

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 08<sup>TH</sup> DAY OF JULY, 2021

BEFORE

THE HON'BLE MR.JUSTICE G.NARENDAR

WRIT PETITION NO.3453/2021(GM-POLICE)

BETWEEN

1. THE JEWELERS' ASSOCIATION (R)  
NO.835, SRIDEV SHOPPING ARCADE  
1<sup>ST</sup> FLOOR, NAGARTHPET  
BENGALURU-560002.  
REPRESENTED BY ITS PRESIDENT  
SRI N VIDYA SAGAR
2. THE JEWELER'S ASSOCIATION  
JUMMA MASJID ROAD  
AND JAIN TEMPLE ROAD  
SHIVAJI NAGAR  
BENGALURU-560 051  
  
REPRESENTED BY ITS PRESIDENT  
SRI S MOHAN LAL.
3. THE BANGALORE DISTRICT JEWELERS  
ASSOCIATION (R)  
NO.4/1 TO 4/16  
NEW NO.1 TO 17  
KAPOOR ADAM SAHIB GALLI  
DHARMARAYASWAMY TEMPLE ROAD  
NAGARTHPET MAIN ROAD  
BANGALORE -560062.  
  
REPRESENTED BY ITS PRESIDENT  
SRI LALITH BOHRA.

...PETITIONERS

(BY SRI: SANKET M YENAGI., ADVOCATE)

AND

1. THE STATE OF KARNATAKA  
DEPARTMENT OF HOME AFFAIRS  
VIDHANA SOUDHA  
BANGALORE-560001  
REPRESENTED BY THE SECRETARY
2. THE DIRECTOR GENERAL AND  
INSPECTOR GENERAL OF POLICE  
NO.2, NRUPATHUNGA RAOD  
BANGALORE-560 001
3. THE COMMISSIONER OF POLICE  
NO.2, ALI ASKAR ROAD  
VASANTH NAGAR  
BANGALORE CITY-560001

...RESPONDENTS

(BY SRI: VINOD KUMAR.M., AGA)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO;

- a) ISSUANCE OF WRIT OF MANDAMUS DIRECTING THE RESPONDENTS TO STRICTLY COMPLY WITH THE GUIDELINES ISSUED UNDER THE CIRCULAR NO. GC/18/S.H.R.C./2007 DATED 19/02/2008 ISSUED BY THE RESPONDENT NO.2, AT ANNEXURE-D AND THE SOP NUMBER CRIME 3/187/2018, DATED 06/03/2019 ISSUED BY THE RESPONDENT NO.2, AT ANNEXURE-E
- b) ISSUANCE OF WRIT OF MANDAMUS DIRECTING THE RESPONDENTS TO A CONSTITUTE A SPECIAL COMMITTEE TO OVERSEE THE COMPLAINTS PERTAINING TO POLICE ATROCITY ON ACCOUNT OF NON-COMPLIANCE OF THE GUIDELINES ISSUED UNDER THE CIRCULAR NO. GC/18/S.H.R.C./2007 DATED 19/02/2008 ISSUED BY THE RESPONDENT NO.2, AT ANNEXURE-D AND THE SOP NUMBER CRIME

3/187/2018 DATED 06/03/2019 ISSUED BY THE  
RESPONDENT NO.2, AT ANNEXURE-E

c) ISSUANCE OF WRITS OR ORDERS OR DIRECTIONS.

THIS WRIT PETITION COMING ON FOR 'PRELIMINARY HEARING', THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

Heard the learned counsel for the petitioners and the learned Additional Government Advocate.

2. The instant petition was initially preferred as a Public Interest Litigation. The matter on being listed before the Bench of the Hon'ble Chief Justice and Companion Judge, after perusing the petition, has been pleased to observe as under:-

"The petitioners are the Associations of Jewelers. Therefore, the members of the petitioners are personally interested in the subject matter of this writ petition.

