

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 8TH DAY OF SEPTEMBER, 2021

BEFORE

THE HON'BLE MR. JUSTICE H.P. SANDESH

CRIMINAL PETITION NO.2389/2020



BETWEEN:

SRI PRABHU SHANKAR
S/O MUNIYAPPA
AGED ABOUT 50 YEARS
ASST. COMMISSIONER OF POLICE
RESIDING AT NO.1160
17TH MAIN, 20TH CROSS
'A' BLOCK, SAHAKARANAGAR
BENGALURU-560 092.

... PETITIONER

(BY SRI A.S.PONNANNA, SENIOR COUNSEL FOR
SMT.LEELA P.DEVADIGA, ADVOCATE)

AND:

- 1 . STATE OF KARNATAKA
REPRESENTED BY COTTONPET
POLICE STATION
CHICKPET SUB DIVISION
BENGALURU CITY-560 001.
- 2 . THE DEPUTY COMMISSIONER OF POLICE
CRIME-II, CITY CRIME BRANCH
BENGALURU CITY-560 009.
- 3 . SRI ADIL AZEEZ
S/O ADIL MAHMOOD
RESIDING AT NO.37
PRESTIGE ARCADE, BURLIN STREET

LANGFORD TOWN, SHATINAGAR
BENGALURU-560 025.

... RESPONDENTS

(BY SRI V.M.SHEELVANT, SPP-I FOR R1 & R2;
SRI RAVI B. NAIK, SENIOR COUNSEL FOR
SMT.VIJETHA R. NAIK, ADVOCATE FOR R3)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C PRAYING TO QUASH THE FIR DATED 12.05.2020 IN CRIME NO.64/2020 REGISTERED BY THE 1ST RESPONDENT POLICE AND THE COMPLAINT DATED 07.05.2020 PRODUCED AS ANNEXURES-A AND B RESPECTIVELY AND ALL FURTHER PROCEEDINGS PURSUANT THERETO.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 30.07.2021 THROUGH '**VIDEO CONFERENCE**' THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

ORDER

This petition is filed under Section 482 of Cr.P.C. praying this Court to quash the FIR dated 12.05.2020 in Crime No.64/2020 registered by the first respondent-police based on the statement of respondent No.3 dated 07.05.2020 on the file of 31st Additional CMM Court, Nrupathunga Road, Bengaluru City.

2. The factual matrix of the case is that this petitioner was working as the Assistant Commissioner of Police, in the Central Crime Branch ('CCB' for short), Bengaluru City. He was a Supervisory Officer of the Economic Offences Wing in the CCB. A case is registered against this petitioner, based on the statement dated 07.05.2020 of one Adil Azeez, who is respondent No.3 herein. In the statement, he has stated that he is the distributor of ITC Company Cigarettes. Due to Covid-19 Pandemic, the Government had declared lockdown in the month of March and April, 2020. He was having 100 employees, who used to supply cigarettes in the cycle and grocery items to different shops and due to lockdown, the employees were facing difficulties. Hence, in April, 2020 he contacted one Sri Babu Rajendra Prasad explaining the difficulties faced by his employees. The said Babu Rajendra Prasad told him to introduce the petitioner herein. After some time, he called and informed him to go along with one Bhushan to the office of this petitioner and he had already spoken to him. Hence, himself and said Bhushan went and met the petitioner and this petitioner introduced the other Inspector Ajay. When he was talking to this petitioner, the said Bhushan went away from the room. He

spoke to him for 15 minutes in the presence of said Ajay and he told him to contact the said Inspector and gave the number of the Inspector. It is his statement that, in between 22.04.2020 to 28.04.2020, he has sent whatsapp message to the said Inspector regarding unethical practice of six to seven distributors in selling the cigarette and their location and photos.

