



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF SEPTEMBER, 2024



BEFORE

THE HON'BLE MR JUSTICE M.NAGAPRASANNA

CRIMINAL PETITION NO. 5840 OF 2024

BETWEEN:

MR. PRIYANK KANOONGO
CHAIRPERSON
AGED ABOUT 43 YEARS
NATIONAL COMMISSION FOR
PROTECTION OF CHILD RIGHTS
5TH FLOOR, CHANDERLOK BUILDING
36, JANPATH, NEW DELHI - 110 001
RESIDENT OF NEW DELHI.

...PETITIONER

(BY SRI VATSAL JOSHI, ADVOCATE A/W.,
SRI VINAYAKA S.PANDIT, ADVOCATE)

AND:

1. STATE OF KARNATAKA
THROUGH
P.S. DEVARAJEEVANHALLI
DISTRICT, BENGALURU CITY
REPRESENTED BY SPP
HIGH COURT OF KARNATAKA.
2. MR. ASHRAF KHAN
AGED ABOUT 70 YEARS
S/O GOUSE KAHAN
RESIDING AT NO. 384
SAYEED NAGAR, K.B. SANDRA,
BENGALURU CITY





KARNATAKA - 560 032.

...RESPONDENTS

(BY SRI. B.N.JAGADEESHA, ADDL. SPP FOR R1;
SRI. MUZAFFAR AHMED, ADVOCATE FOR R2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C.,(528 OF BNSS) PRAYING TO QUASH THE FIR DATED 21.11.2024 IN CR.NO.316/2023 REGISTERED BY DEVARAJEEVANAHALLI POLICE STATION, BENGALURU FOR THE OFFENCE P/U/S 34, 447, 448 AND 295A OF IPC PENDING ON THE FILE OF XI ADDL.C.M.M., MAYO HALL UNIT, BENGALURU VIDE ANNEXURE-A.

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

CORAM: HON'BLE MR JUSTICE M.NAGAPRASANNA

ORAL ORDER

The petitioner – Chairperson of the National Commission for Protection of Child Rights is knocking at the doors of this Court calling in question registration of a crime in Crime No.316/2023 for the offences punishable under Sections 34, 447, 448 and 295A of the IPC.

2. Heard Sri Vatsal Joshi, learned counsel along with Sri Vinayaka S. Pandit, learned counsel for petitioner, Sri B.N.Jagadeesha, learned Additional State Public Prosecutor for



respondent No.1 and Sri Muzaffar Ahmed, learned counsel for respondent No.2.

3. *Sans* details, facts in brief, are as follows:

The issue in the *lis* would commence on 13.11.2023, when an official tour programme of the petitioner is notified. He was in the official tour in the capacity of being a Chairperson of the statutory body – the National Commission for Protection of Child Rights as also the Chairperson of the monitoring authority under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short 'the Act'). The official tour also depicted a visit to Bangalore between 17.11.2023 and 19.11.2023. Therefore, the petitioner was performing the official duty in Bangalore on 19.11.2023. It is the averment in the petition that the petitioner is made known that 33 institutions were keeping children and essentially functioning as a children home and the Women and Child Department was not aware as to whether the same was registered under the Act.

4. The petitioner seeks to conduct an inspection of such homes and visits a yateemkhana, which was in the name and



style of "Darul Uloom Sayideeya Yateemkhana". This comes to be inspected on 19.11.2023. During inspection, it is noticed that the said Darul Uloom Sayideeya Yateemkhana, is an unregistered yateemkhana, which was housing 200 children and functioning in violation of law *i.e.*, the provisions of the Act. The petitioner finds various illegalities or irregularities in functioning of the orphanage. After the inspection, a report is made after the inspection and the petitioner communicates the same to the Chief Secretary, the Government of Karnataka and also a letter addressed to the Deputy Commissioner and other Officers for corrective action. While communicating to the Officers, the petitioner observes several illegalities in the running of the orphanage - yateemkhana. All these communications go on, on 20.11.2023. On 21.11.2023, a complaint comes to be registered against the petitioner for the afore-quoted offences. The police begin to conduct investigation. The registration of the crime has driven the petitioner to this Court in the subject petition.

5. Sri Vatsal Joshi, learned counsel along with Sri Vinayaka S. Pandit, learned counsel for petitioner would vehemently contend that the offences punishable under



Sections 447 and 448 of the IPC are, on the face of it unsustainable as in the discharge of the official duty, the petitioner has visited three orphanages, this cannot be a criminal trespass. Insofar as Section 295A of the IPC, the learned counsel would submit that the complaint is wantonly and deliberately wrongly translated for it to become a crime. In the tweet, the petitioner has never said anything that would disturb the peace and harmony in the society. He has appended a copy of the tweet, which is in Hindi and the actual translation of it to the petition to that effect.

