IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 09TH DAY OF OCTOBER 2020

BEFORE

THE HON'BLE MR. JUSTICE JOHN MICHAEL CUNHA

CRIMINAL PETITION NO.6794 OF 2019

BETWEEN:

SRI H D KUMARSWAMY
S/O SHRI H D DEVEGOWDA
AGED ABOUT 59 YEARS
FORMER CHIEF MINISTER
R/A NO.286, 3RD MAIN ROAD
PADMANABHA NAGAR
BANGALORE-560070

...PETITIONER

(BY SRI: HASHMATH PASHA, SENIOR ADVOCATE FOR
SRI: NASIR ALI, ADVOCATE)

AND:

1 . STATE OF KARNATAKA
BY LOKAYUKTA POLICE
BANGALORE CITY
M S BUILDING
BANGALORE-560001

(REPRESENTED BY LEARNED SPECIAL PUBLIC
PROSECUTOR OF LOKAYUKTA)

2 . SRI M S MAHADEVA SWAMY
S/O M G SUBBANNA
AGED ABOUT 57 YEARS

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NO.151, VEERASHAIVA BEEDHI
SANTHEMARANAHALLI PO
CHAMARAJANAGARA TALUK AND
DISTRICT-571151

...RESPONDENTS

(BY SRI: VENKATESH S ARABATTI, SPL SPP FOR R1;
SRI: M.V. SUNDARARAMAN, ADVOCATE FOR R2)

THIS CRIMINAL PETITION IS FILED U/S.482 CR.P.C PRAYING TO QUASH THE CRIMINAL PROCEEDINGS IN SPECIAL CASE NO.1009/2019 PENDING ON THE FILE OF THE LXXXI ADDITIONAL CITY CIVIL AND SESSIONS JUDGE CCH-82, (SPECIAL COURT EXCLUSIVELY TO DEAL WITH CRIMINAL CASE RELATED TO ELECTED MP's/MLA's IN THE STATE OF KARNATAKA, BENGALURU FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 120B R/W 406, 420, 463, 465, 468, 471 OF IPC AND UNDER SECTIONS 13(1)(c), 13(1)(d), 13(1)(e) R/W 13(2) OF PREVENTION OF CORRUPTION ACT AND UNDER SECTIONS 3 AND 4 OF KARNATAKA LAND (RESTRICTION OF TRANSFER) ACT WHICH IS ARISING OUT OF PCR NO.9/2012, AS AN ABUSE OF PROCESS OF LAW, INCLUDING THE ORDER OF TAKING COGNIZANCE DATED 20.07.2019 AND ISSUE OF PROCESS ORDER DATED 04.09.2019.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 06.10.2020 AND COMING ON FOR PRONOUNCMENT OF ORDER, THROUGH VIDEO CONFERENCE, THIS DAY, THE COURT MADE THE FOLLOWING:

O R D E R

Respondent No.2 – Sri.M.S.Mahadeva Swamy filed a private complaint (PCR.No.9/2012) before the XXIII Addl. City Civil and Special Judge for Prevention of Corruption Act, at Bangalore City seeking prosecution of the petitioner and 18 others for the alleged offences punishable under sections 120-B r/w. 406, 420, 463, 465, 468, 471 of IPC, sections 13(1)(c), 13(1)(d), 13(1)(e) read with 13(2) of Prevention of Corruption Act and under sections 3 and 4 of the Karnataka Land (Restriction of Transfer) Act read with 34 of IPC.

2. The allegations made in the complaint pertained to de-notification of Sy.Nos.128 and 137 of Halagevaderahalli village, Uttarahalli hobli, Bangalore South. At the first instance, learned Special Judge referred the complaint for investigation under section 156(3) of Cr.P.C. This order was challenged by the petitioner before this Court in Crl.P.No.4024/2017 and a prayer was made therein to quash the entire proceedings in PCR.No.9/2012 on the ground that the order of reference made by the learned Special Judge was not a speaking order and that

the learned Special Judge could not have ordered investigation into the alleged offence without prior sanction of the competent authority as the petitioner was sought to be prosecuted in his capacity as the public servant at the relevant time. This Court by its order dated 20.07.2015 dismissed the petition and directed the proceedings in PCR.No.9/2012 and Crime No.20/2012, Lokayukta Police, Bangalore City to continue.

