IN THE COURT OF LXXXI ADDL. CITY CIVIL AND SESSIONS JUDGE, BENGALURU (CCH-82)

Present:

Sri B. Jayantha Kumar, B.A.Law., LL.M.,
LXXXI Addl. City Civil & Sessions Judge,
Bengaluru City (CCH-82)
(Special Court exclusively to deal with criminal cases related to elected MPs/ MLAs in the State of Karnataka)

Dated this the 8th day of July, 2021

PCR No. 40 / 2021

COMPLAINANT: Abraham T.J.

V/s

ACCUSED:

1. Sri.B.S.Yediyurappa
   Chief Minister of Karnataka

2. Sri.B.Y. Vijayendra

3. Sri.Shashidar Maradi

4. Sri.Sanjay Sree

5. Sri.Chandrakanth Ramalingam

6. Sri.S.T. Somasheker

7. Dr. G.C. Prakash, IAS

8. Sri.K. Ravi

9. Sri.Virupashappa Yamakanamaradi

ORDER

This private complaint is filed by the complainant under Sec.200 of the Code of Criminal Procedure, 1973 ('Cr.P.C.' for

short) alleging the offences punishable under Secs.7, 8, 9, 10 and 13 of the Prevention of Corruption Act, 1988 ('PC Act' for short) and Sections 383, 384, 415, 418, 420 r/w Sec.34 and Sec.120B of the Indian Penal Code ('IPC' for short) seeking to refer the complaint to any Investigating Agency to register First Information Report ('FIR' for short) against the accused persons under Sec.156(3) of Cr.P.C. and to conduct investigation and to proceed in accordance with law.

2. The facts alleged in the complaint in brief is hereunder:

"The Complainant is a well-known public interest litigant and a social worker, who is the President of the Karnataka Anti-Graft and Environmental Forum ®, a law abiding citizen who has utmost regard and respect for the law of the land and has highest faith and respect for the judicial process in the Country. He had lodged an information/ complaint in accordance with Sec.154 of Cr.P.C. on 19.11.2020 before the Anti-Corruption Bureau, Bengaluru ('ACB' for short) against the accused persons alleging offences punishable under Secs.7, 8, 9, 10 and 13 of the PC Act, 1988 and Sections 383, 384, 415, 418, 420 r/w Sec.34 and

Sec.120B of IPC and under Sections 3 and 4 of the Prevention of Money-Laundering Act, 2002 ('PML Act' for short). The said ACB had refused to register FIR and instead of registering FIR, the ACB Police sent notice to the complainant on 21.11.2020 seeking originals of the documents attached to the information/ complaint dated 19.11.2020. The complainant has clarified the doubts of the ACB police through his letter dated 25.11.2020 addressed to the Deputy Superintendent of Police, ACB, Bengaluru and the ACB police have closed the information/ complaint and sent an endorsement dated 15.12.2020 without even considering the points needed to be looked into as mentioned in his clarification dated 25.11.2020.

The complainant further alleged that the instant complaint is with regard to the indulgence in corruption, bribe and money laundering activities by the Chief Minister of Karnataka, by misusing his official position as a public servant for his personal benefit along with other public servants, his family members and others. The accused No.1 and one Sri.Madhuswamy, the Law Minister of the Government of Karnataka, have virtually agreed to any kind of investigation either by the CBI, Lokayukta or even by

the High Court, into the issues raised in Karnataka Legislative Assembly.

It is further alleged that the accused persons have been involved in illegal activities of amassing huge amount of illegal money through corruption and bribe which are routed through various Companies owned by some of them, through bogus 'shell companies'. It is alleged that the first illegal money transaction is pertaining to kick backs, corruption and bribe money allegedly demanded and received on behalf of the Accused No.1 in relation to a project taken up by the Bengaluru Development Authority ('BDA' for short) which was entrusted to M/s.Ramalingam Construction Company Pvt. Ltd., a Company owned by Accused No.5 Sri.Chandrakanth Ramalingam. In the year 2017, the BDA had issued a tender notification vide No.BDA/EE/(HPD-1)/TENT-186/2016-17 dated 11.10.2017 inviting tenders for a Turn key project for the construction of 1BHK and 3 BHK flats in Sy. No.22 and 23 in Konadasapura, Bidarahalli Hobli, Bengaluru East Taluk, Bengaluru Urban District, with the last date for the submission of the tenders notified as 16.11.2017, which was further extended to 22.11.2017. The estimated cost for Phase-I was Rs.567 Crores and

M/s. Ramalingam Construction Company Pvt. Ltd., and M/s.Nagarjuna Construction Company Pvt. Ltd., were participated as bidders in the said tenders and the Tender Scrutiny Committee scrutinized the tenders submitted by M/s.Ramalingam Construction Company Pvt. Ltd., and M/s.Nagarjuna Construction Company Pvt. Ltd., on 07.12.2017. After the tender opening process held on 16.12.2017, it was revealed that M/s.Ramalingam Construction Company Pvt. Ltd., had quoted Rs.675 Crores and M/s.Nagarjuna Construction Company Pvt. Ltd., had quoted Rs.691.74 Crores and the contract was finally awarded to the lowest bidder M/s.Ramalingam Construction Company Pvt. Ltd., owned by the accused No.5 Sri.Chandrakanth Ramalingam. After negotiations on 18.12.2017, the bid of M/s. Ramalingam Constructions Co. Pvt., Ltd., was considered and settled at Rs.666.22 crores and 50 thousand. The Board meeting of BDA was held on 21.12.2017 and the proposal of the project under Subject No.199/2017 was granted an Administrative Approval for Rs.666.22 Crores and 50 thousand.