3. That on 20.04.2020, the said Babu Rajendra Prasad told him that he had discussed with this petitioner and will you make settlement and hence, he told him that he will enquire with the other distributors. Thereafter, he has discussed with the other distributors also. He told the other distributors that said Babu Rajendra Prasad would deal with this petitioner for unlawful circulation of cigarettes. The said Babu Rajendra Prasad demanded Rs.15 lakhs from each of the distributors but, on negotiation, it was agreed for Rs.14 lakhs which becomes to Rs.70 lakhs. The said Babu Rajendra Prasad told him to make payment of first installment before 30th April and second instalment in the first week of May. Accordingly, he made the payment of Rs.32.5 lakhs and Rs.30 lakhs to said Babu Rajendra Prasad to make payment to this petitioner. The said Babu

Rajendra Prasad told him that in two installments, Rs.62.5 lakhs was paid to this petitioner and an amount of Rs.5 lakhs was paid to the concerned jurisdictional police.

4. That on 04.05.2020, the said Babu Rajendra Prasad called him and told him to meet this petitioner in the CCB office. Accordingly, he met him and this petitioner called Inspector Ajay and Niranjana Kumar and instructed him to write the details of the payment made and accordingly, as per the instructions of Ajay, in the presence of this petitioner and Inspector Niranjana Kumar, he gave the slip mentioning the payment of Rs.28.5 lakhs to Babu Rajendra Prasad and an amount of Rs.5 lakhs to the station and Rs.2.5 lakhs to Bhushan.

5. That on 07.05.2020, the said Babu Rajendra Prasad called him to come near to his house and at that time, this petitioner and Inspectors Ajay and Niranjana Kumar were also there. Thereafter, ITC company Manager Govindaraj also arrived to his house. The said Babu Rajendra Prasad instructed him and Govindaraj to accompany the police officers to go to Deputy Commissioner of Police, Crime-II and accordingly, all of them went to Deputy Commissioner of Police, Crime-II office and

he enquired them separately. They had shown red and black mixed rexin bag and he identified the money and the said amount was given to Bhushan earlier and he identifies and says that said bag was given to Bhushan. The Deputy Commissioner of Police, Crime-II told him that this petitioner handed over the money telling that he had collected Rs.25 lakhs. Hence, case has been registered against this petitioner and also other accused.

6. In this petition, it is contended that a strange story was concocted, claiming that certain moneys had been paid by the said Adil Azeez to this petitioner and two other Inspectors of Police in the CCB. In this background, it is emerged that the Deputy Commissioner of Police, Crime-II, who is one of the heads of the second respondent, was issued with an order on 06.05.2020 by the Joint Commissioner of Police (Crime) to enquire into certain allegations said to have been carried in some daily newspaper. The Deputy Commissioner of Police, Crime-II in the course of his enquiry, records the statement of the third respondent, who is an accused in the crime registered in K.R.Puram Police Station. On the basis of the statement, the

second respondent writes a letter to the Police Inspector, Cottonpet Police Station dated 12.05.2020 annexing the statement of third respondent, with a request to take appropriate legal action. Based on the same, present Crime No.64/2020 for the offence punishable under Section 384 read with Section 34 of IPC has been registered.

7. It is contended that the police have registered the case in Crime No.167/2020 and the same was under investigation. Based on the statement of the third respondent, FIR has been registered. The accused, who was subjected to investigation, has given a statement as a counter blast to the investigation process and to get away from the arm of law by implicating the police officers, who are investigating the case. If this were to be permitted, then every accused would make allegations against the Investigating Officer and criminal process will have to be set into motion against all of them. The investigation having commenced on 30.04.2020 was in progress and there was no need for the third respondent or any other Superior Officer to interfere in the investigation. The entire mode adopted is only to deviate from the original tract of

investigation by taking away the investigation from the concerned officers, with the sole intention of maliciously implicating the petitioner.