6. *Per contra*, Sri Muzaffar Ahmed, learned counsel for respondent No.2 – complainant would vehemently refute the submission to contend that the petitioner is guilty of the offence under Section 295A of the IPC atleast though Section 447 of the IPC would not be applicable. He would contend that the tweet of the petitioner has got religious overtones and it become ingredients of Section 295A of the IPC. He would submit that the investigation be permitted to continue and seeks dismissal of the petition.



7. Learned Additional State Public Prosecutor representing respondent No.1 – State would toe the lines of the learned counsel for respondent No.2 on the score that the investigation is still on.

8. I have given my anxious consideration to the submissions made by the learned counsel for the respective parties and have perused the material on record.

9. The afore-narrated facts are not in dispute and does not require reiteration. The petitioner is the Chairperson of the National Commission for Protection of Child Rights and also the monitoring authority under the provisions of the Act. In exercise of powers conferred under Section 13 of the Commissions for Protection of Child Rights Act, 2005 (for short 'CPCR Act'), the petitioner in terms of the official tour programme, intends to inspect juvenile or custodial homes or any other place of residence or institution meant for children. Section 13 of the CPCR Act, reads as follows:



"13. Functions of Commission :

Xxxxx

(i) inspect or cause to be inspected any juvenile custodial home, or any other place of residence or institution meant for children, under the control of the Central Government or any State Government or any other authority, including any institution run by a social organisation; where children are detained or lodged for the purpose of treatment, reformation or protection and take up with these authorities for remedial action, if found necessary;

(Emphasis supplied)

Section 13 of the CPCr Act thus empowered the petitioner to enter into any home that houses children in whatever name they were existing. The petitioner comes to Bangalore; seeks to conduct an inspection of the orphanage – yateemkhana run by the complainant; finds several illegalities; communicates those illegalities to the Chief Secretary of the Government of Karnataka. The Communication reads as follows:

"To,

*Chief Secretary,
Government of Karnataka,
Room No. 320, 3rd Floor
Vidhanasoudha, Bangalore-01
E-mail: cs@karnataka.gov.in*

***Subject- Unregistered Orphanage in Bangalore-
Darul Uloom Sayeediya Yateemkhana, 3rd Cross Rd,***



Sayeed Nagar, Bangalore and non-compliance of J.J Act, 2015 reg.

Sir/Madam,

National Commission for Protection of Child Rights (NCPCR) (hereinafter referred to as "the Commission") is a statutory body constituted under Section 3 of the Commission for Protection of Child Rights (CPCR) Act, 2005 to protect the child rights and other related matters in the Country. The Commission is further mandated to monitor the proper and effective implementation of Protection of Children from Sexual Offences (POCSO) Act, 2012; Juvenile Justice (Care and Protection of Children) Act, 2015 and Right to Free and Compulsory Education (RTE) Act, 2009. The Commission under Section 13(1)(1) of the CPCR Act, 2005 also states that the Commission shall inspect or cause to be inspected any juvenile custodial home, or any other place of residence or institution meant for children, under the control of the Central Government or any State Government or any other authority, including any institution run by a social organisation, where children are detained or lodged for the purpose of treatment, reformation or protection and take up with these authorities for remedial action, if found necessary.

2. *The Commission, as per its role under CPCR Act, 2005 and Juvenile Justice Act, 2015, conducted an inspection visit to Darul Uloom Sayeediya Yateemkhana situated at 3rd Cross Rd. Sayeed Nagar, Kaval Byrasandra, R.T. Nagar Post, Bangalore-560032 on 19.11.2023 in presence of the District Child Protection Officer (East) along with other officials. The said Yateemkhana (Orphanage) is functional as an orphanage where around 200 children are staying. During the inspection following irregularities have been found-*

- a) *The **Orphanage is not registered** under Juvenile Justice Act, 2015. As per Section 41 (1) of the JJ Act, 2015- Notwithstanding anything contained in any other law for the time being in force, all institutions, whether run by a State Government or by voluntary or non- governmental organisations, which are meant either wholly or partially, for housing children in need of care and protection or*



children in conflict with law, shall, be registered under this Act in such manner as may be prescribed, regardless of whether they are receiving grants from the Central Government or as the case may be the State Government or not Further the penalty for non-registration of the institution is also defined in Section 42 of the JJ Act. 2015.