It is further alleged that the Elections to the Karnataka State Legislative Assembly was held on 12.05.2018 and a coalition

Government headed by Sri.H.D.Kumaraswamy was formed on 23.05.2018, during which period, the accused No.6 was appointed as Board Member of the BDA on 24.06.2019 and continued till 17.04.2018. Later accused No.6 Sri.S.T.Somasheker was appointed as Chairman of BDA on 10.01.2019. Since the formation of the Government headed by Sri.H.D. Kumaraswamy, there was no progress in the above mentioned Project. Accused No.6 who was the Chairman of the BDA tried to use his influence and exerted pressure on the then Commissioner of BDA Sri.Rakesh Singh, IAS to issue letter of acceptance for the project to M/s.Ramalingam Constructions Co. Pvt. Ltd., which was resisted by the said Commissioner of BDA and in this regard, the then commissioner has also written a letter dated 20.03.2019 to the Chief Secretary of the State, highlighting the undue exertion of influence by accused No.6. Inspite of the aforesaid objection, the then Commissioner of the BDA after anticipating uncertainty about the continuation of the Government had strongly evolved, within one month, the acceptance letter was issued on 22.04.2019 to M/s. Ramalingam Constructions Co. Pvt. Ltd. owned by accused No.5 allegedly under pressure and influence of the accused No.6 Sri.S.T.Somasheker, with a direction for the Company to deposit

Rs.33.31 lakhs and 50 thousand as Bank Guarantee. Within two days from the date of issuance of the Acceptance Letter on 24.06.2019, the Executive Engineer (East) of BDA signed the work order and subsequently, an agreement was entered into between BDA and the Company owned by the accused No.5 Contractor on 27.06.2019. In the very next month, uncertainty in the continuation of the Government headed by Sri.H.D. Kumaraswamy ended with the resignation of 12 MLAs' on 06.07.2017 and the Government headed by accused No.1 Sri B.S. Yediyurappa came to be formed on 26.07.2017 with the help of the legislators, which included accused No.6 Sri.S.T. Somasheker, who defected from Congress Party to the BJP party. Shortly after the new Government took charge, the accused No.7 Dr. G.C. Prakash was appointed as the Commissioner of BDA on 05.07.2019 replacing the then Commissioner Dr. N. Manjula and at the behest of the accused No.1, the accused No.7, the new Commissioner of BDA had allegedly gave proposal to the accused No.5 to pay Rs.12 Crores as bribe to consider his request for commencement of construction work. After the accused No.7 BDA commissioner allegedly made illegal proposals on behalf of accused No.1 at the behest of the accused No.2 B.Y. Vijayendra,

the son of accused No.1 to the Company belonging to the accused No.5 to pay Rs.12 Crores bribe money by permitting to proceed with the project and in the next month of May-2020, an amount of Rs.12 Crores bribe was allegedly paid by accused No.5 in cash to accused No.8 Sri.K.Ravi, owner of the 37th Crescent Hotel, established by M/s.Athitheya Kshema Hotels Private Limited, Crescent Road, High Grounds, Bengaluru, allegedly under instructions from accused No.2 Sri.B.Y. Vijayendra. The bribe amount of Rs.12 Crores was allegedly collected by the accused No.7, the Commissioner of BDA Dr. G.C. Prakash from accused No.8 Sri.K.Ravi on the assurance that the amount will be handed over to the accused No.1 through his son accused No.2, which was incidentally never handed over to accused No.2. 'Power TV', a private Kannada News Channel telecasted the conversation between accused No.2 and Power TV. The accused No.7 has not handed over the money to accused No.2 and then he was transferred from BDA to Mysuru as Regional Commissioner.

It is further alleged that the accused No.5 came in contact with accused No.3 Sri.Shashidhar Maradi, the grand son of accused No.1 ie., Chief Minister of Karnataka and son of

Smt.Padmavathi, who is daughter of Chief Minister to use his influence for obtaining contracts in Government Departments in some cases and in other cases to get the accused No.1 Chief Minister to influence for release of funds from the concerned Government Departments and in some cases to expedite the file clearance/movements in various Government Departments and bribe was paid by accused No.5 through accused No.3 Sri.Shashidhar Maradi for influencing the accused No.1 Chief Minister to exert pressure on the government Departments for the advantage of the Company of accused No.5 and also to exert pressure and influence in Government Department some of which are KNNL Tunga Modernization of Shimoga Project, BESCOM, HESCOM Hubli DBFOT Project, Kengeri Construction of Additional Houses project, KRDL, KHB, BDA, Karnataka Slum clearance Board, etc. WhatsApp message was exchanged between accused No.3 and 5 containing information regarding the periodical flow of the bribe money from accused No.5 and others to accused No.3, the grand son of Chief Minister-Accused No.1 to intervene and influence in favour of the Company of accused No.5 and others with various Departments is established from the message by the accused No.3 on 19.10.2019 at 2.15 p.m. which

mentions that the person Krupakar was someone working as a Sub-Contractor with accused No.5 and said Krupakar is delivering Rs.1.6 crores and the WhatsApp message confirms the payments made by the Contractor of accused No.5 to accused No.3 to the tune of Rs.12.5 Crores. WhatsApp message further confirms the conversation that accused No.9 is the person to contact the accused No.5 periodically in connection with the collection/ delivery of bribe money. Accused No.9 Virupakshappa Yamakanamaradi is the husband of Smt.Padmavathi, who is the daughter of 1st accused – Chief Minister. The accused No.1 through his family members i.e., accused No.2 B.Y. Vijayendra, accused No.3 Shashidhar Maradi, accused No.4 Sanjay Shree and others indulged in corruption by using 'shell companies' i.e., M/s.Belgravia Enterprises Pvt Ltd., M/s. VSS Estates Pvt. Ltd., M/s. VSS Works LLP, M/s. Rajgharana Sales Pvt. Ltd., M/s.Navtech Creation Pvt. Ltd., M/s.Gannayak Commodities Trade Pvt Ltd., M/s.Jagadamba Commosales Pvt.Ltd., M/s. Remac Distributors Pvt. Ltd., M/s.Sakambari Merchants Pvt. Ltd., and M/s. Strategic Vincon Pvt. Ltd., establishing the transfer of the 'proceeds of crime' to the accounts of the Companies owned by the family members of the accused No.1 Chief Minister of the State.

