

BEFORE THE III ADDL. DISTRICT AND SESSIONS COURT  
AND SPECIAL JUDGE, D K , MANGALURU.

PC NO ..... / 2018

BETWEEN

Robert Rosario 50 years  
S /o S H Rosario  
Hilda cottage  
Aikala village and post  
Mangaluru taluk 574141

COMPLAINANT

AND

1) Santhosh S Kunder age -adult  
Presently Dy. Registrar (Enq -4)  
Personal section  
Office of the Karnataka Lokayukta  
Dr B R Ambedkar Road  
M S Building  
Bengaluru. - 1

2) Melwyn Prakash alias M P Noronha  
Advocate  
Aged about 55 years,  
Melwita house, Behind Kulshekar church  
Mangaluru.

3) Padre Dr Aloysius Paul D'Souza,  
Aged 76 years,  
Bishop of Mangaluru  
Residing at Bishop's house  
Kodialbail, Mangaluru 575 003.

4) Padre Valerian Pinto,  
Aged about 69 years,  
Parish Priest, Our Lady of Mercy Church.  
Fajiru post, via Mangala Gangothri.  
Mangaluru- 574199.

ACCUSED

COMPLAINT FILED UNDER SECTION 200 OF CRIMINAL  
PROCEDURE CODE FOR THE OFFENCES PUNISHABLE  
UNDER SECTION 7 and 12 OF THE PREVENTION OF  
CORRUPTION ACT 1988 AND SECTION 120-B, 217, 218 AND  
219 OF INDIAN PENAL CODE

1. The names and addresses of the parties are as shown above in the cause title.

2. The complainant is a social activist fighting against corruption in the system. He is the complainant in PC 75 / 2017 pending before the honorable JMFC II court Mangaluru. Being hurt by some unpleasant events, this complainant is constrained to file this private complaint.

3. The accused number 1 being a public servant has immunity as per section 19 of the prevention of corruption act, 1988 and needed prior sanction from the competent authority for prosecution. Accordingly the complainant had sought prior sanction from the honorable governor of Karnataka through an application dated 14/10/2017 which was sent by speed post weighing 260 grams with number EK710072978IN and received by the office of the honorable governor on 16 /10 / 2017. Copy of which is enclosed herewith and may be read as part and parcel of this complaint. Three months have lapsed since the receipt of my application by the honorable governor and my prayer has not been rejected. Though the sanction for prosecution is not given it is deemed to be given as per the judgment of the Supreme Court of India in Dr. Subramanian Swamy vs Dr. Manmohan Singh And Anr on 31 January, 2012 Author: G S Singhvi Bench: G.S. Singhvi, Asok Kumar Ganguly  
Therefore with this deemed sanction this court is empowered to take cognizance.

4. The accused number 1 named above worked as the magistrate in JMFC II court Mangaluru during the time of alleged crime. He was the presiding officer in the said court when the complainant of this case had filed a private complaint before him on 05/04/2017. The alleged crime took place between 05/04/2017 and 14/10/2017.

5. The accused number 1 was the magistrate in the court of JMFC II court Mangaluru, while the other accused 2 to 4 are the accused in PC no 75/2017 pending before the same court. All the four accused jointly hatched a criminal conspiracy to save 2 to 4 from punishment in their heinous crime in the said case. A2 being an advocate having clout and influence within the corridors of court complex initiated this process being the abettor and A1 joined him in this conspiracy suspectedly accepting the illegal gratification and executed the plan. A3 and A4 are associates of A2 in the crime as abettors.

6. As a part of conspiracy A1 being the judicial officer gave himself the task of enquiry in PC no 75/2017 pending before his court and as enquiry officer he dishonestly and with ulterior motive did everything possible to scuttle the process of justice to help the accused get away scot free without punishment and forfeiture of property. If the enquiry was done by someone else the offenders were all likely to get into the hook of law, so to avoid this he had taken on himself the task of enquiry and made every possible effort to safeguard the offenders from the wrath of law and to save them from criminal penalty and forfeiture of property. So his role as an enquiry officer is in question here and needs to be compared or treated at par with that of a police officer as enquiry officer. If a police officer had conducted himself in the same manner as that of A1 in this case, he would have faced the same charges as mentioned here.

7. Some specific crimes of A1 are as below.

-Despite gathering volumes of original documents of forgery and guilt admission, did not send them to forensic test and opinion. No steps taken to recover the embezzled money. No steps or any action on benami property. Nothing done to stop money laundering. Free hand given to accused to manipulate evidence, threaten or buy over witnesses. Harassed the complainant to force him to withdraw from the case. Encouraged threatening of complainant right inside the court hall. No steps taken to identify witnesses who had first hand information on parallel unaudited bank accounts. No steps taken to restrain the accused from fleeing the country. Did nothing on my submission that complainant is likely to be eliminated thru supari killers.

8. In criminal jurisprudence primary concern is to disarm the offender before any further steps. In this case the offenders were armed with huge amounts of ill gotten money which can create havoc in the society and pose security threat to citizens apart from the complainant and witnesses of the case, but A1 did nothing in this regard to disarm the accused clearly showing his intention to help the accused.

9. Accused number 2 being an advocate constantly monitored day to day proceedings of the case through his access to the corridors of the court. He was quick to get the copy of the complaint from the court as soon as it was filed, with the help of A1. The most important aspect of preliminary enquiry is secrecy and swift action. The accused needed to be nabbed before they counter / preempt the investigation. Otherwise the whole case becomes in fructuous. Yet A1 allowed the offenders a free hand.

