



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 9TH DAY OF APRIL, 2025

BEFORE

THE HON'BLE MR JUSTICE HEMANT CHANDANGOUDAR

CRIMINAL PETITION NO. 4132 OF 2025

BETWEEN:

MR. K.GANESH BABU,
S/O LATE KRISHNAMURTHY,
AGED ABOUT 61 YEARS,
R/AT NO. 26/1-1, CHAITHANYA,
2ND CROSS, M.T. LAYOUT,
BEHIND MES COLLEGE,
13TH CROSS, MALLESWARAM,
BANGALORE-560 053.

ALSO AT:
NO. 23, GROUND FLOOR,
MODEL LIC HOUSING COLONY,
BASAVESHWARNAGAR, BENGALURU-560 079.

...PETITIONER

(BY SRI ANGAD KAMATH, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA,
REP. BY STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDING,
BANGALORE-560 001.
2. MRS. KUSUMA KUMARI,
AGED ABOUT 71 YEARS,
W/O LATE SRI. S. VENKATESHWARLU,
REP. BY GPA HOLDER,
MR. S. SRAVAN CHITANYA,
S/O LATE MR. S. VENKATESHWARLU,
AGED ABOUT 41 YEARS,
R/AT NO. 189/A, MLA COLONY ROAD,
NO. 12, BANJARA HILLS,





HYDERABAD-500 034.

3. MR. B.G. CHENNNAPPA,
AGED ABOUT 72 YEARS.
4. MR. HARSHA VARDHAN,
AGED ABOUT 53 YEARS.

RESPONDENT NO. 3 & 4 ARE
RESIDENTS OF NO.17/2,
OMKARNAGAR, GANKAL VILLAGE,
Kengeri Hobli, BENGALURU SOUTH TALUK.

5. DR. HAFEEZUR RAHMAN,
AGED ABOUT 88 YEARS,
S/O LATE A. ABDUL AZEEZ.
6. MR. SHAFEEQUR RAHMAN,
AGED ABOUT 82 YEARS,
S/O LATE A. ABDUL AZEEZ.

RESPONDENT NO. 5 7 6 ARE
RESIDENTS OF NO. 599, MINA,
2ND MAIN, TEACHERS COLONY,
KORAMANGALA, BANGALORE-560 034.

7. MR. NAZEEBUR RAHMAN,
AGED ABOUT 74 YEARS,
S/O LATE A. ABDUL AZEEZ,
R/AT AREHALLI VILLAGE, BELUR TALUK,
HASSAN DISTRICT-573 101.
8. MRS. KAMARUNNISA,
AGED ABOUT 99 YEARS,
D/O LATE A. ABDUL AZEEZ,
W/O LATE ABDUL GANI.
9. MRS. FARHATH HAYATH,
AGED ABOUT 60 YEARS,
D/O LATE A. ABDUL AZEEZ,
W/O LATE C.R. MOHD. HAYATH.

RESPONDENTS NO. 8 & 9 ARE



RESIDENTS OF AREHALLI VILLAGE,
BELUR TALUK, HASSAN DISTRICT-573 101.

10. MR. SYED AFROZ,
AGED ABOUT 75 YEARS,
S/O LATE SYED GHOUSE,
R/AT AREHALLI VILLAGE,
BELUR TALUK, HASSAN DISTRICT-573 101.
11. MR. SYED SHERAZ,
AGED ABOUT 75 YEARS,
S/O LATE SYED GHOUSE.
12. MRS. SAIRA RAFATH,
AGED ABOUT 59 YEARS,
D/O LATE SYED GHOUSE &
LATE MRS. RAHAMATHUNNISA.

RESPONDENT NO. 11 & 12 ARE
RESIDENTS OF AREHALLI VILLAGE,
BELUR TALUK, HASSAN DISTRICT-573 101.

13. MRS. SHIVAMMA K,
W/O LATE MR. GURUSIDDAPPA,
AGED ABOUT MAJOR,
R/AT BHAVIHAL VILLAGE, NARAGANAHALLI,
DAVANAGERE-577 534.

...RESPONDENTS

(BY SRI M.V ANOOP KUMAR, HCGP FOR R-1;
MISS NALINA MAYEGOWDA, SENIOR ADVOCATE FOR
SMT. ANUSHA B REDDY, ADVOCATE FOR R-2;
R-3 TO R-13 SERVICE OF NOTICE IS DISPENSED WITH V.C.O
DATED 24.03.2025)

THIS CRL.P IS FILED U/S.482 (FILED U/S.528 BNSS) CR.P.C
TO A) SET ASIDE THE ORDER DATED 23.01.2025 PASSED BY THE
V ADDL. CITY CIVIL AND SESSIONS JUDGE, BENGALURU IN
O.S.NO.8729/2004 DIRECTING THE REGISTRATION OF CRL.MISC.
CASE AGAINST THE PETITIONER/DEFENDANT NO.11 FOR
OFFENCE P/US/ 379 R/W SEC.215 OF BNSS ACT 2023 AS
FURNISHED HERewith AT DOCUMENTS NO.1 ETC.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY,
ORDER WAS MADE THEREIN AS UNDER:



