IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21ST DAY OF NOVEMBER, 2026

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BEFORE

THE HON'BLE MR. JUSTICE H.P.SANDESH

CRIMINAL PETITION NO.6286 OF 2022
C/W
CRIMINAL PETITION NO.7111 OF 2022

IN CRL.P NO.6286/2022:

BETWEEN:

1. DR. T.D. DEVEGOWDA
S/O. LATE SRI. DEVEGOWDA,
AGED ABOUT 68 YEARS,
R/O.NO.1285, PADUVANA ROAD,
4TH CROSS, 4TH STAGE, T.K.LAYOUT,
MYSORE-570009.

...PETITIONER

(BY SRI. K. PHANINDRA, SENIOR COUNSEL FOR
SMT. VAISHALI HEGDE, ADVOCATE)

AND:

Digitally signed by DEVIKA M
Location: HIGH COURT OF KARNATAKA

1. STATE OF KARNATAKA
BY JAYALAKSHMIPURAM POLICE, MYSORE,
REPRESENTED BY STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA,
BENGALURU-560001.

2. DR. A. KHADAR PASHA
S/O. LATE AHAMAD HUSSAIN,
AGED ABOUT 56 YEARS,
FINANCE OFFICER,
KARNATAKA STATE OPEN UNIVERSITY,
MYSORE-570006.

...RESPONDENTS

(BY SRI. MOHAMMAD AYUB ALI, ADDL. SPP FOR R1;
SRI. M.B. MARGUND, SENIOR COUNSEL FOR
SMT. KSHAMA NARGUND, ADVOCATE FOR R2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C PRAYING TO QUASH THE ENTIRE PROCEEDINGS AND ORDER DATED 31.03.2022 VIDE ANNEXURE-A PASSED BY THE COURT OF THE I ADDL. SENIOR CIVIL JUDGE AND CJM, MYSURU IN JAYALAKSHMIPURAM P.S., CR.NO.42/2016 FOR ALLEGED OFFENCES UNDER SECTIONS 406, 409, 149 OF IPC AND QUASH THE FIR DATED 20.08.2016 IN CR.NO.42/2016 ALONG WITH THE COMPLAINT DATED 19.08.2016 REGISTERED WITH JAYALAKSHMIPURAM POLICE STATION FOR ALLEGED OFFENCES UNDER SECTIONS 406, 409, 149 OF IPC VIDE ANNEXURES-B AND C AND ALL OTHER PROCEEDINGS PENDING ON THE FILE OF THE COURT OF THE I ADDL. SENIOR CIVIL JUDGE AND CJM, MYSURU IN SO FAR AS THE PETITIONER IS CONCERNED.

IN CRL.P NO.7111/2022:

BETWEEN:

1. PROF. DR. K.S. RANGAPPA
   S/O LATE SUBBE GOWDA,
   AGED ABOUT 67 YEARS,
   OCC: EX VICE CHANCELLOR OF KSOU
   AND UNIVERSITY OF MYSORE
   RESIDING AT NO.227/9,
   BOGADI 2ND STAGE,
   MYSORE-570026.

...PETITIONER

(BY SRI. DINESHKUMAR RAO K., ADVOCATE)

AND:

1. STATE OF KARNATAKA
   BY JAYALAXMIPURAM POLICE STATION,
   MYSORE-570006.
   REPRESENTED BY STATE PUBLIC PROSECUTOR
   HIGH COURT BUILDINGS
   BENGALURU-560001.

2. PROF. KHADER PASHA
   S/O LATE AHMED HUSSAIN,
   AGED ABOUT 56 YEARS,
   OCC: THE THEN REGISTRAR,

NOW FINANCE OFFICER,
KARNATAKA STATE OPEN UNIVERSITY,
MUKTHAGANGOTHRI, MYSURU CITY,
KARNATAKA 570006.

