

Reserved on : 10.01.2025
Pronounced on : 07.03.2025



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 07TH DAY OF MARCH, 2025

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.4241 OF 2024

C/W

CRIMINAL PETITION No.4250 OF 2024

IN CRIMINAL PETITION No.4241 OF 2024

BETWEEN:

- 1 . SMT. PADMA MALINI G. RAO
W/O SRI G.VENKATESH RAO,
AGED ABOUT 57 YEARS,
OCC.:EDITOR, AUTHOR AND
EDUCATIONAL CONSULTANT.
- 2 . SRI G. VENKATESH RAO
S/O. SRI. G. V. G. KRISHNA MURTHY,
AGED ABOUT 62 YEARS,
OCC.: DESIGNATED SENIOR COUNSEL.

BOTH ARE RESIDING AT E-604,
NAGARJUNA APARTMENTS,
PLOT NO. A-1, CHILLA,
MAYUR KUNJ,

EAST DELHI – 110 096.

.. PETITIONERS

(BY SRI PRABHULING K.NAVADGI, SR.ADVOCATE A/W
SRI PRATEEK CHANDRAMOULI, ADVOCATE)

AND:

SRI RAVI KARUMBIAIAH
S/O K. G. MANDANNA,
AGED ABOUT 72 YEARS,
PRESENTLY HAVING OFFICE AT
NO. 1207, 100 FEET ROAD,
HAL II STAGE,
INDIRANAGAR,
BENGALURU – 560 008.

... RESPONDENT

(BY SRI S.SUBRAHMANYA, ADVOCATE)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF
CR.P.C., PRAYING TO QUASH THE ENTIRE PROCEEDINGS THEREOF
IN C.C.NO.50448/2024 PENDING ON THE FILE OF THE LEARNED
Xth ADDITIONAL CHIEF METROPOLITAN MAGISTRATE, MAYO HALL
UNIT, BENGALURU REGISTERED PURSUANT TO THE ORDER OF
TAKING COGNIZANCE DATED 10.01.2024, FOR THE OFFENCE
P/U/S 500 OF IPC 1860.

IN CRIMINAL PETITION No.4250 OF 2024

BETWEEN:

- 1 . SRI G. VENKATESH RAO
S/O SRI G. V. G. KRISHNA MURTY,
AGED ABOUT 62 YEARS,
DESIGNATED SENIOR ADVOCATE,
SUPREME COURT OF INDIA.
- 2 . SMT. PADMAMALINI G. RAO
W/O G. VENKATESHWARA RAO,
AGED ABOUT 57 YEARS,
OCC.: EDITOR, AUTHOR AND
EDUCATIONAL CONSULTANT.

BOTH RESIDING AT E-604,
NAGARJUNA APTS,
PLOT A-1, CHILLA/MAYUR KUNJ,
VASUNDHRA ENCLAVE S.D.,
EAST DELHI – 110 096.

... PETITIONERS

(BY SRI PRABHULING K.NAVADGI, SR.ADVOCATE A/W
SRI PRATEEK CHANDRAMOULI, ADVOCATE)

AND:

- 1 . THE STATE OF KARNATAKA
BY INDIRANAGAR P. S.,
BENGALURU – 570 038
REPRESENTED BY
STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA,
BENGALURU – 560 001.

2 . M/S. CARPENTERS CLASSIC EXIM PVT. LTD.,
 NO. 1214, 100 FT ROAD,
 HAL 2ND STAGE,
 INDIRANAGAR,
 BENGALURU – 560 038,
 REPRESENTED BY ITS
 ADMINISTRATIVE MANAGER,
 SRI. SURESH. A. R.,
 S/O. A. B. RAMARATHNAM,
 AGED ABOUT 60 YEARS.
 PRESENTLY HAVING OFFICE AT
 NO.1207, 100 FEET ROAD,
 HAL 2ND STAGE,
 INDIRANAGAR,
 BENGALURU – 560 038,
 REPRESENTED BY ITS
 ADMINISTRATIVE MANAGER,
 SRI SURESH A.R.,
 S/O A.B.RAMARATHNAM,
 AGED ABOUT 60 YEARS.

... RESPONDENTS

(BY SRI B.N.JAGADEESHA, ADDL.SPP, FOR R-1;
 SRI S.SUBRAHMANYA, ADVOCATE FOR R-2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO QUASH THE ORDER DATED 10.01.2024, TAKING OF COGNIZANCE FOR THE OFFENCES P/U/S 447, 341, 323, 427, 379, 504, 506 OF IPC IN CR.NO.523/2010 PENDING ON THE FILE OF THE LEARNED X ACMM MAYO HALL BENGALURU.

THESE CRIMINAL PETITIONS HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 10.01.2025, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

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

CAV ORDER

Both these petitions are by common petitioners and complainants are different. The two are taken up together and considered by this common order.

2. In Crl.P.No.4241 of 2024, proceedings before the X Additional Chief Metropolitan Magistrate, Mayo Hall Unit, Bangalore in C.C.No.50448 of 2024 registered for offence punishable under Section 500 of the IPC are called in question. The petitioners are accused Nos.1 and 2, husband and wife.

3. In Crl.P.No.4250 of 2024 registration of a crime in Crime No.523 of 2010 and further proceedings pending before the X Additional Chief Metropolitan Magistrate, Mayo Hall Unit, Bangalore are called in question. The petitioners are accused Nos.1 and 2, husband and the wife, as obtaining in Crl.P.No.4241 of 2024.

4. Facts in brief, germane in **Crl.P.No.4241 of 2024** are:

The 2nd petitioner is a practicing and a designated Senior Advocate practicing before the Supreme Court of India. The 1st petitioner is the wife of the 2nd petitioner, the senior Advocate. The two after marriage relocate to New Delhi. The 1st petitioner/wife is the absolute owner of a property bearing No.1214 on 100 ft. road, HAL II stage, Indiranagar, Bangalore. The complainant is a businessman. He is one of the Directors of the Company M/s. Carpenters Classic India Pvt. Ltd., who are into the business of manufacture of modular kitchens. On 11-10-1994, the ground and the first floor of the property of the 1st petitioner is leased in favour of the M/s. Carpenters Classic India Pvt. Ltd. 5 years after the property being leased in favour of the aforesaid Company on 1-1-1999, the 2nd petitioner causes a legal notice upon the complainant indicating that the Joint Directorate of Revenue Intelligence – Customs Income Tax raid took place in the premises that was owned by the 1st petitioner and leased out to the aforesaid complainant. In the legal notice it was directed that the Company should vacate the premises since the lease had expired in the year 1998, while so saying, it was also observed that alleged illegal

activities had prompted raids by the Income Tax and the DRI. Therefore, the building had been brought to disrepute.

5. The complainant then files a suit for injunction in O.S.No.3529 of 1999 to restrain the petitioners/accused from evicting the complainant from the leased premises. All was standstill after an order of injunction being granted. On 01-03-2013, 14 years after the legal notice so caused, the complainant registers a private complaint invoking Section 200 of the Cr.P.C. in P.C.R.51547 of 2013 alleging that the legal notice so caused against the complainant was defamatory. Several other proceedings initiated by the petitioners against the complainant was also made subject matter of the complaint, but the alleged defamatory act related to the legal notice caused in the year 1999. On 10-11-2017, the learned Magistrate passes an order that process cannot be issued without recording the sworn statement of the complainant. The matter was then posted for recording of the sworn statement and the complainant remains absent throughout. On 07-10-2023 sworn statement of the complainant is recorded after 10 years and 7 months of registration of the complainant and

on 10-01-2024, the learned Magistrate takes cognizance of the offence punishable under Section 500 of the IPC and registers C.C.No.50448 of 2024. It is taking of cognizance and issuance of summons for the aforesaid offence of defamation is what has driven the petitioners to this Court in the subject petition.