It is further alleged that there was transfer of Rs.5,01,08,677/- to M/s.Belgravia Enterprises Pvt Ltd., and Rs.3,41,00,000/- from M/s.Belgravia Enterprises Pvt Ltd., to M/s.VSS Estates Pvt. Ltd., clearly and prima facie establish that bogus shell companies were used to route the bribe/corruption money - ‘proceeds of crime’ to the accused No.1 Chief Minister through his nearest family members.

It is further alleged that seven shell companies are located on the same street and all the seven companies have their accounts in the same South Dum Dum Branch of Corporation Bank in Kolkatta. It is further alleged that the corruption - ‘proceeds of crime’, bribe money amounting to Rs.5,01,08,677/- which was transferred from bogus shell companies based in Kolkatta to M/s.Belgravia Enterprises Pvt Ltd., and then from there to M/s.VSS Estates Pvt.Ltd., clearly establishes the illegal, corruption money has been routed to the accused No.1 through his grandson accused No.3 Shashidhar Maradi and his daughter Smt.Padmavati Virupakshappa’s son-in-law accused No.4 Sanjay Sree, who are the only two directors of M/s.Belgravia Enterprises Pvt Ltd., and M/s.VSS Estates Pvt Ltd.

It is further alleged that Anti Corruption Bureau has deliberately failed to obtain necessary documents from BDA and to send the CD containing the audio conversation between the accused No.2 and the TV Channel to the Forensic Science Laboratory at Madiwala, Bengaluru or to the more reputed and credible Central Forensic Science Laboratory, Ramanathapur, Hyderabad for audio analysis to find out the person whose voice has been recorded in the clip and failed to seek the assistance of the Forensic Experts to retrieve all kinds of data like phone call records, messages, images, whatsApp chats, as well as the data on the Phone's Cloud Service, like Google drive or iCloud, including anything that has been deleted by taking the phones of accused No.2, 5, 7 and 8 and to obtain details of the contracts or works undertaken by the accused No.5 in various departments and to obtain bank details of the shell companies located at Kolkatta and failed to obtain bank details of M/s.Belgravia Enterprises Pvt.Ltd., M/s.VSS Estates Pvt Ltd., M/s.VSS Works, Accused No.3 Shashidhar Maradi and accused No.4 Sanjay Shree to establish the collection of illegal funds on behalf of accused No.1 Chief Minister to the tune of Rs.5,01,08,677/- and to obtain the bank

details of accused No.5 Chandrakanth Ramalingam, M/s.Ramalingam Construction Company Pvt Ltd.

It is further alleged that he had approached Hon'ble Governor of Karnataka seeking sanction for prosecution against accused No.1 Sri B.S. Yediyurappa, Chief Minister, accused No.6 Sri.S.T. Somashekar-MLA. He had also approached Chief Secretary of Government of Karnataka, seeking sanction for prosecution against accused No.7 G.C. Prakash, IAS. He had also approached Hon'ble Speaker of the Karnataka Legislative Assembly seeking sanction for prosecution against accused No.1 Sri B.S. Yediyurappa, Chief Minister and Sri S.T. Somasheker, MLA. Hon'ble Governor, the office of the Chief Secretary of Government of Karnataka, Hon'ble Speaker have not responded to his request for according sanction for prosecution. Hence, the complainant prays for taking cognizance of the offences punishable under Secs.7, 8, 9, 10 and 13 of the PC Act, 1988 and Sections 383, 384, 415, 418, 420 r/w Sec.34 and Sec.120B of IPC and under Sections 3 and 4 of the PML Act against accused No.1 to 9 and refer the complaint for investigation under Sec.156(3) of Cr.P.C."

3. Along with the private complaint, the complainant has also moved an application under Section 156(3) of Cr.P.C., praying to refer the complaint for investigation to Anti Corruption Bureau (ACB Police). In support of the said application, the complainant has filed his affidavit and narrated the allegations made against the accused in the private complaint.

4. This private complaint is filed by the complainant-in-person on 02.06.2021. This Court directed the office to place the records before Principal City Civil & Sessions Judge, Bengaluru for necessary order to register as PCR and to make over the matter either to this Court or to CCH91. Accordingly, the complaint was registered as PCR and assigned over to this Court.

5. On 30.06.2021, the complainant has addressed his arguments through video conference in ZoomApp link. In his arguments, he submitted that the accused No.1 Sri B.S.Yediyurappa, Chief Minister of Government of Karnataka has committed three crimes. He has also narrated the crimes as alleged in the private complaint. He submitted that he is a public interest litigant and social worker and President of Karnataka Antigraft and Environmental Forum ®. He further submitted that he has lodged a

complaint in accordance with Section 154 of Cr.P.C. on 19.11.2020 before ACB, Bengaluru alleging offences punishable under Secs.7, 8, 9, 10 and 13 of the PC Act, 1988 and Sections 383, 384, 415, 418, 420 r/w Sec.34 and Sec.120B of IPC and under Sections 3 and 4 of the PML Act, which discloses cognizale offences, but ACB, Bengaluru has refused to register FIR inspite of the mandate given by Hon'ble Apex Court in *'Lalita Kumari Vs. Government of Uttar Pradesh & others'* reported in (2014) 2 SCC 1. Relying on the said decision, he argued that the registration of FIR is mandatory under Sec.154 of Cr.P.C., if information discloses commission of cognizable offence and no preliminary inquiry is permissible in such a situation.

6. The complainant further submitted that instead of registering the FIR, the ACB, Bengaluru has sent two days notice to him to produce original documents attached to the complaint. He further submitted that the ACB, Bengaluru could have procured original documents themselves if required. He submitted that he has clarified the ACB, Bengaluru through his letter dated 25.11.2020 addressed to Dy.S.P., ACB, Bengaluru, but ACB has

closed the complaint and sent an endorsement dated 15.12.2020 without even considering the specific points.