10. All these illegalities were informed to the higher ups in the judiciary thru letters and also thru revision petition but they failed to check the illegal acts of the accused. Their role of inaction / omission also needs to be probed. The concerned persons / authorities are 1) Honorable principal district and sessions judge Mr. K S Bilagi 2) Honorable VI addl district and sessions judge Mr. D T Puttarangaswamy 3) Mr. Justice Subro Kamal Mukherjee then chief justice of Karnataka high court. 4) The Registrar general of Karnataka high court.

11. I drew the attention of the principal district and sessions judge regarding blatant disregard to the Karnataka criminal rules of practice 1968, as early as on 25/04/2017. Which is enclosed herewith as document no 2. But he failed to do any course correction. Later on 31/08/2017 I wrote to him in detail, Which is enclosed herewith as document no 3. Still nothing moved. I wrote to the then Chief Justice of honorable high court of Karnataka Mr. justice Subro Kamal Mukherjee on 29/08/2017. Which is enclosed herewith as document no 4. He did nothing to stop the illegality nor to enquire the matter. Nor any reply to me. My RTI application revealed that he made remark as judicial order on my complaint and just filed without any action. Original copy of the RTI reply attached herewith as document 5. Is corruption / collusion with accused a judicial order ? I also wrote to CBI director he forwarded to the registrar general of Karnataka high court, but no action from registrar general and the collusion with accused continued. I also wrote to union law minister, he forwarded to registrar general of Karnataka high court. Original copy of information from law minister attached herewith as document no 6. Yet no action from registrar general.

12. Revision petition 81/2017 was filed as per section 399 of CrPC in district and sessions court, DK. VI addl district and sessions

court which heard the matter did nothing to break the impasse. My citation of honorable Allahabad high court did not receive any attention. The judge only remarked it is 'not helpful' in his order. How and why it is not helpful is not clear. No speaking order. Though during the hearing he expressed concern with me regarding my safety and other things, given the big clout of accused, no relief in the final order. Which is the force acting behind all this? Needs to be investigated.

13. A2's proximity to the sitting judge of honorable Karnataka high court Mr. justice John Michael Cunha is well known. Both of them were partners in law firm "MANU associates" and it is a well known fact that their friendship still continues. On 5<sup>th</sup> November 2017 the same justice John Michael Cunha attended his felicitation function at the Mangaluru BAR association. A2 was seen on the occasion at the Dias speaking and praising him exhibiting all his clout and proximity. "MANU associates" name was also mentioned in his presence to which the judge did not object. It is to be noted that during that time A2 was accused in my PC no 75/2017 pending enquiry. A1 was seated in the audience hearing the speech of A2, but did not object to this. Is this proximity with high court judge helping A2 to get hold over lower judiciary? Is a question needs answer through probe.

14. Therefore a detailed investigation is needed to get to the bottom of crime and find answers to all these questions. Hence this

**PRAYER :**

The complainant named above prays that this Honorable court may be pleased to direct deputy superintendant of police anti corruption bureau Mangaluru U/S 156 (3) of Cr P C for detailed investigation of the crime against all the accused, in the interest of justice.

Date : 24/01/2018.  
Place : Mangaluru.

Robert Rosario  
Complainant.

BEFORE THE III ADDL. DISTRICT AND SESSIONS COURT  
AND SPECIAL JUDGE, D K , MANGALURU.

PC NO ..... / 2018

BETWEEN

Robert Rosario

COMPLAINANT

AND

Santhosh S Kunder  
And others

ACCUSED

List of witnesses

- 1) The complainant
- 2) Mr. K S Bilagi, honorable principal district and sessions judge, DK
- 3) Mr. D T Puttarangaswamy, honorable VI addl district and sessions judge, DK
- 4) Mr. justice Subro Kamal Mukherjee. Former chief justice of Karnataka high court.
- 5) Registrar general, Karnataka high court.
- 6) Mr. Justice John Michael Cunha. Honorable judge, Karnataka high court.

Date : 24/01/2018.  
Place : Mangaluru.

Robert Rosario  
Complainant.



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AND

Santhosh S Kunder  
And others

ACCUSED

List of Documents

- 1) Copy of application to honorable governor of Karnataka seeking sanction for prosecution.
- 2) Letter written to principal district and sessions judge, DK
- 3) second letter written to principal district and sessions judge, DK
- 4) Letter written to Mr. justice Subro Kamal Mukherjee.
- 5) RTI reply from CJ office, Karnataka high court.
- 6) Original copy of letter from union law minister.
- 7) Certified copy of order sheet of PC no 75/2017 in the court of JMFC II, Mangaluru.
- 8) Original postal receipts of postage (total 8 receipts) sent to various persons as mentioned in complaint.

Date : 24/01/2018.

Place : Mangaluru.

Robert Rosario

Complainant.

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Robert Rosario

COMPLAINANT

AND

Santhosh S Kunder  
And others

ACCUSED

List of enclosures

- 1) Verifying affidavit.
- 2) Memo of appearance.

Date : 24/01/2018.  
Place : Mangaluru.

Robert Rosario  
Complainant.

BEFORE THE III ADDL. DISTRICT AND SESSIONS COURT  
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PC NO ..... / 2018

BETWEEN

Robert Rosario

COMPLAINANT

AND

Santhosh S Kunder

ACCUSED

And others

AFFIDAVIT

I, Robert Rosario , S/o S H Rosario aged 50 years, R/o Hilda cottage, Aikala village and post, Mangaluru, today at Mangaluru do hereby solemnly affirm and declare as under:-

1. That I am the complainant in the aforesaid complaint and am acquainted with the facts and circumstances of the case.
2. That the accompanying complaint has been drafted by me.
3. That the contents / allegations in the complaint from Para 1 to Para 14 are true and correct to the best of my knowledge, information and belief.

