

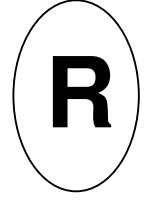
IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 1ST DAY OF OCTOBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE H.P.SANDESH

CRIMINAL PETITION NO.2397 OF 2020



BETWEEN:

1. AMIT BANSAL,
AGED ABOUT 46 YEARS,
S/O G.D. BANSAL,
R/AT NO.141,
EMBASSY PRISTINE,
IBLUR, BELLANDUR,
BENGALURU-560 103.

ADDRESS SHOWN IN FIR
NO.10, 3RD MAIN,
ASHWINI LAYOUT,
INTERMEDIATE RING ROAD,
EJIPURA, KORAMANAGALA,
BENGALURU-560 047.

...PETITIONER

(BY SRI. P.K. SHRIKARA, ADVOCATE)

Digitally signed
by DEVIKA M
Location: HIGH
COURT OF
KARNATAKA

AND:

1. STATE OF KARNATAKA,
BY VIVEK NAGAR POLICE,
VIVEKNAGAR,
BENGALURU-560 047.
REPRESENTED BY SPP
HIGH COURT BUILDING
BENGALURU-560001.
2. KRITHIKA MUTHUKRISHNAN,
AGED ABOUT 40 YEARS,
W/O ANURAG DWIVEDI
D3132, WINDMILLS OF YOUR MIND

ROAD 5B, EPIP ZONE,
WHITEFIELD,
BENGALURU - 560 048.

...RESPONDENTS

(BY SRI. MOHAMMED AYUB ALI, ADDL. SPP FOR R1;
SRIL VIKRAM A. HULIGOL, SENIOR COUNSEL FOR
SRI. S.S. SRINIVASA RAO, ADVOCATE FOR R2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C PRAYING TO QUASH THE ORDER DATED 08.07.2019 PASSED IN CR.NO.176/2015 REGISTERED BY VIVEK NAGAR POLICE IN C.C.NO.511/2020 BY IV ADDL.C.M.M., BENGALURU REJECTING THE B - REPORT FILED BY VIVEK NAGAR POLICE (PRODUCED HEREIN AS ANNEXURE-A1) AND TO QUASH THE ORDER DATED 21.12.2019 PASSED IN CR.NO.176/2015 REGISTERED BY VIVEK NAGAR POLICE IN C.C.NO.511/2020 BY THE HONOURABLE IV ADDL.C.M.M., BENGALURU TAKING COGNIZANCE AGAINST THE ACCUSED FOR THE ALLEGED OFFENCES PUNISHABLE UNDER SECTIONS 380, 406, 468, 471, 420 AND 120(B) OF IPC AND CONSEQUENTLY DIRECTING THE ISSUANCE OF THE SUMMONS TO THE PETITIONER (PRODUCED HEREIN AS ANNEXURE-A2) AND TO QUASH THE CASE IN CR.NO.176/2015 REGISTERED BY VIVEK NAGAR POLICE, PRESENTLY NUMBERED AS C.C.NO.511/2020 ON THE FILE OF IV ADDL.C.M.M., BENGALURU.

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 21.09.2026, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE H.P.SANDESH

CAV ORDER

Heard the learned counsel for the petitioner/accused No.4, the learned Additional SPP appearing for respondent No.1/State and the learned Senior Counsel appearing for respondent No.2/complainant.

2. This petition is filed praying to quash the order dated 08.07.2019 passed in Crime No.176/2015 registered by Vivek Nagar Police in C.C.No.511/2020, by the Hon'ble IV Additional Chief Metropolitan Magistrate rejecting the 'B' report and to quash the order dated 21.12.2019 passed in Crime No.176/2015, taking cognizance against the accused for the offences punishable under Section 380, 406, 468, 471, 420 and 120B of IPC and also to quash the case in Crime No.176/2015 registered by Vivek Nagar Police, presently numbered as C.C.No.511/2020 and to pass such other orders.

3. The factual matrix of the case of the complainant is that, the complainant filed a private complaint dated 30.05.2015 (Annexure-C) before the police. The sum and substance of the contents of the complaint is that the complainant is the owner of company by name

www.newrubric.com and the said company has developed a software called Kaleido and obtained a patent in respect of the same. During the years 2014 and 2015, Pearson company, situated at Ashwini Layout, requested to give the software for trial and to adopt the same to show to the schools. Accordingly, they have given the software in the year 2014. The Pearson company has copied the said software and they have marketed and tried to sell the same and hence, sought for legal action against them for taking the software from them and for cheating. The police based on the written complaint, have registered the case in Crime No.176/2015 for the offence punishable under Section 420 of IPC. The requisition was also given to the Magistrate on 22.07.2015 as per Annexure-B and invoked Sections 380, 406, 468, 471 and 120B of IPC and Section 65 of the Information and Technology Act, 2000. The police invoking Section 420 of IPC and also other offences as per the request, investigated the matter and filed the 'B' report as per Annexure-E. The notice was also given to the complainant in view of filing of 'B' report and hence, a protest petition is filed as per Annexure-F, reiterating the contents of the complaint and prayed the Court to reject the final report filed by the police i.e., 'B' report and prayed the Court to take

cognizance of the offences, which have been invoked. The Trial Court recorded the sworn statement of the complainant on 17.12.2016 as CW1. The document Ex.C.1 is marked and the sworn statement is marked as Annexure-G. The Trial Court, having recorded the sworn statement, has rejected the 'B' report vide order dated 08.07.2019 and the same is challenged before this Court by praying this Court to quash Annexure-A1 i.e., rejection of 'B' report. This Court would like to extract the said order, since the first prayer is in respect of the rejection of 'B' report, which reads as follows:

ORDER

The complainant has filed complaint against the accused for the offences punishable u/s.380, 406, 468, 471, 420, 120B of IPC and the matter was referred to investigation and the police have filed 'B' report and the complainant has filed protest to the 'B' report.