Hence, this petition cannot be treated as a public interest litigation. Treat this petition as an ordinary writ petition under Article 226 of the Constitution of India and shall place the same before the appropriate Bench."

3. Pursuant to the said order of the PIL Bench, the matter is listed before this Court. The petitioners claim to be three Associations primarily representing the

interest of Gems and Jewelry shop owners and the sum and substance of their case is that, in cases of theft and robbery involving the loss of gold, silver and other valuable and precious metals and stones, the Police Officers, more particularly, the Investigating Officers under the first respondent indulge in harassing and meting out unwarranted torture and it is also complained that there are several cases where the Investigating Officers of having in fact seized higher quantity of the precious mettle than that is stated in the complaint. That there have been several such instances and efforts by the petitioners to have them remedied has not paid dividends or rather limited dividends.

4. The learned counsel for the petitioners would invite the attention of the Court to Annexure-D, a Circular dated 19.02.2008, said to have been issued by the Office of the DG & IG of Police, Bengaluru whereby certain instructions have been issued to Investigating Officers and further the authorities namely the

Disciplinary Authority has been directed to initiate appropriate disciplinary action against the staff/officer who are in breach of the instructions or indulge in improper steps or contradictory actions. The learned counsel for the petitioners would further invite the attention of the Court to Annexure-E, being the Standard Operating Procedure. A reading of the Standard Operating Procedure issued by the office of the DG & IG of Police dated 06.03.2019 would yet again reveal the imparting of certain instructions by the office of the top most police officer in the State and evidences a slew of instructions or guidelines issued and the same are as follows:-

- "To completely follow the direction of the Hon'ble Supreme Court during the course of arresting the accused.
- While Obtaining voluntary statement of the accused under Section 27 of Indian Evidence Act, videograph has to be done, at the time of obtaining voluntary statement compulsorily to obtain in the presence of the Panchas. To adopt videogrph in P.F. and to enclose in the Charge-sheet and to file the same.
- If the accused given statement regarding made theft/robbery/dacoity in the places more than one, to make verification of the places/locations connected compulsorily and after ensured that the

act is commissioned to conduct Panchanama of the said place.

- Shall collect First Information Reports registered in the said Police Stations relating to the crime cases occurred in the places verified relying on the statement of the accused.
- When the accused giving information with regard to those received theft material in such event, to verify from various angles regarding whether he is saying truth and to confirm the same.
- The information of the persons received the theft material and voluntary statement given by the accused full information must be brought by the Investigation Office to the notice of the Senior Police Officers.
- To make List of the Full Information of theft/stolen ornaments/materials in every first information.
- To seize the theft material when the Investigation Officer going alongwith the accused and Panchas compulsorily must wear the uniform and name plate must be visible.
- To get produce the Panchas on the basis of the voluntary statement given by the accused by showing the person/shop received the theft material and produced it and to tell them to say full details from the accused only.
- The Investigation officer want to seize the materials/ornaments in any case and regarding Panchas present shall serve the Notice to the Panchas and to obtain their signature.
- To mention the date of serving, time and place in the notice compulsorily.
- If the shop where the accused sold the theft material/pledge it falls to the jurisdiction of other Police Station to give information to the Station House officer of that Police Station.
- When the accused shows the person/shop where he had given the theft material to the Investigation Officer and the Panchas at the time of entering the shop must start videograph.
- When the accused identify the person received the theft material and informs to return the

ornaments/articles he had sold earlier must ensure the said information from the person received the theft material.

- If C.C.T.V. is installed in the shop must ensure its collection and to obtain information.
- Notice containing full details of Ornaments/Articles mentioned in the First Information Report must be enclosed and give the First Information Report to those who received the theft material in the spot.
- To obtain the signature of the Person doing measurement of weight and quality of article/material to be seized and to consider him as Witness.
- While seizing, to do the Panchanama in the spot and to obtain the signature of the Person received the theft material and signature of the Panchas.
- To come on the same day to the police station and to adopt the seized article/ornament/seizure slips in the P.F. on the same day alongwith Mahazar and to produce it to the Hon'ble Court for further order."

