

KAUP010022052024



**IN THE COURT OF THE II ADDITIONAL DISTRICT
AND SESSIONS JUDGE, UDUPI**

Present

Sri.A.SAMIULLA.

B.Sc, LL.B.,

**II Additional District & Sessions Judge,
Udupi.**

Dated: 06th day of March 2026

Crl.RP.No.70 of 2024

Between:

Smt.Shailaja Suresh Jathan,
Age; 60 years,
W/o Late Suresh Jathan,
R/at Flat No.304,
Anvitha Apartments,
Kankanadi, Mangaluru-575002.

**..... Petitioner
(By Sri.MSS)**

Versus

- 1.** The State
Rep., by learned PP,
Maple Police Station, Udupi.
- 2.** Sri.Sudeer,
S/o Shankar Poojary,
R/at Sannidhi,
Santhekatte, Udupi.



- 3.** Smt.Pavitra HL,
R/at Raina Apartment,
Flat No.206,
Santhekatte, Udupi.

..... Respondents
(R1 by learned PP
R2 by Sri.GHM,
R3 by Sri.SA)

ORDER

Revision Petition is filed under Section 397 and 399 of CrPC questioning the correctness & legality of the impugned order dated 23.07.2024 passed by the Learned Principal Senior Civil Judge & CJM, Udupi, in Malpe PS Crime No.94/22, wherein the 'B' report filed by the investigation officer in a complaint for the offences punishable under Sections 454, 380 r/w Section 34 of IPC was accepted and case was closed.

- 2.** Following point arises for consideration;

Whether petitioner made out a case to set aside the impugned order as prayed?

- 3.** Answer to the above point is in the ***affirmative*** for the following;



REASONS

4. At the outset; the petitioner filed a first information statement against accused before the Malpe Police on 02.11.2022, which was registered as Crime No.94/22 for the offences under Sections 380, 454 r/w Section 34 of IPC.

a) The petitioner's husband, the late Suresh Jathan, owned Jathan Petrol Service of Mooduthonse Village and died intestate, leaving the petitioner and her son as his sole legal heirs.

b) Accused-2, Pavitra, had filed a suit, OS.No.13/21 on the file of the Principal Senior Civil Judge & CJM, Udupi, alleging that she and her children are the legal heirs of Suresh Jathan.

c) In the said suit, the petitioner's son Saurabh Jathan filed an interim application seeking leave to



continue the Petrol Pump business. The said application was allowed on 28.09.2022.

d) When such being the fact, the accused-2 Pavitra, on 28.09.2022 around 5:00-5:15 PM, along with accused-1 Sudhir, broke the office of the Petrol Pump, and took the original papers of the Petrol Pump along with other documents and contents on the computer.

e) The petitioner filed a first information statement. Based on the FIS, the Malpe Police conducted an investigation and filed a B report. When the matter was set for filing objections to the 'B' report, the case was transferred from the learned Principal Civil Judge & JMFC, Udupi, to the learned Principal Senior Civil Judge & CJM, Udupi, where the 'B' report was accepted and the case was closed.



5. The impugned order was passed on July 23, 2024, accepting the 'B' report, which led to the revision petitioner's questioning its correctness before this Court on the grounds viz.,

i) The impugned order is not legal, and against the established principles of law and is liable to be set aside.

ii) The impugned order is patently defective, arbitrary and is contrary to law. It is erroneous and the findings recorded therein are not based on the material on record. Hence, it is liable to be set aside.

iii) It is evident from the report that B report has been filed without conducting proper investigation.

iv) During investigation, the police have neither enquired into the offence nor have conducted any investigation in the matter. They haven't examined the witnesses produced on behalf of the complainant and



have blindly filed a 'B' report. The report filed by the police is completely false and groundless. The opinion formed by the police is not based on sufficient materials or evidence.

v) The Trial Court ought not to have accepted the 'B' Report and ought to have taken cognizance of the offence upon the complaint filed by the complainant, and given opportunity to her to examine herself and witness on her behalf to establish her case.