2. Sworn statement of the complainant is recorded and produced documents in support of the complaint.

3. It is the case of the complainant that, the accused No.1 is the CEO of the company by name Pearson India Education Services Pvt. Ltd. and the said company is into the business of operating schools, selling text books and providing digital

services to educational institutions and they had developed a software to be used to school activities and it was a analytics solution by name Kaleido which is used by schools to identify learning gaps and improve student learning. The patent was also pending for Kaleido and accused No.1 was entrusted all the work to introduce Kaleido to schools across India. Later accused No.2 also showed interest in investing in the company and confidential details were given to the accused and presentation was given by the company on 31.5.2014 and company showed interest to license the said project and expressed appreciation for the best result of Kaleido. The proposal given by the first accused company was rejected in 2015 on seeing the progress of the sale and subsequently the complainant noticed that on 28.5.2015 a video titled 'Pearson MyPedia Launch' was uploaded by the accused company on YouTube on 4.3.2015 and accused No.3 was making presentation to potential customers and it was nothing but a copy of the Kaleido project. The said act of the accused has infringed the intellectual property rights of the complainant company and has cheated the company.

4. The learned counsel for the accused in the course of his arguments has relied on the decision laid down in Crl.P.No.536/2017 dated 27.11.2017.

5. It is submitted that, the police have submitted 'B' report without making proper investigation on the ground that the software had no password and the complainant company should not have given it to the accused. However the entrustment was made with specific directions as to the manner of its utilisation and hence sought to take cognizance of the offences against the accused. In support of the complaint the complainant has also produced the copies of the relevant documents. It is the specific case of the complainant that they had entered into transaction with the accused company with an intention that they will not misuse it and not to divert the information and it was given for a specific purpose and hence there is a breach of trust committed by the accused. Hence, it is jut and proper to reject the 'B' report and take cognizance of criminal offences are disclosed. Accordingly, I pass the following:

ORDER

'B' report is rejected.

Cognizance is taken for the offence punishable u/s.380, 406 468, 471, 420 & 120B of IPC.

For sworn statement.

Call on 17.08.2019.

4. The Trial Court having rejected the 'B' report, again posted the matter for recording of sworn statement of the complainant and recorded the sworn statement on 07.09.2019 and got marked the document Ex.C.2 and passed the impugned order dated 21.12.2019 issuing cognizance and the same is questioned before this Court praying to set aside the same and prayer No.2 sought in this petition is to quash the issuance of process against the accused. This Court would like to extract the order dated 21.12.2019 passed by the Trial Court.

ORDER

The complainant has filed complaint against the accused for the offences punishable u/s.380, 406, 468, 471, 420, 120B of IPC.

2. Sworn statement of the complainant is recorded.

3. Heard counsel for the complainant and perused the complaint.

4. The following points arise for my consideration:

- 1) Whether there is any sufficient ground to issue process against the accused for the offences alleged?*
- 2) What order?*

5. *My finding on the above points are:*

Point No.1: In the affirmative.

Point No.2: As per the final order for the following:

REASONS

6. *Point No.1: It is the case of the complainant that, the accused No.1 is the CEO of the company by name Pearson India Education Services Pvt. Ltd. and the said company is into the business of operating schools, selling text books and providing digital services to educational institutions and they had developed a software to be used to school activities and it was a analytics solution by name Kaleido which is used by schools to identify learning gaps and improve student learning. The patent was also pending for Kaleido and accused No.1 was entrusted all the work to introduce Kaleido to schools across India. Later accused No.2 also showed interest in investing in the company and confidential details were given to the accused and presentation was given by the company on 31.5.2014 and company showed interest to license the said project and expressed appreciation for the best result of Kaleido. The proposal given by the first accused company was rejected in 2015 on seeing the progress of the sale and subsequently the complainant noticed that on 28.5.2015 a video titled 'Pearson MyPedia Launch' was uploaded by the accused company on YouTube on 4.3.2015 and*

accused No.3 was making presentation to potential customers and it was nothing but a copy of the Kaleido project. The said act of the accused has infringed the intellectual property rights of the complainant company and has cheated the company.

7. In support of the said contentions the complainant has also produced documents. The complainant has made out grounds to proceed against the accused. The dishonest and fraudulent intention and criminal breach of trust and misappropriation are to be decided at trial. Hence, at this stage there is prima facie material to take cognizance of the accused for the alleged offences. Hence, I answer point No.1 in the affirmative.

8. Point No.2: For the forgoing reasons, I pass the following:

ORDER

- 1) Cognizance is taken against the accused for the offences punishable u/s.380, 406, 468, 471, 420 & 120B of IPC.*
- 2) Office to register Criminal Case against the accused and issue summons to the accused if PF is paid and list of witnesses is furnished.*
- 3) Returnable by 20/3/20.*

5. The other prayer sought in the petition is consequential with regard to the registration of FIR and also to pass such other order as deemed fit in the circumstances of the case.

6. The first ground urged in the petition is that the complaint, the protest petition and the sworn statement do not make any specific allegations against any of the accused persons, including the petitioner herein, who has been arraigned as accused No.4. A reading of the complaint and sworn statement does not disclose commission of any offence by the petitioner herein. In the complaint, protest petition and the sworn statement, there is not even a single statement alleging as to what was the role played by the petitioner in the alleged commission of the offences. The averments in the complaint, protest petition and sworn statement, taken at face value, fail to make out the ingredients of the alleged criminal offences. The complainant/respondent No.2 has not alleged who has committed the offence, even the protest petition and the sworn statements are silent in this regard. In fact, the 'B' report filed by the prosecution says there is no sufficient proof for the investigation of the case in respect of this petitioner is concerned. The learned counsel in his arguments would

contend that on 01.06.2015, the firm has filed a suit in O.S.No.4899/2015 against the company Pearson, interlia, praying for a judgment and decree for injunction and company also filed the written statement. The copy of the plaint and also the written statement filed in O.S.No.4899/2015 are produced as Annexures-J and K. It is contended that a reading of the plaint in O.S.No.4899/2015 shows that the allegations are civil in nature, though a random reference to criminality is sought to be made. The criminal case is nothing but an abuse of the process.