5. From a reading of the above instructions it would clearly demonstrate that not only has the top officer taken cognizance of the guidelines issued by the Hon'ble Apex Court in the matters relating to investigation of offences involving recovering of precious mettle or Gems and Jewels, but has also advised various other measures to be adopted by the Investigating Officers.

6. In the opinion of this Court, the Advisory is comprehensive and if the Advisory is followed, there would be no cause for complaint. That apart, it is pertinent to note that the power of investigation is vested in an Investigation Officer under the Statute, more particularly, under Section 157 of the Code of Criminal Procedure, 1973. Chapter 12 of the Act deals with information and the powers of the police to investigate in the event such information discloses the commission of any cognizable offence and non-cognizable offences. In the event the demand of the petitioners is answered in the affirmative by this Court by directing that the investigation be carried out in a particular manner, it would virtually amount to negating the powers vested in the Investigating Officer by the statute and the same is impermissible.

7. Learned counsel for the petitioners would pray that alternatively the writ petition could be disposed off by directing the respondents to consider and dispose off



the petitioners' representation, more particularly, Annexure-F is addressed to the first respondent. On perusal of Annexure-F, it is seen that the same is omnibus in nature. If the said request were to be accepted and acted upon, it would virtually act as an injunct in general, against all Investigating Officers which would yet again be in the teeth of the provisions of Chapter 12 of Cr.P.C. No right is vested nor is demonstrated before this Court by the petitioners to seek for a relief in the nature that is now being canvassed for under the representation or as canvassed before this Court. As pointed out supra, so long as the provision is on the statute there cannot be directions contrary. The said issue is also no more res-integra and it is a settled principle of law that investigations cannot be directed to be carried out in any particular manner nor can the investigation be modulated to suit the convenience of the accused nor can it be at the dictate of the accused or witnesses. It is not to say that, there are no instances of excesses by the Investigating Officers and the

aberrations though an exception is a reality and it is not the view of the Court that we are living in a utopias society.

8. Be that as it may, as noted earlier, the Investigating Officers cannot be shackled by an omnibus or general order of injunction directing them to carry out the investigation in a particular manner or adopt a particular methodology unless and until such a methodology, scientifically aides the investigation or is capable of reducing human intervention in the matter of investigation. In that view of the matter, this Court is of the considered opinion that the relief as canvassed before this Court and sought for is impermissible and cannot be granted *in rem*.

9. It also goes without saying that, this order would not come in the way of the petitioners espousing the cause of any individual, who is actually harassed or suffers such harassment or transgression of law at the hands of Investigating Officers or such other officers

under the first respondent. In such an event, if particular or specific instances are brought to the notice of respondents No.1 and 2 or to the notices of respondent No.3 or officers of the rank of Commissioner of Police or District Superintendent of Police, the complaints shall be addressed expeditiously and shall be disposed off by affording an opportunity to the aggrieved party.

10. This Court is of the opinion that, it would be in the interest of justice and the ends of justice would be better served if such complaints are directed to be heard and disposed off within a stipulated time. In that view of the matter, the instant writ petition is disposed off with a direction to respondents No.1 to 3 and to all the officers of the rank of Commissioner of Police and Superintendent of Police of every District to consider and dispose off the complaints by members of the petitioners' Association within a stipulated time period of six weeks from the date on which it is placed in their hands. They shall thereafter

intimate the complainants about the result of the inquiry within two weeks thereafter. The intimation/communication shall be by registered post.

11. Petition stands ordered accordingly.

Copy of this order be circulated to the respondents and to all the officers of Commissioner's of Police and Superintendent of Police in the State of Karnataka.

Chs

Sd/-  
JUDGE