HC-KAR

NC: 2025:KHC-K:3525
CRL.P No. 201594 of 2024

IN THE HIGH COURT OF KARNATAKA,

KALABURAGI BENCH

R

DATED THIS THE 1ST DAY OF JULY, 2025

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

CRIMINAL PETITION NO.201594 OF 2024

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

BETWEEN:

1. ASIF S/O ABDUL RAHEMAN,
   AGE:19 YEARS, OCC: LABOURER,
   R/O. HUTTI CAMP, TQ. LINGASUGUR,
   DIST. RAICHUR-584115.

2. MAIBOOB ALIAS PANSHOP MAIBOOB PASHA,
   S/O ABDUL SHUKUR,
   AGE:54 YEARS, OCC: PANSHOP,
   R/O. KAKANAGAR, HUTTI, TQ. LINGASUGUR,
   DIST. RAICHUR-584115.

...PETITIONERS

Digitally signed by SUMITRA SHERIGAR
Location: HIGH COURT OF KARNATAKA

(BY SRI SHIVANAND V. PATTANASHETTI, ADVOCATE)

AND:

THE STATE OF KARNATAKA THROUGH,
HUTTI POLICE STATION,
DIST. RAICHUR-584115.
R/BY ADDL. SPP HIGH COURT OF KARNATAKA,
KALABURAGI BENCH-585107.

...RESPONDENT

(BY SMT. ARATI PATIL, HCGP)

THIS CRL.P IS FILED UNDER SECTION 528 OF BNSS, 2023 PRAYING TO QUASH THE ORDER OF TAKING COGNIZANCE AND ISSUE OF PROCESS DATED 27-08-2024 PASSED IN CC NO.1017/2024 (HUTTI PS CRIME NO.147/2024 DISTRICT RAICHUR) FOR THE OFFENCES PUNISHABLE U/SECS. 78(III) OF KARNATAKA POLICE ACT PENDING ON THE FILE OF ADDL. CIVIL JUDGE AND JMFC LINGASUGUR, DISTRICT RAICHUR.

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

CORAM: HON'BLE MR. JUSTICE V SRISHANANDA

ORAL ORDER

(PER: HON'BLE MR. JUSTICE V SRISHANANDA)

Heard Sri Shivanand V. Pattanashetti, learned counsel for the petitioners and Smt. Arati Patil, learned High Court Government Pleader for the respondent – State.

2. Petition under Section 528 of the Bharatiya Nagaraik Suraksha Sanhita, 2023 (for short 'BNSS, 2023), with the following prayer:

> *"Criminal petition is filed under Section 528 of BNSS, 2023 praying to quash the order of taking cognizance and issue of process dated 27-08-2024 passed in C.C.No.1017/2024 (Hutti PS Crime*

No.147/2024 District Raichur) for the offences punishable u/Sec. 78(III) of Karnataka Police Act, pending on the file of Addl. Civil Judge and JMFC, Lingasugur, district Raichur."

3. Facts in brief, which are utmost necessary for disposal of the petition are as under:

3.1 Sri Hosakerappa K., Police Inspector of Hutti Police Station, Raichur lodged a report with the Station House Officer (for short 'SHO') of Hutti police station, which was registered in Crime No.147/2024 on 16.07.2024 for the offence punishable under Section 78(III) of the Karnataka Police Act, 1963 (for short 'K.P.Act').

3.2 Gist of the report filed by the Police Inspector of Hutti police station would reveal that when he was in police station 16.07.2024 at about 12.30 p.m., he received a credible information that near the new bus-stand of Hutti Town, some people are playing 'Matka' by announcing that

for a rupee invested reward will be Rs.80/- and were noting down the numbers.

3.3 Based on the said information, he formed a raid team comprising of himself, sub staff and panchas. They raided the said place and noticed that present petitioners and others were found in the said place indulging in 'Matka'. From the custody of petitioners, sum of Rs.17,870/-, matka list, Redmi telephone, Vivo telephone and matka chits were sized.

