

KAUP020014322020



**IN THE COURT OF I ADDL.SENIOR CIVIL JUDGE AT
UDUPI.**

Present: **Sri. Santosh Srivastava** B.A., LL.B.,
I Addl. Senior Civil Judge, Udupi.

Dated this the 22nd day of July, 2026

P.C.R. No.5/2020

Between:

M/s. Kusuma Bhandary Constructions Pvt., Ltd.,
Rep. by its authorized signatory,
Mr. Suresh Bhandary,
Aged about 57 years,
S/o. Mr. Bhujanga Bhandary,
R/at No.126/127, Panduranga Sadan,
Ground Floor, 1st to 10th Road,
Opposite Madhur Park, Khar-West,
Mumbai and also at 3rd Floor,
Mischief Mall, K.S. Rao Raod,
Mangaluru. ... Complainant

AND

1. Dr. Kusuma Hegde,
Aged about 32 years,
D/o. Mr. Sudhir Kumar Hegde &

Mrs. Vijaya Laxmi Hegde,
R/at Om Shri Nivas, Ajjarakadu,
Jodukatte , Udupi Taluk and District

2. Mr. Sudhir Kumar P Hegde,
Aged about 65 years,
S/o. Mr. Panduranga Hegde,
R/at Om Shri Nivas, Ajjarakadu,
Jodukatte, Udupi Taluk and District

3:Mrs. Vijaya Laxmi Hegde,
Aged about 55 years,
W/o. Mr. Sudhir Kumar Hegde,
R/at Om Shri Nivas, Ajjarakadu,
Jodukatte,
Udupi Taluk and District. ... Accused

(C - Rep. by Sri. A.B.H. Adv.)

* * * * *

ORDER

This complaint is filed under Section 200 of Cr.P.C. for the offences punishable under Sections 420, 406, 464, 465, 468, 471, 120B of IPC. The complainant is a construction company incorporated under the Companies Act, 1956 and the complainant is a reputed builder and carrying out its construction activities and development of the immovable properties in the State of Karnataka and Maharashtra.

2. The complainant submits that the accused are the resident of Ajarkadu, Jodukattu, Udupi Taluk and District and the accused No.1 along with her father Mr. Sudhir Kumar P. Hedge who is the accused No. 2 who has represented the accused No.1 in O.S. No.6/2008 produces false sketch of the land and the same is the subject matter of this complaint and its adjacent government land and her mother who is accused No.3 who has represented the accused No.1 in the joint development agreement produces false sketch of the land which is subject matter of the complaint and the accused approached the complainant with a dishonest intention and represented to the complainant and its then director and its present authorized signatory Mr. Suresh Bhandari, son of Mr. Bhujanga Bhandari. That is the accused No.1. Ms. Shama S. Hegde is the absolute owner of the immovable property measuring 2 cents 11 cents in Survey No. 345 situated at Shivalli Village of Udupi Taluk and they further represented that she has been allotted the foresaid property as per the terms of the decree passed by the Hon'ble Civil Judge, Senior Division, Udupi in OS No. 6/2008. The complainant submits that the accused have also represented that they were leading real estate dealers and developers in Udupi District. And offered to develop the aforesaid property by constructing a multi-storied

apartment building and the accused have induced the complainant at the very inception of the said transaction that the aforesaid property is situated in the very prime location in front of Manipal lake and the topography of the aforesaid land is very suitable for the multi-storey, posh and luxury residential apartments and the complainant would get substantial profit in this project and in pursuance of the same after discussion it is been agreed that the complainant would develop the said land and towards the consideration for the said development the complainant would be allotted 75% of the share and accused No. 1 would be allotted 25% share in the total built-up area in the proposed apartment building to be developed and accordingly a registered joint development agreement dated 24.11.2008 has been entered in this connection.

