

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 9TH DAY OF MARCH, 2021.

BEFORE

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

CRIMINAL PETITION No.930/2021

BETWEEN:

1. GOPAL KRISHNA
S/O LATE AJJEGOWDA,
AGED ABOUT 65 YEARS,
KALIDASA NAGARA,
EDGA BACK SIDE,
CHIKKAMAGALURU-577101
2. NATARAJ K.H.,
S/O HANUMANTHAPPA,
AGED ABOUT 60 YEARS,
TELEPHONE OFFICE NEAR
CHIKKAMAGALURU-577101
3. RAJESH
S/O SIDDAPPA,
AGED ABOUT 60 YEARS,
MADHUVANA LAYOUT,
CHIKKAMAGALURU-577101
4. DEVARAJ
S/O L.T. MADEGOWDA,
AGED ABOUT 64 YEARS,
BILEKALLU,
CHIKKAMAGALURU 577101
5. KARUNAKAR
S/O L.T. PUTTASWAMY,
AGED ABOUT 60 YEARS,
KALIDASA NAGARA,

CHIKKAMAGALURU-577101

- 6 . BASAVARAJU
S/O PUTTASWAMI,
AGED ABOUT 61 YEARS,
JAYANAGAR 5TH BLOCK,
CHIKKAMAGALURU-577101
- 7 . SUNDARESH
S/O VENKATA RAMAYYA,
AGEE ABOUT 58 YEARS,
RAMANAHALLI,
CHIKKAMAGALURU-577101
- 8 . RAMESH
S/O SANNEGOWDA,
AGED ABOUT 62 YEARS,
KALAYANA NAGARA,
CHIKKAMAGALURU-577101
- 9 . CHENNAKESHAVA
S/O KADAPPA,
AGED ABOUT 61 YEARS,
SUMUKHA NAGARA,
HOUSING BOARD,
CHIKKAMAGALURU-577101

... PETITIONERS

(BY SRI MANJUNATH PRASAD H.N., ADVOCATE)

AND:

STATE OF KARNATAKA
REPRESENTED BY THE SUB-INSPECTOR OF POLICE BASAVANAHALLI
P.S,
CHIKKAMAGALURU-577101

REPRESENTED BY SPP
HIGH COURT OF KARNATAKA
BENGALURU 560001.

... RESPONDENT

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C PRAYING TO QUASH THE ENTIRE PROCEEDINGS IN C.C.NO.978/2020 REGISTERED BY THE RESPONDENT POLICE IN CR.NO.12/2020 ON THE FILE OF THE II ADDITIONAL CIVIL JUDGE AND JMFC AT CHIKKAMAGALURU WHICH IS PRODUCED AS ANNEXURE-A.

THIS CRIMINAL PETITION COMING ON FOR ADMISSION THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

This petition is filed under Section 482 of Cr.P.C, praying this Court to quash the entire proceedings in C.C.No.978/2020 registered by the respondent-Police in Crime No.12/2020 on the file of II Additional Civil Judge and JMFC at Chikkamagaluru.

2. The factual matrix of the case is that the respondent-Police on receipt of a credible information that some people were playing illegal gambling at Senior Citizens Service Centre, the same was entered in the Station House Diary at 18:30 hours and thereafter, obtaining the search warrant from Dy.S.P., conducted the raid and seized an amount of Rs.12,550/- and immediately, they registered N.C.No.36/2020 against the petitioners herein and thereafter, obtained the

permission from the concerned Jurisdictional Magistrate and registered the case against the petitioners.

3. Learned counsel appearing for the petitioners would submit that without obtaining the permission, the Police have conducted the raid and investigated the matter and there is a clear non-compliance of Section 155(2) of Cr.P.C. Therefore, the very initiation of the proceedings against the petitioners herein for the offence punishable under Section 80 of the Karnataka Police Act, 1963 vitiates. Hence, it requires interference of this Court.

4. Per contra, learned High Court Government Pleader appearing for the State would submit that on receipt of a credible information, an entry was made in Station House Diary at 18.30 hours and thereafter, obtaining the permission from Dy.S.P., the raid was conducted and thereafter, N.C. was registered. The investigation was commenced only with the permission of the Magistrate and hence, there cannot be any quashing of the proceedings.

5. Having heard both the learned counsel for the petitioners and the learned High Court Government Pleader for State and on perusal of the records, it discloses that at 18.30 hours, a credible information was received that in Senior Citizens Service Centre, people were indulged in illegal gambling of Andar-Bahar and the same was entered in the Station House Diary in compliance of Section 155(1) of Cr P.C. Here there is no dispute with regard to the compliance of Section 155(1) of Cr.P.C. The main contention of the learned counsel for the petitioners before this Court is that there is a non-compliance of Section 155(2) of Cr.P.C.

6. Having perused Section 155(2) of Cr.P.C., it is clear that no police officer shall investigate the non-cognizable offence without the order of a Magistrate having power to try such case or commit the case for trial. The very contention of the learned High Court Government Pleader appearing for the State is that after making the entry in the Station House Diary, search warrant is obtained under Section 81 of Cr.P.C. from the Dy.S.P., and the raid was conducted. After conducting the raid,

the amount of Rs.12,550/- was seized and the same was entered in N.C.No.36/2020, which is a case of non-cognizable offence and thereafter, approached the learned Magistrate seeking for permission to investigate the matter.

