

IN THE HIGH COURT OF KARNATAKA  
DHARWAD BENCH

DATED THIS THE 10<sup>TH</sup> DAY OF DECEMBER 2019

BEFORE

THE HON'BLE MR. JUSTICE P.G.M.PATIL

CRIMINAL PETITION NO.101997/2019

BETWEEN:

VAGGEPPA GURULINGA JANGALIGI  
(JANGALAGI), AGE: 38 YEARS,  
OCC: SERVICE R/O; MOLE,  
TAL: KAGWAD (ATHANI), DIST: BELAGAVI.

... PETITIONER

(SRI. VITTHAL S.TELI, ADV.)

AND:

THE STATE OF KARNATAKA,  
THROUGH P S I KAGWAD POLICE STATION,  
KAGWAD, TAL; KAGWAD [ATHANI],  
DIST: BELAGAVI REPRESENTED BY STATE  
PUBLIC PROSECUTOR HIGH COURT OF  
KARNATAKA, DHARWAD BENCH, DHARWAD.

...RESPONDENT

(SRI. RJU RAGHAVENDRA, HCGP)

THIS PETITION FILED UNDER SECTION 482 OF CR.P.C. SEEKING TO QUASH THE ENTIRE PROCEEDINGS IN C.C.NO.3397/2019 ON THE FILE OF THE IV ADD. CIVIL JUDGE & JMFC COURT, ATHANI, FOR THE OFFENCES P/US. 87 OF K.P.ACT, INSOFAR AS PETITIONERS ARE CONCERNED (ACCUSED NO.4).

RESERVED FOR ORDERS ON: 25/11/2019

ORDERS PRONOUNCED ON :10/12/2019

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR JUDGMENT, COMING ON FOR PRONOUNCEMENT OF ORDERS THIS DAY, THE COURT PASSED THE FOLLOWING:

ORDER

This petition is filed under Section 482 of Cr.P.C. seeking to quash the entire proceedings in CC No.3397/2019 pending on the file of IV Additional Civil Judge, Athani for the offence punishable under Section 87 of the Karnataka Police Act (hereinafter referred to as "K.P.Act" for short).

2. The brief facts of the case are as follows:-

One Mr. H.N. Shirahatti, PSI Kagwad police station filed a complaint before the SHO of Kagwad Police station stating that on 23.09.2019 at about 18.15 hours, when he was in the police station he received credible information, that within the limits of Mole Village near Laxmi Temple, some persons are playing gambling called "Andar Baahar" for their personal benefit, contrary to law and illegally. Thereafter, he informed the same to Dy. S.P. Athani and CPI Athani, telephonically and as per their instructions and direction, himself along with staff proceeded to the said spot. They reached the spot at 19.30 hours and they stood little away and watched and found that certain persons were saying Yakka means Rs.100/- etc. and they conducted raid and caught hold 13 persons and recovered cash of Rs.10,250/-. On the basis of the complaint, the SHO registered Crime No 123/2019 for

offence under Section 87 of K.P. Act. Subsequently, after investigation, a charge sheet was filed against the petitioner and other accused for the offence punishable under Section 87 of the K.P.Act.

3. The petitioner has stated that the complaint is misconceived, and the alleged offence is non-cognizable as per the Code of Criminal Procedure 1973. Therefore, the police have no authority to investigate the crime. It is further submitted that the police have not complied with mandatory requirement of Section 155 of Cr.P.C. When the officer in-charge of the police station received information regarding commission of non-cognizable offence, he shall enter the same in a book to be maintained by the said officer and refer the informant to the Magistrate. Further, Subsection (2) of Section

155 of Cr.P.C. mandates that no police officer shall investigate a non-cognizable case without order of a Magistrate having power to try such case or commit such case for trial. The petitioner has further stated that there is no iota of evidence that the above said mandatory requirement are complied with. There is no speaking order by the jurisdictional Magistrate permitting the police to take up investigation. Therefore, the proceedings initiated against the petitioner who is arrayed as accused No.4 in the charge sheet are liable to be quashed.

4. Heard the learned counsel for the petitioner and the learned High Court Government Pleader.

5. The learned counsel for the petitioner submitted that the offence punishable under Section 87 of the K.P. Act is non-

cognizable one and therefore, as per Section 155(1) of Cr.P.C., the informant PSI ought to have been referred to the jurisdictional Magistrate and the jurisdictional Magistrate ought to have passed the order, permitting the concerned police to take up investigation of the case and these are the mandatory requirements of the provisions under Section 155(1) and 155(2) of Cr.P.C. which are not followed in the present case. Therefore, the proceedings initiated against the petitioner are vitiated and are liable to be quashed.