6. Facts in brief, in **Crl.P.No.4250 of 2024**, are:

Up to the date of causing of legal notice, the facts narrated in Crl.P.4241 of 2024 are to be paraphrased. The complainant in the case at hand is the Company who was the lessee. After the causing of the legal notice and institution of the suit in O.S.No.3529 of 1999, a crime comes to be registered by the Company on 23-12-2010 in Crime No.523 of 2010 for offences punishable under Sections 448, 323, 427, 504 and 506 of the IPC. The allegation in the complaint was that the 1st petitioner in the subject petition, the Senior Advocate along with 6 goondas come into the premises in a vehicle bearing registration No.KA03-MA-1499 and assaulted the office boy and trespassed into the leased premises. It is therefore, the aforesaid crime sprang for the afore-quoted offences. The police conduct investigation and file a 'B' report holding that a civil

dispute is projected to become a crime. The 'B' report was presented before the concerned Court on 07-01-2012.

7. After about 18 months, the Administrative Manager of the complainant company files a protest memo. After the protest memo they do not appear before the Court. The Court dismisses the case for its non-prosecution, which was challenged before the Court of Sessions in a Criminal Revision Petition. The case before the concerned Court is restored. The sworn statement of the Directors of the Company is record on 25-03-2017 partially, 6 years pass by, further sworn statement is recorded on 07-10-2023. The learned Magistrate takes cognizance of the offences as alleged in the crime and issues summons. Therefore, the learned Magistrate after 14 years, has taken cognizance of the offence and issued summons. Issuing of summons is what has driven these petitioners to this Court in the subject petition.

8. Heard Sri Prabhuling K Navadgi, learned senior counsel appearing for petitioners in both the petitions, Sri B N Jagadeesh, learned Additional State Public Prosecutor appearing for State, and

Sri S Subrahmanya appearing for respondent in Crl.P.No.4241 of 2024 and for respondent No.2 in Crl.P.No.4250 of 2024.

9. The learned senior counsel Sri Prabhuling K Navadgi appearing for petitioners would vehemently contend insofar as it concerns Crl.P.4241 of 2024, there was nothing defamatory in the legal notice so caused. The legal notice was caused in the year 1999 and the complaint is registered in the year 2013. The offence under Section 500 of the IPC is punishable to a maximum of 3 years imprisonment. Therefore, the complaint so filed is hit by Section 468 of the Cr.P.C. The Magistrate could not have taken cognizance of the offence. Even otherwise, the learned senior counsel would submit that the Magistrate ought to have considered the 4th exception to Section 499 of the IPC which holds that the publication of reports of proceedings of Courts do not constitute defamation, if they are substantially true. The alleged defamatory legal notice was never put to circulation in the public, it was only between the 2nd petitioner and the complainant. Therefore, the notice cannot be termed to be defamatory. He would seek quashment of the proceeding, relying on plethora of judgments, all

of which would bear consideration *qua* their relevance in the course of the order.

10. The learned senior counsel in CrI.P.No.4250 of 2024 would submit that the allegations in the complaint are made 11 years after the incident, as the complaint itself comes to be registered in the year 2010 for an eviction notice issued in the year 1999. The police had rightly filed a 'B' report, as it did not constitute an offence. The learned Magistrate, after waiting for 10 long years, now passes an order taking cognizance of the offence, as afore-quoted, in total contravention of the law declared by this Court, as he neither rejects the 'B' report nor accepts it. He would submit that the offence under Section 448 of the IPC will get attracted only when a person unlawfully enters into the property possessed by another. The accused here were in possession of the property. Therefore, there was no question of trespass. He would seek quashment of the subject proceeding as well.

11. Per-contra, the learned counsel Sri S Subrahmanya refuting the submissions in CrI.P.No.4241 of 2024 would

vehemently contend that it is not one, but several proceedings are instituted against the Company or the respondent/complainant, all of which have ended in favour of the complainant or the Company, in that light, the petitioners have defamed the image of the Company and the complainant in the eyes of the general public. Since it all started on causing a legal notice which contained several allegations, complaint had to be registered after closure of the proceedings between the two in most of the cases. Therefore, it is a continuing cause of action and cannot be said that it is registered after delay of 14 years. The contents of the legal notice caused are *per se* defamatory. The learned Magistrate has taken cognizance of the offence for defamation and therefore, this Court exercising its jurisdiction under Section 482 of the Cr.P.C. should not interfere. He seeks dismissal of Crl.P.No.4241 of 2024.

12. In Crl.P.No.4250 of 2024, the learned counsel for the complainant would submit that the complainant had an order of injunction in his favour. The complainant had vacated the premises, the lease had not come to an end in the manner known in law, therefore, it did amount to trespass of the complainant's

property. The other offences alleged of assault, wrongful restraint and theft are all met in the case at hand, as the security or the office boy of the complainant's Company was abused and assaulted and all the movables belonging to the Company were either thrown out or taken away. Therefore, it did amount to theft. He would submit that the police had erroneously filed the 'B' report and the concerned Court has appropriately rejected the 'B' report and taken cognizance and issued summons. Therefore, the learned counsel would seek dismissal of this petition as well.

13. The learned Additional State Public Prosecutor appearing in CrI.P.No.4250 of 2024 would submit that the police after investigation had filed a 'B' report, finding the matter purely civil in nature, as there were proceedings pending between the parties. Since the police had filed the 'B' report he would leave the order to be passed by this Court.

14. I have given my anxious consideration to the submissions made by the respective learned counsel for the parties and have perused the material on record. In furtherance whereof, in

Crl.P.No.4241 of 2024, the issue that would arise for consideration is, **whether the allegations made in C.C.No.50448 of 2024 meet the ingredients necessary to attract Section 500 of the IPC?**

15. To consider this issue, it is necessary to take a little walk in history, as the facts are of 25 years vintage. The petitioners are husband and wife. The 1st petitioner owned a premises as afore-quoted in Bengaluru. The complainant is one of the Directors of a Company by name M/s. Carpenters Classic India Pvt. Ltd.,. Desirous of taking on lease, the complainant's Company and the 1st petitioner enter into a lease agreement wherein the 1st petitioner leased out ground floor and the first floor of the property to the complainant. 5 years pass by. It transpires due to certain allegations, the premises of the Company became the subject matter of raids conducted by the DRI, Income Tax and the Customs department. Since the premises belonged to the 1st petitioner and also the fact that the lease had come to an end, the 2nd petitioner husband causes a legal notice. This legal notice is the subject of defamation. The complaint for defamation was not registered

immediately. Though the legal notice was caused in the year 1999, a complaint comes to be registered invoking Section 200 of the Cr.P.C. before the learned Magistrate on 01-03-2013, 14 years after causing of the legal notice.

