



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 24<sup>TH</sup> DAY OF NOVEMBER, 2023**

**BEFORE**

**THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

**CRIMINAL PETITION NO. 9212 OF 2021**

**C/W**

**CRIMINAL PETITION NO. 4676 OF 2022**

**IN CRL.P NO. 9212/2021**

**BETWEEN:**

MS. ANN NIMMI SEBASTIAN,

...PETITIONER

(BY SRI. ADITYA KRISHNA PANDEY, ADVOCATE)

**AND:**

1. STATE OF KARNATAKA  
BY JEEVANBHIMANAGAR P.S.,  
REPRESENTED BY SPP,  
HIGH COURT BUILDING,  
AMBEDKAR VEEDHI,  
BENGALURU - 560 001.



2. MR. VIWEK VAIDYA,

...RESPONDENTS

(BY SMT. K.P. YASHODHA, HCGP FOR R1;  
NOTICE TO R2 SERVED, BUT UNREPRESENTED)

THIS CRL.P IS FILED U/S.482 OF CR.P.C PRAYING TO a)  
QUASH THE ORDER TAKING COGNIZANCE DATED 19.10.2019  
PASSED BY THE HONOURABLE IV ADDL.C.M.M., BENGALURU  
IN C.C.NO.7076/2020 AT ANNEXURE-A.

**IN CRL.P NO. 4676/2022**

**BETWEEN:**

THOMAS SEBASTIAN NADAKAL,

...PETITIONER

(BY SRI. JAYSHAM JAYASIMHA RAO, ADVOCATE)

**AND:**

1. STATE OF KARNATAKA  
BY JEEVANBHIMANAGAR P.S.,  
REPRESENTED BY SPP,  
HIGH COURT BUILDING,  
AMBEDKAR VEEDHI,  
BENGALURU - 560 001.



2. MR. VIWEK VAIDYA,

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THIS CRL.P IS FILED U/S.482 OF CR.P.C PRAYING TO A.  
QUASH THE ORDER TAKING COGNIZANCE DATED 19.10.2019  
PASSED BY THE IV ACMM, BANGALORE IN C.C.NO.7076/2020  
AT ANNEXURE-A.

THESE PETITIONS, COMING ON FOR DICTATING  
ORDERS, THIS DAY, THE COURT MADE THE FOLLOWING:

**ORDER**

The petitioners are before this Court calling in question an  
order dated 19.10.2019 passed in C.C.No.7076/2020, whereby  
the learned Magistrate takes cognizance of the offences  
punishable under Sections 420, 468, 406, 403, 418 read with  
34 of the Indian Penal Code, 1860 (the 'IPC' for short).

2. Heard Sri. Aditya Krishna Pandey, learned counsel  
appearing for the petitioners and Smt. K.P. Yashodha, learned  
HCGP appearing for respondent No.1.



3. Facts, in brief, germane are as follows:

Respondent No.2 is the complainant, who alleges that he comes in contact with one Thomas Sebastian in the year 2011. Thomas Sebastian, the petitioner in the companion petition. It is alleged that between the years 2011 and 2014, a sum of Rs.1.29/-crore was paid to Thomas Sebastian for the purpose of commencement of the company. The allegation is that the company never took of. Based on the said allegation, a crime comes to be registered before the jurisdictional police in crime No.373/2014 for the offences punishable under Sections 420, 468, 406, 403, 418 read with 34 of the IPC. The police conduct investigation and file a 'B' report in favour of the petitioners. Respondent No.2 - complainant files a protest memo. On the protest memo, the learned Magistrate rejects the 'B' report and takes cognizance of the offences. It is this that has driven the petitioners to this Court in the subject petition.

4. The learned counsel appearing for the petitioners taking this Court through the documents appended to the petition would submit that the complaint did make the investment as aforesaid in the company, the company did take of, but ran into losses. If the company has ran into losses in



the normal business circumstance, it cannot be said that criminal law can be set into motion, that too for the purpose of forgery or cheating. The learned counsel would further submit that the police after investigation filed a 'B' report. The 'B' report is rejected by a peremptory order on a protest memo filed by the complainant. On all these scores, the learned counsel would seek quashment of the entire proceedings.

