESERVED FOR ORDERS ON 06.11.2026 COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE RAJESH RAI K

CAV ORDER

This petition is filed under Section 482 of Cr.P.C seeking to quash the proceedings against the petitioner/accused Nos.1 to 5 in C.C No.1176/2024, arising out of Crime No.88/2021 registered by Hassan Extension Police Station for the offences punishable under Sections 420, 406, 408, 201 r/w section 34 of IPC, pending on the file of the IV Additional Civil Judge and JMFC, Hassan (for short, 'the learned Magistrate').

2. The brief facts of the case are that respondent No.2 lodged a complaint before respondent No.1-Police on 21.04.2021 alleging that petitioner No.1-Sri S.G. Kumaraswamy was functioning as the Secretary of Cosmopolitan Sports and Cultural Association (Regd.) (for short, "the Association"), Hassan, from 05.11.2017 to 31.03.2019. It is alleged that, during his tenure, as per the audit reports for the years 2018-19 and 2019-20, he had misappropriated a sum of Rs.16,21,389.41/- belonging to the Association and thereby caused loss to it.

3. It is further alleged that, pursuant to the resolutions passed in the General Body Meetings held on 25.08.2019 and 20.12.2020, notices were issued to petitioner No.1 calling upon him to remit the said amount. Despite receipt of the notices, he failed to do so. Thereafter, show-cause and final notices were issued calling upon him to explain the alleged irregularities and misappropriation, but he failed to furnish a satisfactory explanation. Consequently, pursuant to the resolution of the Managing Committee dated 15.03.2021, his membership was suspended. Further, pursuant to the resolution passed under Item No.5 of the Managing Committee meeting held on 10.01.2021, respondent No.2 was authorised to initiate criminal proceedings against him. Accordingly, the complaint came to be lodged against petitioner No.1.

4. Based on the said complaint, FIR came to be registered in Crime No.88/2021 dated 21.04.2021 against petitioner No.1 for the offences punishable under Sections 420 and 406 of the IPC. During the course of investigation, respondent No.1-Police issued notices to petitioner No.1 and four others i.e. petitioner Nos.2 to 5, who were the office bearers of the Association, calling upon them to appear for enquiry and produce the available documents. However, they

failed to produce the same. During the course of enquiry, it was revealed that petitioners, in collusion with each other and with an intention to derive unlawful gain, had allegedly misappropriated the funds of the Association in respect of liquor stock, sports activities and registration of members, to the tune of Rs.77,16,966/-. Accordingly, the charge-sheet came to be filed against the petitioners for the offences punishable under Sections 406, 408, 420 and 201 read with Section 34 of the IPC, arraying them as accused Nos.1 to 5. The learned Magistrate thereafter took cognizance of the aforesaid offences. Aggrieved by the same, the petitioners have preferred the present petition.

5. Heard the learned counsel for the petitioners, the learned High Court Government Pleader for respondent No.1 - State and the learned counsel for respondent No.2 - complainant.

6. Apart from urging several other contentions, learned counsel for the petitioners contended that the complaint lodged by respondent No.2, who is the present Secretary of the Association, against the petitioners, who were the erstwhile office bearers of the Association, is politically

motivated and filed out of vengeance. He further contended that respondent No.2 and other office bearers of the Association had already instituted a civil suit in O.S.No.236/2020 seeking a mandatory injunction directing the petitioners to hand over the charge along with the relevant documents and had also instituted another suit in O.S.No.213/2021 seeking recovery of a sum of Rs.23,52,377/- from the petitioners. In the said suit, respondent No.2 has admitted that the alleged misappropriation was only to the tune of Rs.22,52,377/-, whereas, in the present case, the charge-sheet alleges misappropriation to the tune of Rs.77,16,966/-. It is therefore contended that the complaint is politically motivated and has been lodged with an ulterior motive to wreak vengeance against the petitioners.

7. Learned counsel further contended that, even on a perusal of the charge-sheet materials, the ingredients of the offence punishable under Section 420 of the IPC are not attracted, as there is no allegation of any dishonest intention or promise on the part of the petitioners. He further contended that Section 408 of the IPC is also not attracted, as the petitioners were neither clerks nor servants of the Association,

but were its office bearers during the relevant period. On these grounds, learned counsel prays to allow the petition.

8. *Per contra,* learned counsel for respondent No.2 contended that the petitioners, being the erstwhile office bearers of the Association, had misused and misappropriated its funds for their personal gain to the tune of Rs.77,16,966/- and had failed to furnish the relevant documents for the purpose of audit. It was further contended that, during the course of enquiry, the documents collected disclosed the involvement of all the petitioners in the alleged misappropriation of funds of the Association in relation to membership, sports activities and liquor stock. The material witnesses i.e. CW.1 and CWs.4 to 9, have also categorically stated to that effect. In such circumstances, their statements require to be tested in a full-fledged trial and, at this stage, the proceedings cannot be quashed. He further contended that the ingredients of the offences punishable under Sections 406, 408, 420 and 201 of the IPC are clearly attracted against the petitioners. Accordingly, he sought for dismissal of the petition.