8. The other contention of the petitioner is that case has been registered for the offence punishable under Section 384 of IPC and in order to constitute an offence of extortion under Section 384 of IPC, the necessary ingredients would be to intentionally put any person in fear of any enquiry to that person or to any other and dishonestly induce the person so put in fear to deliver any property. In the absence of these fundamental and necessary ingredients, the offence under Section 384 of IPC cannot be made out. In the present case, a plain reading of the statement do not indicate any ingredients of the offence under Section 384 of IPC. Hence, the very registration of the case for the offence punishable under Section 384 of IPC is bad in law.

9. The learned counsel for the petitioner would also submit that the complaint and the FIR registered against this petitioner suffer from malafides, is a gross abuse of process of law, besides being illegal and without jurisdiction. The allegations made in the complaint, even if they are taken at their

face value and accepted in its entirety, do not prima facie constitute any offence, much less the offence alleged against the petitioner. The three complaints and FIRs registered against the petitioner is virtually on the same cause of action. The manner in which the complaints have been filed and registered and the manner in which the petitioner was arrested and subjected to detention leaves no doubt that the criminal proceedings are manifest with mala fides and the entire proceedings are maliciously instituted with ulterior motives for wrecking vengeance on the accused with a view to spite him due to the grudge held against him by the complainants.

10. The counsel also would vehemently contend that it is well settled position of law that in order to get jurisdiction under Section 154 of Cr.P.C. , enabling the Police to register a FIR, fundamental and mandatory requirement is that the complaint or information available before the Officer-in-charge of Police Station, must disclose the commission of a cognizable offence. If no such material discloses any cognizable offence, FIR cannot be registered and the criminal law cannot be set in motion. In the case on hand, when the statement of the third respondent

does not disclose commission of an offence under Section 384 of IPC, it is nothing but an abuse of process and no ingredients of Section 384 of IPC which intentionally puts any person in fear of any injury to that person or to any other and dishonestly induce the person so put in fear to deliver any property. Nowhere in the statement of the third respondent any ingredients of the offence under Section 384 of IPC is made out and hence, it is nothing but an abuse of process.

11. The counsel would vehemently contend that there is a violation of provisions of Section 154 of Cr.P.C. and there is no ingredients of offence under Section 384 of IPC and case has been registered only at the instance of the Deputy Commissioner, who directed the Police Officer to register the case and case has been registered without any material and hence, it requires interference of this Court.

12. The learned counsel for the petitioner in support of his argument relied upon the judgment of the Apex Court in ***Lalita Kumari vs. Government of Uttar Pradesh and Others*** reported in **(2014) 2 SCC 1** wherein, the Apex Court in paragraph Nos.37 to 39, 49, 57 to 67, 70 to 72, 93, 94 and 97

has categorically held that to invoke Section 154 of Cr.P.C., the statement must disclose commission of a cognizable offence and registration of FIR is mandatory under Section 154 of Cr.P.C. if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation. The Apex Court further held that this is a general rule and must be strictly complied with.

13. The Apex Court has also discussed with regard to Section 154 of Cr.P.C. in paragraph No.37 of the judgment that information must disclose commission of a cognizable offence. Chapter XII of the Cr.P.C. also sets out the procedure to be followed during the investigation. The objective to be achieved by the procedure prescribed in the said Chapter is to set the criminal law in motion and to provide for all procedural safeguards so as to ensure that the investigation is fair and is not mala fide and there is no scope of tampering with the evidence collected during the course of investigation.

14. The counsel also brought to the notice of this Court paragraph No.49 wherein, the scope of Section 154 (1) of Cr.P.C. had been discussed using the word "shall". The counsel

also brought to the notice of this Court paragraph Nos.57 to 67 wherein it is observed that information received should be entered in the diary. The Apex Court also held that registration of FIR is mandatory and also that it is to be recorded in the FIR book by giving unique annual number to each FIR to enable strict control and track over each and every registration of FIR by the supervisory police officers.