DEPONENT

Verification

Verified at Mangaluru today i.e. 24<sup>th</sup> day of January 2018 that the contents of this affidavit are true and correct to the best of my knowledge and belief and nothing material has been concealed there from.

DEPONENT

BEFORE THE III ADDL. DISTRICT AND SESSIONS COURT  
AND SPECIAL JUDGE, D K , MANGALURU.

PC NO ..... / 2018

BETWEEN

Robert Rosario

COMPLAINANT

AND

Santhosh S Kunder

ACCUSED

And others

Memo of appearance

I am the complainant in the above referred complaint and I am appearing in person before this court for all the purposes of this case.

Date : 24 January 2018.

Place : Mangaluru.

Robert Rosario  
Complainant.

BEFORE THE HONORABLE GOVERNOR OF  
KARNATAKA, BENGALURU

Robert Rosario 49 years  
S/o S H Rosario,  
Hilda cottage  
Aikala village and post,  
Mangaluru. Karnataka. 574141  
Mobile : 9448104267  
email : robertrosario67@gmail.com

APPLICANT

Sri Santosh Kunder  
Magistrate, JMFC II court,  
Mangaluru. D K.

OPPOSITE PARTY

APPLICATION SEEKING SANCTION TO PROSECUTE THE  
OPPOSITE PARTY ON CORRUPTION AND OTHER CHARGES.

Ref: collusion of opposite party with the accused in PC no 75/2017 in the court of JMFC II court Mangaluru, taking bribe from them.

Here Mr. Santosh Kunder's deeds as an enquiry officer are in question more than as judicial officer, in the private complaint pending before him as in ref above. As the judicial magistrate he orders with a malafide intention to make himself as enquiry officer with an ulterior motive to safeguard the offenders. If the enquiry is done by someone else the offenders were all likely to get into the hook of law, so to avoid this he is taking on himself the enquiry and making every possible effort to safeguard the offenders from the wrath of law and to save them from criminal liability. The offenders saved by Santosh Kunder are the accused in the complaint in ref above.

Some highlights of his crimes are as below.

- Blatantly disregarded the mandatory Karnataka criminal rules of practice 1968.

- Violation of criminal procedure code.
- Violating every norm and closing all options in law to subject the accused to interrogation.
- Refusal to impound passports of 3 accused despite my application.
- Illegally ordering me to get the identity and other details of witness which I am not authorized to do under the law.
- Causing harassment to me as complainant by calling the case at 5.30pm after making me wait for the whole day.
- Summoning witnesses and not examining them.
- Not taking oral submission on record
- Refusing to follow the direction of higher court.
- Encouraging bullying against me inside the court hall.

Calendar of events are as below.

1	05/04/2017	PC no 75/2017 filed in the court of JMFC II Mangaluru under section 200 of CrPC, against 11 accused for the offences punishable under section 120-B, 403, 406, 413, 414, 417, 420, 468, and 477A of Indian penal code with a prayer to refer the complaint U/S 156 (3) Cr P C to the SHO of Mangaluru east police station Kadri for detailed investigation of the crime against all the accused and recover the misappropriated amount from them in the interest of justice.  Sri Santosh Kunder is the magistrate in the said court. Complainant was heard on that day and next day and posted for orders.
2	20/04/2017	Magistrate wrongly ordered to transfer the case to CJM court; citing sections 468 and 477A IPC are triable by CJM court.
3	21/04/2017	Complainant filed application to review and rectify the order as section 413 IPC is triable by

		<p>court of session and JMFC is the committal court for it.</p> <p>Magistrate recalled his own order made on previous day and posted for further orders.</p>
4	02/05/2017	In a 17 page order the magistrate rejected the prayer of referring to police saying before proceeding further he wants to ascertain the veracity of the allegations. And ordered to examine the complainant and witnesses on oath.
5	11/05/2017	Complainant and witness no 3 examined on oath Documents C1 to C3 are marked.
6	31/05/2017 And 05/06/2017	Witness no 2 and 4 examined on oath and documents C4 to C56 marked. These documents include reports of commission of enquiry appointed by church and accused no 2, guilt admission in own handwriting by accused, forged documents, audit remarks etc.
7	07/06/2017	<p>Application filed to impound the passport of A1, A2, A7 and also to refer the case to police for recovery of money and investigation of conspiracy.</p> <p>He rejected the application saying at pre summons stage impounding passport can't be done.</p> <p>He also rejected the prayer to refer to police saying "now the case at stage of examination of complainant and witness. There is bar under proviso (a) of sub section (1) of section 202 CrPC for direction for investigation of the case by the police"</p>
8	12/06/2017	I as Complainant filed citation of Allahabad high court Raj Kumar Adalkha And 5 Ors vs State Of U.P. And Another on 23 July, 2014 Bench: Arvind Kumar Tripathi Court No. – 50 Case :- APPLICATION U/S 482 No. - 20272 of 2014 Applicant :- Raj Kumar Adalkha And 5 Ors Opposite Party :- State Of U.P. And Another

		Counsel for Applicant :- H.C. Mishra,V.P. Srivastava - for solution to overcome the proviso.
9	17/06/2017	In a 7 page order the magistrate rejected the application for referring to police and ordered for examination of all witnesses.
10	08/07/2017	Complainant moved the district and sessions court DK with criminal revision petition 81/2017 challenging the order dated 17/06/2017.
11	27/07/2017	VI addl. District and sessions court DK though not fully granted relief, directed the magistrate to speed up and expedite the case.
12	11/08/2017	<p>Memo filed with the certified copy of the order of VI addl. District and sessions court DK in revision petition no 81/2017 and pointed out the direction to speed up and expedite the case.</p> <p>Memo filed to summon the important witnesses whose identity and address not known to complainant but need to be identified by enquiry officer.</p> <p>He rejected the prayer and ordered the complainant to furnish the names and other particulars of the witness despite knowing that a private citizen is not empowered by law to do so.</p>
13	30/08/2017	<p>I Filed application to authorize me as complainant to question, verify the records and to do such other things with respect to public authorities like bank and other bodies as I am is not empowered by the law to do so being a private citizen, in order to identify the necessary witness.</p> <p>Magistrate Santosh Kunder rejected the application seeking authorization.</p> <p>I also objected to the fact that court did not care to abide by the direction of higher court to expedite the case.</p>