7. The complainant further submitted that he has filed this complaint alleging corruption, bribe and money laundering activities by the accused No.1 Chief Minister of Karnataka by misusing his official position as public servant for his personal benefits along with other public servants, his family members and others.

8. The complainant further submitted that the accused persons have involved in illegal activities of amassing huge amount of money through corruption routed through companies owned by some of them and through various bogus shell Companies.

9. He further argued that crores of rupees exchanged in Bengaluru allegedly in the name of stalled project in BDA. He further argued that a project taken up by the BDA was entrusted to M/s.Ramalingam Construction Company Pvt.Ltd., owned by accused No.5 Chandrakanth Ramalingam and the BDA has issued tender notification on 11.10.2017 inviting tenders for a Turn key project for the construction of 1BHK and 3BHK flats on Sy.No.22

and 23 in Konadasapura, Bidarahalli Hobli, Bengaluru East Taluk and M/s.Ramalingam Construction Company Pvt. Ltd., owned by accused No.5 Chandrakanth Ramalingam was lowest bidder among the two bidders including M/s.Nagarajuna Construction Company Pvt. Ltd. At this stage, the complainant has referred to document No.5 and 6 attached to the private complaint.

10. The complainant further argued that during coalition Government headed by Sri H.D.Kumaraswamy, accused No.6 was appointed as Board Member of BDA and later he was appointed as Chairman of BDA and accused No.6 tried to use his influence and exerted pressure on the then Commissioner of BDA Sri Rakesh Singh, IAS to issue Letter of Acceptance for the project accorded to M/s. Ramalingam Constructions Company Pvt. Ltd., which was resisted by said Sri Rakesh Singh and said Sri Rakesh Singh, IAS has written a letter dated 20.03.2019 to the Chief Secretary of the State, highlighting the sorry state of the Finance of the BDA and the undue exertion of influence by accused No.6. At this stage, the complainant has referred to document No.7 and 8 in support of his arguments.

11. The complainant further argued that the accused No.1 became Chief Minister of Karnataka on 26.06.2017 and after new Government took charge, accused No.7 Dr.G.C.Prakash, IAS was appointed as Commissioner of BDA and he proposed accused No.5 to pay Rs.12 Crores as bribe to accused No.1 for commencement of work of BDA. He further argued that the accused No.7 allegedly made the illegal proposal purportedly at the behest of accused No.1 Chief Minister on behalf of accused No.2 B.Y.Vijayendra in the month of May 2020 and illegally demanded bribe of Rs.12 Crores and accused No.5 has paid bribe in cash through accused No.8 K.Ravi owner of M/s.Athitheya Kshema Hotels Private Limited under instructions from accused No.2 B.Y. Vijayendra. He further argued that the Rs.12 Crores bribe money has taken by the accused No.7 Commissioner of BDA Dr.G.C. Prakash from accused No.8 K.Ravi on the assurance that the amount will be handed over to accused No.1 Chief Minister through his son accused No.2 B.Y.Vijayendra, which was never handed over to accused No.2. He further argued that exchange of cash of Rs.12 Crores is part of the conversation between the accused No.2 and private Kannada news channel – Power TV which was telecasted in the channel and because of vengeance,

accused No.7 was transferred to Mysuru as Regional Commissioner and the audio conversation between accused No.2 and TV Channel was recorded by the TV Channel.

12. The complainant further argued that second offence is with regard to the involvement of accused No.3 Shashidhara Maradi – grand son of accused No.1 and son of Smt.Padmavathi Virupakshappa, who is the daughter of the Chief Minister. He argued that the accused No.3 used his influence to obtain contracts in Government Departments and expedite and speed up the file clearance/ movements in various Government Departments. He further submitted that the accused No.5 had dealings with accused No.3 to influence accused No.1 to exert pressure on Government Departments like KNNL Tunga Modernization of Shimoga Project, BESCOM, HESCOM, Hubli DBFOT Project, Kengeri Construction of Additional Houses Project, KRDL, KHB, BDA, Karnataka Slum Clearance Board, BBMP, BWSSB, etc., and got the work done. All the details are revealed in WhatsApp conversation and accordingly, he has referred document No.12.

13. The complainant further argued that the Sub-contractor of accused No.5 Krupakar paid Rs.12.5 crores to

accused No.3 on behalf of his M/s.Ramalingam Construction Company Pvt. Ltd., and accused No.9 Virupakshappa Yamakanamaradi, who is husband of Smt.Padmavati Virupakshappa has also involved in the commission of crime.

14. He further argued that the accused No.1 to 4 also involved in illegal money transaction through shell companies. He argued that bank transactions of M/s.Belgravia Enterprises Pvt Ltd., M/s.VSS Estates Pvt Ltd., M/s.VSS Works LLP., M/s.Rajgharana Sales Pvt Ltd., M/s.Navtech Creation Pvt Ltd., M/s.Gannayak Commodities Trade Pvt. Ltd., M/s. Jagadamba Commosales Pvt Ltd., M/s.Remac Distributors Pvt Ltd., M/s.Sakambari Merchants Pvt. Ltd., and M/s. Strategic Vincon Pvt Ltd., establish the transfer of the ‘proceeds of crime’ to the accounts of the Companies owned by the family members of the accused No.1 Chief Minister. He has referred to document No.13A and 13B to show the transfer of Rs.3,41,00,000/- to M/s.Belgravia Enterprises Pvt Ltd., and the transfer of said money from M/s.Belgravia Enterprises to M/s. VSS Estates Pvt Ltd. He has also referred to document No.14 while arguing his case.

15. The complainant argued that the seven shell companies are located in the same street of Kolkatta which reveals the illegal dealings and he also argued that the ACB Police have not secured relevant documents from BDA, CD containing the audio conversation, bank details of shell companies, details of contractor, details of accused No.5.