...RESPONDENT

(BY SRI. MOHAMMAD AYUB ALI, ADDL. SPP FOR R1;
SRI. M.B.NARGUND, SENIOR COUNSEL FOR
SMT. KSHAMA NARGUND, ADVOCATE FOR R2)

THIS CRIMINAL PETITION FILED UNDER SECTION 482 OF CR.P.C PRAYING TO QUASH THE IMPUGNED ORDER DATED 31.03.2022 PASSED BY THE I ADDL. SENIOR CIVIL JUDGE AND CJM, MYSORE IN CR.NO.42/2016 OF JAYALAKSHMIPURAM P.S., MYSURU PENDING ON THE FILE OF THE I ADDL. SENIOR CIVIL JUDGE AND CJM, MYSORE (REGISTERED FOR THE OFFENCE PUNISHABLE UNDER SECTIONS 406, 409 R/W 149 OF IPC.

THESE PETITIONS HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 12.11.2026 THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE H.P.SANDESH

CAV ORDER

This Court heard learned senior counsel for petitioner in Crl.P.No.6286/2022 and learned counsel for petitioner in Crl.P.No.7111/2022, learned Additional SPP for respondent No.1 and learned Senior counsel for respondent No.2.

2. This Court heard and reserved the petitions filed by accused Nos.1 and 2 praying this Court to quash the order passed by the learned trial Judge as per Annexure-A dated 31.03.2022, wherein having rejected 'B' report, ordered for

fresh investigation in respect of Crime No.42/2016. Hence, these two petitions are taken up together for common consideration, though both the accused have filed independent petitions.

2. The factual matrix of case of the prosecution is that the police registered a case in Crime No.42/2016 against 7 accused persons invoking the offence punishable under Sections 406, 409 read with Section 149 of IPC based on the complaint given by Financial Officer of Karnataka State Open University ('KSOU' for short), wherein certain accusations are made against each of the accused persons. The police having registered Crime No.42/2016 investigated the matter and filed 'B' report stating that there is no material to file the charge sheet against the accused persons. Hence, complainant has filed objections by way of protest petition. In the protest petition, it is contended that the Investigation Officer has misconceived the entire facts of the case in respect of transparency in public procurement and hierarchy of administrative powers in the University set-up. The complainant-University have stated several reports regarding the act of accused persons, who are working in different capacity. It is the main allegation in the complaint that without

making the tenders, have purchased computers and also necessary furniture. Hence, the Chancellor office made several correspondence to KSOU regarding illegal acts committed by the opposite parties. The Chancellor also has appointed one man committee of Hon'ble Justice Sri K. Bhaktavatsala, Chairman of Enquiry Committee, who has advised to conduct the audit within three months. The complainant have referred several letters issued by the office of the Vice-Chancellor regarding the enquiry as to the act of opposite parties. Even the complainant stated that in view of MOU, payment of mobilization advance of Rs.1 crore to IEM in the end of tenure of Vice-Chancellor of KSOU without making any tender and the same is illegal. The MOU has been entered for purchasing the necessary supply by the IEM and made payment of Rs.1 crore and odd on different dates during the month of 31st October to November, 2012 and the work order was issued during last period of working. Even though the complaint has been lodged to the police, the Investigating Officer has filed 'B' report and the same was rejected and ordered for fresh investigation.

3. The complainant has relied upon several judgments in their objection statement and prays for rejection of 'B' report and apart from that, examined the complainant himself as

C.W.1 and got marked the documents as Exs.C1 to C35. The learned Magistrate having recorded his sworn statement and considering the documents vide impugned order comes to the conclusion that the Investigating Officer filed 'B' report without verifying original documents and without inquiring the witnesses. So from 2012-2013 and 2013-14, the officials who have worked as Vice-Chancellor, Financial Officers and Registrar have alleged to be done the violation of Government Rules and also KTPP Act. Hence, the Investigating Officer has to conduct fresh investigation by securing all the original documents from the complainant-University in paragraph No.11.

4. The learned Magistrate also discussed the scope of Section 202 of Cr.P.C. and comes to the conclusion that as per the sworn statement of C.W.1 and documents produced by C.W.1, there are sufficient material to make fresh investigation by securing original documents and ordered for fresh investigation.