7. The learned counsel for the petitioner relies upon the judgment of the Apex Court in the case of **ALL CARGO MOVERS (INDIA) PVT. LTD. AND OTHERS v. DHANESH BADARMAL JAIN AND ANOTHER** reported in **(2007) 14 SCC 776** and brought to the notice of this Court paragraph No.16, wherein an observation is made that where a civil suit is pending and the complaint petition has been filed one year after filing of the civil suit, we may for the purpose of finding out as to whether the said allegations are prima facie correct, take into consideration the correspondences exchanged by the parties and other admitted documents. It is one thing to say that the Court at this juncture would not consider the defence

of the accused but it is another thing to say that for exercising the inherent jurisdiction of this Court, it is impermissible also to look to the admitted documents. Criminal precedent should not be encouraged, when it is found to be mala fide or otherwise an abuse of the process of the Court.

8. The second count of argument is that the company has not been arraigned as accused. The narration in the complaint, protest petition and in the sworn statement indicates that the allegations made in the complaint are extremely general and vague, are only directed against the company Pearson. However, the company has not been arraigned as accused. But only the Managing Directors and the then officer/employees/Executives of the Pearson have been made as accused. The law is settled that without arraigning the company as accused, there cannot be any criminal prosecution. The learned counsel relies upon paragraph No.58 of the judgment of the Apex Court in the case of **ANEETA HADA v. GODFATHER TRAVELS AND TOURS (P) LTD.** reported in **(2012) 5 SCC 661**, wherein it is held that commission of offence by the company is an express condition precedent to attract the vicarious liability of others. When the company has not been arraigned as a party, no proceedings can be initiated

against it even where vicarious liability can be fastened and the complainant has failed to establish the essential requisite of making allegations against the accused persons to constitute the vicarious liability.

9. The third count of argument before the Court is regarding the role of the petitioner. It is contended that the petitioner does not have any role to play in the present case. Neither in the complaint nor in the protest petition and in the sworn statement is there even a single statement attributing any role played by this petitioner in the alleged commission of the offences. The petitioner has been functioning on a retainership with the technology division of Pearson. In the absence of specific allegations and role of this petitioner, there cannot be any criminal prosecution. The learned counsel also relies upon the judgment of the Apex Court in the case of **SHARAD KUMAR SANGHI v. SANGITA RANE** reported in **(2015) 12 SCC 781**, and brought to the notice of this Court paragraph No.11, wherein it is held that where the allegations were predominantly against the company, and in the absence of specific allegations against the Managing Director, there cannot be any criminal prosecution.

10. The fourth count of argument before the Court is with regard to the offences punishable under Information Technology Act, 2000 as well as IPC. The prosecution case is that the petitioner has committed offences under IPC as well as Information Technology Act. The learned counsel relies upon the judgment of the Apex Court in the case of **SHARAT BABU DIGUMARTI v. GOVERNMENT (NCT OF DELHI)** reported in **(2017) 2 SCC 18**, and brought to the notice of this Court the discussion made in paragraph No.32. Section 81 of the Information and Technology Act specifically provides that the provisions of the Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. It has to be borne in mind that IT Act is a special enactment. It has special provisions. Section 292 of IPC makes offence sale of obscene books, etc. but once the offence has a nexus or connection with the electronic record, the protection and effect of Section 79 cannot be ignored and negated. The counsel also brought to the notice of this Court paragraph No.37, wherein discussion was made with regard to legislative intendment. If legislative intendment is discernable that a latter enactment shall prevail, the same is to be interpreted in accord with the said intention. The learned

counsel would contend that the said judgment of the Apex Court was also followed by the Division Bench of Bombay High Court in the case of **GAGAN HARSH SHARMA v. STATE OF MAHARASHTRA** reported in **2019 Cri.L.J.1398**, wherein in paragraph No.37 discussed with regard to IPC offences and also Information Technology offences.

11. The fifth count of argument before the Court is with regard to the issuance of summons. The learned counsel in support of his contention relies upon the judgment of the Apex Court in the case of **PEPSI FOODS AND ANOTHER v. SPECIAL JUDICIAL MAGISTRATE AND OTHERS** reported in **(1998) 5 SCC 749** and brought to the notice of this Court paragraph No.28, wherein it is held that summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. 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 learned counsel referring this judgment would contend that while issuing the summons, nothing is discussed and the learned Magistrate has

not applied his mind while issuing the summons. The sworn statement as well as the documents, which have been marked, not points out the role of this petitioner and ought not to have issued the process.

12. The sixth count of argument of the learned counsel for the petitioner is with regard to the rejection of 'B' report. The learned counsel relies upon the order passed by this Court in **CrI.P.No.536/2017, ILR 2018 Kar 1725**, and contend that this Court has laid down the procedure to be adopted by the Magistrate to reject the 'B' report. The said procedure has not been adopted by the learned Magistrate while passing the order dated 08.07.2019. The Trial Court ought to have expressed its judicious opinion after applying its mind to the contents of the 'B' report and only then rejected the 'B' report. But the same is not found either in the rejection of 'B' report or referred the contents of the protest memo and not formed any opinion why the Court is rejecting the 'B' report and what are the error on the part of the Investigating Officer in filing the 'B' report. No such reasoning is given and hence, 'B' report is also not sustainable in the eye of law. The learned counsel referring the contents of the complaint, sworn statement and also the orders passed by the Trial Court rejecting the 'B' report dated

08.07.2019 and issuance of the summons against the petitioner dated 21.12.2019, would contend that both the orders are not sustainable in the eye of law.