16. Though several incidents have happened after the said legal notice being caused, the alleged defamatory statement is projected to have come from the legal notice so caused in the year 1999. Therefore, I deem it appropriate to notice certain paragraphs of the complaint so registered against these petitioners, for the afore-quoted offence. It reads as follows:

".....

5. It is submitted that the Accused No.2, who had/has no right, title, interest, share and or claim in the Schedule Property wrote a letter dated 1st January 1999 to the Complainant, the contents of which highly objectionable and defamatory in nature. It is submitted that the Accused No.2 is neither the owner nor the signatory to the lease agreement entered into between Complainant and Accused No.1 except that he is the husband of the Accused No.1, Accused No.2 had no authority whatsoever to write such a letter to the Complainant. The contents of the said letter per se amount to defamation. A copy of the said letter dated 1st January 1999 is produced herewith as **DOCUMENT NO.2.**

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7. Pursuant to issuance of the aforesaid letter dated 1st January 1999, both accused in collusion with one another

have made various attempts to throw the tenant/Complainant out of the Schedule Property by setting criminal law in motion even though the dispute between the parties is of civil nature. The said conduct of both Accused is blatantly illegal and unlawful. Both Accused by colluding with each other have intentionally filed various false and frivolous criminal complaints against the Complainant and his wife with malafide intention of throwing the Complainant out of the Schedule Premises. The various illegal attempts made by the Accused No.2 in collusion with Accused No.1 are as follows

(a) Accused Nos.1 and 2 in order to exert force and to compel tenant/Complainant to vacate Schedule Property have initially written a letter dated 19th November 2004, to the Chairman and Board of Director, Veneta Cucine Spa, Italy, who are the principal of the Complainant's Company, making false and reckless allegation against Complainant with the intention of tarnishing the Image of Complainant in the eye of his principal and others at Italy. The said letter is self-explanatory. A copy of said letter dated 19th November 2004 is produced herewith as **DOCUMENT NO.5.**

(b) Accused got issued a legal notice dated 2nd October 2006 through Sri Devendra Singh, Advocate, to the Chairman of the Board, Italy, making claim E-10,000 Euros per month besides 3,50,000 Euros, from the principal of the Complainant's Company without any basis with the sole object of defaming and tarnishing the image of the Complainant and his business concerns. The said conduct of the Accused is un-warranted and unlawful Copy of the legal notice dated 2nd Oct 06 is produced as **DOCUMENT NO.6.**

(c) It is submitted that both Accused in collusion with one another are in the habit of lodging complaints after complaints against the Complainant and his wife with the Indiranagar police and complaints registered in C. Misc

No.105/2008 and C. Misc. No. 10/2009, the Indiranagar Police have issued an endorsement clearly stating that both the said complaints filed by Accused are false. Copies of endorsements issued by Indiranagar Police are produced as **DOCUMENT NOS.7 & 8.** The said conduct of both Accused amount to malicious prosecution of the Complainant and his wife with the sole object of achieving the malafide intention of taking possession of the leased premises without resorting to the due process of law.

(d) Similarly 5 other false complaints that were filed by both Accused, and the Indiranagar Police have issued an endorsement by clearly stating that the dispute between the parties is of civil in nature and the accused should approach the Hon'ble Civil Court. The accused have filed another complaint alleging trespass against the complainant which came to be registered in Crime No. 168/2006. The Copies of the said five such endorsements issued by the Indiranagar police are produced as **DOCUMENT NOS.9 TO 13.**

(e) In addition to the said complaints the Accused No.2 filed another false and frivolous complaint in Delhi in FIR No. 21/2008, for extortion in which the police have filed a 'B' report against which Accused No 2 has filed a protest memo but the Hon'ble High Court of Delhi has granted stay of further proceedings. Copies of FIR 21/08, 'B' report and stay copy are as **DOCUMENT NOS. 14. 15 & 16.**

(f) Further both the Accused got issued letters to the police from high ranking Government Officers and dignitaries, to achieve the object of illegally throwing the Complainant out of the premises. The said letters have emanated from Secretary to Governor of Karnataka, Central Bureau of Investigation and Anticorruption Branch, New Delhi, Ministry of Home affairs, Government of India, Karnataka Governor's Secretariat. Copies of

four (4) influential letters are collectively produced as **DOCUMENT NO.17.**

(g) It is submitted that due to influence exerted by the Accused the Indiranagar police have acted upon the false and frivolous complaint lodged by Accused and have filed false FIR's against Complainant and one such false FIR was registered in Crime No.243/2006 on 13th September 2006. The said FIR though registered during 2006 on a false complaint filed by Accused No.1, the Indiranagar Police could not make any progress on the said FIR for almost two years, since there was no substance in the complaint. However, on 8th January 2008, the Indiranagar Police without seizure of any material or conducting any investigation into the matter, arrested the Complainant, under the aforesaid FIR and produced him before the X ACMM, Mayo Hall, Bangalore, who has remanded the Complainant to judicial custody till 22nd January 2008 for no fault of the Complainant, and that too without any investigation or enquiry by the Indiranagar police. Further the Indiranagar Police at the time of arrest informed the Complainant that their hands were tied and that they cannot do anything but to arrest the Complainant. It is pertinent to mention here that though no progress was made on the FIR for 2 years, the attest was made on 8th January 2008, in an arbitrary and illegal manner because of the influence exerted by both Accused. Copy of the Order sheet in Crime No. 243/2006 is produced herewith as **DOCUMENT NO. 18.**

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12. It is submitted that Accused No.2 claims himself as an advocate practicing in Supreme Court has deliberately damaged in reputation of Complainant by filing false and frivolous complaint, pressuring the Indiranagar Police to register FIR and compelled to arrest Complainant with wrongful motive without any investigation or opportunity to explain the circumstances. However, Criminal

Petition No.354/2008 came to be filed by Complainant for quashing the FIR, which was allowed by the Hon'ble High Court of Karnataka and said FIR came to be quashed, which crystallizes the malicious acts of both Accused. Thus it goes without saying that both Accused have harassed Complainant to the maximum by way of filing false and frivolous criminal complaints after complaints against Complainant for acts which did not exist. It is submitted that the Complainant has not received any notice from any Hon'ble Court regarding appeal having been preferred by the Accused on the order dated 29th February 2012, passed by the Hon'ble High Court in Criminal Petition No.354/2008."

17. After the filing of the complaint in the year 2013, the proceedings travel for 10 years. The learned Magistrate, passes an order that without recording the sworn statement of the complainant no process can commence. The complainant does not appear before the Court to record his sworn statement for a long time. It transpires that he records his statement only once in 5 years. On 06-01-2018, matter is posted to record the sworn statement of the complainant. He does not appear for 5 years and after 5 years appears and tenders his sworn statement. After recording of the sworn statement which was by itself recorded after 10 years of registration of the crime, the learned Magistrate takes cognizance of the offence under Section 500 of the IPC. The order of taking of cognizance and issuance of process reads as follows:

"ORDERS ON ISSUANCE OF PROCESS"

Complainant filed the private complaint under Section 200 of Cr.P.C for the offence punishable under Section 500 of IPC.

