R

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 22ND DAY OF JULY 2021

BEFORE

THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR

CRIMINAL PETITION No.1422 OF 2021 C/W CRIMINAL PETITION Nos. 1197/2021, 1219/2021 AND 2286/2021

IN Crl.P.No.1422/2021

BETWEEN

1. Sri Sathya Sai Central Trust,
   A Public Charitable Trust having its
   Office at 'Prashanti Nilayam',
   Puttaparthi, Ananthpur District,
   Andhra Pradesh-515134.
   Represented herein by its Trustee,
   Sri. T.K.K.Bhagawat.

2. Sri T.K.K.Bhagawat,
   S/o. Late Sri. T.R.Bhagawat,
   Aged about 87 years,
   Residing at 4072, 'Padma',
   30th Cross, Banashankari 2nd Stage,
   Bengaluru-560070.

…Petitioners

(By Sri. Ashok Haranahalli, Senior Advocate
for Sri. Srinivas Rao S.S., Advocate)

AND

1. State of Karnataka,
   By Nandi Giridhama Police Station,
   Chikkaballapur District,

Represented by the State Public Prosecutor,
High Court Building,
Bengaluru-560001

2. Sri. B.N.Narasimha Murthy,
Aged about 75 years,
S/o. Late Narasimhaiah,
Residing at Satya Sai Grama,
Muddenahalli, Chikkaballapur Taluk,
Chikkaballapur District-562101.

Represented by GPA Holder,
P.V.Govinda Reddy,
Aged 53 years,
S/o. Venkatarayappa,
Resident of Satya Sai Grama,
Muddenahalli, Chikkaballapura Taluk &
Distrist-562101.

…Respondents

(By Sri. B.J.Rohith & Mahesh Shetty, HCGP, for R1,
Sri. Sushil Kumar Jain, Sr.Advocate for
Sri. Adinath Narde, Advocate for R2)

This Criminal Petition is filed under Section 482 Cr.P.C. praying to quash the proceedings in PCR No.216/2020 (Annexure-A) on the file of the II Additional Civil Judge (Jr.Dn.) and JMFC, Chikkaballapur and the consequential First Information Report dated 11.11.2020 (Annexure-B) in Cr.No.73/2020 in the Nandi Giridhama Police Station, Chikkaballapur Taluk and District.

IN Crl.P.No.1197/2021

BETWEEN

Sri. S.S.Naganand,
S/o. Late Sri. S.G.Sundaraswamy,
Aged about 63 years,

Residing at No.50, 'Naman',
2nd Cross, Achaiah Setty Layout,
RMV Extension, Bengaluru-560080.

…Petitioner

(By Sri. K.G.Raghavan, Senior Counsel for
Sri. Madhukar M. Deshpande, Advocate)

AND

1. State of Karnataka,
By Nandi Giridhama Police Station,
Chikkaballapur District,
Represented by the State Public Prosecutor,
High Court Building,
Bengaluru-560001.

2. Sri. B.N.Narasimha Murthy,
Aged about 75 years,
S/o. Late Narasimhaiah,
Residing at Satya Sai Grama,
Muddenahalli, Chikkaballapur Taluk,
Chikkaballapur District-562101.

Represented by GPA Holder,
P.V.Govinda Reddy,
Aged 53 years,
S/o. Venkatarayappa,
Resident of Satya Sai Grama,
Muddenahalli, Chikkaballapur Taluk &
Distrist-562101.

…Respondents

(By Sri. B.J.Rohith & Mahesh Shetty, HCGP for R1,
Sri. Sushil Kumar Jain, Sr.Advocate for
Sri. Adinath Narde, Advocate for R2)

This Criminal Petition is filed under Section 482 Cr.P.C. praying to quash the proceedings in PCR No.216/2020 (Annexure-A) on the file of the Hon'ble II

Additional Civil Judge (Jr.Dn.) and JMFC, Chikkaballapur and the consequential First Information Report dated 11.11.2020 (Annexure-B) in Cr.No.73/2020 in the Nandi Giridhama Police Station, Chikkaballapur Taluk and District.

IN Crl.P.No.1219/2021

BETWEEN

Sri B.R.Vasuki,
S/o. Late B.N.Ranganathan,
Aged about 63 years,
Residing at C-601, Brigade Regency,
8th Main, Malleshwaram,
Bengaluru-560055.

…Petitioner

(By Sri. K.G.Raghavan, Senior Counsel for
Sri. Madhukar M. Deshpande, Advocate)

AND

1. State of Karnataka,
By Nandi Giridhama Police Station,
Chikkaballapur District,
Represented by the State Public Prosecutor,
High Court Building,
Bengaluru-560001

2. Sri. B.N.Narasimha Murthy,
Aged about 75 years,
S/o. Late Narasimhaiah,
Residing at Satya Sai Grama,
Muddenahalli, Chikkaballapur Taluk,
Chikkaballapur District-562101.

Represented by GPA Holder,
P.V.Govinda Reddy,
Aged 53 years,
S/o. Venkatarayappa,

Resident of Satya Sai Grama,
Muddenahalli, Chikkaballapura Taluk &
Distrist-562101.

…Respondents

(By Sri. B.J.Rohith & Mahesh Shetty, HCGP for R1,
Sri. Sushil Kumar Jain, Sr.Advocate for
Sri. Adinath Narde, Advocate for R2)

This Criminal Petition is filed under Section 482 Cr.P.C. praying to quash the proceedings in PCR No.216/2020 (Annexure-A) passed by the file of the Hon'ble II Additional Civil Judge (Jr.Dn.) and JMFC, Chikkaballapur and the consequential First Information Report dated 11.11.2020 (Annexure-B) in Cr.No.73/2020 in the Nandi Giridhama Police Station, Chikkaballapur Taluk and District.

Crl.P.No.2286/2021

BETWEEN

1. Sri K.S.Krishna Bhat,
Aged about 85 years,
Son of late Sri. Sham Bhat,
Residing at Sathya Sai Vihar, Alike,
Bantwal Taluk,
Dakshina Kannada-574235.

2. Sri Nagesh G Dhakappa,
S/o. Late Sri. Gurunath Venkatarao Dhakappa,
Aged about 70 years,
Residing at A204, Rennaiasance Jagruthi,
Ramagondanahalli, Whitefield,
Bengaluru-560055.

…Petitioners

(By Sri. Raghavendra Srivatsa, Advocate and
Sri. K.G.Raghavan, Senior Counsel for
Sri. Madhukar M. Deshpande, Advocate)

AND

1. State of Karnataka,
By Nandi Giridhama Police Station,
Chikkaballapur District,
Represented by the State Public Prosecutor.

2. Sri. B.N.Narasimha Murthy,
Aged about 75 years,
S/o. Late Narasimhaiah,
Residing at Satya Sai Grama,
Muddenahalli, Chikkaballapur Taluk,
Chikkaballapur District-562101.

Represented by GPA Holder,
P.V.Govinda Reddy,
Aged 53 years,
S/o. Venkatarayappa,
Resident of Satya Sai Grama,
Muddenahalli, Chikkaballapura Taluk &
District-562101.

