ªÀiÁ£ÀÅ WÀ£À JgÀqÀ£ÉÃ ¹«¯ï dqïì £ÁåAiÀiÁ®AiÀÄ (Q.±ÉÃ) ªÀÄvÀÄÛ eÉ.JA.J¥ï.¹ £ÁåAiÀiÁ®AiÀÄzÀ ªÀÄÄAzÉ

¦.¹.Dgï: 416/2008

¹.Dgï. 71/2009

¦ÃiÀiÁðzÀÄzÁgÀgÀÄ **-«-** **D¥ÁÇvÀgÀÄ**

²ÃzÀgÀ ¨Á§Ä J£ï. 1. JA. Dgï. gÀ«PÀÄªÀiÁgï, PÉ.J.¸ï ªÀÄvÀÄÛ EvÀgÀgÀÄ

ಫಿರ್ಯಾದುದಾರರ ಪ್ರೊಟೆಸ್ಟ್ ಪೆಟಿಷನ್ ಪರವಾಗಿ ಸಲ್ಲಿಸಿದ ಲಿಖಿತ PÁ£ÀÆ£ÀÄ ªÁzÀ CA±À:-

1. ಪ್ರೊಟೆಸ್ಟ್ ಪೆಟಿಷನ್ ನಲ್ಲಿರುವ ಅಂಶಗಳು ಸ್ವಯಂ ವೇದ್ಯವಾಗಿದ್ದು ಅದನ್ನು ಈ ಲಿಖಿತ ªÁzÀzÉÆAÇUÉ NÇPÉÆ¼ÀÎ®Ä PÉÆÃgÀÄvÉÛÃ£É.

2. ¦ÃiÀiÁðzÀÄ CA±ÀUÀ¼ÀÄ PÁVì¹§¯ï C¥ÀgÁzÀUÀ¼ÀÄ £ÀqÉÇgÀÄªÀ §UÉÎ ªÀgÀÇAiÀÄ£ÀÄì ªÉÄÃ¯ÉÆÃlPÉÌ ¤Ãrgï ªÀÄzÀjAzÀ F §UÉÎ vÀ¤SÁ PÁAiÀÄðªÀ£ÀÄì ªÀiÁqÀzÉ C£ÉÃPÀ ¸ÀÄ¦ÃA PÉÆÃnð£À ªÀiÁUÀðzÀ²ð PÁ£ÀÆ£À£ÀÄì PÀqÉUÁt¸À¯ÁVzÉ JA§ §UÉÎ ªÀiÁ£ÀÅ ನ್ಯಾಯಾಲಯದ ಗಮನ ಸೆಳೆಯಲು ಈ ಕೆಳಕಂಡ ಸ್ಟೈಟೇಷನ್ ಗಳನ್ನು ªÀiÁ£ÀÅ £ÁåAiÀiÁ®AiÀÄzÀ CªÀUÁºÀ£ÉÚÉ ¸À°è¹gÀÄvÉÚ.

3. ªÀiÁ£ÀÅ £ÁåAiÀiÁ®AiÀÄ gÁdå ¥ÉÆÃ°Ã¸ï ªÀÄºÁ ¤zÉÃð±ÀPÀjUÉ DzÉÃ²¸À§ºÀÄzÀÄ CªÀgÀÄ ¸ÀA§AÇ¹zÀ oÁuÉAiÀÄ oÁuÁÇPÁjAiÀÄ ªÁå¦ÛAiÀÄ°è §gÀÄvÁÛgÉ JAzÀÄ w½¸À®Ä ºÉÊPÉÆÃnð£À wÃ¥Áðz À **In a case reported 2001 (5) KarLJ 505 R.N. Shetty vs Vijaya Bank, Kasarakod Branch, Honnavara, Uttara Kannada And Another** "But, then the question arises whether the Magistrate whose power is so fettered under Section 156(3) of the Cr. P.C. is not competent to refer a private complaint to any Police Officer other than the one who is the officer in charge of the particular Police Station. If such a narrow construction of Section 156(3) of the Cr. P.C., is accepted as a binding law on the Magistrates, then it may lead to frustration of justice in certain situations where the investigation of a crime by the officer in charge of a Police Station would not at all be warranted. For instance, if a private complaint before a Magistrate is made under Section 200 of the Cr, P.C. against the very Police Officer in charge of a Police Station, or if such Police Officer has vested

