



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**  
**DATED THIS THE 25<sup>TH</sup> DAY OF JANUARY, 2023**  
**BEFORE**  
**THE HON'BLE MR JUSTICE M.NAGAPRASANNA**  
**WRIT PETITION NO. 20269 OF 2022 (GM-POLICE)**

**R**

**BETWEEN:**

1. SRI. M. PRAKASH

BANGALORE-560 053.

...PETITIONER

(BY SRI.M. PRAKASH, PARTY IN PERSON)

**AND:**

1. SRI. M. VINAYAKA  
AGED ABOUT 30 YEARS

BANGALORE-560 066.

2. THE STATE OF KARNATAKA  
BY THE INSPECTOR OF POLICE  
COTTON PET POLICE STATION,

Digitally signed  
by PADMAVATHI  
B K  
Location: HIGH  
COURT OF  
KARNATAKA





#149, COTTONPET MAIN ROAD,  
COTTONPETE, BENGALURU-560 053.

...RESPONDENTS

(BY SRI. M. VINOD KUMAR, AGA FOR R2)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO- ISSUE DIRECTION OR ORDER FOR APPOINTING ANY OTHER HIGHER RANK POLICE OFFICER TO INVESTIGATE THE COMPLAINT OF THE PETITIONER IN PCR 7840/2022 AND TO REGISTER FIR AGAINST THE R1 AS PER ANNEXURE-D; AND ETC.,

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

**ORDER**

The petitioner is before this Court seeking a direction for appointment of any other Police Officer higher in rank, to investigate the crime registered in Crime No.153 of 2022, which arose out of a private complaint registered in P.C.R.No.7840 of 2022, pending before the 31<sup>st</sup> Additional Chief Metropolitan Magistrate, Bangalore City and further seeking a direction to the 2<sup>nd</sup> respondent to recover materials that have been stolen from his house.



2. Heard the petitioner in-person and Sri M.Vinod Kumar, learned Additional Government Advocate appearing for respondent No.2.

3. Facts adumbrated are as follows:-

The petitioner alleges that the 1<sup>st</sup> respondent in the morning hours of 26-03-2021, forcibly broke open the doors of residence of the petitioner, thieved many articles in the house which were home appliances, fitness equipment, vehicle keys among other valuable articles. The reason for the alleged incident, according to the narration was that, the petitioner had filed a civil suit in O.S.No.4299 of 2020, which was seeking partition of the family properties. It is the averment that, to threaten the petitioner and force him to withdraw the partition suit, the alleged incident had been planted by the 1<sup>st</sup> respondent. Based upon the said incident, the petitioner registered a private complaint before the jurisdictional Magistrate invoking Section 200 of the Cr.P.C. for offences punishable under Sections 380, 503, 410, 414, 425, 442, 451 read with Section 34 of the IPC.



4. The learned Magistrate by his order dated 29-04-2022 directs registration of the complaint in PCR, registered by the petitioner on reference being made of the matter to the Cottonpet Police Station for investigation under Section 156(3) of the Cr.P.C. and also directs that the matter be listed on 26-07-2022. Though the Cottonpet Police received the certified copy of the order on 04.05.2022, the crime was not registered. On 26-07-2022, when the matter was posted before the Court, a reminder was also sent to the Police Station for registration of the crime and reporting such registration. Even then the crime was not registered. The crime comes to be registered only on 18-10-2022 after about 5½ months of reference being made by the learned Magistrate directing investigation to be conducted and a report to be submitted under Section 156(3) of the Cr.P.C. It is in that light the petitioner has knocked the doors of this Court seeking transfer of investigation to the hands of any other police officer or agency owing to the fact that the Station House Officer of the Police Station showing no interest in registering the crime even.



5. The petitioner in-person would seek to contend that the private complaint that is registered was for cognizable offences. Noticing the fact that they were all cognizable offences, the learned Magistrate had directed conduct of investigation to Cottonpet Police Station. Despite a reminder on 26-07-2022, no crime is registered. He would allege that the Station House Officer is hand in glove with the 1<sup>st</sup> respondent/accused and therefore, seeks transfer of investigation to any other Police Station.

6. On the other hand, the learned Additional Government Advocate would seek to defend the action of registration of crime after 5½ months on the ground that the reference though was received on 04-05-2022, the file was misplaced from the table of the Inspector and the moment the file was traced, it was immediately registered. He would submit that the Inspector of Police who had mishandled the file had been placed under suspension and the present incumbent has filed an affidavit that such instances would not be repeated.



7. I have given my anxious consideration to the submissions made by the party-in-person and the learned Additional Government Advocate and perused the material on record.