15. The counsel also brought to the notice of this Court paragraph No.93 of the judgment with regard to the significance and compelling reasons for registration of FIR at the earlier point of time and so also paragraph No.97. The counsel referring this judgment would contend that when the complaint does not disclose commission of any cognizable offence, the respondent-Police ought not to have registered a case and no preliminary inquiry is also necessary, since the complaint does not disclose commission of cognizable offence and the same is missing in the case on hand.

16. The learned counsel for the petitioner also relied upon the judgment of the Apex Court in ***State of Haryana and Others vs. Bhajan Lal and Others*** reported in ***1992 Supp (1)***

SCC 335 and brought to the notice of this Court paragraph No.23 of the judgment wherein, the Apex Court has observed with regard to the contention of non-application of mind on the part of the police officials. Further, in paragraph No.102 of the said judgment, the Apex Court has held that while exercising the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced in certain categories of cases by way of illustrations held that such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice. The counsel referring the said seven illustrations would vehemently contend that the present case is aptly applicable to the case on hand wherein, an abuse of process of law has been made.

17. Per contra, learned counsel appearing for the respondent No.3 vehemently contends that the Police have rightly registered the case against the petitioner, who indulged in extracting the money from him. The respondent No.3 has also filed the statement of objections and along with the statement of objections, certain documents are also enclosed

i.e., Annexures-R1 to R14. It is contended by the respondent No.3 that the complaint is an information to the Investigating Officer which sets the law into motion for an investigation. It is not an encyclopedia and it cannot be expected that every minute details of the offence is to be disclosed in the complaint. The documents of copy of PF, panchanama, mahazar and report of the Deputy Commissioner are annexed along with the objection statement. It is contended that statement of Bhushan is very clear that he took money and handed over the same to the petitioner. While invoking Section 482 of Cr.P.C., the Court has to take note of the fact whether the information disclose commission of cognizable offence and if it does not disclose the same, Section 482 of Cr.P.C. cannot be invoked.

18. The learned counsel for respondent No.3 in support of her argument, relied upon the judgment of the Apex Court in ***Superintendent of Police, CBI and Others vs. Tapan Kumar Singh*** reported in ***(2003) 6 SCC 175*** wherein, the Apex Court has held that, it is not necessary that FIR must disclose all facts and details relating to the offence reported. What is required is that the information given must disclose the commission of a

cognizable offence and must provide a basis for the police officer to suspect the commission of such an offence. If it is so, the police officer is bound to record the information and conduct an investigation. Mentioning of all the ingredients of the offence in the FIR, held, not essential where the facts stated in the General Diary entry recorded on the basis of a telephonic information were that the respondent was a corrupt official and was in the habit of accepting illegal gratifications, that he had demanded and accepted cash to the tune of rupees one lakh approximately, and that he would be carrying with him the said amount while going to a particular place by a particular mode on a particular date, held, a cognizable offence under Section 13 of the Prevention of Corruption Act, 1988 was clearly made out. The counsel referring this judgment would contend that the statement made by respondent No.3 discloses commission of a cognizable offence.

19. The State Public Prosecutor appearing for respondent Nos.1 and 2-State in his argument vehemently contends that Section 44 of IPC defines with regard to the 'injury' which denotes any harm whatever illegally caused to any person, in

body, mind, reputation or property. Hence, the very contention that it does not fulfil the ingredients of Section 383 of IPC cannot be accepted and even the threat also attracts the offence under Section 383 of IPC. He would also submit that an amount of Rs.30 lakhs was recovered from the petitioner and hence, the proceedings cannot be quashed against the petitioner herein.

20. Having heard the learned counsel appearing for the petitioner, learned State Public Prosecutor appearing for respondent Nos.1 and 2 and also the learned counsel appearing for respondent No.3, this Court has to consider the material available on record, whether it is a fit case to exercise the powers under Section 482 of Cr.P.C. Before considering the material placed on record, this Court would like to refer the FIR which is produced at Annexure-C, wherein the offence invoked against the petitioner is under Section 384 read with Section 34 of IPC.