3. Further the complainant submits that the above-named accused have shown the description of the property and its boundary by showing false and fraudulent site plan, sketch and the same got it prepared by them in connivance with the surveyors and the government officials and then the accused No.1 her father and mother handed over the Sketch Site Plan, RTC Conversion Order with Sketch and Decree Copy in respect

of aforesaid property and on the basis of said sketch and document, the complainant has prepared the building plan to construct a multi-storied building in 2-11 acres land consisting of ground plus 14 floors having a super built-up area of 2,40,000 square feet and the said building plan got prepared as per the boundary and topography of the said land stated and shown by the accused and they have handed over the possession of the aforesaid property as per the said sketch to the complainant for the purpose of development. The complainant submits that believing the above name accused, the complainant started all the work on the strength of the aforesaid joint development agreement and the complainant is required to bear all the expenses of the said development as per clause 3 of the said JDA and on the other hand the accused is required to provide the aforesaid property with clear Valid and absolute title as per clause number 11 of the said JDA. Further the accused is required to clear any dispute, litigation whatsoever that may arise concerning the aforesaid property as per clause number 10 of the said JDA. The complainant submits that the accused have Specifically agreed that accused shall not transfer, alienate, assign, encumber or charge the aforesaid property without the written consent of the complainant as per clause 24 of the said JDA. The complainant

submits that the above named accused have committed cheating by preparing forged sketches of the aforesaid property with the connivance of officials in order to change the description of the aforesaid property with a malafide and dishonest intention. The complainant submits that the description, narrative, and boundaries of the aforesaid land and property handed over for development work is totally different. In order to obtain single site layout order, the accused has made false and fraudulent documents and she has fraudulently used the documents to obtain the conversion order bearing A1. SR 13395, 2008 to 2009 dated 09.09.2008, for the adjacent government land unknowingly with a dishonest intention and purposely created legal hitch and hold up and manufactured the dispute to gain unlawfully and caused loss to the complainant. The complainant submits that the accused joined and conspired together along with revenue officials and got it prepared a false sketch of the land in the revenue Survey No. 345 situated at Shivalli Village of Udupi Taluk and partitioned the government land in O.S. No. 6/ 2008 along with her work land. Further in order to do the foundation for cheating and subsequently even applied to convert the government land measuring 2- 10 acres which is portion of 4-44 acres for non agriculture purpose.

4. The complainant submits that the main intention of the accused is to grab the government land touching the aforesaid property in order to lay groundwork for usurping the government land measuring 4-44 acres in Shivalli Village of Udupi Taluk, the above named accused joined hands with revenue officials and committed the aforesaid heinous crime and the accused have used the complainant in order to accomplish their illegal act. Even the partition suit has also been instituted to lay foundation for their illegal act. The above named complainant has spent crores of for the purpose of preliminary work such as obtaining building licence, billing work etc. Apart from the same, the complainant has paid a sum of Rs.15,00,000/- to the accused No.1 towards security deposit for the aforesaid property as per the JDA. The complainant submits that the single site layout order bearing No.UNA PRA 651/2010-11 has been obtained in respect of aforesaid property from the Udupi Urban Development Authority on the basis of the aforesaid sketch and thereafter the building licence has been granted by the Udupi Municipality bearing No.BA 312/2010-2011 dated 28.04.2011 and 7.49 cents of land. In the northern side has been relinquished the said property in favour of Udupi Municipality by way of registered gift deed on 14.04.2011 and registration of the

same has not been done in spite of the directions of Udupi Urban Development Authority. The complainant submits that recently the complainant was shocked to see a sketch prepared and issued by the ADLR Taluk Office, Udupi and a registered gift deed dated 27.07.2010. The complainant submits the above named accused No.1 without taking the written consent or permission of the complainant as per clause No.24 of JDA with a dishonest intention created a false and fraudulent document claiming as a gift deed granting 46 cents of land in Sy.No. 345 of Shivali Village of Udupi Taluk in favour of Udupi Municipality and in page number 2 paragraph number 2 the accused No. 1 has stated that there in order to have the access to the main road from the aforesaid property and its multi-storied buildings, the said grant has been made by the accused No. 1 and her sister Sheebani and they have falsely contended the same in order to manufacture a dispute and absolutely there was no necessity of forming a road from the hint side of the aforesaid property. As per the single site order passed by Udupi Urban Development Authority and the authority has directed accused no. 1 to register 7.49 cents of land in the northern and front side of the aforesaid property in favour of Udupi Municipality by way of gift dated 27.07.2010 was not at all warranted or required. The

complainant submits that accused after mixing with the government officials a portion of land have been deducted from 2 acres 11 cents of land and manufactured a dispute in order to cause wrongful loss to the complainant and to gain unlawfully by cheating the complainant.