13. The learned counsel also relies upon the judgment of the Apex Court in the case of **SUSHIL SETHI AND ANOTHER v. STATE OF ARUNACHAL PRADESH AND OTHERS** reported in **(2020) 3 SCC 240** and brought to the notice of this Court paragraph No.6, wherein it is discussed that considering the averments and the allegations in the FIR and even the charge-sheet, the main allegations are that the company, namely, M/s. SPML Infra Limited supplied sub-standard materials – runner bucket turbines and the supplied runner bucket turbines were not as per the technical specifications. It is also required to be noted that there is no FIR/complaint/charge-sheet against the company and in the absence of company and also in the absence of no specific allegations against the petitioner that he is in charge of administration and management of the company, there cannot be any vicarious liability.

14. The learned counsel also relies upon the order passed by this Court in **CrI.P.No.6547/2019** dated

11.09.2016 and brought to the notice of this Court that in paragraph No.5, this Court discussed the judgments in the cases of **Aneeta Hada** (supra) and also **Pepsi Foods (supra)** and taken note of Section 49 of the Legal Metrology Act, 2009. In paragraph No.10 taken note of that nothing is mentioned in the complaint with regard to the role of the petitioner and the petitioner was not in charge and responsible for day to day affairs of the particular company. Hence, there cannot be any prosecution.

15. The learned counsel also relies upon the judgment passed by this Court in **Crl.R.P.No.2319/2013** dated 14.03.2019, wherein also this Court taken note of Section 49 of Legal Metrology Act, 2009 and extracted the same and in a similar line of the order passed by this Court in Crl.P.No.6547/2019, quashed the proceedings. But liberty was given, if it is permissible to the complainant to proceed in accordance with law.

16. Per contra, the learned Senior Counsel appearing for respondent No.2/complainant would vehemently contend that in the case on hand, it is not necessary to arraign the company as accused and specific allegations are made against

this petitioner in the complaint and arraigning of the company is not an absolute rule. The Court has to take note of the facts and circumstances of each case. The learned counsel would vehemently contend that in Annexure-C complaint, particularly in paragraph No.6, it is specifically stated that this petitioner had discussed with the complainant and he was also part of the discussion and when specific allegation is made against him and also he was the part of discussion having induced the complainant to part with IPR details, he cannot contend that he has not played any role.

17. The learned Senior Counsel would also vehemently contend that Section 120B of IPC is also invoked that there was a conspiracy and the same is also addressed in the complaint and whether he was a part of conspiracy or not in parting with details of IPR, the same is a matter of trial. The learned counsel would also vehemently contend that the issue between the parties cannot be a nip in the bud and the same has to be considered in a trial. The counsel also vehemently contend that the Trial Court having received the 'B' report and considering the contents of the 'B' report, rejected the same and cognizance was taken and thereafter, proceeded to record the sworn statement of the complainant and relying upon the

material, issued the summons. The Trial Court considering Annexure-F, wherein specific accusation is made in the protest petition with regard to the role of this petitioner, the learned Magistrate applied his judicious mind and proceeded to issue the summons and hence, there cannot be any quashing of rejection of 'B' report and taking of cognizance.

18. The learned counsel in support of his arguments relies upon the judgment passed by this Court in **Crl.P.No.536/2017** dated 27.05.2017, in the case of **DR. RAVIKUMAR v. MRS. K.M.C. VASANTHA AND ANOTHER** and brought to the notice of this Court, the procedure to be followed as observed by this Court in paragraph No.5, wherein set out procedure Nos.(i) to (vii) and comes to the conclusion that procedure has been followed and when the procedure has been followed, the question of interference does not arise.

19. Having heard the learned counsel for the petitioner and the learned Senior Counsel appearing for respondent No.2/complainant and also considering the principles laid down in the judgments referred supra by both the learned counsel, the points that would arise for the consideration of this Court are:

- (i) Whether the petitioner has made out the grounds to quash the proceedings initiated against him on the ground that without arraying the Company as a party, there cannot be any criminal prosecution against him who is the Managing Director of the said Company?
- (ii) Whether the Trial Court committed an error in rejecting the 'B' report without looking into the contents of the protest memo Annexure-F and also without coming to the conclusion that the police have committed an error in filing the 'B' report and whether such order requires interference?
- (iii) Whether the Trial Court committed an error in issuing the summons against the accused for the offences punishable under Sections 380, 406, 468, 471, 420 and 120B of IPC without considering the contents of the protest memo, sworn statement and the documents and whether it requires quashing of issuance of the summons to the accused?
- (iv) What order?

Point No.(i):

20. The Court has to take note of factual matrix of the case of the complainant. In the complaint at Annexure-C, it is contended that the complainant is the owner of the company

by name www.newrubric.com and the said company has developed a software called Kaleido and obtained a patent in respect of the same. During the years 2014 and 2015, Pearson Company, situated at Ashwini Layout, requested to give the software for trial and to adopt the same to show to the schools. Accordingly, they have given the software in the year 2014. But the company had copied the said software and they have marketed and tried to sell the same. Hence, sought for legal action against them. Based on the complaint, case was registered.

21. It is not in dispute that police have filed the 'B' report. The Magistrate considering the protest memo, recorded the sworn statement and rejected the 'B' report and taken the cognizance for the alleged offences and thereafter, recorded the further sworn statement and issued the summons. Hence, the petitioners are before this Court.

22. The first and foremost contention with regard to the first point which is raised before this Court is that firm has filed a suit in O.S.No.4899/2015 against the company by name Pearson and sought for decree of injunction and the same is also contested by the petitioner by filing the written statement.

The counsel would contend that when the civil suit was filed, the same was filed against the company, but while filing the complaint, the company has not been arrayed as a party. Hence, second ground urged before the Court is that company has not been arrayed as an accused. The narration in the complaint, protest petition and sworn statement indicates that allegations made in the complaint are extremely general and vague and only directed against the Pearson company. But company has not been arrayed as accused and the Managing Director, the then officer, employee, public executives of the said company are made as accused persons. In this regard, the learned counsel for the petitioner relies upon the judgment of the Apex Court in the case of **Aneeta Hada** and **Pepsi Foods** referred supra, wherein it is held that commission of offence by the company is an express condition precedent to attract the vicarious liability of others. When the company has not been arraigned as a party, no proceedings can be initiated against it even where vicarious liability can be fastened and the complainant has failed to establish the essential requisite of making allegations against the accused persons to constitute the vicarious liability. There is no dispute with regard to the principles laid down in the said judgment is concerned.