2. It is the case of the complainant that, Complainant is one of the Directors of M/s. Carpenters Classic Exim Pvt. Ltd., and M/s. Carpenters Classic India Pvt. Ltd., Accused in collusion with each other, are in the habit of filing false complaints against the complainant and his wife. The Indiranagar Police have also issued endorsements that they are false complaints. Accused have filed various false cases against the complainant in Bengaluru and Delhi, where the Police have given an endorsement that the dispute is Civil in nature and in the case filed in Delhi, 'B' Report was filed. Due to the influence exerted by the accused, Indiranagar police registered a false complaint in 2006 to eject the complainant and he was arrested in 2008. Complainant was forced to spend a day in judicial custody due to the false case filed by the accused. Therefore, it is a malicious prosecution of the accused. Thereafter, when the complainant filed for quashing of the case, the investigation was stayed and later quashed by the Hon'ble High Court. Accused persons have damaged the reputation of the complainant by filing false and frivolous complaints, got him arrested in a false case with wrong motive. Therefore, malicious prosecution was done willfully and deliberately to harm and harass the complainant. Hence, he filed the present private complaint.

5. Complainant led sworn statement in this case and deposed the same as his complaint averments in his sworn statement. He got marked 38 documents as Ex.C1 to Ex.C38. Ex C1 is the complaint, Ex. C2 is the letter issued by Accused no. 2, Ex.C3 is the Memo filed in OS No.3529/1999, Ex. C4 is the Decree of the said suit, Ex.C5 are the four letters, Ex. C6 is the Order sheet of Crime No.243/2006 and the complaint, Ex.C7 is the C/c of order of CC No.22814/2006, Ex.C8 is the C/c of Order in CrI Petition No.354/2008, Ex.C9 is the C/c of Memo filed in OS No.3529/1999, Ex.C10 is the C/c of Decree of OS No.3529/1999, Ex.C11 is the C/c of letter dated 3.12.2007, Ex.C12 to 14 are the letters to the Commissioner of Police, Ministry of Home Affairs and Under Secretary, Ex.C15 is the C/ c of Order in CrI P NO.354/2008, Ex.C16 in the FIR in Cr.No.168/2006, Ex.C17 is the C/c of Order in CrI P

NO.4244/2009, Ex.C18 and 19 are the C/c of Complaints in OS No.15037/2005 and 15038/2005, Ex.C20 is the letter to BESCO, Ex. C21 is the C/c of Order in WP No.18144/2010, Ex. C22 is the Memo filed by the accused in WP No.18144/2010, Ex.C23 is the modified order of WP No. 18144/2010, Ex.C24 is the Complaint filed by Suresh on 23.12.2010, Ex.C25 is the FIR in Cr. No.523/2010, Ex. C26 is the list of inventories furnished to the police, Ex.C27 is the counter complaint given by accused no.2, Ex.C28 is the FIR in Cr.No.524/2010, Ex.C29 to 31 are the Affidavits, Ex.C32 is the C/c of Order in WP No.812/2011, Ex.C33 is the C/c of Order in WP No.3111/2011, Ex.C34 is the C/c of Judgment in CC No. 22814/2006, Ex.C35 is the C/c of Order in Crl.P No. 3208/2012, Ex.C36 is the C/c of Order in Cri.P No.4186/2012, Ex.C37 is the C/c of Order in Crl.P No. 1681/2018 and Ex.C38 is the C/c of Order in Cri.P.No.1682/2018.

6. On perusal of the sworn statement and the documents, complainant has produced various complaints and proceedings before various Courts including the Hon'ble High Court, where the complainant is either acquitted the proceedings/investigation is quashed by the Hon'ble High Court. In order to constitute an offence under section 499 of IPC, the complainant needs to make out a case that, 1) an imputation was made consisting of words spoken or written or intended to be read or made by signs or by visible. Representations; 2) the imputation concerned the complainant; 3) accused made or published incriminating imputation and 4) that intention behind the making or publishing the imputation was causing harm to the reputation of such person.

7. Therefore, to constitute an offence of defamation under Section 499, there has to be imputation and it must have been made in the manner as provided in the provision with the intention of causing harm or having reason to believe that such imputation will harm the reputation of the person about whom it is made. Whether the content of the said complaints and allegations made by the accused against the complainant, or whether it was made by the accused, or whether it came to the notice of others or not or whether the complainant's reputations was demeaned in the estimation of others or

not, are questions of facts to be determined in this case at a later stage.

8. At this stage, on perusal of the complaint and the sworn statement and the documents produced, there are sufficient grounds and *prima facie* case for issuing process against accused for answering the plea for the offences punishable under Section 500 of I.P.C. Therefore, I proceed to pass the following:

ORDER

Cognizance is taken against accused for the offence punishable under Section 500 of I.P.C

Office is directed to register the case against the accused no.1 & 2 in Register No. III for the offence punishable under Section 500 of I.P.C.

Issue summons to accused, if steps taken,
R/by 23.03.2024

Sd/-10/1
X ACMM, Bangalore"

(Emphasis added)

Paragraphs 6 and 7 of the afore-quoted order of the learned Magistrate is what forms the reason for taking of cognizance. The learned Magistrate quotes all the documents relied on by the complainant during his sworn statement. What are those documents is necessary to be noticed, they are documents of all crimes registered between the parties, either instituted by the

petitioners or by the complainant against the petitioners. They are as follows:

"LIST OF DISPUTES BETWEEN THE PARTIES"

Case No.	Description
OS No.3529/1999	Suit filed by Sri. Ravi Karumbaiah against the Petitioners/ Accused. Decreed on 29/01/2005.
Crl.P.No.354/2008	Petition allowed u/s 482 of CrPC in favour of Sri. Ravi Karumbaiah and the FIR and complaint registered in Crime No. 243/2006 are quashed.
CC No. 22814/2006	Sri. Ravi Karumbaiah is acquitted for offences of criminal trespass and mischief.
Crl.P.No. 4244/2009	Petition allowed u/s 482 of CrPC in favour of Sri. Ravi Karumbaiah and FIR No. 271/2009 is quashed.
OS No. 15037/2005	Filed by Smt. Padmamalini G Rao against Smt. Gopika Karumbaiah the wife of Sri. Ravi Karumbaiah for eviction and mesne profits/ damages. The case was subsequently withdrawn.
OS No. 15038/2005	Filed by Smt. Padmamalini G. Rao against M/s Carpenter Classic Exim Pvt. Ltd. The case was subsequently withdrawn.
WP No. 18144/2010	Writ Petition filed by Sri. Ravi Karumbaiah was allowed.
Crime No. 523/2010	Impugned order challenged in the present petition- Crl. P. 4250/2024.
CC No. 22023/2012 (FIR No. 524/2010)	Complaint filed by the Petitioners/ Accused. The order taking cognizance was subsequently quashed in Crl. P. 3208/2012.
WP No. 812/2011 (GM - Police)	Wit Petition filed by Sri. Ravi Karumbaiah challenging FIR No. 524/2010. Direction was given to not dispossess Sri Ravi Karumbaiah.
WA No. 3111/2011 and WA No. 15423-425/2011 (GM- Police)	Appeal against WP No. 812/2011 disposed of.
Crl. P. No. 4186/2012	Petition allowed u/s 482 of Cr.P.C in favour of Sri Ravi Karumbaiah and the order taking cognizance in CC No. 22148/2012 is quashed.
Crl. P. No. 1681/2018	Petition allowed u/s 482 of Cr.P.C in favour of Sri. Ravi Karumbaiah and the FIR and proceedings in CC No. 22023/2012 are quashed.