5. The complainant submits that the complainant has spent a sum of Rs.14,00,000/- for putting up the aforesaid multi-storied residential building and when the construction has reached fifth floor and on account of the aforesaid illegal acts the revenue officials have put a fencing in the aforesaid 2 acres 11 cents and contending that the portion of the property is a government land, an account of which the future development work is impossible. Since the building license has been granted, considering the extent of 2-11 acres of land, The complainant is not entitled for 2,40,000 square feet of super built-up area since portion of the land is a government land and the portion of the land and 46 cents have been taken by the revenue officials out of 2-11 acres of land. The complainant submits that the complainant has sustained huge loss on account of the cheating committed by the aforesaid accused. The act of the accused is high handed and illegal. The above name accused are of desperate character, having man and money power, and their intention is to unlawfully gain by

hook or crook. The complainant admits that after coming to know the illegality committed by the above-named accused, the complainant has lodged a police complaint dated 02.10.2020 in connection with the commission of aforesaid offences before the Manipal Police Station. But the police have refused to register the case against the accused and the police have issued receipt in C No. 599/PTN/MPL/2020 dated 02.10.2020. The police have won over the accused and account of which they have not registered a F.I.R in a cognizable case against the above accused. The complainant submits that immediately thereafter the complainant has lodged a complaint before Superintendent of Police, Udupi District, Udupi on 05.10.2020 and in spite of the complaint lodged before the Superintendent of Police in connection with the aforesaid offence, the police have not taken any proper legal action against the accused by registering a FIR as per law. The complainant submits that the complainant has sustained huge loss on account of the cheating committed by the accused. The complainant submits that the accused have conspired together and committed offences of cheating by making false and fraudulent documents and used the forged documents as genuine and thereby committed the offence punishable under the provisions of Indian Penal Code. And the said offences have been taken place at

Shivalli Village of Udupi Taluk and therefore prayed to refer the matter to Manipal Police station Udupi.

6. It is pertinent to mention here that after the registration of complaint the matter was referred for the police investigation and after investigation pleased to file B report. Thereafter notice was issued to the complainant and he appeared before the court and filed protest petition. This court has gone through the protest petition wherein para No.1 to 13 are similar to the facts mentioned in the complaint as already states supra. Now here the complainant submits that the police without conducting proper investigation filed false case before this court. it is further submitted that complainant did not had faith and confidence on the Manipal Police. And on the receipt of the request forwarded to Superintendent of Police the Investigation Officer was changed but it is the version of the complainant that he sat behind as a mute spectator and the investigation was carried out by the earlier Investigation Officer. It is the contention of the complainant that the police did not record his statement and the witnesses cited by him and inspite of giving documents to the investigation office of Manipal Police Station they did not even considered it and for one or the other reason postponed to give consideration and finally

did not consider at all and simply filed false report. And the complainant further submits that there were government officials who is involved in this alleged conspiracies but the police stated in the report that they could not trace their address and it is the submission of the complainant that the police concerned tried to hash-up the matter. And without tracing the addresses of revenue officials i.e. Mr. Shankar Shetty, Mr. Fernandes, Mr. M.C. Poojary, Mr. Gopala Rao and Mr. Abhijan B. They simply said that their address it not available without even making a proper search. Even the documents and materials collected by the police goes to show that ingredients of the offense have been made out to file a charge sheet in the said case.

7. Further in the report it is reflected that, the extent of the land is 1.85 acres and Shama Hegde and Shibani Hegde are the joint owners of the said property. It is very pertinent to note that Shibani is not the party to the JDA to develop 2.11 acres of land. In order to save the accused the police is making somersault and flip-flop in the final report. And the shortage of the land has been established and extend of land in JDA is 2.11 acres. Accused Mr. Sudheer Hegde has shown the spot for conducting the spot mahazer and notice is not given to the