		He took exception to this and considering it as allegation on court, ordered to shift the case to some other court. Case adjourned awaiting the order from the district and sessions judge with respect to transferring the case.
14	04/10/2017	District judge rejected the request of magistrate to transfer the case.  Magistrate again repeated his old illegal order that complainant should furnish the names and other particulars of the witness, in spite of complainant saying he is a private citizen not empowered to do such things like questioning people.

I had filed the private complaint praying for referring the complaint for investigation under section 156(3) of CrPC. Mr. Santosh Kunder as magistrate refused to refer the matter to police citing reason that, he wants to verify the veracity of the alleged offences and ordered for the examination on oath of the complainant and witnesses, though there was ample evidence on board to check veracity of allegations.

Accordingly I was examined on oath and also three other prime witnesses were examined on oath who deposed in complete support of the case and produced documents to prove the forgery and other crimes which were marked from C1 to C56. Out of which C4 to C8 are the reports of commission of enquiry confirming the misappropriation. C9 to C56 are documents of admission of guilt, forged documents, bank statements, audit reports etc.

At this stage I prayed for police help as the documents gathered by the court were not to be kept in cold storage but must have been subjected to scrutiny like forensic experts without delay in order to strengthen and prove the case of forgery. Most of the documents were the forged records by the accused. And some were admission of crime. They must have been examined / scrutinized and compared with the hand writing of the accused by the competent forensic experts and give expert opinion. And also interrogation of the accused was necessary to unearth the entire conspiracy, estimate the total amount of embezzlement and recover the amount. Some documents and evidence in possession of the accused needed to be seized and brought before the court. Some witnesses were to be questioned with regard to the conspiracy. For all this work help from the police was a must.

But strangely when the time came to verify the veracity as per his own order, he came out with an excuse citing the proviso in 202 (1) (a) of CrPC. Pointing at section 413 as triable by court of session and thus bars him from referring to police. That means he was well aware of this proviso in advance and with malafide intention of helping the accused he had rejected my prayer for police investigation under 156(3).

Here again I offered solution citing the judgment of Allahabad high court Raj Kumar Adalkha And 5 Ors vs State Of U.P. And Another on 23 July, 2014 Bench: Arvind Kumar Tripathi Court No. – 50 Case :- APPLICATION U/S 482 No. - 20272 of 2014 Applicant :- Raj Kumar Adalkha And 5 Ors Opposite Party :- State Of U.P. And Another Counsel for Applicant :- H.C. Mishra,V.P. Srivastava Counsel for Opposite Party :- Govt. Advocate. But he had already made up the mind to help accused so he refused to take note of the most relevant citation and made an order as per page no 28 to 34 in the order sheet in complete violation of criminal procedure code.

This clearly exposes his malafide intention to help the accused to get away from the wrath of law. Earlier while refusing the prayer to refer as per 156(3) he was well aware of this proviso. So he intentionally dragged the case to this stage only to help the accused by avoiding police interrogation and recovery of embezzled amount.

He is bribed for this purpose by the high profile accused with big clout. The clout of the accused is so big that they are capable of subverting the entire system of criminal justice. They are highly influential having high reach and well connected. They include Christian religious leaders like the Bishop of Mangaluru, 3 padres, 1 advocate among total 11 accused in the complaint. Their crime is heinous. Magistrate Santosh Kunder is helping them out of the way.

Jumping the proviso – what are the consequences? For a moment let it be assumed that the proviso is violated in good faith to book the offenders. What is the consequence? Nothing much on the part of magistrate but it could only be a ground for the accused to appeal to higher court. However defying the law, like not abiding by the mandatory Karnataka criminal rules of practice 1968 amounts to contempt of high court. But Santosh Kunder is unmindful of these consequences in spite of pointing it out to him during hearing. This shows he is heavily bribed to help the accused. Even he has blatantly violated the criminal procedure code showing scant respect to the law.

Abuse of judicial process - by abusing his position he gave himself the role of enquiry officer, now thru delaying tactics helping accused get away. Accused are likely to leave country to escape law, as Santosh Kunder is helping them.

So his entire role as enquiry officer is in question. He needs to be treated in par with police officer as enquiry officer. And the same standard / principle shall apply. If a police officer enquiring into a crime if involves in delay tactic of this kind what will be the consequences? He has to face charges of dereliction of duty apart from collusion under the influence of money. More over if the police officer sits over original documents without bothering to verify and scrutinize them, for over 4 months he is certainly charged with dereliction of duty and other charges. Same rule shall apply to Santosh Kunder as enquiry officer.

On 28/09/2017 one advocate "shivananda" bullied inside the court hall against me with the active support of magistrate Santosh Kunder. His encouragement to bullying inside the court hall is to discourage me from pursuing this case.

All this constitute and warrant action against Mr. Santosh Kunder under various sections of corruption act and also other laws. Therefore the sanction to prosecute Mr. Santosh Kunder be granted in the interest of justice.

Date: 14 /10 /2017  
Place: Mangaluru.

