

No.R(J) No.188/2023

High Court of Karnataka,
Bengaluru,
Date: 23rd September 2023

CIRCULAR

The Hon'ble Court while disposing of the ***Criminal Petition No. 531/2022 (Dr. Ashok V V/s The State by Lokayuktha Karnataka) vide order dated 04.07.2023*** has observed that in regard to registration of a private complaint under section 200 of Cr.P.C, as mandated by the Hon'ble Apex Court, the private complainant to be accompanied by an affidavit sworn to by the complainant to the contents of the complaint, failing which, such complaints would not be entertainable before the concerned Courts, as held in ***PRIYANKA SRIVASTAVA V/S STATE OF U.P. reported in (2015) 6 SCC 287 and BABU VENKATESH V/S STATE OF KARNATAKA reported in 2022 SCC OnLine SC 200.*** Further, in regard to compliance with Section 17A of the Prevention of Corruption Act, 1988 as amended in 2008, is held as mandatory in the ruling of the Hon'ble Apex Court in ***YASHWANT SINHA V/S CENTRAL BUREAU OF INVESTIGATION reported in 2020 (2) SCC 338,*** is also noted in the above ruling passed by the Hon'ble High Court.

Further the Hon'ble High Court of Karnataka in the said ruling before concluding, has passed directions and the relevant portion of the same read as under:

“15. In the light of the aforesaid analysis and the unfolding of issues, it becomes necessary to direct the learned Sessions Judges / Special Court who would

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entertain complaints against public servants filed by private persons alleging offences punishable under the provisions of the prevention of Corruption Act, 1988 even if it is an amalgam not to entertain such complaints if they do not comply with the following:

- (i) The complaint should narrate that the complainant has made his efforts to register a crime before the Karnataka Lokayukta and no action is taken by the police on the complaint. Mere statement in the complaint would not suffice but documentary evidence to demonstrate such fact should be appended to the private complaint.***

- (ii) The private complaint should also append prior approval granted by the competent authority to register a private complaint, akin to a prior approval for an FIR to be registered by the Investigating Agency as obtaining under Section 17A of the Act. This would become a prerequisite to the concerned court to refer the matter for investigation under Section 156(3) of the Cr. Prevention of Corruption***

- (iii) The aforesaid direction (ii) would be applicable only if the offences alleged would be the ones punishable under the prevention of Corruption Act or the allegation would be an amalgam of offences both under the Prevention of Corruption Act and the Indian Penal Code. This direction at (ii) will not be applicable if the alleged offences are only of the Indian Penal Code.***

These directions become necessary in the light of the fact that once the matter is referred for investigation the police will have no choice but to register the crime. Therefore, such approval being appended to the private complaint is sine qua non for maintainability of the

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complaint, except in cases concerning disproportionate assets. Such complaints shall bear scrutiny at the hands of the Magistrate or the Sessions Judge as the case would be, for compliance with the aforesaid directions. The private complaint shall also be accompanied by an affidavit of the complainant, not a verifying affidavit, but an affidavit as obtaining under the Oaths Act, 1969. It is only then the learned Sessions Judge can entertain a private complaint against public servants.”

Hence, as directed, all the Sessions Judges / Special Courts in the State dealing with the complaint against public servants filed by private persons alleging offences punishable under the provisions of the Prevention of Corruption Act, 1988, are directed to strictly comply with the directions given in the above rulings of the Hon'ble Apex Court and Hon'ble High Court of Karnataka.

BY ORDER OF THE HON'BLE CHIEF JUSTICE

Sd/-

(M.CHANDRASHEKAR REDDY)
REGISTRAR (JUDICIAL)

To:

1. The Registrar General / Registrar (Vigilance) / Registrar (Recruitment) / Registrar (Administration) / Registrar (Infra & Maintenance) / Registrar (Protocol & Hospitality) / Registrar (Computers)
2. The Director, Karnataka Judicial Academy, Bangalore.
3. The Additional Registrar General / Additional Registrar (Judicial), High Court of Karnataka at Dharwad and Kalaburagi Benches.
4. The Central Project Co-ordinator (CPC), with a request to web-host the Circular.
5. The Assistant Registrar, District Judicial Administration-I, Branch (DJA-I), High Court Building, Bengaluru – with request to circulate the order to all the concerned Sessions Courts in the State.
6. Office Copy.