5. The matter is of the year 2021. The complainant is served long ago i.e. in the year 2021. Despite passage of two years and the matter being listed on plethora of occasions, there is no representation on behalf of the complainant. Therefore, the petitioner and the learned HCGP are heard.

6. The learned HCGP would have no submission to make as the State has filed its 'B' report after investigation.

7. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material available on record.

8. The afore-narrated facts are not in dispute as they form the matter of record. The complainant coming in contact



with the daughter and her father, who are the petitioners in the subject petition is also a matter of record. In the year 2011, it transpires that the petitioner - Thomas Sebastian and the complainant decide to start a joint venture company, accordingly, both of them made their respective investments. The investment of the complainant was to the tune of Rs.1.29/-crore. The company ran into losses and the complainant could not recover the amount of investment. Therefore, the complainant seeks to set the criminal law into motion on an issue that is purely contractual between the parties. If the business has run into losses, where the investment of both the accused and the complainant was made it cannot be said that offence of cheating would ensue against the petitioners, who bonafide invest in the company and due to business losses the company comes down. The other submission of the learned counsel appearing for the petitioners also merits acceptance. On registration of the crime, the police conduct investigation and filed a 'B' report. Upon the 'B' report, a protest memo is filed by respondent No.2. The protest memo reads as follows:



**"PROTEST MEMO**

*The advocate for the complainant very respectfully submits;*

*That The complainant Vivek Vaidya, has filed a complaint before the Jeevan Bhemanagar police station, Bengaluru against accused Thomas Sebastian(A4), for the offence committed under section 34, 418, 403, 406, 420 and 468 of Indian Penal Code. A FIR has been raised in No.373/2014, and all supporting documents establishing the crime was provided to the police. The police have not properly investigated the matter and they have filed a false 'B' report before this Court, which is brought to our knowledge vide Notice dated 02/12/2016. We would like to challenge the B-report to be filed by the police. Since, we have sufficient material to establish the crime committed by the accused.*

*Wherefore, I very respectfully pray that this Hon'ble Court be pleased to allow this Memo, in the interest of justice."*

9. The protest memo narrates that they are wanting to challenge the 'B' report by filing a protest petition. No such petition comes about. The protest memo is taken on record and the learned Magistrate rejects the 'B' report and takes cognizance of the aforesaid offences against the petitioners. The procedure adopted by the learned Magistrate would run foul of the judgment rendered by the Co-ordinate Bench of this Court in the case of **DR. RAVIKUMAR VS. MRS. K.M.C.VASANTHA AND ANOTHER<sup>1</sup>**

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<sup>1</sup> ILR 2018 KAR 1725



"5. The procedure followed by the learned Magistrate is not in accordance with law. It is well recognized principle of law that, once the police submit 'B' Summary Report and protest petition is filed to the same, irrespective of contents of the protest petition, the court has to examine the contents of 'B' Summary Report so as to ascertain whether the police have done investigation in a proper manner or not and if the court is of the opinion that the investigation has not been conducted properly, the court has got some options to be followed, which are,-

**i) The court after going through the contents of the investigating papers, filed u/s 173 of Cr.P.C., is of the opinion that the investigation has not been done properly, the court has no jurisdiction to direct the Police to file the charge sheet however, the Court may direct the Police for re or further investigation and submit a report, which power is inherent under section 156(3) of Cr.p.c, but before taking cognizance such exercise has to be done. This my view is supported by the decisions of the Hon'ble Apex Court in a decision reported in AIR 1968 S.C. 117 between Abhinandan Jha and Dinesh Mishra (para 15) and also Full Bench decision of Apex Court reported in (1980) SCC 91 between Kamalapati Trivedi and State of West Bengal (second head note.)**

**ii) If the court is of the opinion that the material available in the 'B' Summary Report makes out a cognizable case against the accused and the same is sufficient to take cognizance, and to issue process, then the court has to record its opinion under Sec.204 of Cr.P.C., and the Court has got power to take cognizance on the contents of 'B' Summary Report and to proceed against the accused, by issuance of process.**

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***iii) If the court is of the opinion that the 'B' Summary Report submitted by the Police has to be rejected, then by expressing its judicious opinion, after applying its mind to the contents of 'B' report, the court has to reject the 'B' Summary Report.***