Robert Rosario  
Applicant

Annexure:

- 1) Verifying Affidavit
- 2) Copy of complaint filed before JMFC II court, Mangaluru in PC no 75/2017.
- 3) Certified Copy of order sheet of PC no 75/2017 in JMFC II court, Mangaluru.

BEFORE THE HONORABLE GOVERNOR OF  
KARNATAKA, BENGALURU

Robert Rosario 49 years  
S/o S H Rosario,

Hilda cottage  
Aikala village and post,  
Mangaluru. Karnataka. 574141

APPLICANT

Sri Santosh Kunder  
Magistrate, JMFC II court,  
PARTY  
Mangaluru. D K.

OPPOSITE

#### AFFIDAVIT

I, Robert Rosario , S/o S H Rosario aged about 49 years, R/o Hilda cottage, Aikala village and post, Mangaluru, today at Mangaluru do hereby solemnly affirm and declare as under:-

4. That I am the applicant in the aforesaid application and am acquainted with the facts and circumstances of the case.
5. That the accompanying application seeking sanction has been drafted by me.
6. That the contents of the application are true and correct to the best of my knowledge, information and belief and nothing material has been concealed there from.

DEPONENT

#### Verification

Verified at \_\_\_\_\_ today i.e. \_\_\_\_\_ day of October 2017 that the contents of this affidavit are true and correct to the best of my knowledge and belief and nothing material has been concealed there from.

DEPONENT

**BEFORE THE PRINCIPAL DISTRICT AND SESSION  
JUDGE, MANGALURU.**

Submission : the undersigned begs to draw the attention of your honor to the subject below.

**Sub:** inordinate delay in referring my complaint for investigation.

**Ref :** P C No 75 / 2017 in the court of JMFC II Mangaluru for offences under sections 120-B, 403, 406, 413, 414, 417, 420, 468, and 477A of IPC. Regarding Embezzlement of over 5 Crore rupees from the church account at Cordel church.

I am the complainant in the above referred complaint filed on 5<sup>th</sup> April 2017. But till date it is pending before the court without initiating logical steps as per law. Brief history is as below.

05 April 2017 – I filed the complaint before the court, after brief argument regarding the gist of the case posted for next day.

06 April 2017 – the case was numbered as 75 / 2017, and put on board. I submitted my arguments regarding the merit of the case, and drew the attention of the court to the prima facie evidence. And prayed for an order directing the Mangaluru east police SHO to investigate and recover the embezzled amount from the accused and take necessary action. Case was then posted to 11 April for order.

11 April 2017 – no order as the file was not reachable. Posted to 20<sup>th</sup> for order.

20 April 2017 – order made saying case be transferred to CJM as there are sections 468 and 477A of IPC which are triable by CJM.

21 April 2017 – I filed memo to review and rectify the order as the section 413 of IPC is triable by Court of Session. Court recalled the order and posted to 24<sup>th</sup> .

24 April 2017 – no order made, posted to 02 may for order.

Hence I feel I have been subjected to trial instead of the accused in this case. This inordinate delay in referring the case for investigation amounts to - delaying justice is denying justice.

The accused named in the complaint are too powerful and having clout to subvert the due process of law. Earlier one Mr. Anuj Castelino had filed a complaint before the SHO of Mangaluru east police station on the same subject but police had refused to register the case. Drawing the attention of the commissioner of police on this had no effect. Now I have come before the court to set the law in motion to begin

investigation but things are not moving as required by law. The judge seems to be under some pressure. All the proceedings mentioned above over a period of 20 days on 5 dates indicate to such a possibility. Therefore praying for necessary action.

Mangaluru

Robert Rosario (9448104267)

25 April 2017.

**complainant**

From,

Robert Rosario  
S/O S H Rosario  
Hilda cottage, Aikala village and post  
Mangaluru Taluk.

To,

Honorable Sri K S Bilagi  
Principal District and Sessions judge  
D K, Mangaluru.

Your honor,

Sub: submitting extra / additional information than what the magistrate of JMFC II court submitted

Ref: my complaint before the JMFC II court Mangaluru in PC no. 75/2017. And the proceedings dated 30/08/2017 in this case.

Yesterday that is 30<sup>th</sup> august the above referred case was posted for hearing. The learned magistrate took objections to some of the contentions in my memo and application. He also ordered to refer the matter to your honor along with some memo submitted by me. In this regard I like to put my version of the case before your honor for taking an impartial view on the matter.

On 25<sup>th</sup> April 2017 I had approached your honor through the sheristadar of PDJ with a written submission as below. And requested for a personal interview with your honor to explain further. The sheristadar went with my written submission to your honor's chamber and came back with a suggestion that "the judge has asked you to raise the matter in the open court of JMFC II itself and not to come here" "the judge declined to interfere in judicial matter" the text of the written submission made to your honor but declined to receive is as below.

***“BEFORE THE PRINCIPAL DISTRICT AND SESSION  
JUDGE, MANGALURU.***

*Submission : the undersigned begs to draw the attention of your honor to the subject below.*

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*I am the complainant in the above referred complaint filed on 5<sup>th</sup> April 2017. But till date it is pending before the court without initiating logical steps as per law. Brief history is as below.*

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*24 April 2017 – no order made, posted to 02 may for order.*

*Hence I feel I have been subjected to trial instead of the accused in this case. This inordinate delay in referring the case for investigation amounts to - delaying justice is denying justice.*

*The accused named in the complaint are too powerful and having clout to subvert the due process of law. Earlier one Mr. Anuj Castelino had filed a complaint before the SHO of Mangaluru east police station on the same subject but police had refused to register the case. Drawing the attention of the commissioner of police on this had no effect. Now I have come before the court to set the law in motion to begin investigation but things are not moving as required by law. The judge seems to be under some pressure. All the proceedings mentioned above over a period of 20 days on 5 dates indicate to such a possibility. Therefore praying for necessary action.*

*Mangaluru*

*Robert Rosario (9448104267)*

*25 April 2017.*

*Complainant .”*



This text above was addressed to your honor for consideration as a supervisory authority over the lower court and not to interfere in judicial matters in any way. But your honor had declined to the needful. However I conceded the advice and returned back with the written submission.