21. Now, this Court would like to extract Sections 383 and 384 of IPC which reads as follows:

"383. Extortion.—Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the

person so put in fear to deliver to any person any property or valuable security, or anything signed or sealed which may be converted into a valuable security, commits "extortion".

Illustrations

(a) A threatens to publish a defamatory libel concerning Z unless Z gives him money. He thus induces Z to give him money. A has committed extortion.

(b) A threatens Z that he will keep Z's child in wrongful confinement, unless Z will sign and deliver to A a promissory note binding Z to pay certain monies to A. Z signs and delivers the note. A has committed extortion.

(c) A threatens to send club-men to plough up Z's field unless Z will sign and deliver to B a bond binding Z under a penalty to deliver certain produce to B, and thereby induces Z to sign and deliver the bond. A has committed extortion.

(d) A, by putting Z in fear of grievous hurt, dishonestly induces Z to sign or affix his seal to a blank paper and deliver it to A. Z signs and delivers the paper to A. Here, as the paper so signed may be converted into a valuable security. A has committed extortion.

384. Punishment for extortion. —

Whoever commits extortion shall be punished with

imprisonment of either description for a term which may extend to three years, or with fine, or with both”.

22. Having perused the ingredients of Section 383 and penal provisions of Section 384 of IPC, the Court has to take note of the fact whether registration of FIR is an abuse of process and it leads to miscarriage of justice. In order to arrive at such a conclusion, it is appropriate to consider the contents of the statement of respondent No.3 which is at Annexure-A. Having read the contents of Annexure-A-statement dated 07.05.2020, it is clear that the respondent No.3 had approached one Babu Rajendra Prasad for selling cigarettes and other groceries due to the lockdown imposed by the State since, his 100 employees were having no work. Having read the contents of Annexure-A-statement in toto, it is clear that he had approached the said Babu Rajendra Prasad. But, in the statement, the name of this petitioner has been referred stating that the said Babu Rajendra Prasad had spoken to this petitioner. In turn, Babu Rajendra Prasad collected money from the respondent No.3 and other distributors. In turn, the said Babu Rajendra Prasad sent the amount to this petitioner through

one Bhushan. It also discloses that respondent No.3 came to know that money has been handed over to this petitioner through Bhushan and the Deputy Commissioner of Police, Crime-II has revealed that this petitioner handed over the money to him.

23. Having considered the statement of respondent No.3, it is very clear that he had collected money from other distributors and paid the same to said Babu Rajendra Prasad, Bhushan and also to the local police station which is reflected in para No.4 of the statement. It is not his case that he paid the money to this petitioner and it is also important to note that, nowhere in his statement, he has stated that this petitioner had put him in fear to depart money, except stating that he went along with Bhushan and spoken to him and no any statement that this petitioner threatened him or put him in fear. The statement also does not disclose that money has been directly handed over to this petitioner. But, only he comes to know through the Deputy Commissioner that amount was recovered from the petitioner herein. It is also important to note that only name of this petitioner has been referred and there is no

demand and acceptance by this petitioner and the demand is made by Babu Rajendra Prasad. No doubt, the respondent No.3 has placed some of the documents along with the statement of objections at Exs.R1 to R14 and contends that money has been handed over to the petitioner, none of the documents reflect that this petitioner had received the money. However, the document at Annexure-R3 discloses that an amount of Rs.25 lakhs and Rs.5 lakhs was produced at the instance of one Sri Anjan Kumar, Police Inspector, CCB on 30.05.2020 in the presence of panchas and the same is subjected to P.F.No.49/2020 and not from the petitioner herein.

24. Though in the document at Annexure-R5 it is mentioned that this petitioner has handed over the money to the tune of Rs.5 lakhs on 09.05.2020 in the office of the Deputy Commissioner of Police, Crime-II, the said document states otherwise that the amount has been seized in the presence of panch witness and not from the petitioner herein and only seizure mahazar was drawn in the presence of panchas and so also in the document at Annexure-R7, it is stated that an amount of Rs.25 lakhs was produced by this petitioner and the

same was seized in the presence of panch witness and none of the documents contains the signature of the petitioner herein. Further, there is no material on record to show that recovery has been made at the instance of this petitioner. However, it is the case of the learned State Public Prosecutor for the respondent Nos.1 and 2 that an amount of Rs.30 lakhs and Rs.32.5 lakhs was handed over on two different dates. But recoveries are made on different dates.