- b) The Orphanage is **not fulfilling the infrastructural requirements** for accommodating such large number of children. There were 5 rooms of approximately 100 square feet and each room had 4 bunk beds for 8 children and 16 children sleep on four bunk beds placed in the corridor. Around 150 children sleep in two big halls used for prayer.
- c) **None of these children are sent to school** violating their fundamental right to education.
- d) **No recreational facility** such as play material or TV was available in the Orphanage.
- e) The conditions in which children are kept in the Orphanage amounts to **violation of Section 75 of the JJ Act, 2005.**

3. Taking cognizance of the matter us 13 (1) (j) of the CPCR Act. 2005, the Commission requests you to ensure that an FIR be registered u/s 42. 34 and 75 of JJ Act. 2015. against the Head and Members of the Committee under which the Orphanage is functional. The Commission requests that an action taken report may be sent to the Commission within seven (7) days of issuance of this letter.

5. A letter to the concerned District Collector is also being sent to register FIR and ensure production of all children in the Orphanage before the Child Welfare Committee (CWC) as per Section 31 of the JJ Act, 2015 and share details of the children and staff in the Orphanage. Further, as per the representative of the Orphanage present during the inspection. the Orphanage is affiliated to Darul-



Uloom-Deoband. Hence, information regarding the affiliation of the Orphanage is also being sought (copy of letter enclosed).

Please quote the number and date of this letter mentioned at the top while responding

Yours sincerely.

*Sd/-
20.11.2023
(Priyank Kanoongo)"*

(Emphasis added)

The petitioner also communicates the same to the Deputy Commissioner, Bangalore Urban District under whose precincts the orphanage was functioning and seeks action to be taken against the said orphanage.

10. The broad illegalities that the petitioner found in the yateemkhana was that the orphanage was not fulfilling the infrastructural requirement, there were 5 rooms approximately 100 sq.ft. each and about 150 children were staying in those rooms and 16 children slept on 4 bunk beds and 150 children were made to sleep in two big halls used for making prayers. None of the children were sent to school; no recreational facilities were not available in the orphanage and those conditions were in violation of the provisions of the Act.



11. The petitioner requests the State to ensure that a crime is registered against the complainant for offences punishable under Sections 34, 42 and 75 of the Act. The petitioner goes back and generates a tweet. The tweet reads as follows:

“बंगलुरु, कर्नाटक में दारुल उलूम सैय्यादिया यतीम खाना नाम से अवैध ढंग से चलते हुए एक गैरपंजीकृत अनाथ आश्रम का औचक निरीक्षण किया जिसमें कई अनियमिततायें पायी गयीं।

यहाँ करीब 200 यतीम (अनाथ) बच्चों को रखा गया है।
100 वर्गफिट के कमरे में 8 बच्चों का रखा जाता है, ऐसे 5 कमरों में 40 बच्चे रहते हैं व कॉरिडोर में 16 बच्चे रहते हैं।
बाकी 150 बच्चे मस्जिद के नमाज़ पढ़ने वाले 2 अलग अलग हाल में ही रात को सोते हैं। सभी 200 बच्चे दिन भर इन्हीं नमाज़ वाले हाल में मदरसा की इस्लामिक दीनी तालीम पढ़ते हैं।

किसी भी बच्चे को स्कूल नहीं भेजा जाता है।

कोई खेल का सामान नहीं है, बच्चे TV भी नहीं देखते छोटे छोटे बच्चे बेहद मासूम हैं और इतने डरे हुए कि मौलवी को आता देख सारे के सारे स्थिर हो कर आँख बंद कर लेते हैं, सवेरे 3:30 पर जाग कर मदरसा की पढाई में लग जाते हैं और दोपहर में सोते हैं शाम से रात तक फिर तालीम होती है दिन में नमाज़ के लिए छोटे ब्रेक होते हैं।

खाने, आराम करने, मनोरंजन इत्यादि के लिए कोई और जगह नहीं है मस्जिद में ही रहना होता है।

जबकि पता चला है कि करोड़ों की वफ़्त की सम्पति वाले इस यतीम खाने की बिल्डिंग अलग है जिसमें स्कूल चल रहा है पर उसमें इन बच्चों को जाने की इजाज़त नहीं है।

ये बच्चे मध्ययुगीन तालिबानी जीवन जी रहे हैं, संविधान में इनके लिए ये जीवन नहीं लिखा है।