5. The same is challenged in Crl.P.No.6286/2022 by accused No.2. The main grounds urged in this petition by referring the documents Annexures-A to H relied upon the copy

of the order passed by the Trial Court as Annexure-A, copy of the FIR as Annexure-B, copy of complaint as Annexure-C, copy of the final report/'B' report as Annexure-D, copy of the order/letter issued by the Special Secretary to Governor of Karnataka to the Vice Chancellor of KSOU as Annexure-E, copy of the extract of the inquiry report as Annexure-E1, copy of the audit report issued by Senior Deputy Director, Karnataka State Audit and Accounts Department as Annexure-F, copy of the letter dated 22.07.2016 issued by Under Secretary to Governor as Annexure-G, copy of the objections dated 20.11.2018 filed by respondent No.2 to Final Report/'B' report in respect of Crime No.42/2016 as Annexure-H and referring these documents, the petitioner mainly contend in the petition that passing an order for fresh enquiry vide impugned order dated 31.03.2022 by the learned Magistrate is totally illegal and contrary to the ratio of law laid down by this Court in the case of **DR. RAVIKUMAR vs. MRS. K.M.C. VASANTHA & ANR.** reported in **ILR 2018 KAR 1725**. The counsel also would vehemently contend that the police have investigated the matter and filed detailed 'B' report. The Court below has not given any reasons while rejecting the 'B' report. But, has totally relied on self-serving statements of respondent No.2.

6. The counsel also would vehemently contend that the Court below has failed to observe and appreciate the fact that a reading of the complaint dated 19.08.2016 as per Annexure-C does not make out commission of any offences. In the complaint, point No.3 was referred with regard to audit report Annexure-F. Annexure-F clearly reflects that no irregularities were formed in respect of purchase of computers. The allegation made against this petitioner is only in respect of purchase of computers are concerned. The counsel would vehemently contend that Court below without even considering the contents of 'B' report, Annexure-D, has straight away permitted the complainant to examine himself as C.W.1 in support of his allegations and marked the documents Exs.C1 to C35 and even did not taken any cognizance and without taking any cognizance permitting to examine the complainant as C.W.1 is erroneous. The counsel would vehemently contend that in the complaint, only referred point Nos.3 and 4 of the audit report. The point No.3 of the audit report relates to the petitioner herein and point No.4 is not in respect of this petitioner. Even in respect of point No.4 in the audit report also, it is very clear that no irregularity in purchase of the computers as well as other articles. The trial Judge while

passing fresh order for investigation failed to take note of contents of Annexure-F. Hence, the counsel in his argument would vehemently contend that it is a fit case to quash the order passed by the trial Judge.

7. The counsel also would vehemently contend that ingredients of Section 406 of IPC will not attract, since complaint does not disclose any of the allegations and audit report is also in favour of this petitioner, particularly paragraph No.11 of the order. The counsel also would contend that though an allegation is made that audit report is not proper, no action is taken against the Audit and Account Department and there is no violation. The page Nos.74 and 75 is also very clear that specific reasoning is given that no violation in purchase of computers and also stocks are in order. The procedure followed is correct and while filing the 'B' report also taken note of all these factors into consideration.

8. Learned counsel for the petitioner in Crl.P.No.7111/2022, who has been arraigned as accused No.1 reiterates the similar grounds in the petition as the learned Magistrate has no powers to pass order for fresh investigation. The counsel in his argument would vehemently contend that

the police have investigated the matter and filed the charge sheet i.e., 'B' report under Section 173(2) of Cr.P.C. and the very direction for fresh investigation is nothing but re-investigation which is impermissible in law. The counsel also would vehemently contend that learned Magistrate has committed an error in proceeding to record the statement of complainant and the 'B' report is otherwise not correct, the Magistrate himself can enquire into the matter and invoking Section 202 of Cr.P.C. is only for limited purpose of investigating the case for the satisfaction of learned Magistrate to consider the sworn statement/documents submitted by the complainant and ought to have proceeded either under Section 203 of Cr.P.C. or under Section 204 of Cr.P.C.

9. The counsel would vehemently contend that the procedure adopted by the learned Magistrate is contrary to law even as per Section 202 of Cr.P.C., as the same is not permitted. The learned Magistrate has committed serious error in recording the sworn statement on the basis of protest petition without rejecting 'B' report and ought to have rejected the 'B' report and then proceeded to record the sworn statement and the procedure adopted by the learned Magistrate is also erroneous. The counsel also would

vehemently contend that no investigating agency is empowered to conduct fresh, de-nova or re-investigation in relation to the offence which has already been investigated. Further, the Magistrate has no power to direct re-investigation or fresh investigation in view of judgment of the Apex Court in **VINAY TYAGI VS. IRSHAD ALI ALIAS DEEPAK AND OTHERS** reported in **(2013) 5 SCC 762**. The very approach of the counsel is erroneous.