25. Having considered all these material available on record, no doubt the principles laid down referred by the respondent No.3 is clear that, in order to register a case, information should disclose cognizable offence, but, in the case on hand, I have already pointed out that nowhere in the statement at Annexure-A, an allegation is made against this petitioner that he demanded and accepted money or caused any threat to the complainant. The demand and acceptance is by the other persons i.e., Babu Rajendra Prasad and the recovery is also not at the instance of this petitioner, except preparing the document of seizure mahazar in the presence of panchas and the document does not disclose the presence of the petitioner while

making alleged recovery at the instance of the petitioner. The photos relied upon also does not disclose that petitioner carried the money. It is strange that the petitioner being the Police Officer carried the amount and produced in the office of Deputy Commissioner of Police, Crime-II, that too after ten days after the alleged receipt.

26. Having considered the material on record, it is a fit case to exercise the powers under Section 482 of Cr.P.C. and the same comes within the purview of the illustrations as enumerated in paragraph No.102 of the judgment in **Bhajan Lal's** case (supra) which reads as hereunder:

"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 non-cognizable 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”.

27. Having read the illustrations extracted by the Apex Court in the judgment of the **Bhajan Lal's** case (supra) in paragraph No.102, it is clear that the Apex Court, in the backdrop of interpretation of 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 has given the categories of cases by way of illustration wherein the Court can exercise such power to prevent abuse of process of any Court or otherwise to secure the ends of justice held that, 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.

28. The first illustration of the Apex Court in **Bhajan Lal's** case (supra) is aptly applicable to the case on hand, 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 petitioner. I have already pointed out that, none of the ingredients under Section 384 of IPC are present in the statement of respondent No.3 which is at Annexure-A to the petition.

29. The second illustrative circumstance is also aptly applicable to the case on hand, 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 amounts to an abuse of process.

30. The fourth illustration of the Apex Court is that, where the allegation in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code. The other circumstance is that, 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 which amounts to an abuse of process.

31. In the case on hand, I have already pointed out that the allegations made in the statement of respondent No.3 does not constitute the offence under Section 384 of IPC and not comes within the definition of Section 383 of IPC since, no such fear as enumerated under Section 383 of IPC is created in the mind of respondent No.3 and nowhere in his statement, he has stated that this petitioner has put him in fear and collected money but, only reference was made to his name that he met him. It is also not his case that he demanded and accepted the money or put him under any threat. Hence, the question of invoking offence under Section 384 of IPC for extortion does not arise. Hence, it is clear that criminal proceedings are manifest with malafides and the entire proceedings are maliciously instituted with an ulterior motives for wrecking vengeance on the accused with a view to spite him due to the personal and private grudge.

32. It is also important to note that, it is the case of the learned State Public Prosecutor appearing for the State that investigation has been started based on the newspaper report and the Deputy Commissioner of Police, Crime-II conducted an internal enquiry and recorded the statement of respondent No.3. On perusal of the statement of respondent No.3 also, it does not disclose commission of offence under Section 384 of IPC. The learned counsel appearing for the respondent No.3 also relied upon the statement of Bhushan. But, in order to prove the fact that the amount was recovered from this petitioner also, no material, except the documents of seizure mahazar and panchanama.

33. I have already pointed out that the respondent No.3 states that he came to know through the Deputy Commissioner of Police, Crime-II that money has been recovered by the petitioner and this petitioner is not a witness to the recovery of the said amount. Hence, it is clear that, as contended, a case has been registered at the instance of the Deputy Commissioner of Police, Crime-II, since a direction was given to the Inspector to take legal action, based on the statement of respondent No.3.

