IN THE HIGH COURT OF KARNATAKA,

KALABURAGI BENCH

DATED THIS THE 28TH DAY OF JANUARY, 2025

BEFORE

THE HON'BLE MR. JUSTICE S.VISHWAJITH SHETTY

CRIMINAL PETITION NO. 200072 OF 2025

(482(Cr.PC)/528(BNSS))

BETWEEN:

BASAVARAJA SWAMY S/O MURIGEYYA SWAMY,
AGE: 51 YEARS, OCC: AGRICULUTRE,
R/O. YARAMASALA VILLAGE, TQ. DEVADURGA,
DIST. RAICHUR-584101.

...PETITIONER

(BY SRI GANESH NAIK, ADVOCATE)

AND:

THE STATE OF KARNATAKA,
THROUGH DEVADURGA POLICE STATION,
ITS REPRESENTED BY ADDL. SPP,
HIGH COURT OF KARNATAKA,
KALABURAGI BENCH, DIST. KALABURAGI 585103

...RESPONDENT

(BY SRI VEERANAGOUDA MALIPATIL, HCGP)

Digitally signed by SHILPA R TENIHALLI
Location: HIGH COURT OF KARNATAKA

THIS CRL.P IS FILED U/S.482 OF CR.P.C.(OLD) U/SEC 528 OF BNSS, PRAYING TO, QUASH THE CHARGE SHEET AND CRIMINAL PROCEEDINGS IN C.C NO. 861/2023 (CRIME NO. 163/2023) DEVADURGA PS AND DIST RAICHUR AGAINST THE PETITIONER FOR THE OFFENCES PUNISHABLE US/EC 78(3) OF

KARNATAKA POLICE ACT, PENDING ON THE FILE OF LEARNED CIVIL JUDGE AND JMFC, DEVADURGA.

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

CORAM: HON'BLE MR. JUSTICE S.VISHWAJITH SHETTY

ORAL ORDER

(PER: HON'BLE MR. JUSTICE S.VISHWAJITH SHETTY)

1. The accused No.3 is before this Court under Section 482 of Cr.P.C.,/Section 528 of Bharatiya Nagarika Suraksha Sanhita, 2023, with a prayer to quash the entire proceeding in C.C.No.861/2023 pending before the Munsiff and JMFC Court, Devadurga, arising out of Crime No.163/2023 registered by the Devadurga Police Station, Raichur district, for the offence punishable under Section 78(3) of the Karnataka Police Act, 1963 (for short 'the K.P.Act').

2. Heard the learned counsel for the petitioner and the learned High Court Government Pleader, who is directed to take notice for respondent.

3. A perusal of the material on record would go to show that, the FIR has been registered in the present case against one Shivagundappa @ Shivu S/o. Mounesh and another, for the offence punishable under Section 78(3) of the K.P.Act. Undisputedly, the alleged offence is a non-cognizable offence. Therefore, compliance of Section 155(2) of the Cr.P.C., would becomes mandatory. A perusal of the order-sheet of the trial Court would go to show that, there is no mention in the order-sheet about any orders passed by the learned Magistrate under Section 155(2) of the Cr.P.C, permitting the Investigating Officer to register the case and investigate the same. On the other hand, the material on record would go to show that, such permission is granted by the jurisdictional Magistrate by a separate order, which is not part of the order-sheet, maintained in the impugned criminal proceedings. Therefore, in view of the law laid down by the co-ordinate Bench of this Court in the case of ***Vaggeppa Gurulinga Jangaligi (Jangalagi) Vs. The State of Karnataka, through PSI, Kagwad Police Station, Belagavi,*** reported in ***ILR 2020 Kar. 630***, it cannot be said

that, there is compliance of Section 155(2) of the Cr.P.C., in the present case.

4. The material on record would also go to show that, the petitioner has been arraigned as an accused in the charge-sheet, solely on the basis of the confession statement of the accused No.1. Except the confession statement of the accused No.1, there is no other material to prosecute the petitioner. Under the circumstances, I am of the opinion that, the prayer made by the petitioner in this petition needs to be granted. Accordingly, the following order:

ORDER

(i) The criminal petition is allowed;

(ii) The entire criminal proceedings in Crime No.163/2023 registered by the Devadurga Police Station, Raichur district, for the offence punishable under Section 78(3) of the Karnataka Police Act, pending before the Court of Munsiff and JMFC, Devadurga, in

C.C.No.861/2023, as against the petitioner herein, is quashed.

Sd/-
(S.VISHWAJITH SHETTY)
JUDGE

SVH
List No.: 1 Sl No.: 19
CT:PK