Then I filed an application for advancement in the JMFC II court next day that is 26/04/2017. But the magistrate refused to entertain it. The text of the application is as below.

*“IN THE COURT OF JMFC (II COURT) MANGALURU*

*P C No. 75 / 2017*

*Next date of hearing – 02/05/17*

*Last date of hearing – 24/04/2017*

*BETWEEN:*

*Robert Rosario  
S/o S H Rosario*

*COMPLAINANT.*

*AND:*

*Padre Valerian Pinto  
And others*

*ACCUSED*

*Application to put up the case on board*

*It is respectfully submitted as follows*

*The case be called today for the following reasons*

- 1) To put on record my protest and express my displeasure to the inordinate delay in the case, as advised by the honorable principal district and session judge.*
- 2) To draw the attention of the court to the crime rules of practice which mandate speedy cognizance.*

*Therefore the above case may kindly be put up on board today for considering the application filed by the complainant in the interest of justice and fair play.*

*Mangaluru*

*26 April 2017.*

*Complainant .”*

Same day afternoon I submitted the memo as in the text below.

*“IN THE COURT OF JMFC ( II COURT) MANGALURU*

*P C No. 75 / 2017*

*BETWEEN:*

*Robert Rosario  
S/o S H Rosario*

*COMPLAINANT.*

*AND:*

*Padre Valerian Pinto  
And others*

*ACCUSED*

*Memo to submit rule of practice*

*Karnataka criminal rules of practice 1968 - chapter VI Rule 1 is as follows*

*“preference should be given to the preliminary enquiries over other work and they should be conducted from day to day as far as practicable”*

*I had filed the above complaint in this court on 5<sup>th</sup> April 2017 and prayed for referring the complaint to the police for investigation and recovery of embezzled property.*

*Since then 21 days passed with six adjournments but no justice in sight so far. Karnataka criminal rules of practice 1968 mandate speedy and swift action on criminal complaint in order to avoid undue damage to the case which may arise out of tampering of evidence, buying over witnesses and influencing the investigation.*

*The prayer to refer the case to police for investigation was mainly to recover the embezzled amount apart from knowing the total exact amount of misappropriation. This swindled unaccounted dirty money is likely to create havoc in the society by financing crime world. Which is a serious issue of security apart from financial loss to community. In depth investigation of this fact is essential as a preventive measure. The issues like money laundering and financing anti national activities also need to be investigated. Further delay in investigation will only strengthen the criminal elements.*

*The unjustified delay of this kind leads to suspicion that this court is under pressure from the well connected accused with high reach to the powerful and having clout to subvert the system.*

*Hence it is prayed that this court may consider my concern and issue a suitable order to investigate the crime in detail without further delay in the interest of justice and fair play.*

*Mangaluru*

*26 April 2017.*

*Complainant .”*

On this he marked to call tomorrow and never informed me. So I had to wait till the adjournment of the court to know what is written. So the next day that is on 27/08/2017, I submitted the memo of facts which the magistrate now has proposed to send to your honor.

The magistrate is bending backwards to help the accused in this case. He is directly responsible to the present impasse. In the beginning he refused to refer to police investigation under section 156(3) with a reason to check the veracity of the alleged offences and now refusing to take police help for recovery of misappropriated money and to do other things like investigate the conspiracy and identify further witnesses, giving excuse of proviso in section 202 (1) (a). That means he is doing everything possible to avoid recovery of amount from the accused thus helping them. He was well aware of the proviso in 202 earlier but still did not refer to police under 156(3). That means he wanted to create this checkmate like situation to me and thus help the accused to get away with lots of loot and misappropriation.

High profile accused –

The accused in this case are Christian religious leaders like bishop, padre, advocate and others. The accused number 3 in the case is

advocate Melwyn Prakash Noronha known as M P Noronha in the bar. His reach and influence in the corridors of court are well known. He can get away with any crime as his past history suggests. Information I received from the advocate circle is that he is capable of influencing the lower judiciary through someone from the high court. My criminal revision petition in this case before your honor and subsequent hearing by the VI addl sessions judge in Cr R P 81/2017 confirms such a possibility. My RP was dismissed without giving proper reasons. Most of the points raised by me were not answered. Though “reasons to be recorded” in any judgment is a must, in my case it wasn’t done. Arbitrarily dismissed without citing proper reasons. This confirms the high reach of accused 3.

Who is this person in high court helping accused 3 and others needs to be probed.

Date: 31/08/2017

Place: Mangaluru.

Robert Rosario.

CC to: Honorable chief justice Subhro Kamal Mukherjee  
Karnataka high court

From,

Robert Rosario 49 years  
S/o S H Rosario, Hilda cottage  
Aikala village and post, Mangaluru. Karnataka. 574141  
Mobile : 9448104267 email : robertrosario67@gmail.com

To,

Honorable chief justice Subhro Kamal Mukherjee  
Karnataka high court  
Bengaluru 560 001.

Dear Sir,

Sub: 1) collusion of judicial magistrate Sri Santosh Kunder of JMFC II court, Mangaluru with the accused and protecting them in their heinous crime suspectedly on taking bribe and under influence. 2) Contempt of honorable high court by magistrate Santosh Kunder.