16. He further argued that he had approached Hon'ble Governor of Karnataka seeking sanction for prosecuting accused No.1 and he also approached the Chief Secretary of Government of Karnataka seeking sanction to prosecute Dr. G.C. Prakash, IAS. He also approached Hon'ble Speaker of Karnataka Legislative Assembly seeking sanction for prosecuting accused No.1 and 6.

17. In his argument, he has also referred the decisions of Hon'ble Supreme Court in the case of *Vineet Narain and others Vs. Union of India* and another reported in *(1998) 1 SCC 226* and the decision of Hon'ble Supreme Court in the case of *Subramanian Swamy Vs. Manmohan Singh and another* reported *(2012)3 SCC 64*. Relying on these decisions, he argued that the offices of Hon'ble Governor of Karnataka, Chief Secretary and Speaker were under obligation to decide upon his request within

time frame of three months from the date of receipt of the request, failing which, sanction would be deemed to have been issued. So, he requested to take cognizance of the offences punishable under Secs.7, 8, 9, 10 and 13 of the PC Act, 1988 and Sections 383, 384, 415, 418, 420 r/w Sec.34 and Sec.120B of IPC and under Sections 3 and 4 of the PML Act and direct investigating agency to register FIR against the accused under Sec.156(3) of Cr.P.C. and to proceed in accordance with law.

18. I have gone through the materials placed by the complainant and analyzed the submissions made by the complainant. No doubt there are some material to refer the complaint for investigation under Sec.156(3) of Cr.P.C. But before proceeding to refer the complaint for investigation under Sec.156(3) of Cr.P.C., this Court has to examine the law laid down by the Hon'ble Apex Court with regard to the requirement of sanction. To appreciate these aspects, the following points arise for my determination:-

> *1) Whether an order for directing the investigation under Sec.156(3) of Cr.P.C., can be passed in relation to public servant in the absence of valid sanction?*

2) Whether the sanction will be deemed to have been granted, if no decision is taken within a prescribed period for referring the case for investigation under section 156(3) of Cr.P.C.?

3) What order?

19. My answer to the above points are as follows:-

Point No.1 : In the Negative
Point No.2 : In the Negative
Point No.3 : As per final order for the following:

REASONS

20. **Points No.1 and 2**: The complainant has come up with this private complaint alleging three different crimes said to have been committed by the accused persons. He alleged that crores of rupees have been exchanged in Bengaluru allegedly in the name of stalled project of BDA and work order was issued in favour of M/s.Ramalingam Construction Company Pvt. Ltd., a company owned by accused No.5 Chandrakanth Ramalingum and Rs.12.5 Crores was demanded by accused No.2 on behalf of accused No.1. It is further alleged that accused No.7 Dr.G.C. Prakash received Rs.12.5 Crores from accused No.8 K.Ravi on the assurance that the amount will be handed over to accused No.1

through his son accused No.2 B.Y.Vijayendra. Another allegation is that the accused No.3 Shashidhar Maradi is the grandson of accused No.1 and he used his influence to obtain contracts in the Government Departments and he also made influence to accused No.1 to release funds from the concerned Government Departments and to expedite and speed up the file clearance and movement in various Government Departments and accused No.3 exerted pressure on the Governments for the advantage of accused No.5 and the Sub-contractor of accused No.5 by name Krupakara paid Rs.12.5 Crores to accused No.3 and accused No.1 received Rs.12.5 Crores through accused No.3. The third allegation is that the accused No.1 to 4 have indulged in corruption by using shell companies and Rs.3,41,00,000/- amount was transferred to the shell companies and in turn the said amount was transferred to the bank account of the companies of family members of accused No.1.

21. In this case, the complainant has alleged that the accused No.1 to 9 have committed offences punishable under Secs.7, 8, 9, 10 and 13 of the PC Act, 1988 and Sections 383, 384, 415, 418, 420 r/w Sec.34 and Sec.120B of IPC and under Sections

3 and 4 of the PML Act. So it is pertinent to refer to Sec.19 of the Prevention of Corruption Act which reads as follows:

> **19. Previous sanction necessary for prosecution.—**
> (1) No court shall take cognizance of an offence punishable under sections 7, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction save as otherwise provided in the Lokpal and Lokayuktas Act, 2013,—
>
> (a) in the case of a person who is employed, or as the case may be, was at the time of commission of the alleged offence employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;
>
> (b) in the case of a person who is employed, or as the case may be, was at the time of commission of the alleged offence employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;
>
> (c) in the case of any other person, of the authority competent to remove him from his office.
>
> PROVIDED that no request can be made, by a person other than a police officer or an officer of an investigation agency or other law enforcement authority, to the appropriate Government or competent authority, as the case may be, for the previous sanction of such

Government or authority for taking cognizance by the court of any of the offences specified in this sub-section, unless--

(i) such person has filed a complaint in a competent court about the alleged offences for which the public servant is sought to be prosecuted; and

(ii) the court has not dismissed the complaint under section 203 of the Code of Criminal Procedure, 1973 (2 of 1974) and directed the complainant to obtain the sanction for prosecution against the public servant for further proceeding:

PROVIDED FURTHER that in the case of request from the person other than a police officer or an officer of an investigation agency or other law enforcement authority, the appropriate Government or competent authority shall not accord sanction to prosecute a public servant without providing an opportunity of being heard to the concerned public servant:

PROVIDED ALSO that the appropriate Government or any competent authority shall, after the receipt of the proposal requiring sanction for prosecution of a public servant under this sub-section, endeavour to convey the decision on such proposal within a period of three months from the date of its receipt:

PROVIDED ALSO that in case where, for the purpose of grant of sanction for prosecution, legal consultation is required, such period may, for the reasons to be recorded in writing, be extended by a further period of one month:

PROVIDED ALSO that the Central Government may, for the purpose of sanction for prosecution of a public servant, prescribe such guidelines as it considers necessary.