6. Learned counsel for the petitioner has relied on the orders of this Court passed in several cases in support of his submission.

7. Per contra, learned High Court Government Pleader submitted that the jurisdictional Magistrate has permitted the

concerned police to take up investigation and therefore, there is compliance of Section 155(2) of Cr.P.C.

8. It is not in dispute that the alleged offence punishable under Section 87 of the K.P. Act is a non-cognizable offence. When the report is received by the SHO of Police station in respect of commission of non-cognizable offence, the SHO has to follow the mandatory procedure prescribed under Section 155(1) and 155(2) of Cr.P.C. Therefore, it is necessary to refer the said provision. Section 155 of Cr.P.C. which deal with the procedure for investigation and for taking cognizance of non-cognizable offence reads as follows:-

*“155. Information as to non-cognizable cases and investigation of such cases.*

*(1) When information is given to an officer in charge of a police station of the commission within the limits of such station of a non-cognizable offence, he shall enter or cause to be entered the substance of the information in a book to be kept by such officer in such form as the State Government may prescribe in this behalf, and refer the informant to the Magistrate.*

*(2) No police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial.*

*(3) Any police officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an*



*officer in charge of a police station may exercise in a cognizable case.*

*(4) Where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non-cognizable.”*

9. Therefore, when the SHO of the police station receives a report regarding commission of non-cognizable offence, it is his duty to enter the substance of the information in the prescribed book and refer the informant to the Magistrate as required under Section 155(1) of Cr.P.C. Thereafter, the jurisdictional Magistrate is required to pass an order permitting the police officer to investigate the case as mandated by the provisions of Section 155(2) of Cr.P.C. stated supra. Unless, the

police officer is permitted by an order of the jurisdictional Magistrate to investigate the non-cognizable offence, the police officer does not get jurisdiction to investigate the matter and file a final report or the charge sheet.

10. This Court in the case of **Praven Basavanneppa Shivalli Vs. State of Karnataka and Others (2017) 1 Air Kant R 461** considered the requirement of Section 155(1) and (2) of Cr.P.C. where case relates to a non-cognizable offence, in para 10 of the judgment this Court has observes as follows:

*“10. S. 155 of Cr.P.C. deals with the procedure to be adopted in respect of the information received by the Officer in charge of a Police Station relating to commission of non-cognizable offence. As per sub-section (1) of S.155 Cr.P.C. when an Officer in charge of Police Station receives the information as to the commission of a non-cognizable offence, he*

*shall enter or cause to be entered the substance of the information in a book to be maintained by such Officer in the prescribed form 'and refer the informant to the Magistrate'. Sub-section (2) of S.155 Cr.P.C. makes it clear, that no Police Officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit case for trial. Sub-section(1) of S.155 Cr.P.C. which casts a duty on the station house officer who receives information as to the commission of non-cognizable offence to enter or caust to be entered the information in the prescribed book and refer the informant to the Magistrate, does not enable the SHO himself to approach the Magistrate and seek orders. The provision makes it clear, that the SHO shall refer the informant to the Magistrate, thereby, making clear that it is for the informant to seek the orders of jurisdictional Magistrate for issue of direction to the police for investigation of the case. The Magistrate, on being approached by the informant, if orders investigation, the SHO concerned would get jurisdiction to register the*

*crime, investigate the matter and not otherwise.”*

11. This Court in the case of ***Mukkatira Anitha Machaiah Vs. State of Karnataka and another in Crl.P.5934/2009*** decided on 20/8/2013 considered the scope of Section 155(1) and (2) of Cr.P.C. has observed in para 5 as follows:-

*“5. Section 155 of Cr.P.C. deals with the procedure to be adopted in respect of an information received by the officer in charge of a police station relating to commission of a non-cognizable offence. According to sub-section (1) of Section 155 of Cr.P.C., when an officer in charge of the Police Station receives an information as to the commission of a non-cognizable offence, he shall enter or cause to be entered the substance of the information in the prescribed book and refer*

*the informant to the Magistrate. According to sub-section (2) of Section 155 of Cr.P.C. no police officer shall investigate a non-cognizable case without a order of a Magistrate having power to try such case or commit the case for trial. Thus reading of sub-section(1) of Section 155 of Cr.P.C. makes it clear that the duty of the SHO, who receives information as to the commission of a non-cognizable offence is only to enter or cause to be entered the substance of the information in the prescribed book and refer the informant to the Magistrate. It is for the informant to approach the jurisdictional Magistrate and seek a direction to the police for investigation. If the Magistrate on being approached by the informant, directs investigation, the Police Officer concerned would get jurisdiction to investigate the matter.*