23. In the case on hand also, it has to be noted that when the complaint was filed, company has not been arraigned as a party. The only contention of the counsel appearing for the respondent/complainant during the course of his argument is that it is not necessary to arraign the company as accused when specific allegations are made against this petitioner in the complaint and arraigning of the company is not an absolute rule. The said contention cannot be accepted. The judgment of the Apex Court in the case of **Aneeta Hada** and **Pepsi Foods** referred supra is also very clear that there cannot be any prosecution without the company. The summoning of an accused in a criminal case is a serious matter. So criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion and the observation is made that 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. When such Principles are laid down by the Apex Court with regard to arraigning of the company is essential, not only in these two judgments, the Apex Court held the same but also in several judgments of the Apex Court as well as this Court, it

is held that when the involvement of the company indicates, company has to be arraigned as accused. Hence, the second ground raised by the petitioner's counsel comes to the aid of the petitioner that without the company as a party, there cannot be any prosecution against its employees and Managing Director. Accordingly, point No.(i) is answered in the affirmative.

Point Nos.(ii) and (iii):

24. The second and third points raised by this Court are in respect of rejection of 'B' report and issuance of the summons to the petitioner. This Court, while considering the issue involved between the parties, extracted the order passed by the Trial Court in rejecting the 'B' report and taking of cognizance and proceeding to record the sworn statement. So also, this Court extracted the order passed by the Trial Court for taking of cognizance for the second time and issuing of the summons to the accused persons in subsequent order. Thus, there are two orders before this Court. Now, this Court would like to discuss with regard to consideration of the 'B' report and also the Trial Court proceeding to take cognizance and also with regard to the issuance of summons.

25. Before considering the rejection of 'B' report and issuance of the cognizance, this Court in a nutshell would like to mention the accusation made in the private complaint. The specific accusation made is that accused No.1 is the CEO of the company and the company is into the business of operating schools, selling textbooks and providing digital services to educational institutions and they had developed a software to be used to school activities. It was an analytics solution by name Kaleido, which is used by schools to identify learning gaps and improve student learning. The patent was also pending for Kaleido and accused No.1 was entrusted all the work to introduce Kaleido to schools across India. Later accused No.2 also showed interest in investing in the company and confidential details were given to the accused and presentation was given by the company on 31.05.2014 and company showed interest to license the said project and expressed appreciation for the best result of Kaleido. The proposal given by accused No.1 company was rejected in 2015 on seeing the progress of the sale and subsequently the complainant noticed that on 28.05.2015 a video titled 'Pearson MyPedia Launch' was uploaded by the accused company on YouTube on 04.03.2015 and accused No.3 was making

presentation to potential customers and it was nothing but a copy of the Kaleido project. Hence, the complaint was filed making an allegation that the said act of the accused has infringed the intellectual property rights of the complainant company and has cheated the company.

26. Having referred the matter under Section 156(3) of Cr.P.C., the police filed the 'B' report and protest memo was filed before the Magistrate. In the protest memo, it is contended that the 'B' report was filed without making proper investigation and on the ground that software had no password and the complainant company should not have given it to the accused. However, the entrustment was made with specific direction as to the manner of its utilization and hence, sought to take cognizance of the offence. The Trial Court while rejecting the 'B' report comes to the conclusion that the complainant has produced the copies of the relevant documents, but nothing is discussed with regard to the documents which have been produced by the complainant. It is the specific case of the complainant that they had entered into the transaction with the accused company with an intention that they will not misuse it and not to divert the information and it was given for a specific purpose and hence there is a

breach of trust committed by the accused. Having perused the order of the Trial Court in paragraph No.5, nowhere it is discussed with regard to the contents of the sworn statement given before the Court and even when the document of Ex.C.1 was marked, there was no such reference also in the order. While rejecting the 'B' report, the learned Magistrate has to come to a conclusion that the Investigating Officer has committed an error in investigating the matter. But nothing is discussed and only comes to the conclusion that there is a breach of trust and hence, rejected the 'B' report. The very purpose of examination of the complainant is that the complainant has to make out the case in terms of the protest memo and those evidence has not been discussed by the Trial Court and committed an error. It is also important to note that once the complainant is examined and documents are marked, the Trial Court ought to have considered the same along with the 'B' report as well as the sworn statement of the complainant and the documents which have been relied upon. But the Trial Court committed an error in rejecting the 'B' report and once again posting the matter for recording the sworn statement.

27. The complainant was again examined before the Trial Court for the second time and his further sworn statement was recorded and Ex.C.2 was marked. Once again the Trial Court while considering whether it is a fit case to issue process, extracted the very same contents of the earlier order in paragraph No.3 with regard to the allegations in paragraph No.6 of the subsequent order and comes to the conclusion that the act of the accused has infringed the intellectual property rights of the complainant company and has cheated the company. The Trial Court also made an observation that in support of the said contentions, the complainant has also produced documents and once again failed to consider the sworn statement of the complainant, who has been further examined and even did not discuss anything about Ex.C.2, which is marked during the course of sworn statement. The Trial Court in paragraph No.7 comes to the conclusion that the complainant has made out grounds to proceed against the accused. The dishonest and fraudulent intention and criminal breach of trust and misappropriation are to be decided at trial. Hence, at this stage there is prima-facie material to take cognizance of the accused for the alleged offences. The Trial Court once again took cognizance and failed to take note of the

fact that once proceeded to record the sworn statement, that itself amounts to taking of cognizance, whether it is specifically mentioned or not, and again and again mentioned in the order that cognizance was taken. While rejecting the 'B' report, cognizance was taken and again while issuance of the summons also, once again cognizance was taken and the procedure adopted twice for recording sworn statement is also erroneous but not vitiates. Keeping in view the very approach of the Trial Court, this Court would like to make it clear what is the course open to the Magistrate in view of the principles laid down in the judgment of this Court in the case of **Dr. Ravikumar** (supra). This Court in order to clarify the duty of the Magistrate when the 'B' report was filed and protest memo was filed to the same, summarized what would be the course open to the Magistrate. This Court would like to extract Sections 200, 202, 203 and 204 of Cr.P.C., which reads as follows:

"200. Examination of complainant.