Explanation: For the purposes of sub-section (1), expression "public servant" includes such person-

(a) who has ceased to hold the office during which the offence is alleged to have been committed; or

(b) who has ceased to hold the office during which the offence is alleged to have been committed and is holding an office other than the office during which the offence is alleged to have been committed.

(2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) no finding, sentence or order passed by a Special Judge shall be reversed or altered by a court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of

that court, a failure of justice has in fact been occasioned thereby;

(b) no court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;

(c) no court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings.

(4) In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice the court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings.

Explanation.—For the purposes of this section,—

(a) error includes competency of the authority to grant sanction;

(b) a sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature.

22. It is also pertinent to refer to Sec.197 of the Cr.P.C.

197. Prosecution of Judges and public servants.

(1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction save as otherwise provided in the Lokpal and Lokayuktas Act, 2013-

(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, or the State Government:

PROVIDED that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression" State Government" occurring therein, the expression" Central Government" were substituted.

Explanation: For the removal of doubts it is hereby declared that no sanction shall be required in case of a

public servant accused of any offence alleged to have been committed under section 166A, section 166B, section 354, section 354A, section 354B, section 354C, section 354D, section 370, section 375, section 376, section 376A, section 376AB, section 376C, section 376D, section 376DA, section 376DB or section 509 of the Indian Penal Code (45 of 1860).

(2) No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government.

(3) The State Government may, by notification, direct that the provisions of sub- section (2) shall apply to such class or category of the members of the Forces charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that sub-section will apply as if for the expression "Central Government" occurring therein, the expression "State Government" were substituted.

(3A) Notwithstanding anything contained in sub- section (3), no court shall take cognizance of any offence, alleged to have been committed by any member of the Forces charged with the maintenance of public order in a State while acting or purporting to act in the discharge of his official duty during the period while a Proclamation issued under clause (1) of article 356 of the Constitution

was in force therein, except with the previous sanction of the Central Government.

(3B) Notwithstanding anything to the contrary contained in this Code or any other law, it is hereby declared that any sanction accorded by the State Government or any cognizance taken by a court upon such sanction, during the period commencing on the 20th day of August, 1991 and ending with the date immediately preceding the date on which the Code of Criminal Procedure (Amendment) Act, 1991, receives the assent of the President, with respect to an offence alleged to have been committed during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in the State, shall be invalid and it shall be competent for the Central Government in such matter to accord sanction and for the court to take cognizance thereon.]

(4) The Central Government or the State Government, as the case may be, may determine the person by whom, the manner in which, and the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the court before which the trial is to be held.

23. The complainant has relied on a decision of the Hon'ble Apex court in the case of ***Lalita Kumari Vs. Government of U.P. and others,*** reported in ***(2014)2 SCC 1***. In the said decision, Hon'ble Apex Court has observed as follows:

“93) The object sought to be achieved by registering the earliest information as FIR is interalia two fold: one, that the criminal process is set into motion and is well documented from the very start; and second, that the earliest information received in relation to the commission of a cognizable offence is recorded so that there cannot be any embellishment etc., later.

94) Principles of democracy and liberty demand a regular and efficient check on police powers. One way of keeping check on authorities with such powers is by documenting every action of theirs. Accordingly, under the Code, actions of the police etc., are provided to be written and documented. For example, in case of arrest under Section 41(1)(b) of the Code, arrest memo along with the grounds has to be in writing mandatorily; under Section 55 of the Code, if an officer is deputed to make an arrest, then the superior officer has to write down and record the offence etc., for which the person is to be arrested; under Section 91 of the Code, a written order has to be passed by the concerned officer to seek documents; under Section 160 of the Code, a written notice has to be issued to the witness so that he can be called for recording of his/her statement, seizure memo/panchnama has to be drawn for every article seized etc.

95) The police is required to maintain several records including Case Diary as provided under Section 172 of the Code, General Diary as provided under Section 44 of the Police Act etc., which helps in documenting every information collected, spot visited and all the actions of the

police officers so that their activities can be documented. Moreover, every information received relating to commission of a non-cognizable offence also has to be registered under Section 155 of the Code.

96) The underpinnings of compulsory registration of FIR is not only to ensure transparency in the criminal justice delivery system but also to ensure judicial oversight. Section 157(1) deploys the word forthwith. Thus, any information received under Section 154(1) or otherwise has to be duly informed in the form of a report to the Magistrate. Thus, the commission of a cognizable offence is not only brought to the knowledge of the investigating agency but also to the subordinate judiciary.

97) The Code contemplates two kinds of FIRs: The duly signed FIR under Section 154(1) is by the informant to the concerned officer at the police station. The second kind of FIR could be which is registered by the police itself on any information received or other than by way of an informant [Section 157(1)] and even this information has to be duly recorded and the copy should be sent to the Magistrate forthwith. The registration of FIR either on the basis of the information furnished by the informant under Section 154(1) of the Code or otherwise under Section 157(1) of the Code is obligatory. The obligation to register FIR has inherent advantages:

97.1.(a) It is the first step to access to justice for a victim.

97.2.(b) It upholds the Rule of Law “inasmuch as the ordinary person brings forth the commission of a cognizable crime in the knowledge of the State”.

> 97.3.(c) It also facilitates swift investigation and sometimes even prevention of the crime. In both cases, it only effectuates the regime of law.
>
> 97.4.(d) It leads to less manipulation in criminal cases and lessens incidents of antedated FIR or deliberately delayed FIR."

24. As per the said decision, registration of FIR is mandatory under Sec.154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

25. It is just and proper to go through the decision of Hon'ble Apex Court in the case of ***Vineet Narain and others Vs. Union of India and another*** reported ***(1998) 1 SCC 226***. In the said decision, Hon'ble Apex Court has held as follows:

> "58 (15). Time-limit of three months for grant of sanction for prosecution must be strictly adhered to. However, additional time of one month may be allowed where consultation is required with the Attorney General (AG) or any other law officer in the AG's office."