interest in the alleged crime, or for that matter, if any allegation of his being hands in glove with the accused is made, then in these circumstances, the dictate of justice warrants that such a complaint must be investigated by the Police Officer other than the one who is in actual charge of the Police Station. To meet such exigencies, the Legislature has provided the solution in Section 36 of the Cr. P.C., which states.- "Police Officers superior in rank to an officer in charge of a Police Station may exercise the same powers, throughout the local area to which they are appointed, as may be exercised by such officer within the limits of his station". This significant provision conjointly read with sub-sections (1) and (3) of Section 156 of the Cr. P.C. makes the legal position abundantly clear that for the purposes of investigation and report under Section 156(3) of the Cr, P.C., every Police Officer who is superior to the Police Officer in charge of the particular Police Station shall also be deemed to be the Police Officer in charge of that Police Station, having authority to investigate into the alleged crime and submit his report to the jurisdictional Magistrate."

4. ¸ÁªÀðd¤PÀ ¸ÉÃªÁ¢PÁj ¸ÀPÁðgÁPÉÌ ªÉÆÃ¸ÀªÀiÁqÀ®Ä zÁR¯É ¥Áå©¤PÉÃmï ªÀiÁrzÀgÉ CzÀgÀ §UÉÎ Q¤«Ä£À¯ï PÉÃ¸ÀÄ £ÀqÉ¸À®Ä ¸ÀPÁðgÀzÀ C£ÀÄªÀÄw ¨ÉÃQ®è¢gÀÄªÀ §UÉÎ UÀªÀÄ£À ¸É½ÉAiÀÄ®Ä F »AzÉ ¸À°è¸À¯ÁVzÀÝ ¸ÀÄ¦ÃªÀiï PÉÆÃnð£À wÃ¦ð£ÉÆA¢UÉ F PÉ½ÀPÀAqÀ PÉÃ¸À£ÀÄ G¯ÉèÃT¸À¯ÁVzÉ. S. Jayappa v. State of Karnataka, ILR 1999 Kant 3056 : (1999 Cri LJ 4475) when a public servant fabricates the document with a sole intention to cheat and misappropriate the public funds then prior sanction is not required to prosecute the Government servant.

5. £ÁåAiÀÁ®ªÉÃ ¥ÁxÀð«ÄPÀ ºÀAvÀzÀ°è DgÉÆÃ¥ÀzÀ ¸ÀvÁå¸ÀvÀåvÉ §UÉÎ ºÉÆÃUÀ¨ÁgÀzÀÄ JAzÀÄ ªÀiÁUÀðzÀ±Àð£ÀªÁ£ÀÄ ¤ÃqÀ¯ÁVzÉ. DzÀgÉ ¸ÀzÀj PÉÃ¹£À°è ¸ÀzÀj DgÉÆÃ¦vÀ CA±ÀUÀ½À §UÉÎ vÀ¤SÉ ªÀiÁqÀzÉ vÀ¤SÁ¢PÁjAiÀÄÄ ¥ÀÆªÁðUÀºÀ ¦ÃrvÀgÁV ವರ್ತಿಸಿರುವುದು ಸ್ಪಷ್ಟವಾಗಿರುತ್ತದೆ. Supreme Court reported in the case of Medchl Chemicals and Pharma (Private) Limited v Biological E. Limited and Ors, 2000(2) All India Criminal Law Reporter 119 wherein it was held that "It is now well-settled and one need not dilate on this score, neither do we intend to do so presently that the

allegations in the complaint will have to be accepted on the face of it and truth or falsity of which would not be gone into by the Court at this earliest stage as noticed above: whether or not the allegations in the complaint were true is to be decided on the basis of the evidence led at the trial". At page 280 it has observed as follows: ".....Both criminal law and civil law remedy can be pursued in diverse situations. As a matter of fact they "are not mutually exclusive but clearly co-extensive and essentially differ in their content and consequence. The object of criminal law is to punish an offender who commits an offence against a person, property or the State for which the accused, on proof of the offence, is deprived of his liberty and in some cases even his life. This does not, however, affect the civil remedies at all for suing the wrongdoer in cases like arson, accidents, etc. It is anathema to suppose that when a civil remedy is available, a criminal prosecution is completely barred. The two types of actions are quite different in content, scope and import".