3. After investigation, a 'B' report was submitted by Lokayukta Police on 06.12.2018. Learned Special Judge issued court notice to the complainant. Complainant filed his protest petition on 3.5.2019. After hearing the learned counsel for complainant and learned Special Public Prosecutor, by order dated 20.07.2019, learned LXXXI Addl. City Civil & Sessions Judge, Bengaluru City (CCH-82) (Special Court exclusively to deal with Criminal Cases related to Elected MPs/MLAs in the State of Karnataka) rejected the 'B-Report' filed by the Lokayukta Police and took cognizance of the offences under sections 120-B, 406, 420, 463, 465, 468, 471 of IPC, sections 13(1)(c), 13(1)(d), 13(1)(e) read with 13(2) of

Prevention of Corruption Act and under sections 3 and 4 of the Karnataka Land (Restriction of Transfer) Act, 1991 and posted the matter for recording the sworn statement of the complainant. Thereafter, the Special Court recorded the statement of the complainant and in the course of the sworn statement got marked the documents at Ex.P1 to P25. Considering the said statement and the material produced in support thereof, by order dated 04.09.2019, the Special Court directed registration of the criminal case against accused Nos.1 to 19 for the above offences and issued process to all the accused persons.

4. The instant petition is filed by accused No.1 seeking to quash the entire proceedings in Spl.CC No.1009/2019 arising out of PCR.No.9/2012 as abuse of process of court and also to quash the order taking cognizance dated 20.07.2019 and issue of process order dated 04.09.2019.

5. I have heard Sri. Hashmath Pasha, learned Senior Counsel appearing on behalf of Sri.Nasir Ali, learned counsel for petitioner, Sri.Venkatesh S. Arabatti, learned Special Public

Prosecutor for respondent No.1 – Lokayukta and Sri. M.V. Sundararaman, learned counsel for respondent No.2.

6. The principal contention urged by the learned Senior Counsel appearing for the petitioner is that the rejection of 'B' Summary Report by the Trial Court is not proper. The Court has committed an error by issuing notice to the complainant. The procedure adopted by the Special Court is contrary to the law laid down by the Hon'ble Supreme Court in Vishnu Kumar Tiwari v. State of Uttar Pradesh Through Secretary Home, Civil Secretariat, Lucknow and Another, (*2019) 8 SCC 27.* As per the dictum laid down therein, when the Special Judge proceeds to take action by way of cognizance by disagreeing with the conclusions arrived at in the police report, he would be taking cognizance on the police report and not on the complaint. And, therefore, the question of examining the complainant or his witnesses under Section 200 Cr.P.C. of the Code would not arise.

7. With regard to the protest petition submitted by the complainant, it is argued by the learned Senior Counsel that the same is in the form of argument and it does not disclose the

facts constituting the ingredients of the offences alleged against the petitioner and therefore, there is no basis for the learned Magistrate to take cognizance of the alleged offences. Thus it is argued that the order of taking cognizance dated 20.07.2019 is bad in law and is liable to be set-aside on that ground.

8. Insofar as the order relating to issuance of process is concerned, learned Senior Counsel emphasized that the sworn statement given by the complainant does not disclose the constituents of any criminal offences insofar as the petitioner is concerned. The complainant was a stranger to the entire transaction. He had no personal knowledge of the alleged de-notification and therefore, he was not competent to speak about the alleged transaction which had taken place in accordance with the procedure prescribed under law. Eventhough witnesses were cited in the private complaint, none of these witnesses acquainted with the facts have been examined before the Trial Court. The evidence of the compiainant is only a hear-say. No direct evidence is produced to establish the ingredients of any of the offences alleged in the

complaint. As a result, no material is available before the Trial Court to issue process to the petitioner and thus, it is argued that the learned Special Judge has misdirected himself in issuing process to the petitioner without applying his mind to the facts of the case.

9. Regarding invocation of Section 13(1)(e) of Prevention of Corruption Act is concerned, the learned Senior Counsel while taking me through the complaint submitted that even though PCR and the sworn statement given by the complainant do not attract the ingredients of Sec 13(1) (e) of Prevention of Corruption Act, learned Special Judge has taken cognizance of the said offence along with other offences and issued process to the petitioner which indicates total non-application of mind. That apart, there was inordinate delay of five years in initiating criminal action against the petitioner. Eventhough the de-notification order was passed in the year 2007, the PCR was filed only in 2012. Learned Special Judge failed to note that the order of de-notification was not challenged by any one before any competent authorities, as such, no illegality was attached to

this order. That apart, the material available on record clearly indicated that de-notification was ordered based on the report of the Engineering Department as well as the notings made by the Office to the effect that the possession of the land was not taken by the BDA and the land was lying vacant and therefore, the Government was well within its power to de-notify the said land in exercise of powers under section 48 of the Land Acquisition Act. No material is produced by the complainant to show that the petitioner has made any unlawful gain on account of the alleged de-notification and that he has caused wrongful loss to the State Exchequer. As such, even the ingredients of the offence under Sec 13(1) (c) and (d) of the Prevention of Corruption Act are also not made out. The learned Magistrate therefore has committed a serious illegality in proceeding against the petitioner for the alleged offences.