Ref : my complaint before JMFC II court, Mangaluru. DK district, Karnataka. In PC no. 75/2017. For crimes punishable under section 120-B, 403, 406, 413, 414, 417, 420, 468, and 477A of IPC

Normal procedure under the law to set the law in motion is to complain before the police and register FIR. When the police refuse to do so the alternative step is to come before the jurisdictional court and complain under section 200 of CrPC. And pray for referring the matter to police for investigation under section 156 (3) of CrPC. But even the magistrate of court refuses to act as per law under some influence from the powerful accused what to do?

This exactly is the problem I am facing now. The accused are highly influential having high reach and well connected. They include Christian religious leaders and an advocate. Their crime is heinous forgery, falsification of accounts, cheating, breach of trust and misappropriation of funds over 5 crores. I complained before the court of JMFC II Mangaluru after the police refused to register FIR buckling under pressure from the accused. And prayed to refer the matter for police investigation.

At this stage bias of the magistrate is clearly visible through his acts as below.

He refused to refer the case to police on hearing the case on first and second day that is on 5<sup>th</sup> April and 6<sup>th</sup> April 2017. Then needlessly dragged the matter till 20 April only to make an order to transfer the case to CJM, which I contested the next day and he recalled the order made on the previous day! Then the drama continued again and made an order refusing to refer for police investigation and took up the enquiry on himself to examine the witnesses on oath. My examination on oath was done and also three other prime witnesses were examined on oath who deposed in complete support of my case and produced

documents to prove the forgery and other crimes which were marked from C1 to C56.

At this stage I prayed for police help as the documents gathered by the court were not to be kept in cold storage but must have been subjected to scrutiny like forensic experts without delay in order to strengthen and prove the case of forgery. Most of the documents were the forged records by the accused. And some were admission of crime. They must have been examined / scrutinized and compared with the hand writing of the accused by the competent forensic experts and give expert opinion. And also interrogate the accused to unearth the entire conspiracy, estimate the total amount of embezzlement and recover the amount. Some documents and evidence in possession of the accused needed to be seized and brought before the court. Some witnesses were to be questioned with regard to the conspiracy. For all this work help from the police was a must.

Furthermore Bank staff of MCC bank, corporation bank and other banks who worked on the secret / parallel unaudited accounts of the accused, Clerical staff of the Cordel church who worked during the period of forgery, Material suppliers and the workers who worked during the period of crime, CC TV maintenance staff worked at the sight of offence, should have been identified and named as witnesses by the concerned police officer during investigation.

But strangely the magistrate is avoiding this action and dragging the matter without any justification.

Strangely he came out with an excuse citing the proviso in 202 (1) (a) of CrPC. Pointing at section 413 as triable by court of session and thus bars him from referring to police.

I offered solution citing the judgment of Allahabad high court Raj Kumar Adalkha And 5 Ors vs State Of U.P. And Another on 23 July, 2014 Bench: Arvind Kumar Tripathi Court No. – 50 Case :- APPLICATION U/S 482 No. - 20272 of 2014 Applicant :- Raj Kumar Adalkha And 5 Ors Opposite Party :- State Of U.P. And Another Counsel for Applicant :- H.C. Mishra, V.P. Srivastava Counsel for Opposite Party :- Govt. Advocate

Which clearly shed light on such a situation, enabling the magistrate to take police help. But strangely he refused to see it proving his pre determined mind to defeat me and safeguard the accused from the rath of law. The proviso was only an excuse his real intention is to

safeguard the accused as evident from the fact that when there was a chance to refer the case to police under 156(3) earlier without any such proviso he refused to do it and proceeded as per 202 CrPC, only to show the proviso later. This confirms his wrong intention.

### **Contempt of honorable high court by magistrate**

Moreover he has blatantly violated the mandatory rules of practice as per The Karnataka criminal rules of practice, 1968. chapter VI rule 1. The said case is at preliminary stage and must have been conducted on a day to day basis as mandated by the Karnataka criminal rules of practice, 1968 chapter VI rule 1. Any violation of these rules amount to contempt of the honorable high court of Karnataka which framed these rules mandating the lower courts, just like it amounts to dereliction of duty by a police officer conducting investigation if the enquiry caused inordinate delay of this kind. So the magistrate is ready to take risk of contempt of court but reluctant to act as per law citing a lame excuse. This confirms he is heavily bribed for this action.

What happens if a police officer after collecting 56 documents, most of them original, sits over it without doing anything for over two months? Doesn't it amount to dereliction of duty? Then the same principle shall apply to magistrate as enquiry officer also.

At the initial period the accused have to be on hook of the law, so that they don't destroy evidence or do anything to scuttle the process of justice. And also secrecy of investigation is important at initial stage so why the case diary of police officer investigating the offence is kept secret and not discussed in open court nor copies are given to accused. Accused number 3 in this case being an advocate is monitoring day to day proceedings of the case through his access to the corridors of the court. He was quick to get the copy of the complaint from the court as soon as it was filed. The most important aspect of preliminary enquiry is secrecy and swift action. The accused needed to be nabbed before they counter / preempt the investigation. Otherwise the whole case becomes in fructuous. Yet the magistrate did not consider it, thus allowing the offenders a free hand. Knowing all this fully well the magistrate is committing such acts helping the accused. He is fully aware that the ill gotten money in possession of accused can induce threat to complainant and witnesses through SUPARI killers. Yet closing eyes supporting the accused.

In criminal jurisprudence primary concern is to disarm the offender before any further steps. In this case the offenders are armed with huge amounts of ill gotten money which can create havoc in the society and pose security threat to citizens apart from the complainant and witnesses of this case, for which police help was required. That's why the complainant was repeatedly praying before the magistrate of court to order for police investigation without further delay. Which was never heeded to. So the primary concern remains unanswered by the magistrate.