6. vÀ¤SÁ¢PÁjAiÀÄÄ vÀ¤SÉ ªÀiÁr ¸ÀvÀåªÀ£ÀÄß ºÉÆgÀvÀgÀ¨ÉÃPÉ ºÉÆgÀvÀÄ DgÉÆÃ¦ vÀgÀ PÉÃ¸ÀÄ ¹«¯ï ¸ÀégÀÆ¥ÀzÀÄÄ £ÁåAiÀiÁ®AiÀÄzÀ ªÀÄÄAzÉ EzÉ JA§ ¸À§Æ§Ä ªÀgÀ¢AiÀÄ£ÀÄß ¤ÃqÀ¯ÁvÀzÀ ಬಗ್ಗೆ ಸ್ಪಷ್ಟ ಆದೇಶವಿದೆ. KAMALADEVI AGARWAL v. STATE OF WEST BENGAL (2001 AIR SCW 4292) wherein the Honourable Supreme Court has held in para 17 that "... Criminal cases have to be proceeded with in accordance with the procedure as prescribed under the code of Criminal Procedure and the pendency of a civil action in a different Court even though higher in status and authority, cannot be made a basis for quashing of the proceedings." In the above case, the Honourable Apex Court has held that quashing of proceedings at initial stage merely on the grounds that the very foundation of the criminal case is the subject matter of a civil case is unsustainable.

7. vÀ¤SÁ¢PÁjAiÀÄÄ ¦ÃAiÀiÁð¢£À CA±ÀªÀ£ÉÃ ¥ÀjUÀt£ÉÉ vÉUÉzÀÄPÉÆAr®è PÉÃªÀ® DgÉÆÃ¦ vÀgÀ ºÉÃ½PÉAiÀÄ£ÀÄß ªÀiÁvÀ UÀªÀÄ£ÀPÉÌ vÉUÉzÀÄPÉÆ½ÀÄîvÁÛgÉ EzÀÄ PÁ£ÀÆ£ÀÄ ¹zÁ¥ÁvÀzÀ «gÀÄzÀ¥ªÉAzÀÄ vÉÆÃgÀ®Ä Municipal Corporation of Delhi v. P. D. Jhunjunwala (1983) 1 SCC 9 : AIR 1983 SC 158 : 1983 Cri LJ 172 it was made clear as to what would be the evidence against the accused is

not a matter to consider at the stage of summoning and the matter would have to be left at the time of trial and only the allegations set forth in the complaint have to be seen and nothing further.

8. DgÉÆÃ¦vÀ r¥É£ïì K¤zÀÏgÀÄ l:AiÀÄ¯ï ¸ÉÖÃf£À°è £ÉÆÃr, ¦AiÀiÁð¢£À CA±À ªÀ£ÀÄ ªÀiÁvÀ: UÀªÀÄ¤¹ JAzÀÄ £Á¸AiÀiÁ®AiÀÄPÉÌ ªÀiÁUÀðzÁ±Àð£À«zÉ, DzÀgÉ vÀ¤SÁ¢PÁj PÉÃªÀ® DgÉÆÃ¦vÀgÀ ºÉÃ½PÉAiÀÄ£ÀÄ ªÀiÁvÀ: ¥ÀjUÀt¹ CzÀPÉÌ «gÀÄzÀÏ ªÀvÀð£ÉvÉÆÃgÀÄvÁÜgÉ. In a decision in Chandradeo Singh v. Prakash, Chand Bose alias Chabi Bose AIR 1963 SC 1430 : 1963 Cri LJ 397 it was held by the Apex Court that it is the bounden duty of the Magistrate while making an inquiry to elicit all facts not merely with a view to protect the interest of an absent accused person but also with a view to bring to book a person or persons against whom grave allegations are made. Whether the complaint is frivolous or not has at that stage necessarily to be determined on the basis of the material placed before him by the complainant. Whatever the defence the accused may have can only be inquired into at the trial. An inquiry under Section 202, Cr.P.C. can in no sense be characterised as a trial for the simple reason that in law there can be but one trial for an offence.