Crl. P. No. 1682/2018	Petition allowed u/s 482 of Cr.P.C in favour of Sri Ravi Karumbaiah and FIR and proceedings in CC No. 22148/2012 are quashed."
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18. Therefore, what forms the fulcrum of the complaint and the order of taking of cognizance is the afore-quoted list of disputes between the parties. Whether this would constitute an offence for defamation is what is required to be noticed. Section 500 of the IPC which punishes defamation reads as follows:

"500. Punishment for defamation.—Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both."

Section 500 has certain exceptions, which would not amount to defamation, as obtaining in Section 499 of the IPC. Section 499 of the IPC reads as follows:

"499. Defamation.—Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.

Explanation 1.—It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is

intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2.—It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

Explanation 3.—An imputation in the form of an alternative or expressed ironically, may amount to defamation.

Explanation 4.—No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

Illustrations

(a) A says—"Z is an honest man; he never stole B's watch"; intending to cause it to be believed that Z did steal B's watch. This is defamation, unless it falls within one of the exceptions.

(b) A is asked who stole B's watch. A points to Z, intending to cause it to be believed that Z stole B's watch. This is defamation, unless it falls within one of the exceptions.

(c) A draws a picture of Z running away with B's watch intending it to be believed that Z stole B's watch. This is defamation, unless it falls within one of the exceptions.

First Exception—Imputation of truth which public good requires to be made or published.—It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.

Second Exception—Public conduct of public servants.—It is not defamation to express in good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no further.

Third Exception—Conduct of any person touching any public question.—It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no further.

Illustration

It is not defamation in A to express in good faith any opinion whatever respecting Z's conduct in petitioning Government on a public question, in signing a requisition for a meeting on a public question, in presiding or attending at such meeting, in forming or joining any society which invites the public support, in voting or canvassing for a particular candidate for any situation in the efficient discharge of the duties of which the public is interested.

Fourth Exception.—Publication of reports of proceedings of courts.—It is not defamation to publish a substantially true report of the proceedings of a Court of Justice, or of the result of any such proceedings.

Explanation.—A Justice of the Peace or other officer holding an enquiry in open Court preliminary to a trial in a Court of Justice, is a Court within the meaning of the above section.

Fifth Exception.—Merits of case decided in Court or conduct of witnesses and others concerned.—It is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness or agent, in any such case,

or respecting the character of such person, as far as his character appears in that conduct, and no further.

Illustrations

(a) A says—"I think Z's evidence on that trial is so contradictory that he must be stupid or dishonest." A is within this exception if he says this in good faith, inasmuch as the opinion which he expresses respects Z's character as it appears in Z's conduct as a witness, and no further.

(b) But if A says—"I do not believe what Z asserted at that trial because I know him to be a man without veracity"; A is not within this exception, inasmuch as the opinion which he expresses of Z's character, is an opinion not founded on Z's conduct as a witness.

Sixth Exception.—Merits of public performance.—

It is not defamation to express in good faith any opinion respecting the merits of any performance which its author has submitted to the judgment of the public, or respecting the character of the author so far as his character appears in such performance, and no further.

Explanation.—A performance may be submitted to the judgment of the public expressly or by acts on the part of the author which imply such submission to the judgment of the public.

Illustrations

(a) A person who publishes a book, submits that book to the judgment of the public.

(b) A person who makes a speech in public, submits that speech to the judgment of the public.

(c) An actor or singer who appears on a public stage, submits his acting or singing to the judgment of the public.

(d) A says of a book published by Z—"Z's book is foolish; Z must be a weak man. Z's book is indecent; Z must be a man of impure mind". A is within the exception, if he says this in good faith, inasmuch as the opinion which he expresses of Z respects Z's character only so far as it appears in Z's book, and no further.

(e) But if A says—"I am not surprised that Z's book is foolish and indecent, for he is a weak man and a libertine." A is not within this exception, inasmuch as the opinion which he expresses of Z's character is an opinion not founded on Z's book.

Seventh Exception.—Censure passed in good faith by person having lawful authority over another.—

It is not defamation in a person having over another any authority, either conferred by law or arising out of a lawful contract made with that other, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates.

Illustration

A Judge censuring in good faith the conduct of a witness, or of an officer of the Court; a head of a department censuring in good faith those who are under his orders; a parent censuring in good faith a child in the presence of other children; a schoolmaster, whose authority is derived from a parent, censuring in good faith a pupil in the presence of other pupils; a master censuring a servant in good faith for remissness in service; a banker censuring in good faith the cashier of his bank for the conduct of such cashier as such cashier—are within this exception.

Eighth Exception.—Accusation preferred in good faith to authorised person.—

It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation.

Illustration

If A in good faith accuses Z before a Magistrate; if A in good faith complains of the conduct of Z, a servant, to Z's master; if A in good faith complains of the conduct of Z, a child, to Z's father—A is within this exception.

Ninth Exception.—Imputation made in good faith by person for protection of his or other's interests.—It is not defamation to make an imputation on the character of another provided that the imputation be made in good faith for the protection of the interest of the person making it, or of any other person, or for the public good.

Illustrations

(a) A, a shopkeeper, says to B, who manages his business—"Sell nothing to Z unless he pays you ready money, for I have no opinion of his honesty." A is within the exception, if he has made this imputation on Z in good faith for the protection of his own interests.

(b) A, a Magistrate, in making a report to his own superior officer, casts an imputation on the character of Z. Here, if the imputation is made in good faith, and for the public good, A is within the exception.

Tenth Exception.—Caution intended for good of person to whom conveyed or for public good.—It is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good."

To constitute defamation, there must be an intention of harming or knowing that a statement will harm the reputation of a person about whom it is made. It would be no imputation that would harm a person, if the alleged defamatory statements are not published.

Plethora of cases by the Apex Court have considered this aspect. Therefore, a deeper delving into the interpretation of what would constitute a defamation is not necessary, except for considering the judgments so rendered by the Apex Court.

19. The Apex Court in the case of **JEFFREY J. DIERMEIER**

V. STATE OF WEST BENGAL¹, has held as follows:

" "

29. To constitute "defamation" under Section 499 IPC, there must be an imputation and such imputation must have been made with the intention of harming or knowing or having reason to believe that it will harm the reputation of the person about whom it is made. In essence, the offence of defamation is the harm caused to the reputation of a person. It would be sufficient to show that the accused intended or knew or had reason to believe that the imputation made by him would harm the reputation of the complainant, irrespective of whether the complainant actually suffered directly or indirectly from the imputation alleged.

30. However, as per Explanation 4 to the section, no imputation is said to harm a person's reputation, unless that imputation directly or indirectly lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, in the estimation of others or causes it to be believed that the body of that person is in a loathsome

¹ (2010)6 SCC 243

state, or in a state generally considered as disgraceful.”

(Emphasis supplied)

The Apex Court holds that there must be an imputation and such imputation must have been made with the intention of harming the reputation of a person. The Apex Court, later, in the case of **MANOJ KUMAR TIWARI V. MANISH SISODIA**², holds as follows:

“....