ये कर्नाटक सरकार की लापरवाही है, संविधान का उल्लंघन है। @NCPCR_ संज्ञान ले रहा है, राज्य के चीफ सेक्रेटरी को नोटिस जारी कर रहे हैं।

(Emphasis added)



A complaint is registered on the next day by the second respondent - owner of the orphanage. The complaint reads as follows:

“ಸಯೀದಿಯ ಅನಾಥಾಶ್ರಮ
ಸಯೀದಿಯ ಅರಬಿಕ್ವಾಲೇಜ್, ಸಯೀದ್ ನಗರ
ಕಾವಲ್ ಬೈರಸಂದ್ರ, ಬೆಂಗಳೂರು

ರವರಿಗೆ:
ಫೋಲೀಸ್ ಇನ್ಸ್ ಪೆಕ್ಟರ್,
ಡಿ.ಜಿ ಹಳ್ಳಿ, ಫೋಲೀಸ್ ಠಾಣೆ
ಬೆಂಗಳೂರು ನಗರ

ವಿಷಯ: ಪ್ರಿಯಾಂಕನಗೂ ಮತ್ತು ಅವರ್ ಸಾವರ್ ಕರ್ ಸಂಬಂಧಿಕರ 10 ಜನರ ಮೇಲೆ
ಮಾಡಿದ ವರದಿ.

ಈ ಮೇಲ್ಕಂಡ ವಿಷಯಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ ತಮ್ಮಲ್ಲಿ ಬರೆದು
ನಿವೇದಿಸಿಕೊಳ್ಳುವುದನೆಂದು ದಿನಾಂಕ: 19-11-2023ರಂದು ಪ್ರಿಯಾಂಖ ಕನಗೂ ಎಂಬವರು
ನಮ್ಮ ಸಯೀದಿಯ ಅರಬಿಕ್ ಕಾಲೇಜ್ ಸ್ವದೀಯ ನಗರ ಕಾವಲ್ ಬೈರಸಂದ್ರ, ಬೆಂಗಳೂರು -32
ಸುಮಾರು 02-00 ಗಂಟೆಗೆ ಇವರು ನನ್ನ ಸಂಭದಿಯ ಅನಾಥಾಶ್ರಮಕ್ಕೆ ಬಂದು ನಾನು Human
Rights ಪರವಾಗಿ ಬಂದಿದ್ದೇನೆಂದು ಹೇಳಿ ನಿಮ್ಮ ಸ್ಕೂಲ್ ಹಾಗೂ ಅನಾಥಾಶ್ರಮವರ ಬೇಟೆ
ನೀಡಬೇಕೆಂದು ನನ್ನ ಪರ್ಮಿಷನ್ ಇಲ್ಲದೆ ಮೇಲೆ ಅವರಾಗಿ ಅವರೇ ನ್ಯೂಸಿನಲ್ಲಿ ವೀಡಿಯೋ
ಮಾಡಿರುತ್ತಾರೆ. ನಂತರ ಪ್ರಿಯಾಂಕನಿಗೂ @HP/11wit
com/1/states/1726447134122373270 ರಲ್ಲಿ upload ಮಾಡಿರುತ್ತಾರೆ. ಇವರು
ನಮ್ಮ ಮಾದ್ರಾಸದಲ್ಲಿ ಅತಿಕ್ರಮಣ ಪ್ರವೇಶ ಮಾಡಿ ತಾಲಿಬಾನಿಗೆ ಹೋಲಿಸಿ ಸುಳ್ಳು ಸುದ್ದಿ
ಹಬ್ಬಿಸಿ ಉಗ್ರಚಟುವಟಿಕೆ ಮಾಡುತ್ತಿದ್ದಾರೆಂದು ಸುಳ್ಳು ಸುದ್ದಿ ಎಬ್ಬಿಸಿ ಶಾಂತಿ ಸುವ್ಯವಸ್ಥೆಯನ್ನು
ಕದಡುವ ಸನ್ನಿವೇಶವಾದಂತೆ **Twitter** ಮಾಡಿರುವರ ವಿರುದ್ಧ ಕಾನೂನು ರೀತಿ ಕ್ರಮ
ತೆಗೆದುಕೊಳ್ಳಬೇಕೆಂದು ಮನವಿ. ಈ ಆಧಾರದ ಮೇಲೆ ಸಾಮಾಜಿಕ ಜಾಲತಾಣದಲ್ಲಿ ಹಾಗೂ
ಸಮಾಜದಲ್ಲಿ ಸುಳ್ಳು ಸುದ್ದಿ ಎಬ್ಬಿಸುವರ ಕಾರಣದಿಂದಾಗಿ ಕಠಿಣ ಕ್ರಮ
ತೆಗೆದುಕೊಳ್ಳಬೇಕೆಂದು ಮನವಿ ಸ್ವಾಮಿ. ಹಾಗೂ Misuse NH4 without
information u/s 34 of Act of Karnataka.