…Respondents

(By Sri. B.J.Rohith & Mahesh Shetty, HCGP for R1,
Sri. Sushil Kumar Jain, Sr.Advocate for
Sri. Adinath Narde, Advocate for R2)

This Criminal Petition is filed under Section 482 Cr.P.C. praying to quash the proceedings in C.C.No.110/2021 (Annexure-A) on the file of the II Additional Civil Judge (Jr.Dn.) and JMFC, Chikkaballapur and the charge sheet dated 10.02.2021 (Annexure-B) filed in C.C.No.110/2021 on the file of II Additional Civil Judge (Junior Division) and JMFC, Chikkaballapur.

These Criminal Petitions having been heard and reserved on 30.6.2021, coming on for pronouncement this day, the court pronounced the following:

ORDER

All these petitions filed under section 482 of Cr.P.C. are decided by a common order as they arise out of C.C.110/2021 (Cr. No. 73/2020 registered by Nandigiridhama Police Station) on the file of II Additional Civil Judge and JMFC, Chikkaballapura.

2. The second respondent lodged a complaint, PCR No. 216/2020, under section 200 Cr.P.C in the court of II Additional Civil Judge and JMFC, Chikkaballapura (referred to as 'Magistrate' hereafter), against the petitioners. The Magistrate referred the case to the police for investigation under section 156(3) Cr.P.C. Thereafter the police registered FIR in Cr. No. 73/2020 and filed charge sheet in relation to offences punishable under sections 420, 511 and 120B of IPC and section 82 of the Indian Registration Act. In Crl.Ps.1197/2021, 1219/2021 and 1422/2021, the

petitioners have sought quashing of FIR. In Crl.P.2286/2021, the petitioner has sought quashing of charge sheet numbered as C.C.110/2021.

3. I have heard the arguments of learned senior counsel Sri Ashok Haranahalli and Sri K.G.Raghavan, and, Sri Raghavendra Srivatsa, learned counsel – all appearing for the petitioners and Sri Sushil Kumar Jain, learned senior counsel appearing for the second respondent. The learned counsel have also submitted the synopsis of their arguments.

4. The points that the learned counsel raised during their arguments will be referred to later, but their arguments give rise to the following points for discussion: -

(i) Whether the allegations made by the second respondent in his complaint constitute offences under sections 420,

511 and 120B IPC and section 82 of the Registration Act?

(ii) Whether the complaint presented by GPA Holder of the complainant is maintainable?

(iii) Whether the complaint is bad in law as it is not accompanied by a proper affidavit required to be filed in accordance with judgment of the Supreme Court in the case of ***Priyanka Srivastava and Another vs State of Uttar Pradesh and Others [(2015) 6 SCC 287]?***

(iv) Is there any procedural infraction in referring the complaint to the police for investigation under section 156(3) Cr.P.C and taking cognizance of the offences?

(v) What conclusion?

Point No. (i):-

5. The complainant claims to be the absolute owner of 4 acres of land in Sy. No. 43 of Chikkamuddenahalli, Nandi Hobli, Chikkaballapura Taluk and District. He has stated in the complaint that the petitioners in Crl.P.1197/2021, 1219/2021 and 2286/2021 executed a lease deed on 20.6.2017 in favour of Sri Satya Sai Central Trust, i.e., the first petitioner in Crl.P.1422/2021 in respect of 37 guntas of land which is a part of his land in Sy. No. 43. He has stated that the vested interests have made attempts to swallow his property with a mala fide intention. This transaction is fraudulent. The executants of the lease deed do not have any right, title or authority over the land in Sy. No. 43. The petitioners attempted to induce the complainant and thereby laid claim on his property through the lease deed dated 20.6.2017. These are the main

allegations. In the complaint, the individual role said to have been played by each petitioner is described in a table.

6. Sri Ashok Haranahalli, Sri K.G.Raghavan and Sri Raghavendra Srivatsa argued that the lease deed dated 20.6.2017 does not comprise of the property belonging to the complainant. They refer to a sale deed dated 17.7.1982 to submit that Satya Sai Loka Trust (referred to as 'Loka Seva Trust' for short) purchased 37 guntas of land in Sy. No. 43 of Chikkamuddenahalli Village from one Muniyappa. On the basis of this sale deed, revenue entries were also effected in the name of Loka Seva Trust. It appears in the year 2012-13, the Tahsildar of Chikkaballapur Taluk without notice to the Loka Seva Trust or its trustees, changed the survey numbers of the lands and thus, 37 guntas of land which was earlier in Sy. No. 43 was assigned a new Sy. No. 23/1. Likewise the

complainant's property measuring 4 acres of land in Sy. No. 27/1 was renumbered as Sy. No. 43. The trustees of Loka Seva Trust, being unaware of this change, executed the lease deed on 20.6.2017 in respect of 37 guntas of land in favour of Satya Sai Central Trust. In the lease deed, the Sy. No. is shown as 43, but it does not mean that the petitioners wanted to defraud the complainant. They also refer to RTC extracts and one document collected by the investigating officer from the Tahsildar to emphasize that due to change in the survey numbers of the lands, the complainant is under an impression that the petitioners have executed the lease deed in respect of his land, which is factually incorrect. If at all he has any grievance, he has to file a civil suit challenging the lease deed. They further submitted that in fact some persons claiming themselves to be the trustees of Loka Seva Trust lodged a complaint in PCR

287/2017 in the Court of Principal Judicial Magistrate I Class, Chikkaballapura, against the petitioners on the same allegations made in the present complaint and that the learned Magistrate refused to take cognizance of the offences. The said complaint was dismissed. This time the complainant has approached the court in his individual capacity.

6.1. They also referred to an order passed by Principal Senior Civil Judge, Bantwal, in O.S.12/2017 and submitted that the persons who had made earlier complaint, i.e., PCR 287/2017 claiming themselves to be the trustees of Loka Seva Trust have been restrained by an order of temporary injunction to claim themselves to be the trustees of Loka Seva Trust. In the said suit, the complainant herein is one of the defendants and the order of temporary injunction is operating against him also. In fact, the complainant has been removed from the Board of

Trustees of Loka Seva Trust. Yet he claims to be the trustee of the said trust, this shows his mala fide intention. It also shows that he approached the court of Magistrate, Chikkaballapura, with unclean hands.

6.2. They argued that if the entire complaint and the documents produced by him along with the complaint are perused, it can be said that they do not disclose any offence. The investigating officer ought not to have filed charge sheet. The complainant has abused the process of law and court. Therefore there is a need for exercising jurisdiction under section 482 of Cr.P.C for quashing the proceedings pursuant to the complaint.

7. Sri Sushil Kumar Jain argued that the petitioners were not authorized to act as trustees of Loka Seva Trust, the question about their authority is pending consideration in civil suits O.S.141/2012, at

Chikkaballapur Court and O.S.12/2017, at Bantwal Court. Therefore they could not have executed the lease deed. Realising that the new survey number of the complainant's land is 43, they hatched a conspiracy to grab the land of the complainant by including it in the lease deed. They were very much aware that the survey numbers of the lands were changed and that since the year 2012-13, the complainant's land bears the survey number 43. The lease deed thus executed by the petitioners contains false averments as to ownership of the land in survey number 43 and they created false documents to support their title with intent to cause damage to the complainant. Therefore the conduct of the petitioners constitutes offences punishable under sections 463, 420, 423, 511 of IPC and section 82 of Indian Registration Act.