Some of the harassments caused by him to help the accused by discouraging the complainant are as below.

He had summoned 4 witnesses but did not examine 2 out of them citing lack of time. This clearly shows preference not given to my case as per mandatory rules of practice but only doing time pass.

Refusing to impound passport - I had made the prayer to impound the passports of three out of eleven accused who are likely to flee the country, but even that was rejected. So in every sense the accused are let free to flee the country.

Causing harassment to me as a complainant - I am appearing in person in my case and do not have any other work in court except this. But the magistrate is making me to wait in the court till 5.30 pm and calling the case just before adjourning the court giving me 1½ minutes time only to cause harassment by wasting the whole day.

### **Is someone from high court influencing?**

One judge in the high court of Karnataka Mr. Justice John Michael Cunha during his practice as advocate in Mangaluru was the partner of accused number 3 in this case. This accused number 3 Melwyn Prakash Noronha known as M P Noronha is an advocate in Mangaluru known for notorious acts. He is also an accused in fake decree case, wherein he was involved in forging the seal of the court and in producing a fake decree of the court. Yet he is roaming free without any action on him. His clout over the court officials is well known. I understand his friendship with Justice John Michael Cunha continues till date. This angle needs to be probed.

When police close doors to complainant under some pressure, influence or other reasons, the citizen has a choice to move the court with the same complaint. If court also makes the complainant run from pillar to post then where is justice?



The court should not create a situation of uphill task for complainant.

So far courts are held in high esteem by people and considered in high regard, expecting justice. But by the kind of treatment I received, no one would dare to come before it, rather prefer to suffer. My ordeal for so many days is the example.

The entire effort of the magistrate is leading towards making the whole case in-fructuous.

My effort to approach the district and sessions court was of no use. It seems the clout of the accused is too high, they can manage all. I filed a criminal revision petition in the district and sessions court in Cr R P no. 81/2017, which was heard by VI addl. Sessions judge DK. But it was dismissed without giving proper reasons. Some unseen hands are at work to safeguard the accused. The copy of the revision petition and order is attached herewith for your kind perusal.

Therefore the nexus of the magistrate with the high profile accused need to be probed and action be taken against him, and also the persons influencing this case be brought to book, in the interest of justice and fair play.

Date: 29/08/2017

Place:

Mangaluru.

yours sincerely,

Robert Rosario

Enclosures: 1) copy of complaint filed in court.

2) Order sheet copy of the case.

3) Copy of criminal revision petition.

4) Copy of order of district and sessions court

**BY RPAD**

**SPIO No.494/2017**

**E-Mail ID: [rti-spio-hck@nic.in](mailto:rti-spio-hck@nic.in)**

**Ph: 080-22954771**

**Office of the State Public Information**

**Officer & Deputy Registrar,**

**High Court of Karnataka,**

**Bengaluru, dated: 13.10.2017**



To

Sri.Robert Rosario,  
Hilda Cottage,  
Aikala Village and Post,  
Mangalore Taluk,  
Mangalore - 574 141

Sir,

Sub: Application dated 30.09.2017 received in this office on  
07.10.2017 filed under the RTI Act - reg.

With reference to the above subject, in your above application you have  
sought for the following information:

*'Information regarding the action taken on my complaint  
dated 29/08/2017 against Judicial Magistrate  
Sri.Santosh Kunder of JFMC II Court, Mangaluru.. sent by  
speed post EK739676286IN received on 01/09/2017.'*

In this connection, as per the information received from the concerned  
authority of this office, it is informed to you that your complaint letter dated  
29.08.2017 is received in the office of the Hon'ble Chief Justice on 01.09.2017  
and the said letter is endorsed as "Judicial Order. No action in the  
administrative side".

This is for your information and the application is accordingly disposed



Yours faithfully,

(B.V.Renukamma)

**Deputy Registrar**

**State Public Information Officer**

**High Court of Karnataka**

**Bangalore**

Note U/S 7(8) of the RTI Act, 2005:

An appeal is provided under section 19 of the Right to Information Act, 2005 against the above  
information of the State Public Information Officer, if aggrieved, to the Appellate Authority -  
Registrar (Judicial), High Court of Karnataka, Bangalore to be filed along with the impugned  
order of the SPIO within 30 days from the date of receipt of this communication.

The following information pertaining to Judicial matter is available in the Karnataka  
High Court Website, viz., <http://karnatakajudiciary.kar.nic.in/>:

- |  |                  |                            |
|--|------------------|----------------------------|
| 1. Daily cause list particulars            | 2. Case Status   | 3. Certified copies Status |
| 4. Notifications issued under the RTI act. | 5. Notifications | 6. Judgment                |

Received on 20/10/17 11.Am

No.L-15012/13/2017-Jus-I  
Government of India  
Ministry of Law and Justice  
Department of Justice  
\*\*\*\*\*

Jaisalmer House, Man Singh Road,  
New Delhi dated 28<sup>th</sup> September, 2017

To,

**Registrar General,  
Karnataka High Court  
Bangalore-560001.**

Sub: - Representations received from the individuals.


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Sir,

I am directed to forward herewith the following representations (in-original) received from individuals for action, as appropriate, under intimation to petitioners.

S.No	Name & Address of the Petitioner	Petition's Date
1	Shri G. Nagaraja, No. 363, First Main Road, Vijayanagara, Bengaluru-40, Karnataka.	04.09.2017
2	Shri Robert Rosario, Hilda Cottage, Village and Post Aikala, Mangaluru, Karnataka-574141.	27.08.2017


Yours faithfully

  
(Section Officer)

**Encl: As Above**

Copy for information to: - All applicants as mentioned above.

General Guidance by Department of Justice for grievance holders may be seen overleaf.

  
(Section Officer)