ದಿನಾಂಕ: 21-11-2023ರಂದು ಸಮಯ 19:00 ಗಂಟೆಗೆ ಪಿಯಾರ್‌ದುದಾರರು ನೀಡಿದ ದೂರನ್ನು
ಪಡೆದು ರಾಣಾ ಮೊ.ಸಾ 316/2023ರ ಅಂಡರ್ ಸೆಕ್ಷನ್ 275(ಎ), 447, 448, ರೆಡ್/ಎಲ್ 34
ಐ.ಪಿ.ಸಿ.”

(Emphasis added)

The English translation of the complaint is as follows:

"To,
Police Inspector,
Devara Jeevana Halli, Police Station,
Bengaluru Nagara.

Sub:- Complaint against Priyank Kanagoo and
others - reg.

With reference to the above subject, I write to state
that on 19-11-2023 at 2.00 PM. One Mr.Priyanka Kanagoo
and others entered our madarasa Dharul Sayadiya
Yatheem Khana and instruduced himself as he is from
Human Rights Commission. He want to visit school and
orphanage and told that school and orphanage is running
without registration and permission and later taken
photographs and video graphed and the same one be
tweeted in tweeter @
<http://twitter.com/status/1726447134122373270> and
uploaded, **commenting on Taliban like terrorist
activities and taking place in madarasa. The same
person is disturb peace and tranquility in the
society and sending false message in social media,
electronic media by tweeting.**

**Hence please take serious legal action against
Mr.Priyank Kanagoo for not only miss using The
Human Rights Commission and tweeting false
message in the social media.**

Received complaint on 21-11-2023 at 19.00 than
registered Cr. No.316/2023 u/s 295(A), 447, 448 R/W 34
IPC.”

(Emphasis added)



What the complainant would seek to project is that, the complainant on his tweeter had uploaded a message commenting on the yateemkhana as "*Taliban like terrorist activities taking place in madarasa.*" These sentences are not found in the tweet. The English translated copy of the tweet reads as follows:

"Translated from Hindi by

A surprise inspection was conducted of an unregistered orphanage running illegally by the name of Darul Uloom Sayyediya Yatim Khana in Bengaluru, Karnataka, in which many Irregularities were found.

*Around 200 orphan children are kept here.
8 children are kept in a 100 square feet room, 40 children live in 5 such rooms and 16 children live in the corridor.
The remaining 150 children sleep at night in two separate halls for offering prayers in the mosque.*

All 200 children study Islamic religious education in the madrasa in these prayer halls throughout the day.

No children are sent to school.

There is no play material, the kids don't even watch TV, the little kids are very innocent and are so scared that on seeing the maulana coming all of them become still and close their eyes, they wake up at 3:30 in the morning and start studying in the madrasa and sleep in the afternoon, then there is study from evening till night, there are short breaks for namaz during the day.

*There is no other place for eating, rest, entertainment etc. one has to stay in the mosque only.
Whereas it has come to light that this orphanage, which has Waqf property worth crores, has a separate building in which a school is running but these children are not allowed to go there.*

These children are living a medieval Talibani life, this life is not written for them in the Constitution.



This is the negligence of the Karnataka government, a violation of the Constitution. @NCPCR_ is taking cognizance, notice is being issued to the Chief Secretary of the state."

(Emphasis added)

To a pointed question to the learned counsel for respondent No.2 to read both the Hindi and English version, he would admit that there are no words like *Taliban like terrorist activities taking place in madrasa*.

12. What the petitioner has tweeted is that, they are the children who are living a medieval Taliban life. This can at best be a metaphor, used by the petitioner, to describe the condition as to how they were living. This has never been tweeted that Taliban like terrorist activities taking place in madarasa. It is not a madarasa; it is an orphanage. The complainant has deliberately added these words to create antimony, in place of harmony. The allegation is that, the statement of the petitioner has disturbed the peace and tranquility, it is the other way round. The addition in the complaint is a clear mischief, which is likely to disturb the peace and tranquility and not by the statements made by the petitioner. The act of the complainant is unpardonable but this Court is holding its hands



in not directing any coercive action against the complainant for the aforesaid act, while observing that the officers should also encourage restraint as they are performing duties under the statute.