CORAM: HON'BLE MR JUSTICE HEMANT CHANDANGOUDAR

ORAL ORDER

1. The petitioner is challenging the order dated 23.01.2025 passed by the learned V Additional City Civil and Sessions Judge, Bengaluru (CCH 13) in O.S. No. 8729/2024, wherein the office was directed to register a separate C. Misc. Petition on IA No. 26 filed by the plaintiffs, stating that the defendants have tendered false evidence.
2. Heard Sri Angad Kamath, learned counsel for the petitioner, and Ms. Nalina Mayegowda, learned Senior Counsel representing the 2nd respondent's counsel.
3. The respondent filed an application in IA No. 26 under Section 379 read with Section 215 of the BNSS Act, 2023, stating that the petitioner/defendant No. 11 filed a false affidavit, which amounts to perjury. The learned trial court directed the office to register a separate C. Misc. petition.
4. Section 379, Chapter 27 of the BNSS Act, 2023, deals with provisions concerning offences affecting the administration of justice. Section 379 states that, "when, upon an application made to it in this behalf or otherwise, any Court is of the opinion that it is expedient in the



interest of justice that an inquiry should be made into any offence referred to in Sub-section (1) of Section 215, which appears to have been committed in or in relation to a proceeding in that Court, or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry it thinks fit (a) record a finding to that effect; make a complaint thereof in writing and send it to a Magistrate of the first class having jurisdiction.”

5. A bare reading of the said provisions indicates that before conducting a preliminary inquiry or recording a finding that the petitioner has committed an offence in relation to any proceedings in a court, the court must first form an opinion. In the decision cited by the learned Senior Counsel for the respondent in the case of Iqbal Singh Marwah and Another vs. Meenakshi Marwah and Another (reported), and also in the case of Pritish vs. State of Maharashtra and Others (reported) (2002) 1 SCC 253, the Apex Court held that:

“A person against whom a complaint is made is not required to be heard before making a complaint to the Magistrate, and there is no requirement to conduct a preliminary inquiry to record a finding that the person against whom the complaint is made has committed an offence.”



6. Therefore, the aforesaid cited decision is distinguishable and applicable to the present case.

7. In the decision relied upon by the learned counsel for the petitioner in the case of Amarsang Nathaji (as Himself and as Karta and Manager) vs. Hardik Harshadbhai Patel and Others, the Apex Court, with reference to Section 340 of Cr.P.C., ruled that the court must form an opinion that “it is expedient in the interest of justice” to initiate an inquiry into offences of false affidavit and offences against public justice, more specifically referred to in Section 341 of Cr.P.C

8. Perusal of the impugned order reveals that the learned trial Court has directed the office to register a separate criminal miscellaneous petition based on the application filed under Section 379 read with Section 215 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, without recording a specific finding or forming a judicial opinion that such an inquiry is expedient in the interest of justice. Section 379 of the BNSS, which corresponds to Section 340 of the Code of Criminal Procedure, 1973 (Cr.P.C.), mandates that before initiating a complaint for offences affecting the administration of justice—such as giving false evidence or fabricating documents—a Court must apply its judicial mind and come to a conclusion,



supported by reasons, that it is necessary to hold a preliminary inquiry or initiate a complaint.

9. The statutory requirement under Section 379 is twofold: (i) the Court must be of the opinion that it is expedient in the interest of justice to inquire into the alleged offence, and (ii) the Court must record a finding to that effect before directing that a complaint be registered. The absence of an opinion to hold an enquiry renders the impugned direction procedurally unsustainable.

10. Further, as per Section 380 of the BNSS, an appeal lies only against two specific types of orders passed under Section 379: (a) an order refusing to make a complaint, and (b) an order directing the filing of a complaint after forming the requisite opinion. In the present case, since the trial Court has not recorded any finding or formed the requisite opinion, but has merely directed the office to register a separate C. Misc. petition to conduct an inquiry, the said direction does not fall within the scope of appealable orders under Section 380.

11. In such circumstances, where no statutory appellate or revisional remedy is provided under the BNSS, the only recourse available to the aggrieved party is to invoke the jurisdiction of this Court under its inherent powers, as



applicable. Therefore, the present petition is held to be legally maintainable as it seeks to challenge an order passed without adherence to the mandatory statutory safeguards prescribed under Section 379 of the BNSS, 2023. Accordingly, I pass the following:

ORDER

(i) Criminal Petition is allowed.,

(ii) The impugned order dated 23.01.2024 passed by the learned V Additional City Civil and Sessions Judge, Bengaluru in OS No.8729/2024 on the application filed under Section 379 read with Section 215 of BNSS, 2023 is set aside.

(iii) The trial Court to reconsider the application and pass appropriate order in accordance with law within a period of one week from the date of receipt of the copy of this order.

**Sd/-
(HEMANT CHANDANGOUDAR)
JUDGE**