

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 7TH DAY OF NOVEMBER, 2022

BEFORE

THE HON'BLE MR. JUSTICE K.NATARAJAN

CRIMINAL PETITION NO.10639 OF 2022

BETWEEN

RAMANJI
S/O LATE NARASAPPA
AGED ABOUT 53 YEARS
OCC: BUSINESS
R/O OLD KUMBARA STREET
PAVAGADA TOWN
PAVAGADA TALUK
TUMKUR DISTRICT-561 202

... PETITIONER

(BY SRI P.B. UMESH, ADVOCATE FOR
SRI R.B. DESHPANDE, ADVOCATE)

AND

THE STATE OF KARNATAKA
BY PAVAGADA POLICE STATION
MADHUGIRI SUB DIVISION
TUMKUR DISTRICT - 561 202.
REPRESENTED BY STATE PUBLIC PROSECUTOR
HIGH COURT BUILDINGS
BENGALURU - 561 202.

... RESPONDENT

(BY SRI B.J. ROHITH, HCGP)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C PRAYING TO QUASH THE CRIMINAL PROCEEDINGS IN C.C.NO.4389/2021 PENDING ON THE FILE OF THE PRL. CIVIL JUDGE AND JMFC, PAVAGADA (CRIME NO.213/2021 OF PAVAGADA P.S.,) MADHUGIRI SUB-DIVISION, TUMKURU DISTRICT CHARGE SHEETED FOR THE OFFENCE PUNISHABLE UNDER SECTION 78(3) OF KARNATAKA POLICE ACT.

THIS CRIMINAL PETITION COMING ON FOR ADMISSION
THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

This petition is filed by the petitioner-accused No.2 under Section 482 of Cr.P.C. for quashing the criminal proceedings in C.C.No.4389/2021 pending on the file of Prl. Civil Judge and JMFC, Pavagada in respect of Crime No.213/2021 of Pavagada Police Station, Madhugiri Sub-Division, Tumakuru District for the offence punishable under Section 78(3) of the Karnataka Police Act, 1963 (for short 'K.P. Act')

2. Heard the arguments of learned counsel for the petitioner and learned High Court Government Pleader for respondent - State.

3. The case of the prosecution is that the *suo motu* complaint registered by the Police against accused No.1 for the above said offence. Subsequently, the Police filed charge-sheet against this petitioner as accused No.2 for the offence punishable under Section 78(3) of the K.P.

Act alleging that on the credible information on 27.09.2021, the Police raided the spot where accused No.1 found playing Matka assuring Rs.70/- for one rupee, where the customers ran away and accused No.1 found on the spot. Therefore, they seized the cash, articles and ball pen. Then they given notice to him to appear before the Police under Section 41 of Cr.P.C. Subsequently, they registered NCR based upon the panchanama, then the requisition sent to the Magistrate, obtained permission under Section 155(2) of Cr.P.C., then the FIR has been registered, they investigated the matter and filed the charge-sheet against this petitioner by showing accused No.2 as absconding which is under challenge.

4. Learned counsel for the petitioner has contended that the Police have not properly investigated the matter, they have not made any enquiry and even not issued any notice to him under Section 41 of Cr.P.C., but they have filed the charge-sheet only based upon the voluntary statement of accused No.1. That apart, the

Magistrate also not specified whether who has to investigate the matter and the Police also filed the charge-sheet within six days after registering the FIR which is not correct. There are no independent witnesses to show that this petitioner was running Matka. Therefore, conducting proceedings against the petitioner is abuse of process of law, hence, required to be quashed. Learned counsel also submits that as per Section 78(3) of K.P. Act, a person who actually present and playing gambling is responsible for punishment, but, not the petitioner who was not at all present on the spot as there is no link between accused Nos.1 and 2. Hence, prayed for quashing the same.

5. *Per contra*, learned High Court Government Pleader objected the same and contended that as per Section 78(1)(a) of the K.P. Act, the owner is also liable for punishment and accused No.1 was found playing gambling and accused No.2 was running Matka, therefore, both are liable for punishment under Section 78 of the K.P. Act. There is no illegality committed by the Magistrate in

granting the permission under Section 155(2) of Cr.P.C. Hence, prayed for dismissing the petition.