10. Relying on the decision of the Hon'ble Supreme Court in *M/s. PEPSI FOODS Ltd. & Another vs. SPECIAL JUDICIAL MAGISTRATE & Others, (1998) 5 SCC 749*, with reference to para 28, learned Senior Counsel further contended that

summoning of an accused in a criminal case is a serious matter. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused. It is the submission of learned Senior Counsel that in the instant case, the Special Court has utterly failed to apply its mind to the facts of the case and has passed the impugned order without application of mind and in violation of the statutory rules.

11. Further, the learned Senior Counsel pointed out that the allegations made in the complaint and the statement of the complainant clearly indicate that the petitioner was a public servant at the relevant time. Going by the allegations made in the complaint, the alleged acts were performed by the petitioner while he was discharging his duty as the Chief Minister and

therefore no prosecution could have been launched against the petitioner without prior sanction under section 197 Cr.P.C. and section 19 of the Prevention of Corruption Act. On this question, learned Senior Counsel has placed reliance on the decision of the Hon'ble Supreme Court in *D.DEVARAJA vs. OWAIS SABEER HUSSAIN, 2020 SCC Online SC 517,* with reference to paras 73 to 77 wherein it is held as under:

> *73." To decide whether sanction is necessary, the test is whether the act is totally unconnected with official duty or whether there is a reasonable connection with the official duty. In the case of an act of a policeman or any other public servant unconnected with the official duty there can be no question of sanction. However, if the act alleged against a policeman is reasonably connected with discharge of his official duty, it does not matter if the policeman has exceeded the scope of his powers and/or acted beyond the four corners of law.*
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> *74. If the act alleged in a complaint purported to be filed against the policeman is reasonably connected to discharge of some official duty, cognizance thereof cannot be taken unless requisite sanction of the appropriate government is obtained under Section 197 of the Code of Criminal Procedure and/or Section 170 of the Karnataka Police Act.*
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> *75. On the question of the stage at which the Trial Court has to examine whether sanction has been obtained and if not whether the criminal proceedings should be nipped in the bud, there are diverse decisions of this Court.*

> *76. While this Court has, in D.T. Virupakshappa (supra) held that the High Court had erred in not setting aside an order of the Trial Court taking cognizance of a complaint, in exercise of the power under Section 482 of Criminal Procedure Code, in Matajog Dobey (supra) this Court held it is not always necessary that the need for sanction under Section 197 is to be considered as soon as the complaint is lodged and on the allegations contained therein. The complainant may not disclose that the act constituting the offence was done or purported to be done in the discharge of official duty and/or under colour of duty. However the facts subsequently coming to light in course of the trial or upon police or judicial enquiry may establish the necessity for sanction. Thus, whether sanction is necessary or not may have to be determined at any stage of the proceedings.*
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> *77. It is well settled that an application under Section 482 of the Criminal Procedure Code is maintainable to quash proceedings which are ex facie bad for want of sanction, frivolous or in abuse of process of court. If, on the face of the complaint, the act alleged appears to have a reasonable relationship with official duty, where the criminal proceeding is apparently prompted by mala fides and instituted with ulterior motive, power under Section 482 of the Criminal Procedure Code would have to be exercised to quash the proceedings, to prevent abuse of process of court."*

12. Finally, learned Senior Counsel submitted that the proceedings initiated against the petitioner are malafide and ulteriorly motivated. The complainant being a political opponent of the petitioner, the allegations made in the complaint are actuated by malice and are calculated to tarnish the image of the

petitioner and for all these reasons, the impugned proceedings and the orders passed by the learned Special Judge are liable to be quashed or in the alternative, the matter be remanded to the trial court to consider the complaint afresh from the stage of recording the sworn statement of the complainant.