3.4 Later on, the police registered a case, investigated the matter and filed charge sheet on 19.07.2024.

3.5 Very registration of the case and filing of the charge sheet is called in question in this petition.

4. Learned counsel for the petitioners reiterating the grounds urged in the petition wound contend that respondent – police did not follow the procedure as is

contemplated under Section 174 of BNSS, 2023 and sought for quashing of the pending criminal proceedings.

5. *Per contra*, learned High Court Government Pleader supports registration of the case and filing of the charge sheet.

6. In order to appreciate the rival contentions of the parties, it is just and necessary for this Court to cull out Section 174 of BNSS, 2023, which reads as under:

> ***"174. Information as to non-cognizable cases and investigation of such cases.***
>
> *(1) When information is given to an officer in charge of a police station of the commission within the limits of such station of a non-cognizable offence, he shall enter or cause to be entered the substance of the information in a book to be kept by such officer in such form as the State Government may by rules prescribe in this behalf, and,-*
>
> *(i) refer the informant to the Magistrate;*
>
> *(ii) forward the daily diary report of all such cases fortnightly to the Magistrate.*

(2) No police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial.

(3) Any police officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police station may exercise in a cognizable case.

(4) Where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non-cognizable."

7. On careful consideration of the above provision, it is crystal clear that whenever an information is received by an officer in-charge of the police station within whose jurisdiction a non-cognizable offence has been committed, he is bound to enter or cause to be entered the substance of the information in a book to be kept in the police station as the State Government may prescribe in the rules.

8. Later on, the informant should be referred to the Magistrate for obtaining necessary permission. It is also incumbent on the SHO to forward the daily diary report of all such cases fortnightly to the Magistrate.

9. Sub-Section 2 of Section 174 of BNSS, 2023 creates an embargo on the police officer not to investigate such matters, where non-cognizable offence is made out without an order by the jurisdictional Magistrate, who has got power to try such offence or commit the case for trial.

10. Jurisdictional Magistrate, based on the report/complaint may consider the contents of the complaint or report and thereafter permit the police to investigate the matter by passing an order in writing.

11. Thereafter, on receipt of the such an order by the jurisdictional Magistrate, the police should register a case and investigate the matter as an officer in-charge of the police station, except arresting the person involved in the said case without arrest warrant and file appropriate

report as is contemplated under Sub-Section 3 of Section 174 of BNSS, 2023.

12. Further, Sub-Section 4 of Section 174 of BNSS, 2023 would contemplate a situation where the case relates to two or more offences of which any one of the offence is cognizable, the whole incident is to be treated as an incident where cognizable offence has taken place and without following the procedure as is contemplate in Sub-Sections 1 to 3 of Section 174 of BNSS, 2023, the concerned SHO may register the case and investigate the matter as if it is a cognizable offence notwithstanding the fact that other offences are non-cognizable in nature.

13. It is to be noted that even though BNSS, 2023 came to force from 01.07.2024, till today no rules are framed by the State. It is expected that State would take necessary steps in this regard at the earliest.

14. On careful reading and understanding the intent of the legislature in enacting Section 174 of BNSS, 2023,

when the facts of the present case are considered, admittedly, offence alleged against the petitioners is non-cognizable in nature.

15. Without following the procedure as is contemplate under Section 174 of BNSS, 2023, the SHO has not only registered the case but investigated the matter and filed the final report. The same is not in accordance with law and therefore, impugned criminal proceedings has to be quashed.

16. Hence, following order is passed:

ORDER

a) Criminal petition is allowed.

b) The order of taking cognizance and issue of process dated 27.08.2024 passed in C.C.No.1017/2024 (Crime No.147/2024 of Hutti Police Station, Raichur), pending on the file of Additional Civil Judge and JMFC,

Lingasugur, Raichur district, is hereby quashed.

c) Copy of this order is directed to be forwarded to Law Department for taking suitable action.

Sd/-
(V SRISHANANDA)
JUDGE

SRT
List No.: 1 Sl No.: 6
CT:PK