66. We do not know how a statement in a tweet that the answers of Respondent 1 to the questions posed by the appellant will disclose his scam, can be said to be defamatory. **We are afraid that even if a person belonging to a political party had challenged a person holding public office by stating “*I will expose your scam*”, the same may not amount to defamation. Defamatory statement should be specific and not very vague and general. The essential ingredient of Section 499 is that the imputation made by the accused should have the potential to harm the reputation of the person against whom the imputation is made. Therefore, we are of the view that the statement made by Shri Vijender Gupta (A-5) to the effect “*your answer will disclose your scam*” cannot be considered to be an imputation intending to harm or knowing or having reason to believe that it will harm the reputation of Respondent 1.”**

(Emphasis supplied)

² (2023)15 SCC 401

The Apex Court holds that the statement that the complainant would expose the scam therein does not become a defamatory statement, as it is vague and general. The Apex Court, in a later judgment, in the case of **IVECO MAGIRUS BRANDSCHUTZTECHNIK GMBH V. NIRMAL KISHORE BHARTIYA**³ has held as follows:

"....

62. In the context of a complaint of defamation, at the stage the Magistrate proceeds to issue process, he has to form his opinion based on the allegations in the complaint and other material (obtained through the process referred to in Section 200/Section 202) as to whether "sufficient ground for proceeding" exists as distinguished from "sufficient ground for conviction", which has to be left for determination at the trial and not at the stage when process is issued. **Although there is nothing in the law which in express terms mandates the Magistrate to consider whether any of the Exceptions to Section 499IPC is attracted, there is no bar either. After all, what is "excepted" cannot amount to defamation on the very terms of the provision. We do realise that more often than not, it would be difficult to form an opinion that an Exception is attracted at that juncture because neither a complaint for defamation (which is not a regular phenomenon in the criminal courts) is likely to be drafted with contents, nor are statements likely to be made on oath and evidence adduced, giving an escape route to the accused at the threshold. However, we hasten to reiterate that it is not the law that the Magistrate is in any manner precluded from considering if at all any of the Exceptions is attracted**

³ (2024)2 SCC 86

in a given case; the Magistrate is under no fetter from so considering, more so because being someone who is legally trained, it is expected that while issuing process he would have a clear idea of what constitutes defamation. If, in the unlikely event, the contents of the complaint and the supporting statements on oath as well as reports of investigation/inquiry reveal a complete defence under any of the Exceptions to Section 499IPC, the Magistrate, upon due application of judicial mind, would be justified to dismiss the complaint on such ground and it would not amount to an act in excess of jurisdiction if such dismissal has the support of reasons."

(Emphasis supplied)

The Apex Court holds that the reports of investigation, supporting documents or proceedings before the Court of law would come within the exception under Section 499 of the IPC and would not become *per se* defamatory.

20. If the complaint so registered is considered on the touchstone of the principles laid down by the Apex Court, what would unmistakably emerge is, that dragging the complainant into litigation or the complainant dragging the petitioners into litigation on several grievances, grounds or allegations would constitute legal proceedings between the two, which would not and cannot be said to be defamatory, merely because the case has gone in favour of

the complainant. It would have been altogether a different circumstance if it was a case of malicious prosecution. While defamation, has some hues of malicious prosecution, substantially it is not. Therefore, all that remains is, whether the legal notice caused on 01-01-1999 seeking vacation of the premises in which certain statements were made is defamatory or not. Therefore, it becomes germane to notice the legal notice so caused by the 2nd petitioner, it runs as follows:

"1st January' 99

Mr.Ravi Karumbaiah
Managing Director,
CCEXIM Pvt. Ltd

Dear Mr. Karumbaiah,

RE: VACATION OF OUR PREMISES, AT 1214, 100FT, ROAD,
HAL IIND STAGE, INDIRANAGAR, BANGALORE- 8, AND
SETTLEMENT OF OUTSTANDING PAYMENTS.

1. With reference, to the previous correspondence, dated, 23rd June'98 and 1st September' 98- on the subject, by my wife Padmamalini G. Rao, it appears that there has been no response by you or Mr. Thomas Mathew, one of your Directors, regarding the date of vacation.
2. Mr. Thomas Mathew, in his signed communication of 11th June 1998, had stated that you would require a reasonable amount of time to vacate the premises but when asked to vacate vide our letter dated 23rd June' 98, did not specified the time. It is further learnt that when

Mr. Dayanand A. handed over letter dated 1st September '98, you stated that, "it was fit for the dustbin". Mr. Karumbaiah, only fate determines, who 'bites the dust' and who goes into the dustbin. Further, you are also not paying the 10% difference in rent with effect from 1st June 1998, as accepted by Mr. Thomas Mathew in his letter dated 11th June 98.

3. Since I am the one whom you approached for the leasing of the premises in October '94, and I was the one who further allowed you to take the first floor premises. I wish to finalize this matter with you. My wife has already communicated with you in this regard vide letter dated 25th December 1997.
4. In the letter dated 25th December 1997, the details regarding the altercation with you are mentioned, including the arrival of Police on the scene and the Log entry of the incident by the Flying squad is also stated.
5. We have now been informed that you have been under D.R.I. scrutiny for some time and were also being investigated for Tax evasion. I have further learnt that on the 18th of December 1998 there was a combined raid by the D.R.I and the Income Tax department simultaneously, at your office in our premises, at your residence, and that of Ms. Jagruthy (Your business partner), as well as at your factory premises.
6. At these raids, it is learnt that at least 15-20 lakhs, cash and foreign exchange was recovered, including a number of incriminating documents, which have been seized by the authorities, Further more, your accounts room at your office in our premises has been sealed, and Mr. Dayanand A and Mr. Deepak of M/s Cyberspaze (using our premises at back portion) have been made witnesses of this sealing. **It is further learnt that you were asked to and actually did deposit Rs. 50 lakhs, within 2 hours of the raid, in order to avoid arrest.**
7. We have also learnt that, some of your employees, came and left some files on 25th December 1998, in the office of M/s Cyberspaze to be given to Mr. Dayanand A in his

absence and without his permission. It is also learnt that these files contain, incriminating documents, regarding customer lists, payments received from them, as well as communication from overseas business associates, regarding rate lists in foreign exchange of goods supplied etc. **We have taken steps to ensure safe custody, of these files and documents, until we decide what to do with them.**

8. **YOU ARE HEREBY INFORMED THAT, YOU SHOULD VACATE THE PREMISES, ON 1st JUNE 1999, WITHOUT FAIL AND WITHOUT DAMAGING OUR PREMISES, LEAVING IT IN GOOD CONDITION YOU WILL NOT ALTER ANYTHING OR REMOVE ANY FIXTURE OF A PERMANENT NATURE, LIKE FLOORING ETC WITHOUT OUR PERMISSION ALL MAJOR CHANGES MADE BY YOU WITHOUT OUR PRIOR PERMISSION SHALL BE WE PENALIZED WE SHALL BE TAKING POSSESSION ON THAT DAY.**
9. If you fail to vacate on the 1st of June 1999, we shall be constrained to lock up our premises, and be rest assured no court will entertain a petition for restoration, from a corrupt businessman like you and we will bring out all the facts to the court regarding the misuse of our premises and how clause 9 of the lease prohibits it.
10. Any further smart moves from you will result in although it is not our business, ensuring that the Income Tax authorities and the D.R.I, unearths, every single rupee fraudulently and illegally earned by you and you are severely punished like all other white collar criminals. You have, in the past, underestimated my capacity and status of a fairly senior Supreme Court lawyer. Let me warn you, with all the determination at my command that I will leave no stone unturned to expose you and get rid of you from our premises. You have misused the good intentions with which this premises was given and you have proved to be a dishonorable man, who is not to be trusted.