13. In support of these submissions, learned Senior counsel has referred to the following authorities:-

1	2019(8) SCC 27	Vishnu Kumar Tiwari **Vs**. State of Uttar Pradesh Through Secretary Home, Civil Secretariat, Lucknow and Another
2	ILR 2018 KAR 1725	Dr. Ravikumar **Vs.** Mrs. K.M.C. Vasantha and Another
3	1989 (2) SCC 132	M/s India Carat Pvt. Ltd. **Vs.** State of Karnataka and Another
4	1998 (5) SCC 749	Pepsi Foods Ltd. and Another **Vs.** Special Judicial Magistrate and others
5	2001 (6) SCC 181	T.T. Antony and others **Vs.** State of Kerala and Others
6	2020 SCC Online SC 517	D. Devaraja **Vs.** Owais Sabeer Hussain
7	2016 (2) SCC 143	N.K. Ganguly **Vs.** Central Bureau of Investigation, New Delhi
8	2000 (8) SCC 500	Abdul Wahab Ansari **Vs.** State of Bihar and Another

14. Meeting the above arguments, learned Special Public Prosecutor appearing for respondent No.1 Sri. Venkatesh S. Arbatti, at the outset, submitted that all the contentions urged

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by the petitioner regarding non-application of mind and want of previous sanction for initiation of criminal proceedings against the petitioner are already considered by this Court in Crl.P.No.4024/2012 and relying on the very same material and placing reliance on the very same decisions referred to by the learned Senior counsel except the decision in *D.DEVARAJA vs. OWAIS SABEER HUSSAIN,* 2020 SC Online 517, has rejected these contentions by order dated 27.07.2015. The Special Leave Petition preferred by the petitioner against the said order has been dismissed by the Hon'ble Supreme Court by order dated 03.10.2016 in SLP (Crl.)MP.No.15963/2016 and therefore, these grounds are not available to the petitioner to challenge the orders passed by the learned Special Judge.

15. To buttress his submission, learned Special Public Prosecutor has drawn my attention to paras 104, 105 and 107 of the order in Criminal Petition No.4024/2012, wherein it is held that:-

> *104. Sanction is not required under Section 19 of P.C.Act if the accused does not hold the office alleged to have been abused as on the date of taking cognizance.*

> *105. No sanction is required to prosecute the public servant for the offences punishable under sections 120-B, 406, 409, 467, 468 and 471 of IPC. It is no part of the duty of the public servant while discharging his official duties to enter into criminal conspiracy or to indulge in criminal misconduct.*
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> *107. Abuse or misuse of power cannot be said to be part of the official duty. No protection can be demanded by the public servant.*

16. Further referring to the statement of objections filed on behalf of respondent No.1 and with reference to the files relating to the acquisition of subject land and the records produced before the learned Special Judge as per Exs-P1 to P25, the learned Special Public Prosecutor pointed out that these materials prima-facie disclose the ingredients of the offences alleged against the petitioner and therefore there is no reason to interfere with the impugned judgment, much less, to remand the matter to the learned Special Judge as sought for by learned Senior Counsel for the petitioner.

17. Learned Special Public Prosecutor has assailed the very maintainability of the petition under section 482 Cr.P.C. against

the interlocutory orders passed by the trial court in view of the law laid down by the Apex Court in V.C. Shukla v. State through CBI, AIR 1980 SC 1962 and the recent decision of the Hon'ble Supreme Court in the case of Asian Re-surfacing of Road Agency Private Limited and Another v. Central Bureau of Investigation, AIR 2018 SC 2039.

18. In support of the above submissions, learned Special Public Prosecutor has placed reliance on the following citations:-

1. *V. C. Shukla v. State through CBI, AIR 1980 SC 1962.*
2. *Asian Resurfacing of Road Agency Private Limited and Another v. Central Bureau of Investigation, AIR 2018 SC 2039.*
3. *Bhagwant Singh v. Commissioner of Police and Another, 1985 (2) SCC 537.*
4. *Gangadhar Janardhan Mhatre v. State of Maharashtra and Others, 2004 (7) SCC 768.*
5. *Vishnu Kumar Tiwari v. State of Uttar Pradesh through Secretary Home, Civil Secretariat, Lucknow and another, (2019) 8 SCC 27.*

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6. *Dr. Ravikumar v. Mrs. K.M.C. Vasantha and Another, ILR 2018 KAR 1725.*

7. *Lakshminarayana A.S. v. State by Lokayukta Police and others - Crl.P.No.5879/2013 dated 13.03.2019*

8. *State of Haryana and others v. Bhajan Lal and others, AIR 1992 SC 604.*

9. *VinodRaghuvanshi v. Ajay Arora and Ors.- 2013 AIR SCW 6660*

10. *State of Orissa and Ors. v. Ujjal Kumar Burdhan, (2012) 4 SCC 547.*

11. *Priyanka Srivastava & Another v. State of Uttar Pradesh and Others, AIR 2015 SC 1758*

