

NC: 2023:KHC:25419
CRL.P No. 3431 of 2023



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 14TH DAY OF JULY, 2023

BEFORE

THE HON'BLE MR JUSTICE M.NAGAPRASANNA

CRIMINAL PETITION NO. 3431 OF 2023

BETWEEN:

D.K.SHIVAKUMAR,
S/O. D K KEMPEGOWDA,
AGED ABOUT 59 YEARS,
KPCC OFFICE, QUEENS ROAD,
SHIVAJINAGAR
BENGALURU - 560051

...PETITIONER

(BY SRI. ARNAV A. BAGALWADI.,ADVOCATE)

AND:

1. STATE OF KARNATAKA
THOROUGH SHIVAJINAGAR P.S.,
REPRESENTED BY SPP OFFICE,
HIGH COURT OF KARNATAKA,
BENGALURU -560001.

2. SHARATH BABU R
POLICE SUB INSPECTOR,
SHIVAJI NAGAR P.S.
KARNATAKA-51

...RESPONDENTS

(BY SRI.MAHESH SHETTY, HCGP FOR R1 AND R2)

THIS CRL.P FILED U/S.482 CR.P.C BY THE ADVOCATE
FOR THE PETITIONER PRAYING THAT THIS HONOURABLE
COURT MAY BE PLEASED TO QUASH THE PRIVATE
COMPLAINT IN PCR NO.54122/2022 DATED 28.06.2022
AND SET ASIDE THE ORDER OF COGNIZANCE DATED
28.06.2022 IN PCR NO.54122/2022 AND ALL FURTHER





PROCEEDINGS IN C.C.NO.25317/2022 PENDING ON THE FILE OF THE 42nd ACMM BENGALURU FOR THE OFFENCES P/U/S.188 OF IPC SEC.31 R/W SEC.103 OF KARNATAKA POLICE ACT.

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

ORDER

Heard the learned counsel appearing for the petitioner and learned HCGP for respondent Nos.1 and 2.

2. The petitioner/accused No.1 is charged for the offence punishable under Section 188 of Indian Penal Code and Sections 31 read with 103 of Karnataka Police Act.

3. The allegations is holding of a protest during the period, in which, the Standard Operating Procedure (for short hereinafter referred to as 'SOP') of Covid-19 was in operation.

4. Learned counsel for the petitioner would contend that for an offence to become punishable under Section 188 IPC, the lawful orders of Deputy Commissioner/District Magistrate/Taluka Magistrate should have been violated. The violation here is of other orders of State.



5. Be that submission as it may.

6. What merits consideration, at this juncture is the manner, in which, the cognizance is taken and summons are issued to the accused. The Court records the filing of complaint and issues summons to accused Nos.1 to 13 through the jurisdictional police.

7. The order reads as follows:

"Office to Register this case in CC Register and issue notice to the complainant and issue summons to the accused No.1 to 13, through jurisdictional Police Station Rtb.by 26.08.2022."

The order on the face of it, does not reflect any application of mind.

8. The Hon'ble Apex Court in the case of **PEPSI FOODS LTD., VS. SPECIAL JUDICIAL MAGISTRATE - (1988) 5 SCC 749** and in the case of **FAKHRUDDIN AHMAD VS. STATE OF UTTARPRADESH AND ANOTHER - (2008) 17 SCC 157** has delineated the issue of learned



Magistrate requiring to apply the mind while issuing summons on taking cognizance of the offences.

9. In the light of the aforesaid judgments and the order taking cognizance as quoted hereinabove, permitting further proceedings would become an abuse of the process of law, *albeit, prima facie*.

10. Therefore, for the aforesaid reasons, the petition is allowed. The proceedings in C.C.No.25317/2022 pending on the file of 42nd ACMM, Bengaluru for the offences punishable under Section 188 of IPC and Section 31 r/w Section 103 of the Karnataka Police Act stands quashed *qua* the petitioner.

Sd/-
JUDGE

HJ
List No.: 1 Sl No.: 16