12. This Court in paragraph 6 has further has observed as follows:-

*“In the case on hand, as noticed supra, upon receipt of the report submitted by the 2<sup>nd</sup> respondent, the SHO of Virajpet Police Station registered the same as NCR and submitted a requisition to the jurisdictional Magistrate seeking permission to investigate the matter, based on which, the Magistrate granted permission. Thus, the procedure adopted by the SHO is without the authority of law and the same is not contemplated under Section 155 of Cr.P.C. Therefore, the permission granted by the Magistrate on such requisition is also without any basis, as such, the investigation carried on by the police and the charge sheet filed thereon are without the authority*

*of law. Therefore, the prosecution launched against the petitioner is liable to be quashed. However, it is open to Respondent No.2, who is the informant before the police to approach the jurisdictional Magistrate and seek necessary orders as contemplated under Section 155 of Cr.P.C.”*

13. Therefore, the SHO of the police Station has no authority of law unless the jurisdictional magistrate permits the police officer for investigation of the non-cognizable offence.

14. This Court in the case of ***Padubidri Members Lounge Vs. Director General and Inspector General of Police in W.P.No.42073-75/2018*** decided on 3/10/2012, considered the mandatory provision of Section 155(1) and (2) of Cr.P.C. where the charge sheet was filed for the

offence under Section 87 of the K.P.Act. In paragraphs 6 and 7, this Court has held as follows:-

*“6. As per the above provisions, when an Officer-in-charge of the police station receives an information with regard to commission of non-cognizable offence/s, i) he shall enter or caused to be entered the substance of the information in a book to be maintained by the said Officer in a prescribed form and ii) refer the informant to the Magistrate. Further, Sub-Section (2) of Section 155 Cr.P.C. mandates that no Police Officer shall investigate a non-cognizable offence without the order of a Magistrate having power to try such case or commit such case for trial.*

*7. In the instant case, police have failed to comply with the requirements of Section 155(1) and 155(2) of Cr.P.C. There is nothing on record to show that the respondents have referred the informant to the concerned Magistrate as required under Section 155(1) of*



*Cr.P.C., or obtained necessary order as envisaged under Section 155(2) of Cr.P.C., before embarking upon investigation. Thus, on the face of it, the respondents are seen to have violated the provisions of Sections 155(1) and 155(2) of Cr.P.C.”*

15. Again this Court, in the case of ***Veeranagouda and Others Vs. The State of Karnataka in Crl.P.No.102021/2018*** decided on 11/1/2019 considered the requirements of Section 155(1) and (2) of Cr.P.C. and has held in para 9 as follows:-

*“The Counsel appearing for the petitioner’ also brought to the notice of this Court that when a requisition was given to the Magistrate, only an endorsement is made as permitted to investigate as per section 155 of Cr.P.C. on the very request letter itself and the same is not in*

*accordance with law. The concerned Magistrate did not apply his mind and passed any considered order. On the requisition only an endorsement is made and the same is not the permission in the eye of law. Therefore in reality it is not permission at all and the prosecution has not satisfied the Court that mandatory requirements are complied before proceeding with the investigation in the matter. Legal aspect has not been complied and the same has been over looked by the Court below while ordering for registering the criminal case against the petitioners' herein. Looking to these materials it goes to show that it is the abuse of process of Court to continue the proceedings. Not only it is wasting of valuable time and energy of the Court. Even if the trial is proceeded with, it is a futile exercise in the matter."*

16. Therefore, this Court time and again has quashed the proceedings initiated against the accused persons in respect of non-cognizable offence on the ground that the mandatory provisions of Section 155(1) and (2) of Cr.P.C. are not complied with. However, this Court has not laid down any guidelines for the learned Magistrates as to how and in what manner they have to pass the Order under Section 155(2) of Cr.P.C. when a requisition is submitted to the learned Magistrate seeking permission to investigate the non-cognizable offence.

17. In the cases referred above, invariably the learned Magistrates have passed the orders on the requisition submitted by the SHO of the police station by writing a word "permitted" or "permitted to investigate". This Court has held that making such an

endorsement on the requisition submitted by the police is not passing orders and there is no application of judicious mind in permitting the police officer to take up the investigation for non-cognizable offence.