12. *Mallinath Maharaj @ Mallayya v. The State of Karnataka and another- Crl.P.No.200281/2017 dated 27.02.2017(para 8 and 9)*

13. *Abhay Singh Chautala v. Central Bureau of Investigation, (2011) 7 SCC 141.*

14. *Ajoy Ahaharya v. State Bureau of Investigation against Economic Offences (2013) 16 SCC 728.*

15. *L. Narayan Swamy v. State of Karnataka & Others, AIR 2016 SC 4125*

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16. Habibulla Khan v. State of Orissa & Another, AIR 1995 SC 1124.

17. Satya Narayan Sharma v. State of Rajasthan, AIR 2001 SC 2856.

19. Having heard the learned counsels in detail and on going through the material produced before the court, the points that arise for my consideration are:-

1. *Whether the order taking cognizance dated 20.07.2019 and the issue of process order dated 04.09.2019 are in accordance with the procedure contemplated under law?*
2. *Whether the initiation of criminal action against the petitioner is bad in law for want of prior sanction under section 197 Cr.P.C. and section 19 of Prevention of Corruption Act?*
3. *Whether the proceedings in Spl.C.No.1009/2019 are liable to be quashed against the petitioner?*

Reg: Point 1.

20. The procedural defects highlighted by the learned Senior Counsel for petitioner are mainly based on i) Rejection of 'B' summary report submitted by Lokayukta police and ii) Non-application of mind to the facts of the case before issuance of process to the petitioner. Though elaborate arguments are advanced by learned Senior Counsel for the petitioner on both these contentions, yet, insofar as the procedure to be followed in accepting or rejecting the 'B' summary report is concerned, the law is so well settled that there is hardly any scope for arguments on this issue. Suffice it to note that following the decision of the Hon'ble Supreme Court in Kamalapati Trivedi v. State of West Bengal', (1980) SCC (2) 91, this Court in 'Dr. Ravi Kumar v. Mrs. K.M.C. Vasantha and Another', ILR 2018 KAR 1725, has enumerated the guidelines to be followed by the courts and the Magistrate dealing with the 'B' summary report submitted by the investigating agency as under:-

> *"5. xxxxxxxxxxxxxxxx It is well recognized principle of law that, once the police submit 'B'*

Summary Report and protest petition is filed to the same, irrespective of contents of the protest petition, the court has to examine the contents of 'B' Summary Report so as to ascertain whether the police have done investigation in a proper manner or not and if the court is of the opinion that the investigation has not been conducted properly, the court has got some options to be foliowed, which are,-

i) *"The court after going through the contents of the investigating papers, filed u/s 173 of Cr.P.C., is of the opinion that the investigation has not been done properly, the court has no jurisdiction to direct the Police to file the charge sheet however, the Court may direct the Police for re or further investigation and submit a report, which power is inherent under section 156(3) of Cr.P.C, but before taking cognizance such exercise has to be done. This my view is supported by the decisions of the Hon'ble Apex Court in a decision reported in AIR 1968 S.C. 117 between Abhinandan Jha and Dinesh Mishra (para 15) and also Full Bench decision of Apex Court reported in (1980) SCC 91 between Kamalapati Trivedi and State of West Bengal.*

ii) *If the court is of the opinion that the material available in the 'B' Summary Report makes out a cognizable case against the accused and the same is sufficient to take cognizance, and to issue process, then the court has to record its opinion under Sec.204 of Cr.P.C., and the Court has got power to take cognizance on the contents of 'B' Summary Report and to proceed against the accused, by issuance of process.*

iii) If the court is of the opinion that the 'B' Summary Report submitted by the Police has to be rejected, then by expressing its judicious opinion, after applying its mind to the contents of 'B' report, the court has to reject the 'B' Summary Report.

iv) *After rejection of the 'B' Summary Report, the court has to look into the private complaint or Protest Petition as the case may be, and contents therein to ascertain whether the allegations made in the Private complaint or in the Protest Petition constitute any cognizable offence, and then it can take cognizance of those offences and thereafter, provide opportunity to the complainant to give Sworn Statement and also record the statements of the witnesses if any on*

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the side of the complainant as per the mandate of Sec.200 Cr.P.C."