A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate:

PROVIDED that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses,-

- (a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or*
- (b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under section 192:*

PROVIDED FURTHER that if the Magistrate makes over the case to another Magistrate under section 192 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them.

202. Postponement of issue of process.

(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192 may, if he thinks fit, and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction, postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:

PROVIDED that no such direction for investigation shall be made, -

- (a) *where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or*
- (b) *where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200.*

(2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath:

PROVIDED that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.

(3) If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer-in-charge of a police station except the power to arrest without warrant.

203. Dismissal of complaint.

If, after considering the statement on oath (if any) of the complainant and of the witnesses and the result of the inquiry or investigation (if any) under section 202, the Magistrate is of opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint, and in every such case he shall briefly record his reasons for so doing.

204. Issue of process.

(1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be –

- (a) a summons case, he shall issue his summons for the attendance of the accused; or*
- (b) a warrant case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction.*

(2) No summons or warrant shall be issued against the accused under sub-section (1) until a list of the prosecution witnesses has been filed.

(3) In a proceeding instituted upon a complaint made in writing, every summons or warrant issued under sub-section (1) shall be accompanied by a copy of such complaint.

(4) When by any law for the time being in force any process fees or other fees are payable, no process shall be issued until the fees are paid and, if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint.

(5) Nothing in this section shall be deemed to affect the provisions of section 87.

28. Having considered the proviso of Section 200 of Cr.P.C., it is very clear that when a private complaint is filed, two options are opened to the Magistrate. To take cognizance, proceed to record the sworn statement of the complainant and record the statements of witnesses which have been relied upon by the complainant. The proceeding to record the sworn statement itself is taking of cognizance, whether it is explicitly mentioned as cognizance is taken or not. At this stage itself, this Court would like to clarify that the taking of cognizance is not defined under the Cr.P.C. But to proceed to record the sworn statement itself is taking cognizance, that means the Magistrate has to take note of the contents of the complaint, whether it discloses an offence is committed, whether it is cognizable or non-cognizable and record the sworn statement. That is the first course open to the learned Magistrate.

29. The second course open to the Magistrate is to look into the contents of the complaint, whether the matter requires an investigation by the Investigating Officer. If the Magistrate comes to the conclusion that the matter requires to be investigated, to refer the matter under Section 156(3) of Cr.P.C. The same is a pre-cognizance order and no question of taking of any cognizance while referring the matter under

Section 156(3) of Cr.P.C. If the Court proceeds to record the sworn statement, that itself is taking of cognizance and need not necessary to mention that cognizance is taken.

30. Having received the 'B' report, it is open to the learned Magistrate to give a notice to the complainant, if notice is not given by the Investigating Officer and the same is not contemplated under Section 200 of Cr.P.C. But that is the procedure followed in view of the judgments of the Apex Court and this Court and if such protest memo is filed against the 'B' report, it is settled law that the protest memo has to be treated as complaint, even if the protest memo not contains the contents of the original complaint and only a formal protest petition is filed and even second protest memo also can be filed. If not filed, the Court can direct the complainant to file even second protest memo as held by the Apex Court in the case of **SHIVSHANKAR SINGH v. STATE OF BIHAR AND ANOTHER** reported in **(2012) 1 SCC 130**. The Apex Court in this judgment held that the law does not prohibit filing or entertaining of the second complaint even on same facts, provided the earlier complaint has been decided on the basis of insufficient material or the order has been passed without understanding the nature of the complaint or the complete

facts could not be placed before the Court or where the complainant came to know certain facts after disposal of the first complainant, which could have tilted the balance in his favour. However, the second complaint would not be maintainable in a case wherein the earlier complainant has been disposed of on all full consideration of the case of the complainant on merit. In paragraph No.19 it is held that the protest petition can always be treated as a complaint and proceeded with in terms of Chapter XV of Cr.P.C. Therefore, in case there is no bar to entertain a second complaint on the same facts, in exceptional circumstances, the second protest petition can also similarly be entertained only under exceptional circumstances. In case the first protest petition has been filed without furnishing the full facts/particulars necessary to decide the case, and prior to its entertainment by the Court, a fresh protest petition is filed giving full details, it would be maintainable. That means if the first protest memo not contains the full details, there is no bar to file a second protest petition giving full details. Having considered the protest memo, it is clear that the same can be treated as a complaint and proceed in terms of Chapter XV of Cr.P.C.