10. The counsel also in support of his argument would vehemently contend that learned Magistrate committed an error in invoking power under Section 202 of Cr.P.C. and the same is not permissible. The counsel would vehemently contend that this petitioner was working as Vice-Chancellor from 2009-2013 i.e., 11.01.2013 and no payments are made during this period even in respect of MOU and though, MOU came into existence in 2012 and payment was made after 2013 and by that time, this petitioner had already served and his period was over and there is no prima facie material against this petitioner that he made payment without following the procedure. The counsel would vehemently contend that due to enmity, a complaint is filed and when there was no payment

during his tenure, question of facing criminal case by this petitioner does not arise.

11. Per contra, learned Senior counsel for respondent No.2-complainant in his argument would vehemently contend that this complaint was filed against these two petitioners and others and the same was registered as Crime No.42/2016 and allegation is that having purchased the computers, the payment of mobilization advance of Rs.1 Crore and additional payment made to IEM agency is in clear violation. The counsel also would vehemently contend that though learned counsel appearing for the petitioner in Crl.P.No.7111/2022 would contend that number of complaints are filed and this Court already quashed the case in respect of Crime No.53/2019 based on the complaint dated 17.12.2019 and even the same had reached to the Apex Court and the Apex Court confirmed the order passed by this Court, but clarified that it is in respect of subsequent complaint and while dismissing the petition and confirming the same held that already there was initiation of proceedings in Crime No.42/2016 and there cannot be second complaint and the same is subject to result of Crime No.42/2016. Hence, quashing of other complaint will not come

in the way of this petitioner, since this is the main complaint filed against both the petitioners.

12. Learned Senior counsel for respondent No.2 also filed memo along with documents. Earlier, the other accused persons have also writ petition and mainly brought to notice of this Court copy of FIR in Crime No.42/2016, copy of FIR in Crime No.53/2019, copy of FIR in Crime No.54/2019, complaints which are 4 in number and so also, copy of the order sheet in Crime No.42/2016. The counsel also mainly relied upon statement of objections filed in both the cases referring the documents Annexure-R1 to R24 and particularly, the counsel brought to notice of this Court accusation made against both the petitioners and brought to notice of this Court, paragraph No.11 of the statement of objections and while referring the audit report Annexure-R8, it is stated that audit report submitted by the Senior Deputy Director, State Audit and Accounts in respect of point No.3 there was a reference for having purchased the computers. The audit team ought to have examined and reported the lapses in purchase of computer/furniture in all worth Rs.38,69,836/- Regional Centres of KSOU established in different District Headquarters of the State. Instead of doing so, the audit team in collusion

with some officers of the University i.e., accused have reported regarding purchase of different 30 numbers of computers worth Rs.10,99,259/-. No dispute that they have purchased 30 computers and the same was also taken note of by the one man committee of Hon'ble Justice Sri K. Bhaktavatsala and the audit report is issued favouring the accused persons.

13. The counsel brought to notice of this Court paragraph No.12, wherein also an allegation is made that Registrar is the officer next to the Vice-Chancellor of the University. Administrative Sanctions, work orders, purchase orders ought to be issued by and in the name of the Registrar, KSOU, for procurement of goods and services, adhering to the procurement norms. The same was not done and brought to notice of this Court paragraph Nos.13, 14 and 15, wherein made an allegation and so also contend that quotation procedure was not followed. The Counsel also brought to notice of this Court paragraph No.22 of the statement of objections referring the document Annexure-R17, so also paragraph No.29 that purchase of these 30 computers has nothing to do with the purchase of computers and furniture to the Regional Centres of the respondent-university. The counsel also brought to notice of this Court document Annexure-R series, particularly brought

to notice of this Court Annexure-R4, wherein an advice is made by the Hon'ble Governor and Chancellor that necessary steps may be taken within a period of one month and communicated for their perusal.