21. The decision relied on by learned senior counsel for the petitioner in Vishnu Kumar Tiwari v. State of Uttar Pradesh through Secretary, Home Civil Secretariat, Lucknow and Another, (2019) 8 SCC 27 does not depart from the principles laid down in the earlier decisions of the Hon'ble Supreme Court. Even in this decision, the Hon'ble Supreme Court has reiterated that mere fact that the magistrate had earlier ordered an investigation under Section 156 (3) and received a report under Section 173 will not have the effect of total effacement of the complaint and therefore the Magistrate will not be barred from proceeding under Sections 200, 203 and 204. It is held in this decision that 1) *a Magistrate who on receipt of a complaint, orders an investigation under Section 156(3) and receives a police report under Section 173(1), may, thereafter, do one of three things: (a) he may decide that there is no sufficient ground for proceeding further and drop action; (b) he may take cognizance of the offence under Section 190 (1)(b) on the basis of the police report and issue process; this he may do without*

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being bound in any manner by the conclusion arrived at by the police in their report; (c) he may take cognizance of the offence under Section 190(1)(a) on the basis of the original complaint and proceed to examine upon oath the complainant and his witnesses under Section 200. If he adopts the third alternative, he may hold or direct an inquiry under Section 202 if he thinks fit. Thereafter he may dismiss the complaint or issue process, as the case may be."

22. In the instant case, a perusal of the case records reveal that the learned magistrate has adopted the third course open to him. The records indicate that by a detailed and considered order, the Special court rejected the 'B' summary report vide order dated 20.07.2019. This order is self-explanatory and clearly reflects that by assigning cogent reasons, learned Special Judge rejected the 'B' summary report and thereafter, took cognizance of the offences under sections 120-B, 406, 420, 463, 465, 468, 471 IPC and section 13 (1) (c), 13 (1) (d), 13(1) (e) and 13(2) of Prevention of Corruption Act and sections 3 and 4 of Karnataka Land (Restriction and Transfer) Act, 1991.

23. It is evident from the order dated 20.07.2019 that cognizance has been taken on the basis of the original complaint as per section 190(1) (a) of the Code, as by then, the police report was rejected and thereafter the trial Judge proceeded to examine the complainant upon oath as per section 200 Cr.P.C. and on considering the sworn statement and the documents produced by the complainant ordered issuance of process by a separate and considered order dated 04.09.2019. This procedure, in my view, is in consonance with the procedure laid down in the above decision and does not suffer from any error or procedural irregularity as sought to be made out by learned Senior Counsel for petitioner.

24. The contention based on the alleged violation of the procedural requirements of sections 190 and 200 Cr.P.C. appears to have been canvassed by misreading the observations of the Hon'ble Apex Court in para 18 of the above judgment wherein it is held '*Thus, when he proceeds to take action by way of cognizance by disagreeing with the conclusions arrived at in the police report, he would be taking cognizance on the basis of*

the police report and not on the complaint and therefore, the question of examining the complainant or his witnesses under section 200 of the Code would not arise. This was the view clearly enunciated."

25. The above observations relates to the facts of the said case. A careful reading of the judgment in Vishnu Tiwari's case indicates that the criminal law was set in motion in that case not on the basis of the private complaint under section 200 Cr.P.C., but on the basis of the first information report under section 154 Cr.P.C. and in that background, it was held that when the Magistrate proceeds to take action by way of cognizance by disagreeing with the conclusion arrived at in the police report, there was no question of examining the complainant or his witnesses under section 200 Cr.P.C. It is obvious, that when action is initiated by lodging the FIR, there is no complaint on record and therefore the question of examining the complainant or his witnesses under section 200 Cr.P.C. does not arise at all. Whereas, in the instant case, indisputably, proceedings against the petitioner were initiated under section 200 Cr.P.C. based on

the complaint and therefore the procedure adopted by the learned Magistrate in taking cognizance of the offences based on the complaint and the protest petition is in conformity with the principles enunciated in the above decisions. As a result, I do not find any merit in the first limb of the contentions urged by learned Senior Counsel for the petitioner.