As already pointed out, the statement of respondent No.3 does not disclose commission of any cognizable offence and none of the ingredients of offence under Section 384 of IPC. No doubt, the offence under Section 384 of IPC is a cognizable and non-bailable offence, but the statement does not disclose commission of cognizable offence. Hence, the judgment relied upon by the learned counsel appearing for the third respondent will not come to the aid of third respondent.

34. Having considered the material on record, registration of FIR is nothing but a malicious prosecution against this petitioner with an ulterior motive to wreck vengeance against the accused with a view to spite him due to private and personal grudge. It is nothing but an infight between the officers of the department and due to vengeance, the criminal prosecution is instituted which is a serious matter.

35. This Court also would like to refer the judgment of the Apex Court in ***State of Karnataka vs. L. Muniswamy and others*** reported in ***(1977) 2 SCC 699***. The Apex Court while exercising the powers under Section 482 of Cr.P.C. held that in exercise of wholesome power, the High Court is entitled to quash

the proceedings if it comes to the conclusion that allowing the proceedings to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. It is also observed that, while exercising the jurisdiction under Section 482 of Cr.P.C, consideration justifying the exercise of inherent powers for securing the ends of justice naturally vary from case to case and a jurisdiction as wholesome as the one conferred by Section 482 ought not to be encased within the straight jacket of a rigid formula and the Court has to consider whether the material wants prosecution of a person.

36. This Court would also like to refer the judgment of the Apex Court in ***Dineshbhai Chandubhai Patel vs. State of Gujarat and Others*** reported in **(2018) 3 SCC 104** wherein, it is held that the Court can exercise the powers under Section 482 of Cr.P.C. after examining the question involved in the matter and the contents of the complaint/FIR has to be looked into. If the Court finds that FIR does not disclose prima facie commission of any cognizable offence, then the Court can invoke Section 482 of Cr.P.C. to quash the proceedings which otherwise

amounts to abuse of process and leads to miscarriage of justice. If complaint discloses commission of cognizable offence, then only the Investigating Officer can unearth the crime. In the case on hand, complaint does not disclose commission of cognizable offence.

37. Having considered the principles laid down in the judgments referred supra, it is very clear that the Court can exercise the powers under Section 482 of Cr.P.C. wherein the complaint does not disclose committing of any cognizable offence and the same is filed with an ulterior motive for wrecking vengeance against the accused with a view to spite him due to private and personal grudge, the Court can exercise the powers under Section 482 of Cr.P.C. In the case on hand, not only one case has been registered against this petitioner, in all, six cases have been registered invoking other penal provisions at the instance of the Deputy Commissioner of Police, Crime-II. When criminal proceedings are manifest with malafides and has been initiated maliciously with an ulterior motives for wrecking vengeance with a view to spite him due to the personal and private grudge, it is the duty cast upon the Court to prevent the

abuse of process which leads to miscarriage of justice. Hence, it is appropriate to invoke Section 482 of Cr.P.C. It is also pertinent to note that law cannot be set in motion as a matter of course and the Court has to carefully scrutinize the material on record.

38. I have already pointed out that the none of the ingredients of the offence under Section 383 of IPC has been made out in the statement of respondent No.3 and therefore, the question of proceeding against the petitioner for the offence under Section 384 of IPC is nothing but an abuse of process which leads to miscarriage of justice. Hence, it is appropriate to exercise the powers under Section 482 of Cr.P.C. to quash the proceedings.

39. In view of the discussions made above, I proceed to pass the following:

ORDER

- (i) The criminal petition is allowed.
- (ii) The impugned FIR registered against the petitioner herein in Crime No.64/2020 dated 12.05.2020 for the offence punishable under

Section 384 read with Section 34 of IPC on the file of 31st Additional CMM Court, Nrupathunga Road, Bengaluru City is hereby quashed.

**Sd/-
JUDGE**

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