13. Therefore, the offence under Section 295A of the IPC cannot be laid as it is the product of falsehood and mischief on the part of the complainant. Section 295A of the IPC reads as follows:

"295A - Deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious beliefs:

--Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of citizens of India, by words, either spoken or written, or by signs or by visible representations or otherwise, insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

The purport of Section 295A of the IPC need not detain this Court for long or delve deep into the matter as the Apex Court in the case of **MAHENDRA SINGH DHONI VS. YERRAGUNTALA SHYAMSUNDAR AND ANOTHER** reported in **(2017) 7 SCC 760**, considers this very issue and holds as follows:



"6. On a perusal of the aforesaid passages, it is clear as crystal that Section 295-A does not stipulate everything to be penalised and any and every act would tantamount to insult or attempt to insult the religion or the religious beliefs of a class of citizens. It penalises only those acts of insults to or those varieties of attempts to insult the religion or religious belief of a class of citizens which are perpetrated with the deliberate and malicious intention of outraging the religious feelings of that class of citizens. Insults to religion offered unwittingly or carelessly or without any deliberate or malicious intention to outrage the religious feelings of that class do not come within the section. The Constitution Bench has further clarified that the said provision only punishes the aggravated form of insult to religion when it is perpetrated with the deliberate and malicious intention of outraging the religious feelings of that class. Emphasis has been laid on the calculated tendency of the said aggravated form of insult and also to disrupt the public order to invite the penalty.

(Emphasis supplied)

In the light of the fact that none of the ingredients of Section 295A of the IPC is made out, even to its remotest sense, the offence under Section 295A of the IPC is loosely laid against the petitioner.

14. The other offences are the ones punishable under Sections 447 and 448 of the IPC, which deal with criminal trespass and house trespass, ingredients of which are found in Sections 441 and 442 of the IPC. They read as follows:



"441. Criminal trespass : Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit "criminal trespass.

442. House-trespass : Whoever commits criminal trespass by entering into or remaining in any building, tent or vessel used as a human dwelling or any building used as a place for worship, or as a place for the custody of property, is said to commit "house-trespass". Explanation.-The introduction of any part of the criminal trespasser's body is entering sufficient to constitute house-trespass.."

(Emphasis supplied)

The petitioner was performing his duties under the statute and in discharge of his official duty; visits the yateemkhana / orphanage; finds illegalities and reports illegalities. The action of the public servants performing their duties under the statute and inspecting any premises can by no stretch of imagination be a criminal trespass or house trespass by those public servants performing their public duties, unless there are glaring facts otherwise present. In the case at hand does not project anything glaring except the mischief of the complainant.

15. The subject complaint is deliberately registered by the complainant as a counter blast to the complaint made by the



petitioner to the Chief Secretary of the Government of Karnataka and the Deputy Commissioner, exposing the manner of children living in the yatheemkhana by the petitioner. Such complaints if permitted to be continued, no public servant/s can be safe in performance of their official duty. Therefore, finding no ingredients of the offences alleged against the petitioner, permitting further proceedings to continue on the face of it, would become an abuse of the process of the law and putting a premium on the mischief played by the complainant.

16. Reference being made to the judgment of the Apex Court in the case of **STATE OF HARYANA V. BHAJAN LAL** reported in **(1992 Supp. 1 SCC 335)**, in the circumstances become apposite. The Apex Court has held as follows:

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an



exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or 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 a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a noncognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”



16. *The principles laid down by this Court have consistently been followed, as well as in the recent judgment of three Judge judgment of this Court in Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra².*

(Emphasis supplied)

If the original complaint in Kannada, the tweet in Hindi and the English translation and the judgment rendered by the Apex Court are considered, it would lead to an unmistakable inference that this would become a fit case where proceedings against the petitioner will have to be quashed by exercise of jurisdiction under Section 482 of the Cr.P.C., failing which, it will not only fall foul of the judgment of the Apex Court, but result in patent injustice.

17. For the aforesaid reasons, the following:

ORDER

- (i) The Criminal Petition is allowed.
- (ii) The impugned Crime No.316/2023, pending before the XI Additional Chief Metropolitan Magistrate, Mayo Hall Unit, Bengaluru, stands quashed.

Sd/-
(M.NAGAPRASANNA)
JUDGE