

ORDERS

The complainant has filed the present complaint seeking for appropriate action against the accused for the offences punishable under Sections 504, 506, 417, 420 and 409 of IPC

2. The complainant has alleged that the accused is her brother and during the year 2004 to 2020, he has received a sum of Rs.11,17,837/- from the complainant for his domestic expenses. In the year 2019, the accused has promised the complainant who was at Kuwait, that he will repay the amount once she returns from Kuwait. Complainant has returned from Kuwait on 14.09.2020 and asked the accused to return the money. But the accused has given evasive answer stating that he has invested the amount for cultivation and he has no money to return and also stated that he will do away the life of complainant. The complainant has paid money to accused believing that he will return the same. But the accused has received the said money with malafide intention to cheat the complainant and also committed breach of trust. Therefore, she lodged first information with Mudigere Police on 03.02.2023 and thereafter to S.P., Chikkamagaluru on 08.02.2023. No action has been taken against the accused. Complainant had also filed pre-litigation case in PLC No. 30/2023 on 19.12.2023 wherein the accused did not agree to settle the matter and thus the said petition was closed giving liberty to the complainant to take legal action against the accused. On these averments the complainant seeks for taking cognizance of the offences, however, learned counsel for

complainant seeks for referral of the matter for investigation by the Mudigere Police.

3. Having heard the learned counsel for complainant, this Court has carefully perused the entire materials on record as well as the report of PSI, Mudigere PS wherein submitted that on receiving the first information, the same is registered as NC No. 23/2023. On basis of complaint lodged with the Superintendent of Police, GP No. 61/2023 is also registered in which the accused was enquired who has told that she had not received any loan from the complainant and money she had transferred to the bank account of accused, is incurred to the education and other expenses of her son who was residing in the house of accused. Therefore, the complainant was issued with an endorsement to approach competent authority for redressal of her grievance.

4. It is relevant here to refer the decision of Hon'ble Apex Court in the case of **Srinivas Gundluri & Ors vs M/S. Sepco Electric Power Constructions** reported in **(2010) 8 SCC 206** wherein it has been held as under:

"To make it clear and in respect of doubt raised by Mr. Singhvi to proceed under Section 156 (3) of the Code, what is required is a bare reading of the complaint and if it discloses a cognizable offence, then the Magistrate instead of applying his mind to the complaint for deciding whether or not there is sufficient ground for proceeding, may direct the police for investigation."

5. It is no doubt that Section 156(3) OF Cr.P.C is akin to Section 175(3) of BNSS. This complaint is accompanied with an affidavit of complainant. Herein the present case, the complainant has alleged that the accused who is her brother, has receive a sum of Rs.

11,17,837/- as loan and on demanding for its return, he has scolded the complainant, threatened her to do away with her life and thereby committed breach of trust and also cheating. The acknowledgments and endorsements issued by the Mudigere Police and the complaint addressed to the Superintendent of Police, Chikkamagaluru District, goes to show that the complainant has approached the police on the above allegations whereas the police having enquired the accused who denied the loan transaction, has advised the complainant to approach the civil court.

6. The complainant has approached the police on 30.01.2023 and later on 19.12.2023, she has approached the Taluk Legal Services Committee, Mudigere, wherein the accused was called and therein also the accused has denied the allegations made by the complainant. Thus, the complainant was advised to take appropriate legal course. Since the police have inquired the matter and come to conclusion that the matter is in civil nature, referring the matter to the very police for investigation would be of no use. The complainant has specifically alleged that when she went to ask the accused to return her money, he has scolded her in filthy language, threatened to do away her life and told that he will not return her money and thereby committed breach of trust and cheating. Under the circumstances of the case, this court is of view to proceed itself for inquiry under Section 223 of BNSS so as to see whether the alleged offences have been committed and whether there are sufficient materials to proceed against the accused for the alleged offences. Hence, the following:

ORDER

Request of the learned counsel for complainant to refer the matter for police investigation, is hereby rejected.

Matter is taken up for inquiry under Section 223 of BNSS.

**For sworn statement of complainant and witnesses if any by:
16.04.2025.**

Sd/-

**(Vishwanath.A)
Prl. Civil Judge & JMFC
Mudigere.**