complainant at the time of drawing spot mahazer. Further it is pertinent to note that as per the complainant no physical survey of the land by the competent government surveyor has been conducted by the police in the said land. But for the name sake it is stated that, the police have drawn a spot mahazer at the instance of accused of Mr. Sudheer Hegde and the same is shocking. The accused No.2 has falsely narrated the story of 30 floors and he has not produced any documents for the same. And when the license granted for the ground and 14 floors building, and if the accused was not interested he would cancel the JDA. The accused has granted the road right in the said 0.46 acres of land saying his own land as per the agreement of right of way. The complainant came to know that without his knowledge, the accused has registered the said 46 cents of land by way of registered gift deed in favour of Udupi Municipality with an intention to convert 2.10 acres government land with intention to grab the same. There is no road in the said 46 cents land and the accused No.2 has given a false statement in O.S.No.423/2012 on the file of II Addl. Civil Judge and JMFC, Udupi that there is a road in the said 46 cents of land and the same is using by the public. The Investigation Officer did not collect and submitted all the documents from the Udupi Municipality regarding the gift

deed, agreements of Shama Hegde in respect of land Sy.No.345/2 of Shivalli Village in question and even sketch is not been obtained. Therefore the Investigation Officer did not carried out the investigation and did not considered the documents of the complainant. Hence the B report may be treated as charge sheet or refer to any other jurisdictional police to conduct further investigation and file a report or to take appropriate legal action against the accused.

8. Along with the protest petition list of documents and list of witnesses are being furnished. But in perusal of the same copy of R.T.C. extracts and statement of account are only being furnished. No doubt at the time of filing the complaint documents have been furnished, i.e. acknowledgment, copy of record of rights pertaining to Sy.No.345/2, joint development agreement, registered gift deed, acknowledgment and further the learned counsel for the accused while canvassing the arguments has relied upon 2004(4) KCCR 2709 wherein it is held in the said judgment that there is no difficulty in maintaining the complaint if the essential ingredients of Sec.420 of I.P.C. is being attracted. Further, has relied upon SCC – 2014 – 3 – 389, wherein it is held that merely because a Civil remedy is available to the aggrieved person

his right to conduct criminal prosecution does not go away. Still he can maintain a criminal complaint.

9. Further he also relied upon 2023 SCC Online Kerala 836, further relied upon 2019 (17) SCC 1, 1980 (1) SCC 554, ILR 2018 KAR 1725, 1989 (2) SCC 132. This court has gone through the judgments relied by the complainant.

10. Heard the complainant at length the following points which arise for my consideration are as follows:

1. Whether the complainant has made out grounds to register the case against the accused by setting aside B report.
2. What order?

11. The answers to the above points are as under:

Point No.1 : In the negative;

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

REASONS

Point No.1:

12. This private complaint is being filed under Sec.200 of Cr.P.C. on 27.11.2020 for the offense punishable under Sec.420, 406, 464, 465, 468, 471 r/w

120B of I.P.C. Later on this private complaint came to be registered as P.C.No.5/2020 and the same was referred to the Manipal Police Station for investigation in accordance with law, thereafter F.I.R. came to be registered for the offense punishable under Sec.465, 468, 471, 420 r/w 34 of I.P.C. After the investigation the B report came to be filed. This court has gone through the B report, wherein it can be seen that as per the joint development agreement the matter is already referred for arbitration.

13. No doubt merely because there is a civil remedy pending for consideration there is no impediment to register criminal case against the accused and the learned counsel for the complainant by furnishing the citation is able to show that nothing prevents the court to carryout criminal prosecution inspite of civil proceedings pending for redressing their grievances.

14. After perusing the 'B' report filed by the police concerned, it can be seen that the complainant has many allegations against the government officials who are not party to this proceedings in accordance with law. Moreover, there is a multiple angle shown by the complainant in the private complaint filed before this court. At one point of time he says that the accused have misrepresented themselves and involved the complainant in their web and

got executed joint development agreement to develop the aforesaid land. At one point of time the complainant says that the accused are in violation of clauses of joint agreement development and on the other side he states that all the revenue officials together joined the accused and cheated the complainant. It is settled position of law that, the facts should be juxtaposed in order to determine the real cause. No doubt the complainant may be having a good case on hand and from the facts it can be seen that the complainant wants to enforce the joint development agreement. But, apart from enforcing joint development agreement he wants a criminal prosecution to go simultaneously against the accused which according to the opinion of this court it is unjust enrichment and no such petitions will be proceeded further merely for personal grudges and vengeance.