14. The counsel also brought to notice of this Court document at Annexure-R9 with regard to mobilization funds in advance referring the document of KSOU dated 05.04.2016. The counsel also brought to notice of this Court Annexure-R13 issued by the Registrar dated 19.08.2016, wherein reference is made with regard to prima facie illegality and irregularity in point Nos.3 and 4 of the audit report. So also, the document Annexure-R14 i.e., the complaint given and registered as Crime No.42/2016. The counsel also would vehemently contend referring Annexure-R16, earlier when these two petitioners and others had approached the Court for quashing the FIR, the same was dismissed. The counsel also contend that the 'B' report filed by the Investigating Officer is without perusing the material on record and reasoning given in column No.17 is also as against the material. Hence, the counsel would vehemently contend that specific allegations are made in the audit report against the petitioners and therefore, they cannot rely upon the same.

15. Learned Senior counsel for respondent No.2 in support of his argument relied upon judgment in NATIONAL BANK OF OMAN vs. BARAKARA ABDUL AZIZ AND ANOTHER reported in (2013) 2 SCC 488 and brought to notice of this Court paragraph Nos.8 and 9, wherein discussion was made with regard to scope of Section 202 of Cr.P.C. Investigation under Section 202 Cr.P.C. is different from the investigation contemplated under Section 156 as it is only for holding the Magistrate to decide whether or not there is sufficient ground for him to proceed further. The scope of enquiry under Section 202 Cr.P.C. is therefore, limited to the ascertainment of truth or falsehood of the allegations made in the complaint on the materials placed by the complainant before the Court; for the limited purpose of finding out whether a prima facie case for issue of process has been made out; and for deciding the question purely from the point of view of the complainant without at all adverting to any defence that the accused may have.

16. The counsel also brought to notice of this Court order passed by the Division Bench of this Court in **W.P.NO.51930/2019** dated **29.08.2026**, wherein the challenge was made by the petitioner in Crl.P.No.7111/2022

with regard to set aside the report of One Man Fact Finding Committee dated 14.10.2015 and this Court dismissed the same. Hence, matter requires re-consideration, as the learned Magistrate has not committed any error in passing an order for further investigation. Though word is used as 'fresh investigation', it is for further investigation.

17. Having heard the respective counsel and also the principles laid down in the judgments referred supra, the Court has to examine with regard to scope of ordering for fresh investigation and also whether there are materials to proceed against the petitioners in view of accusation made. Hence, the points that would arise for consideration of this Court are:

(i) Whether the petitioner in Crl.P.No.6286/2022 has made out a ground to quash the proceedings initiated in Crime No.42/2016 in setting aside the order passed by the learned Magistrate vide Annexure-A dated 31.03.2022, wherein fresh investigation is ordered?

(ii) Whether the petitioner in Crl.P.No.7111/2022 has made out a ground to quash the proceedings initiated in Crime No.42/2016 in setting aside the order passed by the learned

Magistrate vide Annexure-A dated 31.03.2022, wherein fresh investigation is ordered?

(iii) What order?

Point Nos.(i) and (ii):

18. Both the points are taken up together for consideration, since the proceedings are initiated against the petitioners in Crime No.42/2016,.

19. The main allegation in the complaint at Annexure-C is against both the petitioners along with other accused is that a letter was addressed to the Police Inspector by the Financial Officer dated 19.08.2016, wherein it was referred that a letter was received from the Chancellor's Office that there is a prima facie illegality and irregularity in point Nos.3 and 4 of the audit report and based on the same, a crime is registered for the offence punishable under Sections 406, 409 read with Section 149 of IPC. The learned Senior counsel appearing for respondent No.2-complainant brought to notice of this Court that another case in Crime No.53/2019 is also registered and the same is quashed by this Court and the same is confirmed by the Apex Court, since already there was a case registered

for the similar offence in Crime No.42/2016 and there cannot be one more complaint. Hence, the very contention of learned counsel appearing for the petitioner in Crl.P.No.7111/2022 that already quashed the proceeding and there cannot be another proceedings cannot be accepted in respect of this crime is concerned. However, learned Senior counsel for the petitioner in Crl.P.No.6286/2022 and learned counsel for the petitioner in Crl.P.No.7111/2022 would vehemently contend that there cannot be any fresh investigation and the Magistrate has no power to pass any order for fresh investigation. Learned Senior counsel appearing for the petitioner in Crl.P.No.6286/2022 relied upon the judgment in ***Dr. Ravikumar's*** case and so also, learned counsel for the petitioner in Crl.P.No.7111/2022 relied upon the judgment in of ***Vinay Tyagi's*** case.