7.1. Regarding the earlier private complaint, i.e., PCR 287/2017, learned counsel argued that it was filed by Loka Seva Trust. In the said complaint, the execution of lease deed in respect of 72 acres of land was in question and in the present complaint filed by the complainant, the question is with regard to 37 guntas of land in Sy. No. 43. He emphasized that actually the land measuring 37 guntas comprised in the lease deed is a part of complainant's property and thus his interest is affected. There is a misstatement in Crl.P.No.1422/2021 that PCR 287/2017 was lodged by the present complainant. Since the petitioners have made misstatements, their petitions under section 482 Cr.P.C must be dismissed.

7.2. Sri Sushil Kumar Jain submitted further that the civil consequences do not flow from the contents of the complaint. There are clear allegations that the complainant has been defrauded by creating

false documents. Therefore the contents of the complaint constitute offences. He further submitted that even assuming that there are civil consequences, it cannot be said that criminal action is not permitted.

8. The fact not at dispute is that the complainant was granted 4 acres of land (4.06 acres including kharab) in Sy.No.27/1 of Chikkamudenahalli, Chikkaballapur Taluk, and this is evidenced by a grant certificate dated 04.01.1973. It appears that in the year 2013, the Tahasildar, assigned new survey numbers to some lands, and probably this was consequent to resurvey as the complainant has stated. The investigating officer has collected a document from the Tahasildar in this regard, and the petitioners also do not dispute this; but what they state is that, this change in survey number was effected without notice to them. On account of assigning new survey numbers, the complainant's land

to an extent of 4 acres was given survey No.43, where as the 37 guntas of land purchased by Loka Seva Trust came to be renumbered as Survey No.23/1. Since the petitioners were not aware of the change in survey number when they executed the lease deed on 20.06.2017, they mentioned the survey number of the leased property as 43. The RTC extracts produced indicate that till the year 2013-2014, the land in Sy.No.43 to an extent of 37 guntas stood in the name of the Secretary, Sri Satya Sai Loka Seva Trust. The RTC extract also indicates that from the year 2014-2015 onwards, the name of complainant was entered as owner and cultivator of 4 acres of land in Sy.No.43. It is for this reason that the complainant is asserting that the Loka Seva Trust was not the owner of land in survey No.43 on the date of execution of lease deed. May be that his stand is justifiable, but the petitioners do not claim that the 4 acres of land in Survey No.43

belongs to Loka Seva Trust. Their stand is that survey No.43 was to be mentioned in the lease deed because when Loka Seva Trust purchased the land in the year of 1982, its survey No. was 43, and that the Tahasildar changed the survey numbers of some of the lands of Chikkamudenahalli without intimation to them. It is pertinent to mention here that the complainant has nowhere disputed the sale deed dated 17.07.1982 under which Loka Seva Trust purchased 37 guntas of land. For this reason the complainant cannot say that the petitioners had no authority to execute lease deed in respect of 37 guntas of land on behalf of Loka Seva Trust. The survey number mentioned in the lease deed as 43 may be incorrect, but it can be corrected at any time by executing a rectification deed.

9. Another contention strongly raised by Sri. Sushil Kumar Jain is that 37 guntas of leased land is a

part of complainant's land. If this argument is to be accepted, the complainant must challenge the lease deed by filing a suit, and whether leased land is a part of 4 acres of complainant's land or not, cannot be ascertained without conducting survey. Without taking recourse to this remedy, if he simply alleges that the petitioners have appropriated his land while executing the lease deed, it is not worth acceptance in as much as those issues cannot be decided in a criminal proceeding.

10. Now in the light of the above factual scenario, it is to be examined whether the allegations in the complaint constitute an offence. To constitute an offence under section 420 IPC, the transaction in question must indicate that a person has been deceived and induced fraudulently to deliver a property to any person (another person), or to make, alter or destroy the whole part of a valuable security

or to deliver anything which is signed or sealed and which is capable of being converted into a valuable security. Section 420 has genesis in section 415 IPC and therefore dishonest or fraudulent inducement must be there from the beginning.

11. To attract the offence under Section 120B IPC, there must be an agreement between two or more persons for committing an illegal act or an act which is not illegal by illegal means, and in furtherance of such an agreement, an act should have been committed.

12. Now if the allegations in the complaint are analyzed keeping in view the ingredients of the penal sections referred to above, it can be stated that there is no material for any of these offences. The complainant might have stated in paragraph 9 of the complaint that the accused, i.e., the petitioners herein

attempted to induce him in order to claim his property through the mode of lease deed dated 20.6.2017, but this statement apparently appears to be a falsehood. Reason is that the lease deed was executed by Loka Seva Trust in favour of Central Trust in respect of 37 guntas of land, which does not belong to the complainant. As has been observed already, when the complainant does not dispute the sale deed dated 17.7.1982 under which Loka Seva Trust purchased 37 guntas of land, question of inducing him to lay claim on his property is nothing but his imagination. Therefore the ingredient for invoking the offence under section 420 IPC cannot be made out. For this reason the offence under section 120B IPC must also fail.

13. So far as the offence under section 511 IPC is concerned, it is just an attempt to commit a crime and if there are no ingredients to invoke section 420

IPC, obviously the offence under section 511 IPC cannot be invoked at all. The complaint also does not disclose the essential ingredients of section 82 of the Registration Act. For invoking section 82 of the Registration Act, a person should have made false statement on oath intentionally before an officer under the Act in a proceeding or enquiry; or intentionally delivered to the registering officer in any proceeding under section 19 or 21, a false copy or translation of a document or a false copy of a map or plan; or falsely personates another and in that character presents a document; or abets anything punishable under the Act. Allegations constituting an offence for these reasons are not there in the complaint. The lease deed does not appear to be a false document; and false statement in it is difficult to be made out.

14. The learned counsel for the petitioners has relied upon a judgment of the Supreme Court in the

case of ***Indian Oil Corporation vs NEPC India Limited and Others [(2006) 6 SCC 736].*** This decision has set out the following principles to be followed for exercising jurisdiction under section 482 Cr.P.C.

> *"12. ……..*
>
> *(i) A complaint can be quashed where the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out the case alleged against the accused.*
>
> *(emphasis supplied)*
>
> *For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.*

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with malafides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic

facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out : (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.

13. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is

obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable break down of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged. In G. Sagar Suri vs. State of UP [2000 (2) SCC 636], this Court observed :

"It is to be seen if a matter, which is essentially of civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a

great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this Section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice."

15. The learned counsel for the complainant Sri Sushil Kumar Jain has referred to a decision of the Supreme Court in the case of ***LALMUNIDEVI (SMT) vs STATE OF BIHAR AND OTHERS [(2001) 2 SCC 17]*** in which it is clearly held as below : -

"8. <u>There could be no dispute to the proposition that if the complaint does not make out an offence it can be quashed. However, it is also settled law that facts may give rise to a civil claim and also amount to an offence. Merely because a civil claim is maintainable does not mean that the criminal complaint cannot be</u>

maintained. In this case, on the facts, it cannot be stated, at this prima facie stage, that this is a frivolous complaint. The High Court does not state that on facts no offence is made out. If that be so, then merely on the ground that it was a civil wrong the criminal prosecution could not have been quashed."