26. It is also just and necessary to go through the decision of Hon'ble Apex Court in the case of ***Subramanian Swamy Vs.***

Manmohan Singh and another reported in ***(2012) 3 SCC 64***. In the said decision, Hon'ble Supreme Court has held as follows:-

> "81. In my view, the Parliament should consider the Constitutional imperative of Article 14 enshrining the rule of law wherein `due process of law' has been read into by introducing a time limit in Section 19 of the P.C. Act 1988 for its working in a reasonable manner. The Parliament may, in my opinion, consider the following guidelines:
>
> a) All proposals for sanction placed before any Sanctioning Authority, empowered to grant sanction for the prosecution of a public servant under section 19 of the P.C. Act must be decided within a period of three months of the receipt of the proposal by the authority concerned.
>
> b) Where consultation is required with the Attorney General or the Solicitor General or the Advocate General of the State, as the case may be, and the same is not possible within the three months mentioned in clause (a) above, an extension of one month period may be allowed, but the request for consultation is to be sent in writing within the three months mentioned in clause (a) above. A copy of the said request will be sent to the prosecuting agency or the private complainant to intimate them about the extension of the time-limit.
>
> c) At the end of the extended period of time-limit, if no decision is taken, sanction will be deemed to have been granted to the proposal for prosecution, and the prosecuting agency or the private complainant will proceed to file the

> charge sheet/complaint in the court to commence prosecution within 15 days of the expiry of the aforementioned time-limit."

27. In the said decision, it is held that sanction will be deemed to have been granted to the proposal for prosecution and prosecuting agency or the private complainant will proceed to file the charge sheet/ complaint in the Court to commence prosecution within 15 days of the expiry of the aforesaid time limit. So, from this decision it is clear that deemed sanction is applicable only to file complaint by the private complainant and it is not for forwarding the complaint for investigation under Sec.156(3) Cr.P.C.

28. It is just and proper to look in to the decision of Hon'ble Apex Court in the case of ***Priyanka Srivastava & others Vs. State of U.P. and others*** reported in ***(2015)6 SCC 287***, wherein Hon'ble Apex Court has held as follows:-

> "31. We have already indicated that there has to be prior applications under Section 154(1) and 154(3) while filing a petition under Section 156(3). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. The warrant for giving a direction that an the application

> under Section 156(3) be supported by an affidavit so that the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with law. This will deter him to casually invoke the authority of the Magistrate under Section 156(3). That apart, we have already stated that the veracity of the same can also be verified by the learned Magistrate, regard being had to the nature of allegations of the case. We are compelled to say so as a number of cases pertaining to fiscal sphere, matrimonial dispute/family disputes, commercial offences, medical negligence cases, corruption cases and the cases where there is abnormal delay/laches in initiating criminal prosecution, as are illustrated in Lalita Kumari are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR."

29. This decision says that an application under Sec.156(3) of Cr.P.C. must be supported by an affidavit duly sworn by the applicant who seeks invocation of jurisdiction of Magistrate under the said provision.

30. At this juncture, it would be worthwhile to refer to the decision of Hon'ble Apex Court in the case of ***Anil Kumar & others Vs. M.K. Aiyappa and another,*** reported in ***(2013)10 SCC 705***. In the said decision, Hon'ble Apex Court has held as follows:

“15. The judgments referred to herein above clearly indicate that the word cognizance has a wider connotation and is not merely confined to the stage of taking cognizance of the offence. When a Special Judge refers a complaint for investigation under Section 156(3) Cr.P.C., obviously, he has not taken cognizance of the offence and, therefore, it is a pre-cognizance stage and cannot be equated with post-cognizance stage. When a Special Judge takes cognizance of the offence on a complaint presented under Section 200 Cr.P.C. and the next step to be taken is to follow up under Section 202 Cr.P.C. Consequently, a Special Judge referring the case for investigation under Section 156(3) is at pre-cognizance stage.

16. A Special Judge is deemed to be a Magistrate under Section 5(4) of the PC Act and, therefore, clothed with all the magisterial powers provided under the Code of Criminal Procedure. When a private complaint is filed before the Magistrate, he has two options: He may take cognizance of the offence under Section 190 Cr.P.C. or proceed further in enquiry or trial. A Magistrate, who is otherwise competent to take cognizance, without taking cognizance under Section 190, may direct an investigation under Section 156(3) Cr.P.C. The Magistrate, who is empowered under Section 190 to take cognizance, alone has the power to refer a private complaint for police investigation under Section 156(3) Cr.P.C.

21. Learned senior counsel appearing for the appellants raised the contention that the requirement of sanction is

> only procedural in nature and hence, directory or else Section 19(3) would be rendered otiose. We find it difficult to accept that contention. Sub-section (3) of Section 19 has an object to achieve, which applies in circumstances where a Special Judge has already rendered a finding, sentence or order. In such an event, it shall not be reversed or altered by a court in appeal, confirmation or revision on the ground of absence of sanction. That does not mean that the requirement to obtain sanction is not a mandatory requirement. Once it is noticed that there was no previous sanction, as already indicated in various judgments referred to herein above, the Magistrate cannot order investigation against a public servant while invoking powers under Section 156(3) Cr.P.C. The above legal position, as already indicated, has been clearly spelt out in Paras Nath Singh and Subramanium Swamy cases."

31. So, on going through this decision, it is very clear that where jurisdiction is exercised on a complaint filed in terms of Sec.156(3) of Cr.P.C., the Magistrate is required to apply his mind and in such a case, the Special Judge / Magistrate would not refer the matter under Sec.156(3) of Cr.P.C., for investigation against the public servant without a valid sanction order under Sec.19(1) of the Prevention of Corruption Act.

32. It is pertinent to note that in the subsequent decision, in the case of ***L.Narayana Swamy Vs. State of Karnataka*** and

others reported in ***(2016)9 SCC 598,*** Hon'ble Apex Court has held as follows:

> "Having regard to the ratio of the aforesaid judgment, we have no hesitation in answering the questions of law, as formulated in para-10 above, in the negative. In other words, we hold that an order directing further investigation under Sec.156(3) of Cr.P.C., cannot be passed in the absence of valid sanction."