9. ªÀiÁ£À: £Á¸AiÀiÁ®AiÀÄ ¥ÉÆÃ°Ã¸ÀjUÉ ¸ÀjAiÀiÁzÀ ªÀiÁUÀðªÁV vÀ¤SÉ ªÀiÁqÀ®Ä DzÉÃ²¸À §ºÀÄzÀÄ F §UÉÎ ¦AiÀiÁðzÀÄzÁgÀgÀÄ ªÀÄ£À« ªÀiÁqÀ§ºÀÄzÀÄ JAzÀÄ vÉÆÃgÀ®Ä F PÉ¼ÀPÀAqÀ ºÀ®ªÀÅ ¸ÀÄ¦:ÃªÀiï PÉÆÃnð£À DzÉÃ±ÀUÀ¼À£ÀÄ UÀªÀÄ£ÀPÉÌ vÉUÉzÀÄ PÉÆ¼ÀÎ®Ä PÉÆÃgÀ¯ÁVzÉ. The view was taken by Supreme Court in Dilawar Singh vs. State of Delhi JT 2007 (10) SC 585 (vide para 17). "We would further clarify that even if an FIR has been registered and even if the police has made the investigation, or is actually making the investigation, which the aggrieved person feels is not proper, such a person can approach the Magistrate under Section 156(3) Cr.P.C., and if the Magistrate is satisfied he can order a proper investigation and take other suitable steps and pass such order orders as he thinks necessary for ensuring a proper investigation. All these powers a Magistrate enjoys under Section 156(3) Cr.P.C." Hence the Magistrate can order re-opening of the investigation even after the police submits the final report, vide Stateof Bihar vs. A.C. Saldanna AIR 1980 SC 326

10. The view taken by **Sakiri Vasu v. State of U.P & Others [2008 AIR SCW 309]** Section 156(3) provides for a check by the Magistrate on the police performing its duties under Chapter XII Cr.P.C. In cases where the Magistrate finds that the police has not done its duty of investigating the case at all, or has not done it satisfactorily, he can issue a direction to the police to do the investigation properly, and can monitor the same. In our opinion Section 156(3) Cr.P.C. is wide enough to include all such powers in a Magistrate which are necessary for ensuring a proper investigation, and it includes the power to order registration of an F.I.R. and of ordering a proper investigation if the Magistrate is satisfied that a proper investigation has not been done, or is not being done by the police. Section 156(3) Cr.P.C., though briefly worded, in our opinion, is very wide and it will include all such incidental powers as are necessary for ensuring a proper investigation.

11. The view taken by **Sakiri Vasu v. State of U.P & Others [2008 AIR SCW 309]** It is well-settled that when a power is given to an authority to do something it includes such incidental or implied powers which would ensure the proper doing of that thing. In other words, when any power is expressly granted by the statute, there is impliedly included in the grant, even without special mention, every power and every control the denial of which would render the grant itself ineffective. Thus where an Act confers jurisdiction it impliedly also grants the power of doing all such acts or employ such means as are essentially necessary to its execution.

12. The view taken by **Sakiri Vasu v. State of U.P & Others [2008 AIR SCW 309]** In Union of India vs. Prakash P. Hinduja and another 2003 (6) SCC 195 (vide para 13), it has been observed by this Court that a Magistrate cannot interfere with the investigation by the police. However, in our opinion, the ratio of this decision would only apply when a proper investigation is being done by the police. If the Magistrate on an application under Section 156(3) Cr.P.C. is satisfied that proper investigation has not been done, or is not being done by the officer-in-charge of the concerned police station, he can certainly

direct the officer in charge of the police station to make a proper investigation and can further monitor the same (though he should not himself investigate).

13. ¥ÉÆÃ°Ã¸ï ªÀiÁ¼£ÀÄ¼ÀÄ¯ï ¤ªÀÄªÀiÁªÀ½UÀ¼À §UÉÎ ªÀiÁ£À¸À ¸ÀÄ¦ÃªÀiï PÉÆÃmïð G¯ÉèÃT¹ ZÀað¹gÀÄªÀ §UÉÎ ªÀÄvÀÄÚ vÀ¤SÁ PÁAiÀÄðªÉÊPÀj ªÀÄvÀÄÚ ªÀgÀ¢AiÀÄ §UÉÎ CzÀgÀ ªÀÄºÀvÀéªÀ£ÀÄÀ ªÀiÁ£À¸À £Á¼AiÀiÁ®AiÀÄ ¥ÀjUÀt¹gÀÄªÀ §UÉÎ vÉÆÃgÀ®Ä F DzÉÃ±ÀzÀ UÀªÀÄÀ£À ¸É¼ÉAiÀÄ¯ÁVzÉ. Har Prasad and Anr vs Ranveer Singh and Anr AIR 2008 SC 1265 "It will be seen that the Code, as such, does not use the expression 'charge-sheet' or 'final report'. But it is understood, in the Police Manual containing Rules and Regulations, that a report by the police, filed under Section 170 of the Code, is referred to as a 'charge-sheet'. But in respect of the reports sent under Section 169 i.e. when there is no sufficient evidence to justify the forwarding of the accused to a Magistrate, it is termed variously, in different States, as either 'referred charge', 'final report', or 'summary'."