(emphasis supplied)

16. Another decision relied upon by Sri Sushil Kumar Jain is ***Vinod Raghuvanshi vs Ajay Arora and Others [(2013) 10 SCC 581].*** He has referred to para 30, where it is held :

"30. It is a settled legal proposition that while considering the case for quashing of the criminal proceedings the court should not "Kill a stillborn child", and appropriate prosecution should not be stifled unless there are compelling circumstances to do so. An investigation should not be shut out at the threshold if

the allegations have some substance. When a prosecution at the initial stage is to be quashed, the test to be applied by the court is whether the uncontroverted allegations as made, prima facie establish the offence. At this stage neither can the court embark upon an inquiry, whether the allegations in the complaint are likely to be established by evidence nor should the court judge the probability, reliability or genuineness of the allegations made therein. More so, the charge-sheet filed or charges framed at the initial stage can be altered/amended or a charge can be added at the subsequent stage, after the evidence is adduced in view of the provisions of Section 216 Cr.P.C. So, the order passed even by the High Court or this Court is subject to the order which would be passed by the trial court at a later stage.

17. Assuming for argument sake that Loka Seva Trust had no authority or right to execute the lease deed, and thereby the petitioners committed fraud or

cheating, the aggrieved party in that event is the lessee i.e., Satya Sai Central Trust, not the complainant. Interestingly Satya Sai Central Trust is also one of the accused in the complaint. The complainant is a third party to the transaction between two trusts and therefore the complainant's locus to file a complaint can be doubted. In this context, a decision of the Supreme Court in the case of ***Mohammed Ibrahim and Others vs State of Bihar and Another [(2009) 8 SCC 751]*** may be referred here.

> *"23. When we say that execution of a sale deed by a person, purporting to convey a property which is not his, as his property, is not making a false document and therefore not forgery, we should not be understood as holding that such an act can never be a criminal offence. If a person sells a property knowing that it does not belong to him, and thereby defrauds the*

> *person who purchased the property, the person defrauded, that is the purchaser, may complain that the vendor committed the fraudulent act of cheating. <u>But a third party who is not the purchaser under the deed may not be able to make such complaint.</u>*
>
> *(emphasis supplied)*

18. If the material facts in the instant case are analyzed in the background of the principles set out in the above decisions, it is difficult to say that the complaint discloses offences alleged by the complainant. As has been already observed, he has to take recourse to a civil action if really he is under the impression that his land has been included in the lease deed. It is not the case of the complainant that there is forgery, that a false document is created and that there is impersonation. 37 guntas of land belongs to Loka Seva Trust, about which there is no dispute and cannot be disputed also. If in respect of

that land, lease deed was executed, it does not amount to cheating. The complainant cannot taint these uncontroverted facts with the colour of criminality. The dispute is purely civil in nature.

19. Another point to be mentioned here is that on an earlier occasion, some of the trustees of Loka Seva Trust made a complaint i.e., PCR 287/2017. In the earlier complaint, there was an allegation that the petitioners executed lease deed in respect of all the properties of Loka Seva Trust fraudulently. The court did not take cognizance; the complaint was dismissed at the threshold. It is true that in the earlier complaint, the complainant herein was not a party; but it was filed by some persons claiming themselves to be the trustees of Loka Seva Trust. If once the court of competent jurisdiction did not take cognizance of the offences when a complaint was made and the said order became final, another

complaint on the same allegations though filed by the complainant in his individual capacity, cannot be said to be maintainable. Thus I come to conclusion that point No.(i) is to be answered in negative.

Point No.(ii)

20. Sri. K.G.Raghavan and Sri. Raghavendra Srivatsa raised the question of competency of the power of attorney holder of the complainant to present a complaint under section 200 of Cr.P.C. They argued that at the time when the complaint was presented to the court, original power of attorney was not produced; and it was only at a later stage that original was produced. But the original produced at a later stage is not the original of the photocopy of the power of attorney that had been produced along with the complaint. They submitted that the records from the Magistrate's court could be secured for verifying whether the original power of attorney was produced

before the court at the time of presentation of complaint or not.

21. The original records were secured and on verification, it is found that what had been produced with the complaint was a photocopy of the power of attorney dated 11.06.2020. It is also borne out from the order sheet that when one of the petitioners applied for issuing certified copy of the power of attorney, the office of JMFC declined to issue the certified copy for the reason that certified copy of a photocopy cannot be issued. It was on 15.02.2021 that original power of attorney dated 11.02.2021 was produced by advancing the case. But it is not the original of the photocopy produced at the time of presentation of the complaint. Any way the fact remains that the complainant is represented by his agent, the controversy in this regard is not material. But Sri K.G. Raghavan and Raghavendra Srivatsa

argued another point about locus standi of the power of attorney holder to present a complaint because he is not the real aggrieved party. They submitted that the complaint should have been presented by the complainant personally.

22. Sri. Sushil Kumar Jain met this argument by referring to the judgment of the Supreme Court in the case of ***A.R.Antulay vs Ramdas Sriniwas Nayak and Another [(1984) 2 SCC 500].*** His argument was that anybody can set the criminal law into motion unless a statute provides very specifically as to eligibility of a complainant.

23. It cannot be said that there is no substance in the argument of Sri. K.G.Raghavan and Sri Raghavendra Srivatsa. If I am asked to express my personal view about competency of a person to present a complaint under section 200 Cr.P.C, I

humbly express my view that, section 2(d) defines the word 'complaint' which means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report. The word 'complainant' is not defined, however in sections 195, 195A, 198, 198A, 198B and 199 of Cr.P.C. it is clearly specified as to who can make a complaint. So also there are some special laws where provisions are made for taking cognizance of offences upon a complaint by authorized or designated officers. So, except in the cases where the law in clear terms states as to who is competent to lodge a complaint, there is no bar as such for a third party to set criminal law into motion for prosecuting the perpetrators of crime. That is the reason why anybody can report a cognizable offence to the police. But here in my

opinion, a further distinction can be made. Offences such as theft, robbery, dacoity, attempt to murder, murder, rape, etc, have impact on the society and in respect of such offences anybody can set law into motion. But there are certain offences which do not generally affect the society except the person affected. This is the reason why section 320 Cr.P.C. provides for compounding of some of the offences that more affect a person, called aggrieved party, than society at large. At least in these types of compoundable offences, in my opinion, a complaint under section 200 Cr.P.C. has to be lodged by the aggrieved party.

24. The Hon'ble Supreme Court in the case of ***A.R.Antulay (supra)*** has held,

> *"6. It is a well recognised principle of criminal jurisprudence that anyone can set or put the criminal law into motion except*

where the statute enacting or creating an offence indicates to the contrary. The scheme of the Code of Criminal Procedure envisages two parallel and independent agencies for taking criminal offences to court. Even for the most serious offence of murder, it was not disputed that a private complaint can, not only be filed but can be entertained and proceeded with according to law. Locus standi of the complainant is a concept foreign to criminal jurisprudence save and except that where the statute creating an offence provides for the eligibility of the complainant, by necessary implication the general principle gets excluded by such statutory provision……."

25. The principle enunciated by the Hon'ble Supreme Court is binding as it is the law of the land. Therefore the argument of Sri. Sushil Kumar Jain is to be accepted. Moreover, here, the power of attorney holder cannot be treated as a third party, he is the

agent of the complainant, his locus standi cannot be questioned. Point No.(ii) is answered in affirmative.