20. Having perused the principals laid down in the judgments referred supra, it is very clear that learned Magistrate cannot pass any order for fresh investigation. In the judgment in ***Vinay Tyagi's*** case, the Apex Court categorically held that the learned Magistrate has no such power to pass order for fresh investigation, the Magistrate has no jurisdiction to direct fresh or de novo investigation. But, once the report is filed, the Magistrate has jurisdiction to accept the report or

reject the same right at the threshold. In the case on hand, it is not in dispute that investigation is conducted and 'B' report is filed. While filing the 'B' report in respect of purchase of computers is concerned referring to audit report comes to the conclusion that there was no such violation. The Apex Court in this judgment also discussed with regard to investigation can be ordered in varied forms and at different stages, right at the initial stage of receiving the FIR or a complaint, the Court can direct investigation in accordance with the provisions of Section 156(1) in exercise of the powers under Section 156(3) Cr.P.C. Investigation can be of initial investigation, further investigation, fresh or de novo or re-investigation. It is also settled law that Cr.P.C. does not contain any provision which deals with the Court competent to direct fresh investigation, the situation in which such investigation can be conducted, if at all, and finally the manner in which the report so obtained shall be dealt with. But, the Superior Courts have their jurisdiction under Section 482 of Cr.P.C. or even Article 226 of the Constitution of India to direct further investigation, fresh or de novo and even re-investigation and Magistrate has no such power.

21. This Court would like to rely upon judgment of the Apex Court in **KISHAN LAL vs. DHARMENDRA BAFNA AND ANOTHER** reported in **(2009) 7 SCC 685,** wherein also at paragraph No.13 in detail discussed paragraph No.10 of the judgment of the Apex Court in **DEVARAPALLI LAKSHMINARAYANA REDDY vs. V. NARAYANA REDDY** reported in **(1976) 3 SCC 252,** wherein discussion was made as to power of Magistrate under Sections 202, 156, 156(3) and taking cognizance under Sections 190, wherein it is observed that Section 202 comes in at a stage when some evidence has been collected by the Magistrate in proceedings under Chapter XV, but the same is deemed insufficient to take a decision as to the next step in the prescribed procedure. In such a situation, the Magistrate is empowered under Section 202 to direct, within the limits circumscribed by that Section an investigation "for the purpose of deciding whether or not there is sufficient ground for proceeding". Thus the object of an investigation under Section 202 is not to initiate a fresh case on police report but to assist the Magistrate in completing proceedings already instituted upon a complaint before him.

22. This Court also would like to rely upon judgment of the Apex Court in **CHANDRA BABU ALIAS MOSES vs. STATE**

THROUGH INSPECTOR OF POLICE reported in **(2015) 8 SCC 774.** In this judgment also, the Apex Court held that Superior Courts alone have the jurisdiction under Section 482 Cr.P.C. or under Article 226 of the Constitution of India to direct "further investigation", "fresh" or "de nova" and even "reinvestigation". While the Magistrate can only direct further investigation, the Courts of higher jurisdiction can direct further investigation, re-investigation or even investigation de novo or by a different agency, depending on the facts of a given case. Needless to say, the power of the Magistrate to direct for further investigation has to be cautiously used.

23. This Court also would like to rely upon judgment of the Apex Court in VINUBHAI HARIBHAI MALAVIYA AND OTHERS vs. STATE OF GUJARAT AND ANOTHER reported in (2019) 17 SCC 1 and in this judgment also, detailed discussion was made, including postponement of issue of process and discussed in paragraph No.20 scope of Section 173(8) in Cr.P.C. and so also in paragraph No.24 discussed scope of Section 156(3) and in paragraph No.26 judgment of ***Devarapalli Lakshminarayanareddy's*** case was also taken note of and comes to the conclusion that there cannot be a fresh investigation by the learned Magistrate.