18. Under these circumstances, this Court felt it necessary to lay down some guidelines for the benefit of our Judicial Magistrates as to how they have to approach and pass orders when requisition is submitted by the SHO of police station seeking permission to investigate into the non-cognizable offence. The provision of Section 155(1) and (2) of Cr.P.C. referred above make it very much clear that the SHO of the police station on receiving the information regarding the commission of non-cognizable offence, his first duty is to enter or cause to be entered the substance of such

commission in a book maintained by such Officer and then refer the informant to the Magistrate. This is the requirement of Section 155(1) of Cr.P.C. Once the requisition is submitted to the Magistrate, it is for the Jurisdictional Magistrate to consider the requisition submitted by the SHO of police station and pass necessary order either permitting the police officer to take up the investigation or reject the requisition. Section 155(2) of Cr.P.C. specifically provides that no police officer shall investigate the non-cognizable case without the order of the Magistrate having power to try such case or commit such case for trial. Therefore, passing an "order" by the Magistrate permitting the police officer to investigate the non-cognizable offence is an important factor. The word without the order of the Magistrate appearing in

Subsection (2) of Section 155 of Cr.P.C. makes it clear that the Magistrate has to pass an 'order' which means supported by reasons. On the other hand, in number of cases, the Jurisdictional Magistrates are writing a word 'permitted' on the requisition submitted by the police itself which does not satisfy the requirement of Section 155(2) of Cr.P.C. such an endorsement cannot be equated with the word 'Order'.

19. Chapter V Rule 1 of Karnataka Criminal Rules Practice, 1968 also deals with investigation of non-cognizable case. The said provision reads as follows:-

*“ INVESTIGATION AND PROSECUTION*

*\*1. Report under Section 154.- (1) On receipt of the report of the Police Officer under Section 154 of the Code, the Magistrate shall make a note on the report of the date and time of the receipt thereof and initial the same.*

*Before initialing, the Magistrate shall also endorse on the report whether the same has been received by the post or muddam.*

*2. (1) When a Magistrate directs an investigation of a case under Sections 155(2), 156(3) or 202 of the Code, he shall specify in his order the rank and designation of the Police Officer or the Police Officers by whom the investigation shall be conducted.”*

20. Therefore, under Rule 1, the Magistrate shall endorse on the report whether the same has been received by post or muddam. Under Rule 2, Magistrate has to specify in his order the rank and designation of the police officer or the police officer by whom the investigation shall be conducted. Considering the mandatory requirement of Section 155(1) and (2) of Cr.P.C. and Rule 1 and 2 of Chapter V

of the Karnataka Criminal Rules Practice, this Court proceed to laid down the following guidelines for the benefit of the judicial Magistrate working in the State.

- i) The Jurisdictional Magistrates shall stop hereafter making endorsement as 'permitted' on the police requisition itself. Such an endorsement is not an order in the eyes of law and as mandated under Section 155(2) of Cr.P.C.
- ii) When the requisition is submitted by the informant to the Jurisdictional Magistrate, he should make an endorsement on it as to how it was received, either by post or by Muddam and direct the office to place it before him with a separate order sheet. No order should be passed on the requisition itself. The said order sheet should be continued for further proceedings in the case.
- iii) When the requisition is submitted to the Jurisdictional Magistrate, he has to first examine whether the SHO of the police



station has referred the informant to him with such requisition.

- iv) The Jurisdictional Magistrate should examine the contents of the requisition with his/her judicious mind and record finding as to whether it is a fit case to be investigated, if the Magistrate finds that it is not a fit case to investigate, he/she shall reject the prayer made in the requisition. Only after his/her subjective satisfaction that there is a ground to permit the police officer to take up the investigation, he/she shall record a finding to that effect permitting the police officer to investigate the non-cognizable offence.
- v) In case the Magistrate passes the orders permitting the investigation, he/she shall specify the rank and designation of the Police Officer who has to investigate the case, who shall be other than informant or the complainant.

21. Coming to the case on hand, the SHO of Kagwad police station received a complaint from PSI on 23/9/2019 and SHO

submitted a requisition to IV Additional JMFC, Athani, seeking permission to investigate the offence under Section 87 of the K.P.Act which is a non-cognizable offence. It is seen that the learned Jurisdictional Magistrate has made and endorsement on the requisition which reads as follows:-

“Perused materials. Permitted

Sd/-”

22. Therefore, absolutely there is no application of judicious mind by the learned Magistrate before permitting the police to investigate the non-cognizable offence much less an order passed by the learned Magistrate.

23. Under these circumstances, the proceedings initiated against the petitioner in CC No.3397/2019 pending on the file of the IV

Additional Civil Judge and JMFC, Athani, are liable to be quashed so far as the petitioner is concerned. Accordingly, the petition filed under Section 482 of Cr.P.C. is allowed and the said proceedings are hereby quashed as against the petitioner is concerned.

24. Registry is directed to forward the copy of the order to the Director of Karnataka State Judicial Academy, Bangaluru, for information and necessary action.

25. Registry is also directed to circulate the copy of the order to all the judicial Magistrates in the State to follow guidelines laid down in the order.

Sd/-  
JUDGE

Vmb/-