7. This Court would like to extract Section 81 of the Karnataka Police Act, 1963, which states the provision relating to entry, search etc., by the police officers in gaming-house and the same reads as below:-

Section 81. Entry, search, etc., by Police Officers in gaming-house.—It shall be lawful for a Police Officer,—

(i) in the City of Bangalore not below the rank of a Sub-Inspector and either empowered by general order in writing or authorised in each case by special warrant issued by the District Magistrate or Sub-Divisional Magistrate, or Commissioner of Police or Superintendent of Police; or Deputy Commissioner of Police, Assistant Superintendent of Police or Deputy Superintendent of Police or Assistant Commissioner of Police, and

(ii) elsewhere not below the rank of a Sub-Inspector of Police [and either empowered by general order in writing or authorised in each case by special warrant issued] by a District Magistrate or Sub-Divisional Magistrate, or by a Magistrate specially empowered by the State Government in this behalf or by a Superintendent of Police or by an Assistant or Deputy Superintendent of Police,—

(a) to enter, with the assistance of such persons as may be found necessary, by night or by day, and by force, if necessary, any building, room, tent, enclosure, vehicle, vessel or place, which he has reason to suspect is used as a common gaming-house or for the purpose of gaming on any of the objects referred to in sub-section (1) of section 78;

(b) to search all parts of the building, room, tent, enclosure, vehicle, vessel or place which he shall have so entered, when he shall have reason to suspect that any instruments of gaming are concealed therein, and also the persons whom he shall find therein, whether such persons are then actually gaming or not;

(c) to take into custody and bring before a Magistrate all such persons;

(d) to seize all instruments of gaming and all moneys and securities for money and articles of value which are reasonably suspected to have been used or intended to be used for the purpose of gaming, and which are found therein:

Provided that no officer shall be authorised by special warrant unless the Commissioner or Deputy Commissioner or Assistant Commissioner of Police or Magistrate or Superintendent, Assistant or Deputy Superintendent of Police concerned is satisfied, upon [a written complaint or report made to him] and upon making such inquiry as he may think necessary, that there are good grounds to suspect the said building, room, tent, enclosure, vehicle, vessel, or place to be used as a common gaming-house.

8. Learned counsel appearing for the petitioners would vehemently contend that before conducting the raid, the Police ought to have obtained the permission from the learned Magistrate. In the case on hand, they have not only conducted the raid, but also drawn mahazar, which amounts to an investigation. Hence, there is a non-compliance of Section 155(2) of Cr.P.C. It is important to note that under Section 155(1) of Cr.P.C. after receiving the credible information the same has to be entered in the Station House Diary and after entering the same, the Police proceed to seek the permission from the Dy.S.P., to conduct the search and the search warrant is also obtained. After obtaining the search warrant only, they have conducted the raid and has come to know that a non-cognizable offence has been taken place. Hence, the entry of N.C. No.36/2020 has been made in the Station House Diary. The question that would arise before this Court is whether the Police have to seek for permission from the learned Magistrate before conducting the raid. The very contention of the petitioners that conducting the raid itself amounts to an investigation, cannot be accepted for the reason that when the

credible information is received with regard to the persons who have indulged in Andar-Bahar, the Police are not expected to wait till they obtain permission from the learned Magistrate, and the permission is required only for the registration of the case. In a case of a non-cognizable offence, an entry has to be made in the Station House Diary. In the case on hand, the FIR is registered subsequent to conducting of raid and prior to registering of FIR, permission is obtained from the Magistrate on 23.02.2020 vide separate order dated 24.02.2020. Unless the accused is able to show that prejudice is caused to him because of police investigation without the order of the Magistrate, the trial and conviction of the accused is not vitiated. In the case on hand, after obtaining the search warrant from Dy.S.P. as envisaged under Section 81 of the KP Act and when they found an amount of Rs.12,550/-, the mahazar was drawn. The same is permissible under Section 81 of the KP Act, which is lawful and Section 81(d) authorizes to seize all instruments of gaming and all moneys and securities for money and articles of value, which are reasonably suspected to have been used as intended to be used for the purpose of gaming, which are found therein, the

raid was conducted and thereafter the permission is obtained from the Magistrate.

9. Having perused the order, there is a separate order and also the requisition was received and thereafter, the learned Magistrate has accorded the permission to register the case to investigate the matter and consequent upon the order, the FIR is issued. Hence, the very contention of the petitioners that there is no any compliance of Section 155(2) of Cr.P.C., cannot be accepted. Here is a case that the requisition was given to the learned Magistrate and obtained the permission from the learned Magistrate, the FIR is registered and an investigation is conducted. Thereafter, the Police have filed the charge sheet for the offence punishable under Section 80 of the Karnataka Police Act. The raid was also concluded after obtaining the search warrant as envisaged under Section 81 of the KP Act and the same is lawful to do so. Hence, I do not find any merit in the petition to quash the proceedings.

and the following:-

ORDER

The petition is hereby rejected.

In view of the disposal of the main petition, I.A., if a
does not survive for consideration and the same stands disposed
of.

**Sd/-
JUDGE**

PYR