***iv) After rejection of the 'B' Summary Report, the court has to look into the private complaint or Protest Petition as the case may be, and contents therein to ascertain whether the allegations made in the Private complaint or in the Protest Petition constitute any cognizable offence, and then it can take cognizance of those offences and thereafter, provide opportunity to the complainant to give Sworn Statement and also record the statements of the witnesses if any on the side of the complainant as per the mandate of Sec.200 Cr.P.C.***

***v) If the court is of the opinion that the materials collected by the police in the report submitted under section 173 of Cr.p.c. are not so sufficient, however, there are sufficient materials which disclose that a cognizable offence has been committed by the accused, the court can still take cognizance of the offence/s under section 190 read with 200 Cr.p.c. on the basis of the original complaint or the protest petition as the case may be. After taking cognizance and recording sworn statement of the complainant and statements of witnesses if any and also looking into the complainant/Protest Petition and contents therein, if the Magistrate is of the opinion that, to ascertain the truth or falsity of the allegations further inquiry is required and he thinks fit to post pone the issue of process he can still direct the investigation under section 202 of Cr.p.c., to be made by a Police officer or by such other officer as he thinks fit, to investigate and submit a report, for the purpose of deciding whether or not there is sufficient ground for proceeding against the accused. In the above eventuality, care should be***



***taken that, the case shall not be referred to the Police under section 156(3) of Cr.p.c, once the magistrate takes cognizance and starts inquiring into the matter himself.***

***vi) After taking such report under section 202 of Cr.P.C., and looking to the entire materials on record, if the magistrate is of the opinion that there are no grounds to proceed against the accused then the Magistrate is bound to dismiss the complaint or the Protest Petition u/s.203 of Cr.P.C. as the case may be.***

***vii) If in the opinion of the Magistrate there are sufficient grounds to proceed against the accused, on examination of the allegations made in the Protest Petition or in the complaint, as the case may be and also after perusal of the sworn statement, then he has to record his opinion judiciously, and issue summons to the accused by exercising power u/s.204 of Cr.P.C.***

*But, none of these procedures have been followed by the learned Magistrate. On the other hand, as could be seen from the records, the learned Magistrate even without rejecting the 'B' Summary report and without taking cognizance of the offences, but after going through the contents of the Protest Petition has directly provided opportunity to the complainant to give her sworn statement. On the basis of the contents of the Protest Petition, and after relying upon the contents of the Protest Petition and the sworn statement, the learned Magistrate has rejected the 'B' Summary Report which virtually amounts to putting the horse behind the Cart.*

*6. Of course, the contents of the Protest Petition before taking cognizance can only be used for a limited purpose of ascertaining whether the investigation done by the Police is proper and correct. Therefore, the learned Magistrate has committed a serious error in not*



*passing any orders on the 'B' Summary Report before taking cognizance on the basis of the Protest Petition.*

*7. Issuance of summons to the accused will have a serious repercussion, i.e., calling upon a person to the Court is also a very serious act of the court. Therefore, the procedure contemplated as noted above has to be very scrupulously and meticulously followed by the court. The Magistrate has to explore all the options as noted above in accordance with law at right stages, which has not been done in this particular case. The learned Magistrate has relied upon the contents of the Protest Petition and the sworn statement for the purpose of rejecting the 'B' Summary Report, which is not proper and correct. He has to pass orders on the 'B' Summary report before taking cognizance on the Protest Petition for the reasons already narrated in the earlier paragraphs of this judgment."*

*(Emphasis supplied)*

In the light of the violation of procedure in rejecting the 'B' report and taking of cognizance apart from the fact that the very criminal law that is set into motion was on breach of contract or understanding between the petitioners and the complainant, further proceedings if permitted to continue would become an abuse of the process of the law and ultimately result a miscarriage of the justice.

10. For the aforesaid reasons, the following:

**ORDER**

I. Criminal petitions are allowed.



**NC: 2023:KHC:42381**  
**CRL.P No. 9212 of 2021**  
**C/W CRL.P No. 4676 of 2022**

II. The order dated 19.10.2019 passed in C.C.No.7076/2020 for the offence punishable under Sections 420, 468, 406, 403, 418 read with 34 of the IPC stands quashed.

**Sd/-**  
**JUDGE**

JY  
List No.: 2 Sl No.: 3  
CT: BHK