vi) The report filed by the police is not correct and not binding on the petitioner. She has got a very good case and is ready to prove the same if sufficient opportunity is given to her. Trial Court blindly believed the 'B' Report filed by the police and closed the case.

vii) That as per the notification No.2/2024 the local limits of the Court was changed and the case was transferred to the Principal Senior Civil Judge & CJM,



Udupi, and due to the confusion the undersigned counsel on 23.07.2024 was waiting in Principal Civil Judge, Udupi, to file the objection. But in the meantime the case was called before the Principal Senior Civil Judge & CJM, Udupi, and the impugned order was passed on the same day.

viii) That if the petitioner is not given an opportunity to examine herself and the witnesses on her behalf, she will be highly prejudiced and will be put to great hardship.

ix) There are specific allegations against the accused and there exist *prima facie* case against the accused which establishes sufficient grounds to proceed against the accused under Section 204 of CrPC. Hence, she prayed to allow the revision petition.

6. The first respondent is represented by the learned Public Prosecutor. Second respondent is represented



by the learned advocate Sri.GHM. Third respondent is represented by the learned advocate Sri.SA.

7. The third respondent filed objections denying the petitioner averments and supporting the 'B' report filed by the Malpe Police and its acceptance by the learned Trial Court.

8. Trial Court records were secured; heard arguments and perused records.

9. The core issue before the Court is whether the Trial Court properly accepted the 'B' report and whether the complainant was afforded a sufficient opportunity to object to or protest the 'B' report.

10. To resolve the core issue, let's examine and scrutinize the proceedings conducted before the Trial Court, focusing on the acceptance of the 'B' report and the opportunities provided to the complainant.



11. After receiving the 'B' report, the Trial Court issued a notice to the complainant on 07.08.2023. On 23.09.2023 the complainant appeared through her learned advocate Sri.MSS and the matter was scheduled for filing objections to the 'B' report. In the meanwhile the case was transferred from the Principal Civil judge & JMFC, Udupi, to the Principal Senior Civil Judge & CJM, Udupi, as per notification No.02/24 dated 23.04.2024. On 23.04.2024 the records were transferred to the Court of learned CJM, Udupi, and next hearing date was fixed on 28.06.24. On that day the Learned Presiding Officer was on leave and case was adjourned to 23.07.2024. On that day the 'B' report was accepted and case was closed.

After receiving the records, the transferee Court had not issued a Court notice to the complainant and accepted the 'B' report without providing opportunity



to the complainant to appear before the transferee Court to the file her objection.

12. The petitioner specifically asserted that the Police filed 'B' report without conducting proper investigation without examining her and her witnesses.

13. Given the circumstances, allegations, and fundamental principle of natural justice i.e., "*Audi alteram partem*" (hear the other side) and no one should be condemned of unheard, and emphasizing the importance of giving both parties a fair opportunity to present their case and be heard before a decision is made, this Court is of the opinion that, subject to certain conditions if one last chance is provided to the complainant to put forth her case before the Learned Trial Court by filing protest petition to the 'B' report submitted by the investigation officer it will meet the



ends of justice. Hence, above point is answered in the affirmative and proceeds to pass the following;

ORDER

Petition is allowed.

Order of the Learned Trial Court dated 23.07.2024 is set aside.

Petitioner is directed to appear before the Trial Court on 06.04.2026 without anticipating any further notice for appearance from the Trial Court. If she failed to appear on that day before the Trial Court the order of acceptance of 'B' report and closure of case stands confirmed.

Petitioner is further directed to file the protest petition within 15 days of her appearance before the Trial Court and to argue the matter within 15 days of filing of protest



petition. If she failed in doing so, the order of acceptance of 'B' report and closure of case stands confirmed.

If protest petition is filed, the Trial Court to consider the same in accordance with law and to pass an appropriate orders.

Send a copy of this order to the Trial Court forthwith.

(Dictated to the Stenographer directly on computer, typed by her, corrected by me and then pronounced in the open Court on this the 06th day of March 2026).

(A.Samiulla)
II Addl. District & Sessions Judge,
Udupi.