6. Having heard the arguments and on perusal of the records, the main three contentions raised by the learned counsel are that (1) before registering FIR, the Police have conducted panchanama which is against the provisions of Section 154 of Cr.P.C. (2) the Police have filed the charge-sheet within six days of registering the FIR which is not correct and (3) the petitioner is not present on the spot and playing gambling is punishable under Section 78(3) of the K.P. Act.

7. Considering the grounds urged by the learned counsel and on perusal of the records, especially, the FIR was registered subsequent to preparing panchanama. In this regard, on the credible information, the Police people raided the spot and seized the cash of Rs.4,180/- along with Matka chit as well as ball pen. Accused No.1 was found playing Matka. The Police after seizing the same, issued notice under Section 41(A) of the Cr.P.C. asking

him to come to the Police Station as the offence alleged is non-cognizable one. The panchanama is only for an acknowledgment for having seized the articles. Subsequently, based upon this panchanama, they registered the NCR case (Non-Cognizable Registration) against the accused persons. On the voluntary statement, the accused is said to be stated that accused No.2 is the actual owner and he has paid the amount to him. Based upon the panchanama and NCR, the Police sent the report to the Magistrate under Section 155(1) of Cr.P.C. seeking permission. The learned Magistrate after considering the detailed panchanama and NCR registered by the Police, has relied upon the judgment of the High Court of Karnataka, Dharwad Bench in the case of ***Praveen Basavanneppa Shivalli vs. State of Karnataka and another in W.P.No.102248/2016 (GM-RES)*** as well as in the case of ***Vaggeppa Gurulinga Jangaligi vs. State of Karnataka*** reported in ***(2020) 1 KCCR 371*** which is the recent judgment of the High Court, where it has passed considered order and permitted the Police to

investigate the matter and the learned Magistrate has categorically stated that the first informant-Defacto complainant shall not be a Investigation Officer that means the Magistrate has specified that any other person can be investigated other than the first informant. The Police can investigate the matter as Investigation Officer as per the Notification issued by the State Government authorizing as Investigation Officer. Above the rank of Police constable, all are eligible for conducting the investigation and Station House Officer can file the charge-sheet. Such being the case, there is no illegality committed by the Police by seizing the articles under the panchanama and that panchanama is only based on non-cognizable registration of the case in NCR No.375/2021.

8. Subsequently, it is an admitted fact that the information given to the Magistrate seeking permission and the permission also rightly accorded by the learned Magistrate. The Police have registered the FIR on 28.09.2021 on the next date of the obtaining the

permission. Subsequently, the Police investigated the matter and filed charge-sheet within six days. As per Section 57 of the Cr.P.C., where the Police not able to complete the investigation within 24 hours, then the accused shall be produced before the Magistrate. Otherwise, they can obtain the permission of the Magistrate for extending the custody of the accused up to 60 days or 90 days as per Section 167 of Cr.P.C. Such being the case, even the Police have authority to file charge-sheet within a day by completing the investigation. Such being the case, the second contention raised by the learned counsel is not acceptable that Police have no authority to file charge-sheet within six days does not arise.

9. The next contention raised by the learned counsel is that the petitioner is not present on the spot in order to punish under Section 78(3) of K.P. Act. In this regard, Section 78(1) of the K.P. Act as well as Section 78(1)(B) of the K.P. Act reveals that the owner, occupier

and other person also liable for punishment. The definition clearly stated that the owner also liable other than the person who actually conducting the Matka and gambling. Section 78(3) of K.P. Act is only a punishment provision. Such being the case, the contention of the learned counsel that the petitioner is merely not present on the spot, but it cannot be said to be not committed any offence. In fact accused No.2 is said to be the owner and accused No.1 was conducting the Matka and accused No.1 giving entire money to this petitioner. Of course, it may be based upon the voluntary statement, but, is the voluntary statement admissible or not admissible are when appreciation of evidence is considered only during the trial, but, it cannot be a ground for quashing the very charge-sheet. Such being the case, merely the Police have not cited any independent witness in the charge sheet, but, that itself is not a ground to quash the criminal proceedings. Therefore, I am of the view that the petition is devoid of merits and liable to be dismissed.

10. Accordingly, the petition is ***dismissed***.

11. In view of disposal of the main petition, pending I.A.No.1/2022 does not survive for consideration and the same is disposed of.

**Sd/-
JUDGE**

GBB