Point No.(iii)

26. The learned counsel for the petitioners, mainly Sri. K.G. Raghavan, assailed the complaint on the count that the complainant had not filed an affidavit as mandated by the Supreme Court in the case of ***PRIYANKA SRIVASTAVA AND ANOTHER vs STATE OF U.P. AND OTHERS [(2015) 6 SCC 287].*** Elaborating on this point, it was argued by him that the complainant should make a specific statement in the complaint that he exhausted the remedies under Section 154(1) and Section 154(3) of Cr.P.C. before approaching the court under Section 200 Cr.P.C. The complainant is also required to produce proof for having exhausted the remedies contemplated under Section 154(1) and Section 154(3) of Cr.P.C. and file an affidavit to that effect as

held by the Supreme Court in ***Priyanka Srivastava***. In the case on hand nothing is there indicating the remedies under Section 154(1) and Section 154(3) Cr.P.C. being availed and that no affidavit is also filed. The affidavit filed with the complaint is very cryptic and it does not meet the requirement of the mandate in ***Priyanka Srivastava***. The learned counsel also submitted that ***Priyanka Srivastava*** has been consistently followed by this court in many cases viz., ***C.T.RAVI vs STATE OF KARNATAKA AND OTHERS (MANU/KA/4396/2020); JAN WILLEM ADRIAAN DE GEUS AND ORS. vs. STATE OF KARNATAKA AND OTHERS (MANU/KA/2900/ 2017); NITHEESH AND OTHERS vs STATE OF KARNATAKA AND OTHERS (MANU/KA/7499/ 2019) and SHOBHA RANI & OTHERS vs STATE OF KARNATAKA AND OTHERS (MANU/KA/4409/ 2019).*** All the counsel argued in unison that the

complaint deserves to be quashed for this reason alone.

27. Sri. Sushil Kumar Jain, per contra argued that the order dated 3.11.2020 shows that the Magistrate has made verification regarding veracity of the complaint and then referred the matter for investigation which is in accordance with the judgment in ***Priyanka Srivastava***. His further submission was that the direction given in ***Priyanka Srivastava*** to exhaust remedy under Section 154(1) is merely recommendatory, and it does not take away the power of the Magistrate under Section 156(3) Cr.P.C., to refer the matter for investigation. He also submitted that the direction in ***Priyanka Srivastava*** is to discourage frivolous complaints, and that the present complaint is not frivolous.

28. The direction given in ***Priyanka Srivastava*** has been held to be mandatory in many judgments of this court (referred supra). It is not mere directory or recommendatory as argued by Sri. Sushil Kumar Jain. In the case on hand, of course an affidavit has been filed, it is just a verifying affidavit and does not indicate that the complainant exhausted the remedies under Section 154(1) and Section 154(3) Cr.P.C. There is nothing to show that he approached the jurisdictional police first and then the Superintendent of Police. The case on hand is such that the complainant cannot straight away approach the court of Magistrate with a complaint under Section 200 Cr.P.C., unlike, for instance, a complaint for the offence under Section 138 of N.I.Act, where the law itself prescribes that the Magistrate can only entertain a complaint. The Magistrate appears to have not

applied his mind before proceeding further. He ought to have directed the complainant to file a proper affidavit. Thus looked, entertaining the complaint is bad in law, the complaint should have been rejected at the threshold. Therefore point No.(iii) is answered in affirmative.

Point No.(iv)

29. The learned counsel for the petitioners have founded their argument on the premise that once the learned Magistrate applied his judicial mind and posted the case for recording the sworn statement of the complainant, it amounted to taking cognizance and he could not have reverted the case to pre-cognizance stage by referring the matter to police investigation. They referred to the order sheet of the proceeding in the complaint to substantiate their argument. They further argued that it is not

necessary that the Magistrate must specifically make an endorsement "cognizance taken" on the complaint or in the order sheet. But, if he once decides on perusing the complaint that it discloses the commission of an offence and there is no reason to reject the complaint at that stage and proceeds further in the matter, it must be held that the cognizance has been taken. The learned counsel submitted that once cognizance is taken, the complaint cannot be referred to police for investigation. The procedure adopted by the Magistrate is contrary to law and therefore on this ground the FIR as also the charge sheet filed by the police are to be quashed. They have placed reliance on some rulings which will be referred to later.

30. Sri. Sushil Kumar Jain submitted that the Magistrate was right in referring the matter for investigation by the police. According to him the

Magistrate did not take cognizance at the initial stage. The order sheet does not indicate that the Magistrate took cognizance of the offence either on 03.11.2020 or any date prior to it. Only thing that can be discerned from the order sheet is that on 03.11.2020, the Magistrate applied his mind on the allegations made in the complaint, and on verification of the documents filed with the complaint, he felt that there was a case for police investigation. The Magistrate took cognizance only after charge sheet was filed. He too based his arguments on some rulings.

31. Before dealing with the arguments, given a look at the order sheet, it discloses the following proceedings:

i) The complaint was filed on 26.06.2020.

ii) After verification by the office, the Principal Civil Judge and JMFC made over the case to the court of II Additional Civil Judge & JMFC,

Chikkaballapura vide his order dated 27.06.2020.

iii) The case was called for the first time in the court of II Additional Civil Judge & JMFC on 29.06.2020, and it was posted to 03.08.2020 for recording sworn statement of the complainant.

iv) On 03.08.2020, the case was adjourned to 16.09.2020, for recording sworn statement.

v) On 16.09.2020, the court did not function as it was closed due to Covid-19, and case was adjourned to 03.11.2020.

vi) On 03.11.2020, the Magistrate ordered for police investigation.

32. Therefore it is true that the Magistrate in the first instance, wanted to record the sworn statement of the complainant.

33. Now in a situation like this, is it possible to say that the Magistrate did take cognizance, is the actual question, which is purely procedural. It

requires interpretation of sections 200 to 204 of Cr.P.C. But before answering this question, it is necessary to mention here the answers given by Sri. K.G.Raghavan and Sri. Raghavendra Srivatsa to a clarification sought by me. The question put to them was, if in the context of language of Section 200 Cr.P.C., because of the presence of the word "taking", a present participle, can it be said that the stage of taking cognizance precedes the recording of sworn statement. Sri. K.G.Raghavan replied that grammatical or literal interpretation is not permitted in criminal cases, that it is permitted only while interpreting fiscal laws and that what is required is contextual interpretation.

34. Sri. Raghavendra Srivatsa also replied that Section 200 Cr.P.C. must be interpreted in the context of purpose behind recording sworn statement. It is for the purpose of proceeding against the accused who

has committed a crime, and for this reason the Magistrate should be convinced that an offence has taken place. Therefore cognizance of an offence must first be taken before recording the sworn statement. To garner support for his argument that grammatical interpretation should not be resorted to, he relied upon a judgement of the Supreme Court in the case of ***R.L.ARORA vs STATE OF UTTAR PRADESH AND OTHERS (AIR 1964 SC 1230).***

35. Now I refer to the decisions relied upon by the petitioners counsel. In ***CREF FINANCE LTD vs. SHREE SHANTHI HOMES (P)LTD AND ANOTHER [(2005)7 SCC 467]*** it is held:

> *"10. In the instant case, the appellant had filed a detailed complaint before the Magistrate. The record shows that the Magistrate took cognizance and fixed the matter for recording of statement of the complainant on 01.06.2000. Even if*

we assume, though that is not the case, that the words "cognizance taken" were not to be found in the order recorded by him on that date, in our view that would make no difference. The cognizance is taken of the offence and not of the offender and, therefore, once the Court on perusal of the complaint is satisfied that the complaint discloses the commission of an offence and there is no reason to reject the complaint at that stage, and proceeds further in the matter, it must be held to have taken cognizance of the offence. One should not confuse taking of cognizance with issuance of process. Cognizance is taken at the initial stage when the Magistrate peruses the complaint with a view to ascertain whether the commission of any offence is disclosed. The issuance of process is at a later stage when after considering the material placed before it, the Court decides to proceed against the offenders against whom a prima facie case is made out. It is possible that a complaint may be filed

against several persons, but the Magistrate may choose to issue process only against some of the accused. It may also be that after taking cognizance and examining the complainant on oath, the Court may come to the conclusion that no case is made out for issuance of process and it may reject the complaint. It may also be that having considered the complaint, the Court may consider it appropriate to send the complaint to police for investigation under Section 156(3) of the Code of Criminal Procedure. We can conceive of many other situations in which a Magistrate may not take cognizance at all, for instance, a case where he finds that the complaint is not made by the person who in law can lodge the complaint, or that the complaint is not entertainable by that Court, or that cognizance of the offence alleged to have been committed cannot be taken without the sanction of the competent authority etc. These are cases where the Magistrate will refuse to take cognizance and return

the complaint to the complainant. But if he does not do so and proceeds to examine the complainant and such other evidence as the complainant may produce before him then, it should be held to have taken cognizance of the offence and proceeded with the inquiry. We are, therefore, of the opinion that in the facts and circumstances of this case, the High Court erred in holding that the Magistrate had not taken cognizance, and that being a condition precedent, issuance of process was illegal."

36. In ***DEEPASHREE M.KARANTH vs STATE OF KARNATAKA AND ANOTHER (2016 SCC ONLINE KAR 962)***, the coordinate bench of this court has referred to the decision of the Supreme Court in the case of **MADHAO vs STATE OF MAHARASTRA** [(2013) 5 SCC 615] where it is held:

"Once Magistrate takes cognizance and embarks upon procedure embodied in Ch. XV of Cr.P.C. (containing Sections 200 to

203), he cannot revert back to pre-cognizance stage and avail of Section 156(3).”

37. In ***DEVARAPALLI LAKSHMINARAYANA REDDY AND OTHERS vs V. NARAYANA REDDY AND OTHERS [(1976) 3 SCC 252],*** a decision referred by Sri. Sushil Kumar Jain, it is held,

“14. This raises the incidental question: What is meant by "taking cognizance of an offence”' by a Magistrate within the contemplation of s. 190? This expression has not been defined in the Code. But from the scheme of the Code, the content and marginal heading of s. 190 and the caption of Chapter XIV under which ss. 190 to 199 occur, it is clear that a case can be said to be instituted in a Court only when the Court takes cognizance of the offence alleged therein. The ways in which such cognizance can be taken are set out in clauses (a), (b) and (c) of Section 190(1).

Whether the Magistrate has or has not taken cognizance of the offence will depend on the circumstances of the particular case including the mode in which the case is sought to be instituted and the nature of the preliminary action, if any, taken by the Magistrate. Broadly speaking, when on receiving a complaint, the Magistrate applies his mind for the purposes of proceeding under s. 200 and the succeeding sections in Chapter XV of the Code of 1973, he is said to have taken cognizance of the offence within the meaning of s. 190(l)(a). If, instead of proceeding under Chapter XV, he has in the judicial exercise of his discretion, taken action of some other kind, such as issuing a search warrant for the purpose of investigation, or ordering investigation by the police under s. 156(3), he cannot be said to have taken cognizance of any offence."

38. The Word "Cognizance" is not defined in Cr.P.C. as has been held by the Supreme Court in the case of ***AJIT KUMAR PALIT VS. STATE OF W.B. (1963 Supp (1) SCR 953)***, the word cognizance takes the meaning 'become aware of', and when used with reference to a court or judge, 'to take notice judicially'. It is also settled principle that cognizance is taken of offence/offences, and not of the offender. But once cognizance is taken, next step is to secure presence of accused before the court, for which process must be issued. Therefore taking cognizance is quite different from issuance of process; the former precedes the latter.

39. If the Magistrate finds no materials for taking cognizance, it is quite obvious that process need not be issued to the accused and the complaint must be rejected and this is the aspect discussed in ***CREF Finance Ltd***. But here, since the argument of

the petitioners' counsel mainly concerned with the procedure of taking cognizance, it requires consideration.

40. According to section 190 of Cr.P.C., a Magistrate may take cognizance of an offence

(a) upon receiving a complaint of facts constituting an offence.

(b) Upon a police report

(c) Upon information received from any person other than a police officer, or upon his own knowledge that an offence has been constituted.

41. Therefore, Section 190 Cr.P.C. is the empowering provision. It does not prescribe any procedure. It is in sections 200 to 203 Cr.P.C. that procedure is found. Of course, there are different views about the procedure to be followed and it has

led to anomaly. Since sections 200 to 203 Cr.P.C. deal with the procedure, any interpretation to be given must be in the context of following the procedure and nothing more. In fact Sri. K.G.Raghavan and Sri. Raghavendra Srivasta insisted on giving contextual interpretation. Indeed, ***in CREF Finance Ltd.,*** it is observed, (para10)

> *"10. …….It may also be that after taking cognizance and examining the complainant on oath, the court may come to the conclusion that no case is made out for issuance of process and it may reject the complaint……..."*

42. I may state humbly that the decision in ***CREF*** does not set out any procedure, and that the above extraction does not indicate it. It is held in many decisions, and it is a well established principle that cognizance cannot be taken by a Magistrate unless he is convinced that there are sufficient

materials indicative of an offence having been committed. This being the position of law, a question may further be raised as to how a Magistrate can arrive at such a conclusion. If thought process in the mind of the Magistrate is sufficient to take cognizance, what is the necessity of examining the complainant on oath and the witnesses. Straight away process may be ordered against the accused if cognizance is taken before examining the complainant, and the witnesses. This approach some how appears to be unconvincing. Therefore, it can be stated that the purpose behind examining the complainant on oath and the witnesses, if any, is to arrive at conclusion whether any offence has taken place or not. If this is not the purpose, section 200 loses its significance. At this juncture, I may refer to the judgment of the Hon'ble Supreme Court in the case of ***A.R.Antulay*** where there is an inkling to the procedure to be followed.

"31…… We find no merit in the submissions. As has been distinctly made clear that a Court of special Judge is a court of original criminal jurisdiction and that it can take cognizance of an offence in the manner hereinbefore indicated, it may be that in order to test whether the complaint disclosed a serious offence or that there is any frivolity involved in it, the Judge may insist upon holding an inquiry by postponing the issue of process. When a private complaint is filed, the court has to examine the complainant on oath save in the cases set out in the proviso to Sec. 200 Cr.P.C. After examining the complainant on oath and examining the witnesses present, if any, meaning thereby that the witnesses not present need not be examined, it would be open to the court to judicially determine whether a case is made out for issuing process. When it is said that court issues process, it means the court has taken cognizance of the offence and has decided

to initiate the proceeding and as a visible manifestation of taking cognizance, process is issued which means that the accused is called upon to appear before the court. This may either take the form of a summons or a warrant, as the case may be. It may be that after examining the complainant and his witnesses, the court in order to doubly assure itself may postpone the issue of process, and call upon the complainant to keep his witnesses present……"

(emphasis supplied)

43. Again in the case of ***S.R.Sukumar Vs. Sunaad Raghuram (Criminal Appeal No.844/2015) (ILR 2016 KAR 1)*** the Hon'ble Supreme Court has held,

"11. "Cognizance" therefore has a reference to the application of judicial mind by the Magistrate in connection with the commission of an offence and not merely to a Magistrate learning that some offence had been committed. Only upon

examination of the complainant, the Magistrate will proceed to apply the judicial mind whether to take cognizance of the offence or not. Under Section 200 Cr.P.C., when the complainant is examined, the Magistrate cannot be said to have ipso facto taken the cognizance, when the Magistrate was merely gathering the material on the basis of which he will decide whether a prima facie case is made out for taking cognizance of the offence or not. "Cognizance of offence" means taking notice of the accusations and applying the judicial mind to the contents of the complaint and the material filed therewith. It is neither practicable nor desirable to define as to what is meant by taking cognizance. Whether the Magistrate has taken cognizance of the offence or not will depend upon facts and circumstances of the particular case."