24. Keeping in view the principles laid down in these judgments, this Court has to take note of the order impugned at Annexure-A. The learned Magistrate while passing an order at paragraph Nos.8 and 9 taken note of the allegations, the 'B' report and also MOU and so also, the evidence of complainant in paragraph No.9. But, in paragraph No.11 while discussing the same comes to the conclusion that the Investigating Officer filed the 'B' report without verifying the original documents and without inquiring the witnesses. But, it is observed that from 2012-2013, 2013-2014, the officials, who have worked as Vice-Chancellor, Financial Officers and Registrar have alleged to have done the violation of the Government Rules and also KTPP Act. Hence, the Investigating Officer has to conduct fresh investigation by securing all the original documents from the complainant-University. Hence, it is clear that ordered for fresh investigation which is not permissible. Though, the learned Magistrate discussed in paragraph No.12 scope of Section 202 of Cr.P.C. is concerned, once again reiterates that it is a case of fresh investigation and as per sworn statement of C.W.1 and documents produced by C.W.1, there are sufficient material for fresh investigation by securing the original documents. Both the counsel brought to notice of this Court that further observation

is made that as per Section 202 of Cr.P.C., the matter is referred to the concerned police for further investigation, but reasoning given by the learned Magistrate is for fresh investigation which is spelt out in operative portion of the order, which reads as follows:

"ORDER

The 'B' report filed by the investigation officer is rejected.

Acting under Section 202 of Cr.P.C. the investigation officer is directed to conduct fresh investigation by securing all the original documents from the complainant and file the report."

25. Having taken note of operative portion also, while rejecting 'B' report, invoking Section 202 of Cr.P.C., the Investigating Officer is directed to conduct fresh investigation by securing all the original documents from the complainant and file the report. Having perused this order, it is very clear that this direction given by the learned Magistrate is opposed to the principles laid down in the judgments referred supra by both the counsels appearing for the petitioners and so also principles laid down in the judgments referred by this Court.

26. Apart from that, the Court has to take note of the 'B' report filed by the Investigating Officer and the same is based on the audit report, which is marked as Annexure-F to the petitions and both the petitioners have relied upon the same and the respondent No.2 relies upon the document at Annexure-R8 which is also the report filed by the Auditor, wherein categorical finding is given that there is no such violation. But, point Nos.3 and 4 referring the Special Secretary letter as per Annexure-C is clear that there is no violation. The contention of the petitioner in Crl.P.No.6286/2022 is that the only allegation against him is that 30 computers are purchased without following the procedure. But, as per Annexure-F audit report, clean chit is given. No doubt, a letter is addressed mentioning point Nos.3 and 4 of the audit report, having perused point No.3, though a letter is referred in Annexure-R13 which is relied upon by learned Senior counsel appearing for respondent No.2, in Annexures-R13 and R14, reference is made that there is illegality, but no such illegality is found out in Annexure-F in respect of point No.3 is concerned. But, it is observed that there is a prima facie illegality and irregularity in point Nos.3 and 4 of the audit report and the said observation is made as a general observation, but report in respect of point

No.3 is very clear that there is no such violation. Hence, on merits also, there is no ground to proceed against the petitioner in Crl. P.No.6286/2022.

27. In respect of other petitioner in Crl.P.No.7111/2022 is concerned, specific accusation is made in respect of point No.4. No doubt, having perused point No.4, allegations are made with regard to entering into MOU and payment. But, the admitted document of audit report at Annexure-F is very clear that payments are not made during the period of this petitioner and payments are made subsequently in the month of May, 2013 onwards consequent upon MOU and though MOU came into existence earlier, but payments are made subsequently. Hence, there cannot be any violation on the part of the petitioner. Admittedly, this petitioner term was from 2009 to January, 2013 and no dispute to that effect as the same is not disputed by the complainant, though it is not stated in the grounds of the petition.

28. However, learned Senior counsel appearing for the complainant brought to notice of this Court statement of objections filed in Crl.P.No.7111/2022 and particularly, documents of Annexures-R9(D1), R9(D2) and R9(E), wherein