26. The next contention urged by the learned Senior Counsel that the sworn statement of the complainant is vitiated for the reason that it was recorded with the assistance of an Advocate, also does not merit acceptance. No-doubt, it is true that as held by this Court in *K. VENKATARAMAIAH & OTHERS v. KATTERAO S. DESHPANDE,* 2008 Crl.L.J. 1547,

> *"10. When a specific procedure is contemplated under Section 200 of Cr.P.C., it cannot be deviated by adopting some other procedure which is not prescribed, even though it may be convenient to the complainant. The purpose of recording the substance of sworn statement by the Magistrate is to enable the Magistrate to satisfy himself of the allegation in the complaint to proceed further in the matter. Under Section 200 Cr.P.C., the Magistrate himself examines*

the complainant and the witnesses and records the substance of the same. The Magistrate is under obligation to reduce the substance of the statement in writing which is to be signed by the complainant and the witnesses. If an affidavit is accepted, it would go contrary to the provisions of Section 200 of Cr.P.C. In my opinion, Section 200 of Cr.P.C. does not contemplate acceptance of affidavit in the form of sworn statement nor affidavit partakes the character of sworn statement as required under Section 200 Cr.P.C. Sworn statement does not require any cross-examination nor requires a recording of the statement at the instance of an advocate. It is not an examination-in-chief, but it is the statement made before the Magistrate for his satisfaction. The filing of an affidavit by the complainant in support of his complaint would be contrary to the procedure under Section 200 of Cr.P.C. and it is inadmissible."

27. But, in the instant case, on examining the sworn statement of the complainant, it is noticed that first eight lines of examination of the complainant was recorded with the assistance of his counsel on 26.07.2019 and thereafter, the examination of the complainant was deferred. The further

examination of the complainant was resumed on 08.08.2019 and this statement as well as the statement recorded on 21.08.2019 is personally given by the complainant without the assistance or presence of the Advocate. All the material allegations are found in the statement recorded on 08.08.2017 and 21.08.2019. This statement therefore does not suffer from any vices as contended by learned Senior Counsel. As a result, the first limb of argument canvassed by the learned Senior Counsel is rejected.

28. Coming to the next limb of objections regarding non-application of mind and non-consideration of the material produced by the complainant is concerned, at the threshold, it should be noted that at the stage of issuing process, the learned Special Judge or the learned Magistrate is not required to analyse and sift the evidence and is not required to assign elaborate reasons in justification of its order. At the stage of issuance of process, the learned Magistrate or court is required to find out whether the sworn statement and the material produced in support thereof prima-facie disclose the commission

of offences and prima-facie case for trial is made out. On perusal of the impugned order, I find that such exercise has been carried out by the learned Special Judge. It is seen from the impugned order that the learned Special Judge has adverted his mind to the allegations made in the complaint and has referred to the documents produced by the complainant and as well as the provisions of law applicable to the facts stated therein. Therefore, the contention of learned Senior Counsel for petitioner that the impugned order has been made without considering the material on record and without application of mind, cannot be accepted. Even otherwise, the petitioner having approached this Court under section 482 Cr.P.C. challenging the interlocutory order passed by the court below, power under section 482 Cr.P.C. cannot be exercised to quash the said order on the purported ground, unless the petitioner has been able to point out any patent illegality or error amounting to abuse of process of Court or failure of justice. No such fundamental error or defect of jurisdiction has been pointed out by learned Senior Counsel for the petitioner warranting interference of this Court under section 482 of Cr.P.C.

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29. In view of the above conclusion, though I am not required to consider the submissions urged by learned Senior Counsel for petitioner assailing the impugned order on the ground of non-consideration of material, yet, I have looked into the documents produced by the complainant before the learned Magistrate only for the limited purpose of ascertaining whether prima-facie case has been made out by the complainant for issuance of process to the petitioner for the alleged offences. In this regard, it is relevant to note that the various documents produced by the complainant at Exs-P1 to P25 disclose that in relation to land bearing Sy. No. 128, the Special Land Acquisition Officer had passed an award on 28.04.1998. which was approved by Deputy Commissioner (LA) , BDA on 16.05.1998. In relation to land bearing Sy.No. 137, the SLAO passed the award on 04.05.1998 which was approved by Deputy Commissioner (LA), BDA on 25.05.1998. Thereafter, possession of the said lands was taken on 29.09.1999 and handed over to the engineering section of the BDA on the very same day to form the layout. Thus, the said lands vested in the BDA with effect from 29.09.1999.

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30. On 19.09.2005, accused No.2 filed a representation requesting for de-notification of the said lands. The Petitioner/accused No.1 who was the Chief Minister of Karnataka from 03.02.2006 upto 09.10.2007 called for the records and the file pertaining to request made by Accused No.2, by order dated 04.09.2006. Thereafter, as per paragraphs No.17 and 18 of the said file, passed the order for de-notifying the said lands. Subsequently by order dated 01.10.2007, the notification was approved and on 03.10.2007, the notification was issued thereby de-notifying the said lands purporting to act under Section 48 of the Land Acquisition Act, 1894 vide Notification No. UDD/434/MNX/2007, Bangalore dated 01.10.2007 which was issued specifically with respect to the said lands.