14. ¦AiÀiÁðzÀÄzÁgÀgÀ zÀÆgÀÄ ªÀÄvÀÄÚ zÁR¯ÁwUÀ¼À£ÀÄÀ ¤®ðQ¹gÀÄªÀ¼ÀzÀPÉÌ wÃ¥ÀÄð ¤ÃrgÀÄªÀ ªÀiÁ£À¸À ¸ÀÄ¦ÃªÀiï PÉÆÃnð£À wÃ¦ð£À CA±ÀªÀ£ÀÄÀ UÀªÀÄ£ÀPÉÌ vÀgÀ§AiÀÄ¸ÀÄvÉÛÃ£É. Mushtaq Ahmad vs Mohd. Habibur Rehman Faizi& Ors on 31 January, 1996 1996 SCC (7) 440, In this case the appellant, in his complaint, stated that he was a teacher and at the material time the respondents were the Manager, Principal, Teacher and Member of the Managing Committee of the school. The appellant went on leave for higher education to Saudi Arabia. When he came back he found that his salary and dearness allowance, for the period of his absence, had been drawn by the respondents, from government funds, forging his signature. According to the complaint the respondents had committed breach of trust of government money. In support of these allegations made in the complaint, copies of the salary statements of the relevant periods were produced. On the Magistrate taking cognizance of the offence, the respondents filed proceedings under Section 482 Cr.P.C. and the Allahabad High Court quashed the complaint on the ground that it was false, frivolous and vexatious. On

a special leave petition being filed, the Supreme Court held:- ".....In spite of the fact that the complaint and the documents annexed thereto clearly made out a prima facie case for cheating, breach of trust and forgery, the High Court proceeded to consider the version of the respondents given out in their petition filed under Section 482 CrPC vis--vis that of the appellant and entered into the debatable area of deciding which of the versions was true, - a course wholly impermissible, in view of observations in Bhajan Lal's case.

15. **J¥ï.L.DgÏ £ÉÆAzÁªÀt ¸ÀªÀÄAiÀÄzÀ°è ¦AiÀiÁðzÀÄzÁgÀjUÉ ¤ÃqÀ¨ÉÃPÁzÀ £ÉÆÃnÃ¸ÀÄ ¤Ãr®è, © ªÀgÀ¢AiÀÄ £ÉÆÃnÃ¸ÀÄ ¤Ãr®è F §UÉÎ CAvÀºÀ £ÀqÀªÀ½PÉ vÀ¤SÁ¢PÁjAiÀÄ £ÉÊ¸ÀVðPÀ £ÁåAiÀÄ ¹zÁ¸ÀAvÀ G®èAWÀ£É JAzÀÄ vÉÆÃgÀ®Ä F PÉ¼ÀPÀAqÀ wÃ¦ð£À ¨ÁUÀªÀ£ÀÄß G¯ÉèÃT¸À¯ÁVzÉ.** In the pronouncement of the Apex Court reported at (1980) 4 SCC 379 S.L. Kapoor vs. Jagmohan, the court held that the notice must be given in the context of the proposed action and merely furnishing the information casually or for some other purpose would not amount to proper notice. It was held that the requirement of natural justice are met only if opportunity to represent is given in view of the proposed action. The demands of natural justice are not met even if the very person proceeded against has furnished the information on which the action is based, if it is furnished in a casual way or for some other purpose.

16. **PÁ£ÀÆ£ÀÄ ¤AiÀÄªÀiÁªÀ½ AiÀiÁªÀ jÃw ºÉÃ¼ÀÄvÀÛzÉÆÃ ºÁUÉ ªÀiÁr E®èªÉ ªÀiÁqÀ¯ÉÃ ºÉÆÃUÀ¨ÉÃr JAzÀÄ EgÀÄªÀ ¹zÁ¸ÀAvÀªÀ£ÀÄß UÀªÀÄ£ÀPÉÌ vÀgÀ¯ÁVzÉ.** The well settled principle that where law mandates something to be done in a particular way, then it has to be done in that way or not at all is so well settled that it needs no elaboration. (Ref : Tailor v. Tailor ; (1936) 63 IA 372 : AIR 1936 PC 253 Nazir Ahmed vs. King Emperor ; AIR 1954 SC 322 Rao Shiv Bahadur Singh & Anr. vs. State of U.P. ; AIR 1961 SC 1527 Deep Chand vs. State of Rajasthan AIR 1964 SC 358 State of U.P. vs. Singhara Singh & Ors. ; (1999) 3 SCC 422 Babu Verghese & Ors. vs. Bar Council of Kerala & Ors.).