letter is addressed by the IEM to the Registrar requesting to release the mobilization amount of Rs.1 Crore to start the operation of Integrated Web Based System effectively and smoothly. This amount is to be adjusted against future periodic payments to be made to the IEM over a period of 3 years in 12 equal installments dated 31.10.2012. The counsel also brought to notice of this Court letter dated 22.11.2012 and Annexure-R9G, wherein the office of the Registrar order dated 27.11.2012 is referred with regard to the request to get an approval. Though counsel brought to notice of this Court that the approval was given by the Vice Chancellor, but in the second paragraph, it is mentioned that the said order was issued on the approval of Chancellor, but not on the approval of Vice-Chancellor and operative portion also refers the approval of Chancellor and not Vice-Chancellor, though contend that approval was given by this petitioner. However, counsel also brought to notice of this Court issuance of Cheque dated 29.11.2012 i.e., Cheque issued in favour of IEM for an amount of Rs.1 crore and an endorsement is also given for having received the Cheque. But, the document placed before the Court Annexure-R8 and so also, Annexure-F is clear that no such payment is made during the period of this petitioner. In

page No.5 of Annexure-R8, it is shown that payments were made on 04.09.2013, 25.11.2023, 05.02.2014, 02.04.2014, 27.03.2014, 10.10.2014 and 18.05.2015 and all these payments are subsequent to the period of this petitioner and no financial misdeeds on the part of the petitioner during his period and these are payments made after 9 months of his period was over and complainant also not disputes this document.

29. When such being the case, there cannot be any criminal prosecution against the petitioner. The judgment of the Apex Court in **PEPSI FOODS LTD. vs. SPECIAL JUDICIAL MAGISTRATE** reported in **(1998) 5 SCC 749** is very clear that on the face value, if no misdeeds during his period and the accusation is not found against the petitioner, there cannot be any criminal prosecution against this petitioner. So also, in the judgment of the Apex Court in **STATE OF HARYANA vs. BHAJAN LAL** reported in **1992 Supp (1) SCC 335**, the Apex Court in paragraph No.102, particularly Guideline Nos. 4, 5 and 7, observed that if complaint does not disclose constituting of an offence and no ingredient of the offence against the petitioner, there cannot be any criminal prosecution and

Guideline No.7 is very clear that in order to wreck vengeance, a criminal prosecution cannot be instituted.

30. The judgment of the Apex Court in ***Kishan Lal's*** case is very clear that to wreck vengeance for personal grounds, criminal prosecution cannot be invoked and it is prima facie clear that no payments are made during his tenure and he cannot be prosecuted for the same and agreement was also signed by Registrar and not by this petitioner and mere entering into an agreement cannot be a basis for prosecution when there was no payment during his period. Hence, the petitioner in Crl.P.No.7111/2022 has also made out a ground to quash the proceedings and also quash the order passed by the learned Magistrate and learned Magistrate failed to take note of all these factors into consideration and even order for fresh investigation and he was not authorized to pass such order for fresh investigation.

31. Having considered the factual aspects in respect of accused Nos.1 and 2 and the allegation made in the complaint and FIR and also taking note of the reasons given by the Investigating Officer by filing 'B' report and so also, the discussion made by the learned Magistrate, the learned

Magistrate committed an error in ordering for fresh investigation in view of the principles laid down in the judgments referred supra by counsels appearing for the petitioners as well as the judgments relied upon by this Court The law is also settled that the learned Magistrate cannot pass an order for fresh investigation and the Magistrate is not having any such power and only Superior Courts can do the same and Magistrate is not having jurisdiction to pass impugned order at Annexure-A and the same is passed without jurisdiction.

32. This Court has also taken note of accusation made in the complaint in respect of accused No.2 which is in respect of purchase of 30 computers and Annexure-F is very clear that no such violation. No doubt, grievances are made by the complainant that audit report is misleading and even, if it is considered, the same cannot be a ground to initiate criminal prosecution and initiation of criminal prosecution is a serious matter and so also in respect of accused No.1 is concerned, payments are not made during his period and the same is made subsequent to his tenure and his tenure was in between 2009 to January, 2013 and payments which are shown in the audit report is subsequent to his tenure and no prima facie material against him for having disbursed the amount. Hence,

against him also there cannot be any criminal prosecution. Accordingly, I answer point Nos.(i) and (ii) as 'negative'.

Point No.(iii):

33. In view of the discussion made above, I pass the following:

ORDER

(i) Both the criminal petitions are ***allowed.***

(ii) The impugned order passed by the learned Magistrate at Annexure-A dated 31.03.2022 is set aside and consequently, the 'B' report is accepted and the proceedings initiated against the petitioners are dropped.

Sd/-
(H.P.SANDESH)
JUDGE

ST