44. The Hon'ble Supreme Court in the case of ***Vijay Dhanuka and Others vs Najima Mamtaj and Others [(2014) 14 SCC 638]*** held,

> *"9. Under Section 200 of the Code, on presentation of the complaint by an individual, other than public servant in certain contingency, the Magistrate is required to examine the complainant on solemn affirmation and the witnesses present, if any. Thereafter, on perusal of the allegations made in the complaint, the statement of the complainant on solemn affirmation and the witnesses examined, if any, various options are available to him. If he is satisfied that the allegations made in the complaint and statements of the complainant on oath and the witnesses constitute an offence, he may direct for issuance of process as contemplated under Section 204 of the Code. In case, the Magistrate is of the opinion that there is no sufficient ground for proceeding, the option*

available to him is to dismiss the complaint under Section 203 of the Code. If on examination of the allegations made in the complaint and the statement of the complainant on solemn affirmation and the witnesses examined, the Magistrate is of the opinion that there is no sufficient ground for proceeding, the option available to him is to postpone the issue of process and either inquire the case himself or direct the investigation to be made by a police officer or by any other person as he thinks fit. This option is also available after the examination of the complainant only."

45. Therefore, it becomes amply clear from the above decisions that the purpose of examination of the complainant after presentation of the complaint is only to gather materials in order to decide whether prima facie case exists or not for taking cognizance. Fortified by the above judgments, on further analysis of sections 200 to 203 Cr.P.C., it is possible to state

that: Chapter XV of Cr.P.C., is about "Complaints to Magistrate" consisting of Sections 200 to 203. Section 204 is found in chapter XVI with the heading 'Commencement of proceedings before the Magistrate'. These sections are sequentially arranged in two chapters with a definite purpose. That means when a complaint is lodged, the Magistrate has to first ascertain whether there exists materials to arrive at a conclusion that an offence has taken place so that presence of the accused can be secured before the court. This is possible on perusing the complaint and examining the complainant and the witnesses if any. Examination is not necessary in a circumstance specified in clauses (a) & (b) of the proviso to section 200 Cr.P.C.

46. After examination of the complainant, if the Magistrate is convinced that an offence might have taken place, he must proceed to issue process to the

accused under section 204 Cr.P.C. Section 201 states that if the Magistrate finds that he is not competent to take cognizance, the complaint must be returned to the complainant if the complaint is in writing, and if it is not in writing, the complainant must be directed to the proper court.

47. Section 202 Cr.P.C. contemplates a further procedure which can be resorted to by a Magistrate in a situation where even after examining the complainant and the witnesses if any, under section 200 Cr.P.C., if he is not convinced and thinks that further inquiry is necessary, he may postpone the issuance of process and can proceed further in one of the three ways, i.e., he can inquire into the case himself, or direct an investigation to be made by a police officer, or he can direct an investigation by any other person. If the accused resides at a place beyond the area of the jurisdiction of a Magistrate, the

procedure contemplated in sub-section (1) of section 202 Cr.P.C. is mandatory, and discretionary in other cases. The proviso states that direction for investigation shall not be given

(a) if the Magistrate finds that the offence complained of is exclusively triable by the Court of Sessions or

(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under Section 200.

48. Therefore according to clause (b) of the proviso, investigation by a police officer or any other person cannot be directed in a case where the complaint is not made by the Court, meaning thereby that the complaint should have been made by an individual and he and his witnesses (if any) should

have been examined. That means to say that even after examining the complainant and the witnesses, there is scope for investigation either by the police officer or any person for the purpose of satisfying whether there are sufficient grounds to take cognizance in order to issue process to the accused. It is to be made clear that investigation by a police officer under section 202 cannot be understood that it is an investigation ordered under section 156(3) Cr.P.C.

49. If the Magistrate is of the opinion that even after an inquiry or investigation contemplated under Section 202, he does not find sufficient materials, he may dismiss the complaint. If the language of Section 203 is read, it becomes so clear that he can dismiss the complaint if he finds that the statements of the complainant and the witnesses, and the result of inquiry does not afford a ground for proceeding

further to issue process. That means he can dismiss the complaint without taking cognizance. Given a conjoint reading to sections 200 to 203, it is possible to state that cognizance of an offence cannot be taken unless the procedure contemplated under Section 200 and if need be, Section 202 is followed. These two sections cannot be construed in such a way as to say that taking of cognizance should be followed by recording of sworn statement of the complainant and examination of witnesses.

50. This aspect can be examined from another angle also. Section 156(3) Cr.P.C. empowers a Magistrate to refer a complaint for police investigation. Even to refer a complaint for investigation by the police, the Magistrate must be convinced from the contents of the complaint that an offence appears to have taken place and therefore it requires investigation. To arrive at this conclusion, he

must apply his mind to contents of the complaint. This aspect has been made clear by the Hon'ble Supreme Court in the case of ***RAMDEV FOOD PRODUCTS PVT. LTD., vs STATE OF GUJARAT (AIR 2015 SC 1742).*** Referring to the earlier judgment it is held:

> *"20. It has been held, for the same reasons, that direction by the Magistrate for investigation under Section 156(3) cannot be given mechanically. In Anil Kumar vs. M.K. Aiyappa[5], it was observed :*
>
> > *"11. The scope of Section 156(3) CrPC came up for consideration before this Court in several cases. This Court in Maksud Saiyed case [(2008) 5 SCC 668] examined the requirement of the application of mind by the Magistrate before exercising jurisdiction under Section 156(3) and held that where*

jurisdiction is exercised on a complaint filed in terms of Section 156(3) or Section 200 CrPC, the Magistrate is required to apply his mind, in such a case, the Special Judge/Magistrate cannot refer the matter under Section 156(3) against a public servant without a valid sanction order. The application of mind by the Magistrate should be reflected in the order. The mere statement that he has gone through the complaint, documents and heard the complainant, as such, as reflected in the order, will not be sufficient. After going through the complaint, documents and hearing the complainant, what weighed with the Magistrate to order investigation under Section 156(3) CrPC, should be reflected in the order, though a detailed expression of his views is neither required nor warranted. We have already extracted the order

passed by the learned Special Judge which, in our view, has stated no reasons for ordering investigation."

The above observations apply to category of cases mentioned in Para 120.6 in Lalita Kumari (supra).”