17. **KISHAN LAL VS DARMENDRA BAFNA 2009 SC CASE** 2009 (3) JCC 2273, 2009(3) RCR (Criminal) 828 **:-** It is now a well settled principle of law that when a final form is filed by any Investigating Officer in exercise of his power under sub-section (2) of Section 173 of the Code, the first informant has to be given notice. He may file a protest petition which in a given case may be treated to be a complaint petition, on the basis whereof after fulfilling the other statutory requirements cognizance may be taken. The learned Magistrate can also take cognizance on the basis of the materials placed on record by the investigating agency. It is also permissible for a learned Magistrate to direct further investigation.

18. **The Division Bench of Karnataka High Court in** Babu @ Thirupathi vs The State Of Karnataka ILR 2007 KAR 3142 Observed that; "The legislative intendment of Section 36 of Cr.P.C. is that all the superior rank police officers above SHO including the Superintendent of Police should involve in supervising the investigations to ensure the integrity and quality. Unfortunately we find that as a matter of routine the superior rank police officers do not involve in supervising the investigations made by the SHO. It is rarefy and only in sensational cases, the S.P and senior police officers take control of the investigation to guide the SHO. The non-use of the provisions of Section 36 Cr.P.C. by the S.P and other senior police officers has resulted in free and unfettered situation to the I.Os to conduct the investigation in a causal and caviler manner and also to dishonestly manipulate the final reports submitted Under Section 173 Cr.P.C. It is very essential that the draw backs in current practices in the investigations have to be over come to bring about effective and quality investigations to bring the culprit to justice. In our view to achieve the above object, it should be made compulsory by circular instructions and by amending the police manual to make it mandatory that the final reports of all the cases triable by sessions, the Superintendent of Distinct shall verify and counter sign the final report before it is filed into the Court In respect of lesser heinous offences, all the final reports have to be verified and countersigned by the Add! S.P or the ACP Such corrective steps in the police investigation would hopefully bring about fairness and quality in the

investigation and would obviate malpractice.....We direct the Registry to send the copy of the judgment tot he Director General of Police and to the Home Secretary for effective compliance of the observations made in the judgment We also direct the Director General of Police and the Home Secretary to enquire and find out the mala fide if any, of PW 16 i.e., IO in recording the statement of the witnesses Under Section 161(3) Cr.P.C. If enquiry reveals that PW 16 is guilty of the offence Under Section 192 Cr.P.C., the needed action for prosecution is to be initiated."

19.¥ÉÆÃ°Ã¸ï ªÀiÁå£ÀÄåAiÀÄ¯ï ¤AiÀÄªÀiÁªÀ½UÀ¼À §UÉÎ ªÀiÁ£Àå gÁdå ºÉÊ PÉÆÃmïð G¯ÉèÃT¹ ZÀað¹gÀÄªÀ §UÉÎ ªÀÄvÀÄÜ vÀ¤SÁ PÁAiÀÄðªÉÊPÀj ªÀÄvÀÄÜ ªÀgÀ¢AiÀÄ §UÉÎ CzÀgÀ ªÀÄºÀvÀéªÀ£ÀÄß ªÀiÁ£Àå £ÁåAiÀiÁ®AiÀÄ ¥ÀjUÀt¹gÀÄªÀ §UÉÎ vÉÆÃgÀ®Ä F DzÉÃ±ÀzÀ UÀªÀÄ£À ¸É¼ÉAiÀÄ¯ÁVzÉ. Hon'ble Division Bench of Karnataka High court in Balappa vs State of Karnataka ILR 2005 KAR 1093 speaking on Lapses in Investigation said: "This case is a classic example of tainted investigation affecting the major charge thereby weakening the charge and pushing it into a whirpool of doubts generated by the contaminated investigation, ultimately resulting in drowning of the charge of murder in that whirpool of doubts.....Chapter XXVIII of the Karnataka Police Manual contains detailed instructions to investigating officers, giving guidelines for proper investigation. If the police officers follow the guidelines faithfully and honestly, particularly in the matter of promptly sending the F.I.R. to the jurisdictional Magistrate, going to the spot and inspecting the spot of offence, minutely and observing the existing facts, drawing up spot mahazar noticed the facts noticed there, faithfully recording the statements of witnesses in their own words without loss of time, they go a long way in pinning the real culprit. It shall be borne in mind that tainted evidence introduced during investigation acts like a moth in wood ultimately destroying the core of the case resulting in the escape of real culprit. The Supreme Court has observed as far back as in 1974 in JAMUNA CHOUDHARY v. STATE OF BIHAR, that the duty of Investigating Officer is not merely to bolster up a prosecution case with such