9. Learned High Court Government Pleader appearing for respondent No.1-State also opposed the prayer in the petition and prays to dismiss the petition.

10. I have given my anxious consideration to the submissions made by the learned counsel for the respective parties so also perused the entire charge sheet materials.

11. As could be gathered from the records, the present criminal prosecution has been initiated by the newly elected office bearers of the Association against the petitioners, who are its erstwhile office bearers, alleging misappropriation of funds of the Association to the tune of Rs.77,16,966/-. No doubt, different amounts have been referred to in the complaint, the civil suits and the charge-sheet towards the alleged misappropriation. However, the charge-sheet explains that the petitioners had failed to hand over the relevant documents and accounts for the purpose of audit. Therefore, the amount referred to in the charge-sheet was arrived at on the basis of the materials available with respondent No.2.

12. Further, a perusal of the charge-sheet materials and the copies of the plaints produced by the petitioners discloses that the petitioners had failed to hand over the affairs

of the Association to the newly elected office bearers along with the relevant documents and accounts. The petitioners have also not disputed in their written statement that they were the erstwhile office bearers of the Association. Further, the statements of CWs.4 to 9 *prima facie* disclose the involvement of the petitioners in the alleged misappropriation of funds of the Association. In such circumstances, it cannot be said, at this stage, that the allegations made in the complaint and the charge-sheet are false or that the complaint has been lodged out of vengeance.

13. When *prima facie* materials are forthcoming against the petitioners in the charge-sheet, the proceedings cannot be quashed merely on the ground that civil proceedings are pending between the parties. The defence sought to be raised by the petitioners requires consideration during the course of trial and cannot be adjudicated upon in a petition filed under Section 482 of the Cr.P.C.

14. Nevertheless, on perusal of the complaint averments and charge-sheet materials, the offence punishable under Section 406 of the IPC is *prima facie* attracted against the petitioners. The petitioners were entrusted with the affairs

of the Association and, it is alleged, that they had dishonestly misappropriated substantial funds of the Association. Such an allegation, if proved, would constitute criminal breach of trust as defined under Section 405 of the IPC and punishable under Section 406 of the IPC.

15. Insofar as Section 408 of the IPC is concerned, the said provision is attracted where the criminal breach of trust is committed by a clerk or servant, or a person employed as a clerk or servant. In the present case, admittedly, the petitioners were not clerks or servants, nor were they employed in such capacity by the Association. They were the office bearers of the Association. Therefore, Section 408 of the IPC is not attracted against the petitioners. However, since Section 406 of the IPC applies to any person who commits criminal breach of trust, the allegations made in the charge-sheet *prima facie* attract the offence punishable under Section 406 of the IPC.

16. With regard to the offence punishable under Section 420 of the IPC, the Hon'ble Apex Court, in ***DELHI RACE CLUB (1940) LTD. V. STATE OF UTTAR PRADESH - (2024) 10 SCC 690***, has held that, to attract Section 420 of the IPC, there

must be a fraudulent or dishonest intention on the part of the accused at the time of making the promise or representation, and such culpable intention must exist right from the inception. In the present case, there are no averments either in the complaint or in the charge-sheet to indicate that the petitioners had a dishonest or fraudulent intention right from the time they were elected as office bearers of the Association. Therefore, the ingredients of Section 420 of the IPC are not *prima facie* attracted against the petitioners.

17. However, the charge-sheet materials disclose that the petitioners had failed to produce the relevant documents and records for the purpose of audit by the newly elected office bearers. If the said allegation is established, it would *prima facie* constitute an act of causing disappearance of evidence. Hence, the offence punishable under Section 201 of the IPC is *prima facie* attracted against the petitioners.

18. For the foregoing discussion, I proceed to pass the following.

ORDER

i. The petition is ***allowed in part***.

ii. The proceedings against the petitioners – accused Nos.1 to 5 in C.C No.1176/2024, arising out of Crime No.88/2021 registered by Hassan Extension Police Station, for the offence punishable under Section 408 and 420 IPC, pending on the file of the learned the IV Additional Civil Judge and JMFC, Hassan, are hereby quashed.

iii. However, the aforesaid proceedings in respect of other offences punishable under Sections 406, 201 r/w section 34 of IPC shall continue against the petitioners-accused Nos.1 to 5.

SD/-
(RAJESH RAI K)
JUDGE

PKS/K