(emphasis supplied)

51. Whenever a Magistrate decides to refer a complaint to investigation by police under Section 156(3) Cr.P.C., he does not take cognizance, he awaits the filing of charge sheet and takes cognizance based on the charge sheet materials. Sri K.G.Raghavan’s argument is that arriving at a satisfaction to record the sworn statement would itself amount to taking cognizance. Now, if his analogy were to be accepted, even application of mind by the Magistrate to find out whether the matter requires police investigation, would amount to taking cognizance. This is the anomaly that emerges if his

argument is accepted. Therefore the correct position appears to be, cognizance cannot be taken unless the Magistrate arrives at a satisfaction about occurrence of an offence only after going through the complaint and examining the complainant on oath and the witnesses if required.

52. Sections 200 and 202 Cr.P.C., can be grammatically interpreted to gather the true meaning of the language of the sections. Though Sri K.G.Raghavan argued that grammatical interpretation cannot be applied in criminal matters, his argument cannot be accepted. There is no bar as such. Sri Raghavendra Srivasta also argued in the same way and has placed reliance on the judgment of the Supreme Court in the case of ***R.L.Arora.*** It is held,

> *"8. The first question that falls for consideration is the construction of cl. (aa) of sub-s. (1) of s. 40 of the Act. The*

amendments to s. 41 are consequential and will stand or fall with cl. (aa) inserted in s. 40(1). It is contended on behalf of the petitioner that on a literal construction of this clause (which, it is urged, is the only possible construction) it requires that the company which is acquiring the land should be engaged or should be taking steps for engaging itself in any industry or work, which is for a public purpose. If a company satisfies that requirement it can acquire land for the construction of some building or work, even though that building or work may not itself subserve such public purpose. Therefore, the argument runs that cl. (aa) permits compulsory acquisition of land for a purpose other than a public purpose and is hit by Art. 31(2) of the Constitution, whereunder land can be compulsorily acquired only for a public purpose. It may be conceded that on a literal construction the adjectival clause, namely, "which is engaged or is taking steps for engaging itself in any industry or

work which is for a public purpose", qualifies the word "company" and not the words "building or work" for the construction of which the land is needed. So prima facie it can be argued with some force that all that cl. (aa) requires is that the company for which land, is being acquired should be engaged or about to be engaged in any industry or work which is for a public purpose and it is not required that the building or work, for the construction of which land is acquired should be for such public purpose".

It is also held in para 9 that,

"9. …… Further, a literal interpretation is not always the only interpretation of a provision in a statute and the court has to look at the setting in which the words are used and the circumstances in which the law came to be passed to decide whether there is something implicit behind the words

actually used which would control the literal meaning of the words used in a provision of the statute. It is permissible to control the wide language used in a statute if that is possible by the setting in which the words are used and the intention of the law-making body which may be apparent from the circumstances in which the particular provision came to be made. Therefore, a literal and mechanical interpretation is not the only interpretation which courts are bound to give to the words of a statute; and it may be possible to control the wide 'language in which a provision is made by taking into account what is implicit in it in view of the setting in which the provision appears and the circumstances in which it might have been enacted …….”

53. In this judgment it is found that the Hon’ble Supreme Court employed grammatical construction of the statute besides applying purposive interpretation.

Therefore I am of the opinion that the grammatical interpretation will remove the anomaly.

54. Section 200 contains an expression, "A Magistrate taking cognizance of an offence…." If this expression is slightly modified to read it as, 'A Magistrate having taken cognizance', the language in section 200 can be interpreted. The word 'taking' is a present participle which denotes an action in progress or action not completed. On the contrary, the words 'having taken', a perfect participle, denote a completed action. If a question is put as to which action is in progress, the answer would obviously be the process of taking cognizance. Because the words '*having taken'* are not used in Section 200, it is not possible to say that the stage of taking cognizance should precede examination of the complainant on oath. However, the same interpretation cannot be given to section 204. Sub section (1) of section 204,

reads: "If in the opinion of Magistrate taking cognizance……". The word "taking" though is a present participle, it does not convey the meaning that action is in progress. The reason is quite obvious. Section 204 deals with issuance of process to the accused, which stage arises only after taking cognizance. Since process cannot be issued unless cognizance is taken, the word 'taking' here takes the meaning action completed given a contextual interpretation.

55. Based on the above discussion, the cognizance taking procedure to be followed may be set out as follows :-

(i) After presentation of the complaint, the Magistrate must read the complaint and if he finds on the face of it, commission of an offence or offences is not disclosed, he can reject or dismiss the

complaint. But the Magistrate must be slow in rejecting the complaint just on reading it because if the complaint is not properly articulated, rejection of complaint may result in causing injustice to the complainant. It is also possible that intelligent drafting may give an impression that an offence has taken place, which may not be true sometimes. Therefore it is better to examine the complainant and the witnesses if necessary.

(ii) If after reading the complaint and examining the witness (if they are present and their examination is necessary) under section 200 Cr.P.C. the Magistrate arrives at conclusion that there are sufficient grounds to proceed

further, he shall take cognizance of the offence and issue process to the accused.

(iii) Even after following the procedure set out in section 200, if the Magistrate is not convinced about existence of sufficient materials to take cognizance, he may resort to hold an inquiry himself or direct investigation as contemplated under section 202.

(iv) If the Magistrate does not prima facie find materials as to constitution of any offence after examining the complainant and witnesses (if any), he can dismiss the complaint in accordance with section 203.

(v) Resorting to procedure contemplated under section 202 is not always

mandatory, it may be resorted to only in the circumstances stated in section 202. That means, cognizance may be taken or the complaint may be rejected depending upon the situation even after the stage of section 200.

(vi) It is not necessary that a Magistrate must endorse ”cognizance taken” in the order sheet, but what is required is application of mind and it must be depicted in a brief order. Decision as to issuing process to the accused itself amounts to cognizance being taken.

(vii) Whenever investigating police officer files ‘B’ report, and the complainant wants to contest the ‘B’ report, the Magistrate has to follow the same procedure set out above.

56. Now in the case on hand, it is true that the learned Magistrate in the initial stage posted the case for recording the sworn statement of the complainant and then at a subsequent stage, he referred the matter to police for investigation under Section 156(3) Cr.P.C. From the discussion made above, it cannot be said that because the learned Magistrate decided to record the sworn statement, he had taken cognizance of the offences at the initial stage. There is nothing wrong in directing the matter for police investigation on a subsequent date as the Magistrate had not taken cognizance till the date of referring the case to police for investigation. In this view the argument of Sri K.G.Raghavan and Sri Raghavendra Srivatsa cannot be accepted. Point No.(iv) is answered in negative.

Point No.(v)

57. In view of points (i) and (iii) being answered in favour of the petitioners, the petitions are to be allowed. Hence the following :-

ORDER

(a) All the petitions are allowed.

(b) The proceedings in PCR 216/2020 on the file of II Additional Civil Judge (Junior Division) and JMFC, Chikkaballapura and the FIR in Cr. No. 73/2020 registered by Nandigiridhama Police Station, Chikkaballapura Taluk and District are quashed.

(c) The charge sheet registered as C.C.110/2021 on the file of II Additional Civil Judge (Junior Division) and JMFC, Chikkaballapura, arising out of Cr. No.

73/2020 of Nandigiridhama Police Station is also quashed.

(d) Registry is directed to return the trial Court records.

SD/-
JUDGE

ckl/-