

**(1984) 11 KAR CK 0017**

**In the Karnataka High Court**

**Case No : Cr.R.P. No"s. 274 and 275 of 1983**

Udandappa Hanamappa Pujari and etc.

APPELLANT

Vs

State of Karnataka

RESPONDENT

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**Date of Decision : 23-11-1984**

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 397, 401  
Karnataka Police Act, 1963 — Section 54, 55, 56, 58

**Citation : (1985) ILR (Kar) 311**

**Hon'ble Judges : Narayan Rai Kudoor, J**

**Bench : Single Bench**

**Advocate : C.H. Jadhav, for the Appellant; S.S. Koti, Govt. Pleader, for the Respondent**

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**Judgement**

1. Cr.R.P. No. 274/1983 is one under S. 397 read with S. 401, Cr.P.C., brought by Udandappa Hanamappa Pujari to set aside the proceedings of the Sub-Divisional Magistrate, Bagalkot, in No. Mag SR. 20/82 dt. 29-3-1983.
2. Cr.R.P. No. 275/1983 is a similar revision petition and under similar circumstances filed by one Yamanappa Asangi to set aside the proceedings of the Sub-Divisional Magistrate, Bagalkot, in No. Mag SR. 6/82-83 dt. 10-3-1983.
3. As common questions of law and fact are involved in both these petitions, I propose to dispose of them by a common order.
4. It will be sufficient to notice the facts of the case in one of the petitions as it will serve the purpose in both the petitions. I shall notice the facts of the case in Cr.R.P. No. 274/1983.
5. The Sub-Divisional Magistrate, Bagalkot, on the basis of a report submitted by the P.S.I. Kaladgi, caused a notice dt. 29-3-1983 to be served upon the petitioner under S. 58, Karnataka Police Act, 1963, calling upon him to explain regarding the allegations made in the notice and the proposed action to be taken against the petitioner prohibiting him to enter the Bijapur District for a period of 5 years.

The validity and legality of the notice has been questioned by the petitioner on various grounds raised in the petition.

6. It is provided under S. 58, Karnataka Police Act, 1963 (for short the "Act"), that before an order under S. 54, 55 or 56 is passed against any person, the officer acting under any of the said sections or any officer above the rank of an inspector authorised by that officer shall inform the person in writing of the general nature of the material allegations against him and give him a reasonable opportunity of tendering an explanation regarding them. No doubt the Sub-Divisional Magistrate caused the notice to be issued to the petitioner under S. 58 of the Act. However, the notice in question does not specify as to under which section, whether under S. 54, or 55 or 56, he proposed to take action against the petitioner and make an order externing him from Bijapur District for a period of 5 years. A simple reading of Ss. 54, 55 and 56 shows that the requirements that may call for action and the nature of the order to be made under each of them are not exactly similar or alike. Besides, an order to be passed by the officer acting under any of those sections shall precede by notice as stipulated in S. 58. That being the position, the officer causing the notice to be issued under S. 58 shall state in the notice the general nature of the material allegations against the party to whom the notice was proposed to be issued making sure under which section whether under S. 54, or 55 or 56 he intended to take action. Besides, the maximum period of direction to be issued under S. 54, 55 or 56 prohibiting a person from entering into any particular area or any District, etc., is limited under S. 57 of the Act for a period not exceeding 2 years, the notice shall specify the proposed action to be taken.

7. Keeping in view the abovementioned legal requirements, let me now proceed to consider the validity and legality of the notice issued to the petitioner.

8. It is seen from the contents of the notice dt. 29-3-1983 issued to the petitioner that the learned Sub-Divisional Magistrate has merely extracted the contents of the police report submitted to him which consists of several past alleged acts of the petitioner and others and therefrom he proceeds to say that there was cause for breach of public peace and called upon the petitioner to tender an explanation regarding them. It looks from the contents of the notice that the learned Sub-Divisional Magistrate based his notice issued to the petitioner only on the report of the police without taking an independent assessment of it before issuing the notice in question. In other words, it seems to me that the Sub-Divisional Magistrate has mechanically acted on the basis of the police report to issue the notice in question. As rightly pointed out by the learned Advocate for the petitioner, the notice in question suffers from serious legal infirmity of non-application of the mind by the Sub-Divisional Magistrate which is the very foundation for taking action under Ss. 54 to 56 of the Act.

9. There is one other legal infirmity in the notice issued to the petitioner. The Sub-Divisional Magistrate has stated in the notice that the P.S.I. Kaladgi in his report recommended to take action against the petitioner by making an order

prohibiting him from entering Bijapur district for a period of five years and the learned Sub-Divisional Magistrate merely copied the recommendation of the police officer in his notice issued under S. 58 to the petitioner without realising his own limitations under S. 57 that any order that he could make under any of the S. 54 to 56 shall not exceed a period of two years from the date on which the order was passed. This piece of material also indicates non-application of the mind by the Sub-Divisional Magistrate to the facts and circumstances of the case before he issued the notice under S. 58.

10. Thus viewed from any angle, it seems to me that the notice issued to the petitioner and the proposed action to be taken flowing therefrom both are illegal and unlawful.

11. The above discussion and the conclusion reached would equally apply to the facts of the case in Cr.R.P. No. 275/1983.

12. In the result, for the reasons stated above, both the petitions are allowed. The notices dt. 29-3-1983 and 10-3-1983 issued to the respective petitioners and the proceedings initiated thereon are hereby set aside.

13. Petitions allowed.