8. The afore-narrated facts are not in dispute and the events need to be reiterated. The petitioner alleges that on 26.03.2021, the supporters of the 1<sup>st</sup> respondent forcibly entered the house of the petitioner, broke open the lock and committed theft of several valuables in the house. Pursuant thereto, the petitioner seeks to register a complaint before the Police on 27.03.2021. But, the Police did not entertain the complaint notwithstanding the fact that it was alleging cognizable offences. Later, the petitioner approaches the Commissioner of Police by registering a complaint against the 1<sup>st</sup> respondent on 17.08.2021. After much persistence, what the petitioner receives is an endorsement dated 12-12-2021, stating that the complaint is closed holding that it is a personal matter.



9. It is on the aforesaid endorsement, the petitioner seeks to register a private complaint under Section 200 of the Cr.P.C. on 28-04-2022, for offences punishable under Sections 380, 503, 410, 414, 425, 442, 451 read with 34 of the IPC which are all cognizable. The learned Magistrate on 29-04-2022 passes the following order:

***"Perused the complaint and documents produced by the complainant. On perusal of the same it shows that there are allegations about cognizable offences. Hence, I feel it is fit case to refer the matter to jurisdictional police for investigation. In view of this I proceed to pass the following:***

**ORDER**

***Office to register the complaint in PCR and refer the matter to Cottonpet Police for investigation u/s 156(3) of Cr.P.C. and submit report.***

***Await report by 26-07-2022."***

*(Emphasis added)*

The shara, in the said order sheet indicates that the Court Police Constable to whom the investigation had been directed, receives the order copy on 04-05-2022. The learned Magistrate had directed investigation to be conducted on the complaint of the petitioner under Section 156(3) of the Cr.P.C., which is received by the Cottonpet Police on 04-05-2022. These



dates are a matter of record. Law requires that, when the Magistrate directs investigation to be conducted under Section 156(3) of the Cr.P.C., the investigation has to commence immediately and for the investigation to commence, a FIR should be registered without any loss of time.

10. The learned Magistrate had directed the matter to be re-listed on 26-07-2022 awaiting the report of investigation. Noticing that the FIR itself not being registered, one more opportunity was given on 26-07-2022, while directing the matter to be listed on 30-8-2022. Even then, the crime was not registered. It is a matter of record that the crime comes to be registered on 18-10-2022, for an order of reference, under 156 (3), dated 29.04.2022. The crime is registered 5 months and 21 days after the direction to register and investigate. Therefore, there has been blatant callousness on the part of the Station House Officer of Cottonpet Police Station, who has displayed lackadaisical attitude towards registration of the crime.





11. The respondent-State has sought to justify the action of blatantly belated registration of FIR by filing an affidavit. It is germane to notice the affidavit. The affidavit filed by the 1<sup>st</sup> respondent - Inspector of Police, Cottonpet Police Station, reads as follows:

**"AFFIDAVIT**

*I, Balaraj G., S/o Sri Gurusiddappa, aged about 39 years, working as Inspector of Police, Cottonpet Police Station, Bengaluru-1, do hereby solemnly affirm and state on oath as follows:-*

*1. I respectfully submit that I am working as Inspector of Police, Cottonpet Police Station, Bengaluru since 29-11-2022. Before that one Sri K.Y.Praveen, my predecessor was the Inspector of Police. I know the facts of the case; hence, I am swearing to this affidavit.*

***2. I state that it is true that the learned 31<sup>st</sup> Additional Chief Metropolitan Magistrate, Bengaluru passed an order to register the FIR before the Cottonpet Police under Section 156(3) of Cr.P.C. on 29-04-2022. It is also true that on 4-05-2022, the Court P.C. collected the copy of the intimation/Private Complaint lodged by the learned Magistrate before the Hon'ble Court. The Court P.C. brought the order of the Court/intimation to the Police Station and kept the same on the table of the Inspector of Police. During that period Sri Praveen K.Y. was working as Inspector of Police, who is presently under suspension. Though I have sent a letter to him seeking clarification of delay, there is no response. Upon enquiry with Lohit, HC 9792, he***



***informed that on 18-10-2022, the then Police Inspector told him that while checking the file he traced the orders of the Hon'ble Court and asked him to register FIR immediately. The then Inspector of Police asked PSI - Kavyashree to register the complaint and to investigate the matter. Immediately, thereafter the FIR has been registered and an investigation was commenced by Kavyashree.***

*3. I submit that we have utmost respect and regard for the orders passed by this Hon'ble Court. We have never disrespected the order of this Hon'ble Court. It is not a deliberate mistake. It is only due to oversight as the documents got missed up with other case papers. Hence, we lost sight of the said case. The moment we traced the documents, on the same day, without any insistence or reminder, we promptly registered the FIR.*

***4. I submit that henceforth, we will be very careful in dealing with the intimation/referral documents received from the Hon'ble Court. We will never commit such a mistake and we apologize to this Hon'ble Court for the delay caused due to misplacement of the documents. Now, we are investigating the matter promptly with no stone unturned to render justice to the petitioner. After investigation, the Final report was filed before the learned Magistrate on 7-01-2023.***

*Wherefore, I most respectfully pray that this Hon'ble Court may be pleased to accept the aforesaid affidavit on record and pass suitable orders to meet the ends of justice and equity."*

*(Emphasis added)*



The affidavit of the State confirms that, on 04-05-2022 the Court Police Constable collected the order of the learned Magistrate, brought it to the notice to the Station House Officer and kept the intimation on the table of the Inspector of Police. During that period, one Praveen K.Y., was working as the Inspector of Police.