15. Further this court has also gone through the contents of protest petition wherein the complainant's grievances is the investigation is not done according to his directions. Merely because the investigation did not go according to the complainant he cannot say that, the police have joined with the accused and given false report by carrying out hash-up investigation. This court does not find any hash-up in the investigation and the Investigation

Officer has done the investigation and filed report which his acceptable. According to the opinion of the Investigation Officer there is no case made out by the complainant. More over from the investigation this court came to the knowledge that there are multiple litigation pending and the matter is already referred for the arbitration and the complainant ratifies and canvassed the arguments that the matter is pending before arbitration. Unfortunately in the protest petition there is no discussion of any such proceedings and on perusal of the protest petition the complainant only repeated facts by using different words and alleged that the Revenue officials are involved in creating false documents and preparing false sketches. So without any taking legible actions against Revenue Officials he has filed this complaint against the accused and alleges the facts against the officials for not arrayed in this case.

16. On perusal of the contents of protest petition it is also the grievances of the complainant that the police could not trace out the address of revenue officials. Nothing prevented the complainant to help the Investigation officer in this regard. No doubt it is not the work of the complainant but, this court by seeing the report forwarded by the police it goes to show that there

are steps taken to secure the address of the government officials who have alleged to be involved in preparing false documents. But unfortunately their address could not be traced out.

17. Further on perusal of the contents of the protest petition it can be only seen that the complainant want to enforce the joint development agreement and under the garb of the same he wants a criminal prosecution to go simultaneously.

18. At this stage, this court likes to place reliance upon **Shailesh Kumar Singh @ Shailesh R. Singh Vs. State of Uttar Pradesh and others**, wherein it is held that, *disapproved practice of using criminal prosecution as a substitute for civil remedies*. So therefore, no essential ingredients of sections for alleged forgery, criminal breach of trust are attracted.

19. Further at this stage of discussion, this court likes to place reliance upon reported judgment of Hon'ble Supreme Court **Anukul Singh vs The State Of Uttar Pradesh, 2025 Live Law SC 948**, wherein it is held that, the matters which are civil dispute in nature a criminal colour cannot be given to it. Hon'ble Supreme Court further held that, no scope should be given to use criminal

prosecution as a tool for harassment in purely civil disputes.

20. It is also pertinent to mention here that it is the complainant who requested this court to refer the matter for investigation for Manipal Police Station, but on perusal of the protest petition in the very beginning itself the complainant says that he did not had faith in the Manipal Police for investigation of this case. In such being the case the complainant has got no voice to carryout defects in the investigation without any proper foundation. So therefore the complainant's remedy lies elsewhere and he can enforce the joint development agreement by filing suit in accordance with law.

21. Further at this stage this court likes to place reliance upon reported judgment of Hon'ble High Court of Karnataka at Bengaluru, **Crl. Petition No.8922/2017 Sri Nagaraj C.H. Vs. State by its S.P.P. Bengaluru**, wherein it is held that *merely because a complainant files a protest petition and gives the statement with regard to his protest petition the learned Magistrate should not get swayed away by such protest petition. Therefore while considering the report filed by the police it is incumbent upon the learned Magistrate to consider B report, protest petition and the evidence on record and record is finding as to why he rejects*

the B report and accepts the protest petition. No doubt there may be report filed by the police without proper investigation. Then also the reasons are to be recorded in writing by applying judicial mind in rejecting the B report.

Therefore, the court satisfies with the investigation of police and there are no good grounds to interfere in the B report filed before this court. Hence, I answer **point No.1 in the negative.**

Point No.2:

22. In view of the above discussion, this court proceeds to pass the following :

ORDER

The 'B' report filed by the police concerned stands accepted.

Proceedings of this case stands dropped at this stage.

This matter stands disposed by way of this order.

(Dictated to Stenographer, transcribed by her, corrected and then pronounced by me in open court on this the 22nd Day of July, 2026)

(Santosh Srivastava)

I Addl. Senior Civil Judge and A.C.J.M.,
Udupi.