31. This Court also would like to rely upon the judgment of the Apex Court in the case of **H.S. BAINS, DIRECTOR, SMALL SAVING-CUM-DEPUTY SECRETARY FINANCE, PUNJAB, CHANDIGARH v. STATE (UNION TERRITORY OF CHANDIGARH)** reported in **(1980) 4 SCC 631**. This judgment is also relied upon by the Apex Court in several occasions and also this Court and that would be helpful to the Magistrates to consider the same having filed the 'B' report consequent upon Section 156(3) of Cr.P.C., wherein also scope of Sections 200, 203 and 204 of Cr.P.C. was discussed. It is held in the judgment that when the police report submitted under Section 173 of Cr.P.C. on the basis of investigation ordered by the Magistrate under Section 156(3) of Cr.P.C., does not bar the Magistrate from proceeding under Sections 200, 203 and 204 of Cr.P.C. The courses open to the Magistrate on receipt of the report, even if the report suggests that the case against the accused not made out and must be dropped, held, the Magistrate disagreeing with the report can take cognizance of the offence under Section 190(1)(b) and direct issue of process. In this judgment, the Apex Court has held that a Magistrate having received a police report under Section 173(2), may, thereafter, do one of three things: (1) he

may decide that there is no sufficient ground for proceeding further and drop action; (2) 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 being bound in any manner by the conclusion arrived at by the police in their report; (3) he may take cognizance of the offence under Section 190(i)(a) on the basis of the original complaint and proceed to examine upon oath the complainant and his witnesses under Section 200 of Cr.P.C. If he adopts the third alternative, he may hold or direct an inquiry under Section 202 of Cr.P.C. if he thinks fit and thereafter he may dismiss the complaint or issue process, as the case may be. The Apex Court with regard to this in detail discussed the same in paragraph Nos.6 and 7 reiterating the procedure and it is very clear that the Magistrate is not bound by the conclusions arrived at by the police and the above three courses are open to the Magistrate to consider the protest memo and also the 'B' report and also to take cognizance and proceed in accordance with law. Though Section 200 of Cr.P.C. does not specify the procedure in case of filing of the 'B' report, but the principles laid down in the above judgment and also subsequent judgments are very clear to that effect.

32. This Court also would like to rely upon the judgment of this Court in the case of **G. KRISHNA PRAKASH v. STATE OF KARNATAKA** reported in **ILR 2008 KAR 3569**, wherein in paragraph No.3, an observation is made that on filing of 'B' report, the original complainant will have to be notified with regard to filing of 'B' report, giving sufficient opportunity to appear before the Court. On his appearance before the Court, if he files protest petition to 'B' report and opts to examine himself and other witnesses, the legal course that is left to the Magistrate is to treat such protest petition as original complaint filed under Section 200 of Cr.P.C. The 'B' report, along with the material produced therein loses importance and such material would be of no value. Then thereafter, the Court will have to look into the averments made in the protest petition and the contents of the sworn statements and arrive at a conclusion as to whether the same makes out a prima facie case for issuance of process to the accused. The question of acceptance or rejection of 'B' report at that stage would arise only in the event the complainant does not make out a prima facie case for issue of process and this is not considered in the judgment of **Dr. Ravi Kumar** (supra). However, the Court will have to ascertain whether the material

produced in the form of protest petition and the sworn statements of the complainant and witnesses if any, examined make out a prima facie case to issue process or if the material so produced is deficient, it may terminate the proceedings as provided under Section 203 of Cr.P.C., and if there is prima facie case made out, process shall be issued as provided under Section 204 of Cr.P.C. This principle is also taken note of by this Court in **Crl.P.No.100591/2018** and connected matters, dated 01.02.2019 and followed the same. Having taken note of the same, it is very clear that 'B' report, sworn statement and the documents produced by the complainant have to be considered simultaneously and then take a decision whether 'B' report could be accepted or rejected or to issue the summons.

33. This Court also would like to rely upon the judgment of the Apex Court in the case of **SHIVJEE SINGH v. NAGENDRA TIWARY AND OTHERS** reported in **(2010) 7 SCC 578**, wherein the Apex Court held that to proceed following the procedure under Sections 200, 202, 203 and 204 of Cr.P.C. – sufficient ground – held, means satisfaction that a prima facie case is made out against the accused and not sufficient ground for securing his conviction. It is also held that the provisions contained therein are required to be interpreted

keeping in view the well-recognized rule of construction that procedural prescriptions are meant for doing substantial justice. If violation of the procedural provision does not result in denial of fair hearing or causes prejudice to the parties, the same has to be treated as directory notwithstanding the use of the word "shall". The object of examining the complainant and the witnesses is to ascertain the truth or falsehood of the complaint and determine whether there is a prima facie case against the person who, according to the complainant has committed an offence. If upon examination of the complainant and/or witnesses, the Magistrate is prima facie satisfied that a case is made out against the person accused of committing an offence, then he is required to issue process under Section 204 of Cr.P.C. If no case is made out, to invoke Section 203 of Cr.P.C.

34. This Court also would like to rely upon the judgment of the Apex Court in the case of **RAKESH AND ANOTHER v. STATE OF UTTAR PRADESH AND ANOTHER** reported in **(2014) 13 SCC 133**, wherein the Apex Court discussed the scope of Sections 200, 202, 190(1)(a), 190(1)(b) and 173 of Cr.P.C. The power of Magistrate to take cognizance after accepting negative final police report. The Magistrate by accepting the final report under Section 173 of Cr.P.C. did not

become functus officio and had power to take cognizance under Section 190(1)(a) on basis of protest petition filed by the complainant/first informant and proceed under Sections 200 and 202 of Cr.P.C.

35. This Court also would like to rely upon the recent judgment of the Apex Court in the case of **ZUNAID v. STATE OF UTTAR PRADESH AND OTHERS** reported in **(2023) 14 SCC 576**, wherein it is held that a Magistrate can ignore the conclusion arrived at by the Investigating Officer and independently apply his mind to the facts emerging from the investigation and take cognizance of the case, if he thinks fit, exercise his powers under Section 190(1)(b) and direct the issue of process to the accused. Further, it is held that the Magistrate is not bound in such a situation to follow the procedure laid down in Sections 200 and 202 for taking cognizance of a case under Section 190(1)(a) though it is open to him to act under Sections 200 or 202 also. After acceptance of protest petition by rejecting final report, the CJM held to have committed no error in proceeding further under Section 200 of Cr.P.C.