evidence as may enable to record a conviction, but to bring out the real unvarnished truth."

20. In case of Smt. Selvi And Ors. vs State By Koramangala Police Station 2004 (7) KarLJ 501 JUSTICE S Majage, It cannot be forgotten that Section 39 of the Criminal Procedure Code casts a duty upon every person to furnish information regarding offences. Criminal justice system cannot function without the cooperation of the people. Rather, it is the duty of every person to assist the State in the detection of the crime and bringing criminal to justice. Withholding such information cannot be traced to the right to privacy, which itself is not an absolute right. In this regard, reference can be had to a recent decision of the Supreme Court in the case of State v. Dharmapal, 2003 AIR SCW 1960 : AIR 2003 SC 3450 and observed by the Supreme Court in the case of State of Gujarat v. Anirudha Singh, , that it is the statutory duty of every witness, who has the knowledge of the commission of the crime, to assist the State in giving evidence.

21. A Division Bench of this Court in J. Alexander, vs State Of Karnataka ILR 1995 Kant 2578 : (1996 Cri LJ 592), has ruled that under Section 173(4) the Court has to satisfy itself with regard to executive function of Investigating Officer in the matter of exercise of his power. The Court also ruled in para 13 reading as under : In a country where there is cancerous growth of corruption with close links between the bureaucracy and politicians and such acts being done under shrouded mystery, it is difficult to assume that all facts could be revealed in one stroke. In such cases great effort is needed to discover material, and after securing further material, if the police seek to investigate the matter, the provisions of law cannot be interpreted to settle such course of action. An order accepting the B report is not an immunity granted to an accused person, but merely a temporary relief subject to further investigation in the event good and fresh material is secured and investigation is done. It is also possible that a sloppy or dishonest Investigating Officer connives with the accused and sends up a B report and if the higher officers discover the same and collect fresh or further material could it said that the mere acceptance of B report sent by the junior officer would still stand even on discovery of such

material and further investigation done by the police. Such a course would lead to startling results. We do not think that is the intention of the Cr. P.C. either Under Section 173(4) or 173(8). A provision of law must be expected to read in such a manner that if advances the cause of justice and the interest of the public, but not merely to bear in mind an action taken by the Court while supervising investigation. Such act though characterised as judicial is nevertheless of supervisory character because of different stages of investigation different kinds of control are exercised by the Court.

F jÃwAiÀÄ E£ÀÄß ºÀ®ªÀÅ PÁ£ÀÆ£ÀÄ CA±ÀUÀ¼À£ÀßzÀÄ w½¢gÀÄªÀ ªÀiÁ£À¸À £ÁåAiÀiÁ®AiÀÄ ಫಿರ್ಯಾದುದಾರರ ಪ್ರೊಟೆಸ್ಟ್ ಪೆಟಿಷನ್ ನಲ್ಲಿನ ಅಂಶವನ್ನು ಕಾನೂನು ಅಂಶಗಳೊಂದಿಗೆ **¥ÀjUÀt¹, ¸ÀzÀj ¥ÀæPÀgÀt ªÀ£ÀÄß G£ÀßvÀ ¥ÉÆÃ°Ã¸ï C¢PÁjUÀ½AzÀ vÀ¤SÉUÉ PÀ®A 156(3) ¹.Dgï.¦.¹ PÉ¼ÀUÉ CzÉÃ²¹, ªÀgÀ¢ ¥ÀqÉAiÀÄ®Ä PÉÆÃgÀÄvÉÛÃ£É.**

¸ÀÄ½À:- vÀÄªÀÄPÀÆgÀÄ
¢£ÁAPÀ:- 16-08-2010

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