31. It is relevant to note that the report dated 30.12.2005 of BDA specifically states that possession of the said lands has been taken on 29.09.1999. The order passed by the accused No.1/petitioner has been passed ignoring the notes at paragraphs 4 to 16 of the said file, which were suggestive of closure of the file under "D" Category. Paragraph 9 states that

the possession was already taken and the said lands cannot be dropped from the acquisition. Further para 10 noted the closure of the file under D Category; para 11 stated that the case has not been placed before the notification committee and has been directly sought by the office of the Chief Minister.

32. Ignoring all the above aspects, especially the notings of the competent authorities and the report dated 30.12.2005 of the BDA at paras 4 to 6 of the said file, petitioner passed the order at paras 17 and 18 purportedly in terms of Government of Karnataka (Transaction of Business) Rules, 1977. This order on the face of it appears to be bad for the reason that on the date of submitting the representation dated 19.08.2005, accused Nos.2 to 4 were not the owners of the said lands, since the land had vested in the Government of Karnataka. Further, as on the date of passing the order of de-notification, accused Nos.2 to 4 had already sold the said lands to accused Nos.5 & 6 under sale deeds dated 13.12.2004 for a sum of Rs.43,75,000/- and Rs.47,25,000/-. Thereafter, vide sale deed dated 10.03.2010, accused Nos.5 & 6 sold the said lands in favour of accused No.7 to 15 for a sale

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consideration of Rs.4,14,00,000/-. Thereafter, accused Nos.7 to 15 entered into Memorandum of Understanding dated 31.03.2011 with accused Nos.16 to 19, which are the firms floated by accused Nos.7 to 15.

33. The above facts, in my view, squarely attract the ingredients of the offences under section 13(1) (c), 13(1) (d) and 13(1) (e) of the Prevention of Corruption Act and the provisions of Karnataka Land (Restriction of Transfer) Act. Though, learned Senior Counsel for petitioner has vehemently contended that the allegations made in the complaint and the material produced in support thereof do not prima-facie constitute the offence under section 13(1) (e) of Prevention of Corruption Act, yet, having regard to the fact that at the stage of taking cognizance, the learned Magistrate is only required to ascertain the prima-facie application of provisions of law to the facts of the case and adequate opportunity would be available to the petitioner/accused under section 245 Cr.P.C. to put forth a case for his discharge on the ground of lack of material to proceed against him, I do not find it proper to record any finding

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on the said contention, lest, it would prejudice the case of the petitioner in the course of trial. Liberty therefore is reserved to the petitioner to canvass this plea before the trial court at the stage of framing charge. For the same reason, the argument of learned Senior Counsel for petitioner that the complainant was a stranger to the transaction in question and was not conversant with the dealings in question, also cannot be accepted. The material produced before the learned Special Judge goes to show that the alleged offences are sought to be substantiated through documentary evidence and not on oral evidence. Since documents produced before the Court prima-facie make out the ingredients of the above criminal offences requiring summons to the petitioner, I do not find any justifiable reason to interfere with the impugned order on the purported contentions raised in the petition. As a result, even the second limb of argument canvassed by learned Senior Counsel for petitioner is liable to be rejected and is accordingly rejected.

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Reg.Point No.2

34. Coming to the question of sanction, this issue is already concluded by orders of this Court in Cri.P.No.4024/2012. As already stated above, this Court has recorded a clear finding that in the circumstances of the case and having regard to the nature of the allegations leveled against the petitioner, sanction under section 197 Cr.P.C. and section 19 of Prevention of Corruption Act is not necessary. The Hon'ble Supreme Court has refused to interfere with the said order, as such, this order has attained finality. This order is binding on the petitioner and therefore he is estopped from raising this issue at every stage of the proceedings. Hence, without entering into any further discussion on this issue, the contention urged by learned Senior Counsel for petitioner as to the requirement of prior sanction for prosecution of the petitioner is also rejected.

Reg. Point No.3

35. In the light of this discussion and for the reasons stated above, impugned orders do not call for interference by

this Court under section 482 Cr.P.C. There are sufficient material to proceed against the petitioner for the alleged offences. In the absence of any material to show that the action initiated against the petitioner is an abuse of process of court and has resulted in failure of justice, there is no ground to quash the impugned proceedings as sought for in the petition.

As a result, the petition is liable to be dismissed and is accordingly dismissed.

Sd/-
JUDGE

Bss/mn/-

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