33. It is also just and proper to refer to another decision of Hon'ble Apex Court in the case of ***Maksud Saiyed Vs. State of Gujarath,*** reported in ***(2008) 5 SCC 668***. In the said decision, Hon'ble Apex Court has held as follows:

> "15. This Court in *Pepsi Foods Ltd., V. Special Judicial Magistrate* held as under: (SCC P.760, para 28)
>
> > "28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and

> would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinse the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."
>
> The learned Magistrate in our opinion, shall have kept the said principle in mind."

34. It is also just and proper to refer to a recent decision of Hon'ble Supreme Court in the case of ***Manju Surana Vs. Sunil Kumar Arora,*** reported in ***(2018) 5 SCC 557***. In the said decision, Hon'ble Apex Court has held as follows:

> "33. The catena of judgments on the issue as to the scope and power of direction by a Magistrate under Chapters 12 & 14 is well established. Thus, the question would be whether in cases of the P.C. Act, a different import has to be read qua the power to be exercised under Section 156(3) of the Cr.P.C., i.e., can it be said that on account of Section 19(1) of the P.C. Act, the scope of inquiry under Section 156(3) of the Cr.P.C. can be said to be one of taking cognizance thereby requiring the prior sanction in case of a

> public servant? It is trite to say that prior sanction to prosecute a public servant for offences under the P.C. Act is a provision contained under Chapter 14 of the Cr.P.C. Thus, whether such a purport can be imported into Chapter 12 of the Cr.P.C. while directing an investigation under Section 156(3) of the Cr.P.C., merely because a public servant would be involved, would beg an answer."

Hon'ble Supreme Court has referred the above said case to Larger Bench.

35. On analysing the ratio laid down by the Hon'ble Apex Court, it is clear that Sec.19 of the P.C.Act imposes bar on the Court to take cognizance of an offence till sanction is obtained from the competent authority. The bar is against to take cognizance for the purpose of trial. Hon'ble Apex Court has also time and again called for mandatory compliance of Sec.19 of the P.C. Act and its implication for non-compliance. Hon'ble Apex Court in the case of *Anil Kumar Vs. M.K.Aiyappa'* has held as follows:

> "According to Black's Law Dictionary, the word 'cognizance' means 'jurisdiction' or 'the exercise of jurisdiction' or 'power to try and determine causes'. In common parlance, it means taking notice of. A Court, therefore, is precluded from entertaining a complaint or taking notice it or exercising jurisdiction if it is in respect of a public servant who is accused of an offence alleged to

have been committed during discharge of his official duty."

36. At the same time, the Hon'ble Apex Court has also noted that occasion may arise where the Magistrate may have to exercise its limited power at the pre-cognizance stage, and remarked that mere direction calling for investigation under Sec.156(3) Cr.P.C., is passed at the pre-cognizance stage. However, despite conceding the same, it went on to conclude that since exercise of powers under Sec.156(3) of Cr.P.C., required application of mind, sanction under Sec.19(1) of P.C. Act is mandatory and in the absence of prior sanction, no power can be exercised under Sec.156(3) of Cr.P.C. Said issue came up for reconsideration before the Hon'ble Supreme Court in *Manju Surana Vs. Sunil Arora and others* referred above, wherein the Hon'ble Apex Court after considering the observations made in *Anil Kumar Vs. M.K.Aiyappa* case, raised doubts about the legality of the same and while referring the issue to the Larger Bench remarked that *"we have examined the rival contentions and do find a divergence of opinion, which ought to be settled by a larger bench. There is no doubt that even at the stage of Sec.156(3), while directing an investigation, there has to be an application of mind by the Magistrate. Thus, it may not be an acceptable proposition to contend that there would be some consequences to follow were the Magistrate to act in a mechanical*

and mindless manner. That cannot be the test." Hon'ble Supreme Court would consider these aspects. Till then, prior Sanction is mandatory to forward the complaint for investigation under Sec.156(3) of Cr.P.C.

37. In this case, the allegations of corruption are mainly revolve around accused No.1. It is pertinent to note that during the course of argument, learned Public Prosecutor has presented a memo signed by Sri.D.Rajendra, Dy.S.P., ACB, Bengaluru City and produced xerox copy of the order signed by Sri N.Shivakumar, Under Secretary to Governor (Admin) and in the said letter, it is said that Hon'ble Governor by order dated 23.06.2021 has been pleased to reject the request of the complainant for sanction for prosecution of the Chief Minister of Karnataka.

38. Keeping in view of all these aspects and considering the ratio laid down by the Hon'ble Apex Court, I am of the opinion that there is no room for doubt that the requirement of Sanction is a condition precedent for directing investigation under Sec.156(3) Cr.P.C, which in the present case has not been obtained by the complainant with respect to the accused No.1, 6 and 7, who are public servants. Hence, I hold that the complaint filed by the

complainant praying for referring the same for investigation under Sec.156(3) of Cr.P.C., and interim application filed by the complainant under Sec.156(3) of Cr.P.C., are liable to be dismissed for want of valid sanction. Accordingly, I answer point No.1 and 2 in negative.

39. **Point No.3**: In view of my findings on point No.1 and 2, I proceed to pass the following:

ORDER

Private complaint filed by the complainant under Sec.200 of Cr.P.C., and interim application filed by the complainant under Sec.156(3) of Cr.P.C., are not maintainable in the absence of valid sanction and accordingly dismissed.

(Dictated to the Judgment Writer, transcribed and typed by him, revised and corrected by me and then pronounced in the Open Court on this ***the 8th day of July, 2021****)*

(B. Jayantha Kumar)
LXXXI Addl. City Civil & Sessions Judge,
Bengaluru City (CCH-82)
(Special Court exclusively to deal with criminal cases related to elected MPs/ MLAs in the State of Karnataka)