12. The defense is that, upon enquiry, it was noticed that the order of the learned Magistrate had been misplaced and while taking out some other file, the present officer i.e., the Inspector holding the post of PSI found the order of reference and registered the crime immediately. Therefore, it is an admission that though the order of reference of the learned Magistrate was received on 04-05-2022, the crime is registered only on 18-10-2022. The defense further states that, it is only due to oversight and the intimation getting mixed up with other papers, the Station House Officer had lost sight of the case and also undertakes that such mistakes will never happen again.



13. Registration of an FIR on a cognizable offence, more particularly, on a reference being made by the learned Magistrate under Section 156(3) of the Cr.P.C. is imperative and of paramount importance, as the investigation has to commence on such registration. Reference being made to the judgment of the Apex Court in the case of **MOHD. YOUSUF VS. AFAQ JAHAN AND ANOTHER** reported in **(2006)1 SCC 627**, would be apposite, wherein the Apex Court holds as follows:

" .... .... "

**11.** *The clear position therefore is that any Judicial Magistrate, before taking cognizance of the offence, can order investigation under Section 156(3) of the Code. If he does so, he is not to examine the complainant on oath because he was not taking cognizance of any offence therein. For the purpose of enabling the police to start investigation it is open to the Magistrate to direct the police to register an FIR. There is nothing illegal in doing so. After all registration of an FIR involves only the process of entering the substance of the information relating to the commission of the cognizable offence in a book kept by the officer in charge of the police station as indicated in Section 154 of the Code. Even if a Magistrate does not say in so many words while directing investigation under Section 156(3) of the Code that an FIR should be registered, it is the duty of the officer in charge of the police station to register the FIR regarding the cognizable offence disclosed by the complainant because that police*



*officer could take further steps contemplated in Chapter XII of the Code only thereafter.”*

The Apex Court clearly holds that, when a Magistrate directs investigation under Section 156(3) of the Cr.P.C., FIR should be registered. It is the duty of the officer in-charge of the police station to register FIR regarding the cognizable offences disclosed in the complaint. It should be registered even if the Magistrate does not say in so many words, while directing investigation.

14. The aforesaid action of registration of crime with an inordinate delay would disclose culpable negligence on the part of the Law Enforcement Agency in compliance with the lawful order passed by the learned Magistrate under Section 156(3) of the Cr.P.C. for registration of FIR and for investigation into the cognizable offences. Lawful orders passed by the judicial authority are required to be scrupulously enforced by the police. Failure to do so, constitutes a constitutional tort arising out of breach of a fundamental right of access to justice for victims of crime. Such breach amounts to serious misconduct



and gross dereliction of duty justifying imposition of major penalty. Such gross dereliction of official duty by the Law Enforcement Agencies cannot be countenanced. The failure to register the crime by the then Officer in-charge of the Cottonpet Police Station cannot be brushed aside, as a mere loss of file and tracing of it. The said officer cannot and should not be left off the hook, more so, in the light of the affidavit admitting such dereliction of duty filed by the State (*supra*).

15. The learned Additional Government Advocate would submit that the Officer is now placed under suspension pending conduct of a departmental inquiry. Therefore, the Director General and Inspector General of Police shall hold a departmental inquiry, which shall be conducted and completed within a time frame, accountability shall be fixed upon the said officer after following due process of law and affording all opportunity to the said officer.

16. The apprehension of the petitioner that there would not be a fair investigation since the crime itself is not registered



is alleviated by the fact that the Investigating Officer one Balaraj G., who has filed the afore-quoted affidavit has also brought to the notice of the Court that final report has already been filed on the investigation on 07-01-2023. The apprehension and grievance of the petitioner is thus mitigated.

17. For the aforesaid reasons, I pass the following:

**ORDER**

- (i) Writ Petition stands disposed.
- (ii) The Director General and Inspector General of Police shall hold a departmental enquiry against the said officer in-charge of the police station, who is identified as one Praveen K.Y.
- (iii) The departmental inquiry against him shall be concluded within three months from the date of receipt of a copy of this order and accountability shall be fixed in such departmental inquiry after following due process of law.
- (iv) The compliance report of action taken in the departmental inquiry shall be filed before the Registry of this Court.



The Registry is directed to communicate this order to the Principal Secretary, Department of Home Affairs, Government of Karnataka and the Director General and Inspector General of Police.

**Sd/-  
JUDGE**

JY

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