I am awaiting an immediate reply within 7 days from today, accepting to vacate the premises on the said date without damaging it, by settling fairly the outstanding and also allowing

new tenants to visit the premises. You are further asked to deposit the rents regularly on the 5th of every month with 10% increase, inclusive of outstandings from 1st June 1998.”

What the 2nd petitioner quotes is what has happened. It is a matter of record that the premises was searched on certain allegations against the complainant or the Company in which the complainant was a Director. This by no stretch can be said to be defamatory, as they were facts poured into the notice, so caused and the notice was not published anywhere, it was a communication between the 2nd petitioner and the complainant. Therefore, there is no fact that had not happened narrated in the complaint, nor the complaint was published to bring down disrepute to the complainant, in the eyes of general public. Therefore, the offence of defamation cannot be laid against the petitioner.

21. The act of the Magistrate appears to be that he would wait till the complainant comes and records his sworn statement, as the Court has waited for 10 long years to record a sworn statement and issue process in a seemingly frivolous case registered against the petitioners. Therefore, on all the aforesaid reasons, the order

of taking of cognizance and issuance of process for the offence punishable under Section 500 of the IPC is rendered unsustainable and the unsustainability would lead to its obliteration.

22. The facts obtaining in Crl.P.No.4250 of 2024 are similar or an offshoot of the facts narrated in the aforesaid case. It would suffice if the issue would commence from noticing the complaint so registered against the petitioners in the case at hand. It reads as follows:

"23rd December 2010
Bangalore

To
The Station House Officer
Indira Nagar Police Station
Indira Nagar
Bangalore.
Dear Sir

**Sub: Complaint against G. Venkateshwar Rao & Smt
Padmamalini Rao**

We are a Company engaged in the business of import and sale of modular Kitchens We have several branches in Bangalore and all over India. We have taken Premises on the ground floor front portion bearing No.1214, 100 feet Road, HAL II Indiranagar Bangalore 550 038, (for short Premises) from Smt Padmamalini G Rao, wife of Sri G Venkateshwar Rao under Lease Agreement dated 11th July 1994 (Copy Attached) and ever since we are in possession of the Premises.

During the year 1999 Sri G. Venkateshwar Rao and his wife Smt. Padmamalini G. Rao threatened to dispossess the Company from the Premises. In the situation, we had approached the Hon'ble City Civil Court, Bangalore in OS 3529/1999 for restraining orders. By decree dated 29th January 2005, the Hon'ble Court was pleased to order that the Defendant i.e., Smt. Padmamalini G. Rao and Sri. G. Venkateshwar Rao shall not dispossess us without due process of law (Copy of the decree attached). Thereafter, Smt. Padmamalini G. Rao had filed suit in O.S.15038/2005 for ejectment and the said suit is pending as on date.

In the meanwhile on 23rd December 2010 i.e., today at about 9.30 A.M., Sri.G.Venkateshwar Rao along with about 6 persons came to the Premises in Vehicle NO.KA-03 MA-1499 at the time when our office boy Sri. Anand Kumar, had opened the aforesaid office Premises. After about 10 minutes of opening the office and as he was cleaning the premises, the said Sri. G. Venkateshwar Rao along with his men forcibly entered the premises along with about 6 hired persons/goondas, and without any reason/s immediately started physically assaulting the said Sri. Anand Kumar by punching him on his stomach and chest mercilessly. The other employee viz., Sri. Vinu Kumar, who had just entered the office at that time was also beaten up and his helmet was also forcible snatched and damaged by the said persons. Thereafter the said 2 employees viz., Sri. Anand Kumar and Sri Vinu Kumar, were forcibly taken to the back side of the premises to a portion in possession of Smt. Padmamalini G. Rao and Sri Venkateshwar Rao, and were detailed illegally. One person claiming to be Sri. G. Venkateshwar Rao, snatched the mobile belonging to Sri Anand Kumar and Sri Vinu Kumar. The said Sri.G.Venkateshwar Rao, then started beating Sri Anand Kumar again and also threatened to kill him and also the Director of the Company Sri. Ravi Karumbiah, for having made to go to the Court. The other staff who were to enter the office were detained at the gate itself. The staff were prevented and threatened not to inform anybody for their own good. The said 2 (two) employees who were illegally detained were released at about 10.30 only after other employees came to know about the detention and went for their rescue at the room situated backside.

In the meanwhile, the remaining persons who had come with the said Sri. G.Venkateshwar Rao, on his instruction and directions demolished a portion of the compound wall, brought down signage and name board of the company and put up a temporary aluminum sheet to cover the premises so as to prevent entry to the premises. Thereafter Sri. G. Venkateshwar Rao, came to the entrance and deputed his persons to prevent the entry of our staff. We also have reasons to believe that he has gone inside the premises along with his men and has caused damage to our belonging. The extent of the damage is not known as we were not allowed to enter the premises.

We also wish to inform you that the fact that the possession of the premises is with us is evident from the order of the Hon'ble High Court of Karnataka dated 18th October 2010 and 9th November 2010 in W.P. No.18144/2010 (Copy attached). We also inform you that the first floor (front portion) is also in our possession under different lease agreement and in respect of the said premises also a suit in O.S.No.15037/2005 is pending (Copy attached).

We bring to your notice that the action of Sri.G.Venkateshwar Rao as detailed above despite order of the Court in O.S.No. 3529/1999 and pending litigation in O.S.No.15038/2005 constitutes various offences including criminal trespass, illegal detention of our staff, threat to life, criminal intimidation, causing grievous hurt etc., The said Sri G. Venkateshwar Rao, has close nexus with criminal elements and is using the same against the company and in particular against its Director Sri Ravi Karumbiah.

Sri.G. Venkateshwar Rao and his men are still at our premises illegally preventing entry of our staff to take possession of the premises by force. If the elements are not removed immediately from the premises, the same would result in serious further offences as there is life threats. We request you to register a complaint against Sri. G Venkateshwar Rao, who is responsible for the above criminal action and his wife Smt. Padmamalini G. Rao at whos' instigation and behest the above crime has been committed by the said person and also against the said 6 persons hired by the said Sri G. Venkateshwar Rao for the commission of the offences.

In the circumstances, we request you to kindly grant sufficient protection to the premises in occupation by us and also to our Director Sri Ravi Karumbaiah, who is under threat.

For CC Exim (P) Ltd..
Sd/-

Authorised Signatory."