36. Having considered the principles laid down in the judgments referred supra, it is very clear that even having filed the 'B' report, the learned Magistrate can if found that the matter requires to be considered, it can take cognizance impliedly or explicitly and record the sworn statement and consider the material collected by the Investigating Officer as well as the material placed by the complainant and to consider both sworn statement as well as the documents and then take a decision whether there is a prima facie case to proceed against the accused and issue process against the accused. Having considered the principles laid down in the judgments referred supra, this Court would like to summarize the procedure to be followed by the Magistrate when a 'B' report is filed pursuant to a reference made to the Investigating Officer under Section 156(3) of the Cr.P.C. Although the statute does not specifically prescribe the procedure in such circumstances, the following guidelines may assist the Magistrates in proceeding in accordance with law in the light of the above principles:

1. The order passed by the Magistrate upon considering the contents of the complaint, referring

the matter for investigation under Section 156(3) of the Cr.P.C., is a pre-cognizance order.

2. If the Magistrate proceeds to record the sworn statement of the complainant, such an act amounts to taking cognizance of the offence, irrespective of whether the order expressly states that cognizance has been taken or not.
3. Having recorded the sworn statement of the complainant and considering the sworn statement along with the documents produced, if the Magistrate proceeds to pass an order that there is prima facie material to proceed, it amounts to issuance of process by the Court under Section 204 of Cr.P.C. Considering the procedure laid down under Section 200 of Cr.P.C., if summons is issued exercising the power under Section 204 of Cr.P.C. as found material to proceed and if no sufficient ground is found to proceed, to invoke Section 203 of Cr.P.C. to dismiss the complaint.
4. When the 'B' report is filed and notice thereof is given to the complainant either by the Investigating

Officer or by the Court and if the complainant chooses to file a protest memo, even if such protest memo is not proper or sufficiently detailed, to give an opportunity to file a detailed protest petition as held in the judgment of the Apex Court referred supra. The protest memo should contain full details to proceed against the accused as the same will be considered as complaint.

5. Having filed the protest petition, the same has to be treated as a complaint and proceed to take cognizance and having taken cognizance, give an opportunity to the complainant to give his sworn statement and consider the documents and no need to reject the 'B' report at that stage. The reasons given by the Investigating Officer to file 'B' report has to be considered along with the sworn statement and also the documents produced by the complainant and even if 'B' report is rejected or accepted, the Court will not become functus officio as held by the Apex Court in the case of **Rakesh** (supra). The same also can be considered simultaneously and then proceed to pass an order

either under Section 203 or 204 of Cr.P.C. The Magistrate need not necessarily pass any explicit order either rejecting the 'B' report or accepting the same. But issuance of process itself is proceeding against the accused having found the material and consider the reason given while filing 'B' report in view of the judgment of this Court in the case of **G.Krishna Prakash** and order passed in Crl.P.No.100591/2018 dated 01.02.2019.

6. The procedure adopted by the Magistrate i.e., recording the sworn statement while considering the 'B' report and thereafter again issuing process for recording the sworn statement, as made in the present case, is a procedural error. However, such procedural error will not vitiate the proceedings. The Court has to take note of whether there is any prima facie material to proceed against the accused even if 'B' report is filed in view of the principles laid down in the judgment of the Apex Court in the case of **H.S Bains** (supra) to agree or disagree.

37. It is made clear that the Magistrate need not reject the 'B' report and proceed further and in view of the principles laid down in the judgments referred supra, the 'B' report, sworn statement and the documents produced by the complainant have to be considered either for rejecting or accepting the 'B' report. While doing so, the Magistrate to consider the reasoning given by the Investigating Officer for filing the 'B' report and also to consider the material placed by the complainant either in the sworn statement or in the documents and to take a decision invoking powers vested with the Magistrate under Section 203 or 204 of Cr.P.C. There cannot be any order or rejection in the earlier stage and whether it is to be rejected or to be considered and the same has to be done simultaneously and the same would be application of judicious mind by the learned Magistrate in order to proceed or to drop the proceedings as envisaged in the judgments referred supra.

38. The discussions made above makes it clear that since the Magistrates are under confusion whether they have to reject at the initial stage or to proceed thereafter and in view of the discussions made above, the same is clarified that to proceed in accordance with law either as per the statute or as

per the principles laid down in the judgments of the Apex Court and this Court.

39. Having considered the material on record in the present case and the procedure adopted by the learned Magistrate, this Court has already answered point No.(i) in the affirmative that without arraigning the company as a party, there cannot be any criminal prosecution against this petitioner/accused No.4, who is the Managing Director of the said company as the allegations are against the company and no particular accusation against this petitioner as contended by the learned counsel for the petitioner.

40. Having considered the material on record, point No.(ii) is also answered in the affirmative that the Trial Court committed an error while rejecting the 'B' report without looking into the contents of the protest memo (Annexure-F) and also without coming to the conclusion that the police have committed an error in filing the 'B' report. With regard to issuance of the summons is concerned, the Trial Court committed an error in issuing the summons against the accused without considering the contents of the protest memo, sworn statement and the documents and ought to have

considered simultaneously. Hence, it requires quashing of the issuance of summons against the petitioner, who has been made as party in his individual capacity without arraigning the company as a party and there cannot be any proceedings against this petitioner in the absence of the company. Even this Court comes to the conclusion that the Trial Court committed an error in rejecting the 'B' report and issuing the process and in view of answering Point No.(i) in the affirmative, no need to remand the matter for re-consideration. Accordingly, point No.(iii) is also answered in the affirmative.

41. In view of the discussions made above, I pass the following:

ORDER

- (i) The petition is allowed.
- (ii) The order passed by the Trial Court in respect of this petitioner/accused No.4, is hereby quashed.
- (iii) The Registrar General is directed to communicate this order to all the Magistrates and Judges dealing with private complaints, particularly to apprise them with regard to the procedure to be followed when a 'B' report is received in a private complaint. The same

would serve as a useful reference for their academic and judicial guidance.

- (iv) The Registrar General is also directed to communicate this order to the Director of the Karnataka Judicial Academy to enlighten the Judicial Officers during their training programmes.

**Sd/-
(H.P.SANDESH)
JUDGE**

MD/SN