The afore-quoted complaint becomes a crime in Crime No.523 of 2010. A perusal at the complaint would indicate that it was a pure landlord and tenant dispute. The complaint itself narrates that the petitioners had threatened the complainant that they would dispossess them from the premises, therefore, they had instituted a civil suit in O.S.No.3529 of 1999. It is said that the husband/1st petitioner, the Senior Advocate and his henchmen came to the premises and sought to assault the office boy and took away certain material. Therefore, the complaint is registered. The landlord and tenant dispute is sought to be projected to become the crime for the aforesaid offences. The police, after investigation, file a 'B' report. Again the learned Magistrate waits for the complainant to file a protest petition. The complainant takes 18 months to file a protest petition against the 'B' report. The complainant does not appear after filing of the protest petition. The complaint itself is

terminated which is restored by the Sessions Court in a criminal revision petition. The complainant then, after 2 years records his sworn statement. The Magistrate then takes 6 years to record the further sworn statement which happens on 07-10-2023 and then passes an order taking of cognizance by the following order:

"Orders on 'B' Report and Issuance of Process

Complainant had filed a complaint before Indiranagar P.S., in which IO filed B Report

2. It is the case of the complainant that, complainant has obtained the ground floor bearing no.1214, 100 feet road, Hal II Stage, Indiranagar, Bengaluru for a rent from the accused, to run his import and sale of modular kitchen business. In this regard, there are civil disputes between the accused and the complainant, and on 23.12.2010, at about 9.30 am accused came along with six persons and criminal trespassed in to his shop. They assaulted office boys, Anand Kumar and Vinukumar and locked them in a room and abused them in filthy language. It is alleged that, accused also criminally intimidated the office boys and damaged their belongings in the shop. It is also alleged that, complainant was thrown out without giving his belongings. Therefore, a complaint was lodged and it was registered as Cr.No.523/2010. IO took up the investigation and opined that there is civil dispute pending between them with regard to the said property. The IO also observed that though the complainant had vacated the premises, in order to take back the possession, he had filed this case and that the complainant did not co-operate in the investigation. Hence, he filed B report to the Court.

3. On service of notice on 'B' Report, complainant appeared through his counsel and led his sworn statement as a protest to the 'B' report. He deposed the same as his complaint averments in his sworn statement. He got marked 31 documents as Ex.C1 to Ex.C31. Ex. C1 is the letter issued by Accused no.2, Ex.C2 is the Memo filed in OS No.8529/1999, Ex. C3 is the Decree of the said suit, Ex.C4 to 7 are the letters to

the Secretary of Governor, Commissioner of Police, Ministry of Home Affairs and Under Secretary, Ex.C8 is the C/c of Order in Crl. Petition No.354/2008, Ex. C9 is the FIR in Cr.No. 168/2006, Ex.C10 is the C/c Order in Crl. P NO.4244/2009, Ex.C11 and 12 are the C/c of Complaints in OS No.15037/2005 and 15038/2005, Ex.C13 is the letter to BESCO, Ex.C14 is the C/c of Order in WP No.18144/2010, Ex.C15 is the Memo filed by the accused in WP No.18144/2010, Ex.C16 is the modified order of W.P. No.18144/2010, Ex.C17 is the Complaint filed by Suresh on 23.12.2010, Ex.C18 is the FIR in Cr.No. 523/2010, Ex.C19 is the list of inventories furnished to the police, Ex.C20 is the counter complaint given by accused no.2. Ex.C21 is the FIR in Cr.No 524/2010, Ex.C22 to 24 are the Affidavits, Ex.C25 is the C/c of Order in WP No.812/2011, Ex.C26 is the C/c of Order WP No.3111/2011. Ex.C27 is the C/c of Judgment in CC No.22814/2006, Ex.C28 is the C/c of Order in Crl. P No. 3208/2012, Ex. C29 is the C/c of Order in Crl.P No.4186/2012, Ex.C30 is the C/c of Order in Crl.P No.1681/2018 and Ex.C31 is the C/c of Order in Crl.P No.1682/2018.

4. On perusal of the sworn statement and the documents and the 'B' report, it is the allegation of the complainant that the accused along with six others trespassed in to his shop and assaulted his office boys, locked them up in a room and abused them in foul language. It is also alleged that accused threatened the complainant's staff and threw the complainant out without giving his items and also damaged his things in the office. It is also submitted that he gave a list of inventories to the police to help him recover same. However, the IO filed B report on the ground that there is civil dispute and that the complainant was already dispossessed and as such, he had filed a false complaint. IO also opined that the complainant did not co-operate in the investigation. However, on perusal of the documents produced, and the sworn statement of the complainant, there are sufficient grounds and prima facie case for rejecting the B report and issuing process against accused for answering the charges for the offences punishable under Section 447, 341, 323, 427, 379, 504, 506 of I.P.C. Since the remaining six persons are not known, process is issued only against the accused. Therefore, I proceed to pass the following:

ORDERS

Cognizance is taken against accused No.1 & 2 for the offence punishable under Section 447, 341, 323, 427, 379, 504, 506 of I.P.C.

Office is directed to register the case against the accused no.1 & 2 in Register No.III for the offence punishable under Section 447, 341, 323, 427, 379, 504, 506 of I.P.C.

**Issue summons to accused no.1 & 2, if steps taken.
R/by 23.03.2024.**

**Sd/- 10/1
X Addl.C.M.M., Bengaluru."**

(Emphasis added)

Here-again, the learned Magistrate refers to several proceedings between the two. The issue would be, whether the order on 'B' report and issuance of process would meet the rigour of procedure as laid down by this Court in the case of **DR. RAVIKUMAR v MRS. K.M.C. VASANTHA**⁴, wherein the co-ordinate Bench of this Court holds as follows:

"....

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

⁴ **ILR 2018 KAR 1725**

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 between *Abhinandan Jha v. Dinesh Mishra*¹ (para 15) and also Full Bench decision of Apex Court in between *Kamalapati Trivedi v. State of West Bengal*².**
- 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.**
- 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 complaint/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.”

(Emphasis supplied)

A perusal at the order on 'B' report quoted *supra* does not inspire even a semblance of confidence, as the order neither rejects the 'B' report nor accepts the 'B' report, but takes cognizance and issues process, this is what is held to be an error in law by the coordinate bench in the afore-quoted judgment.

23. Therefore, without going into the fact whether the complaint, the sworn statement or the order of taking cognizance meeting the ingredients of the offence, I deem it appropriate to remit the matter back to the hands of the learned Magistrate to redo the process of considering the protest petition, to pass an order on the 'B' report and protest petition in consonance with the judgment rendered in the case of **RAVIKUMAR** *supra*. Therefore, the resultant inference would be that, CrI.P.4241 of 2024 which challenges proceedings in C.C.50448 of 2024 for offence punishable under Section 500 of the IPC is to be obliterated and the

proceedings in Crime No.523 of 2010 in Crl.P.No.4250 of 20224 are to be remitted back to the hands of the learned Magistrate.

24. For the aforesaid reasons, the following:

ORDER

- (i) **Crl.P.No.4241 of 2024 is allowed.** Proceeding in C.C.No.50448 of 2024 pending before the X Additional Chief Metropolitan Magistrate, Bengaluru stand quashed.
- (ii) **Crl.P.No.4250 of 2024 is allowed in part.** The order of taking cognizance dated *10-01-2024 is quashed. The matter is remitted back to the learned Magistrate to redo the exercise of answering the 'B' report and the protest petition, bearing in mind the observations made in the course of the order.
- (iii) The concerned Court shall conclude the proceedings as afore directed within 4 weeks from the date of receipt of the copy of this order and regulate its procedure further.

* corrected vide chamber order dated 15.03.2025
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(iv) Ordered accordingly.

Consequently, I.A.No.2 of 2024 pending in Crl.P.No.4241 of 2024 also stands disposed.

Sd/-
(M. NAGAPRASANNA)
JUDGE

Bkp
CT:MJ