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**BEFORE THE HON'BLE HIGH COURT OF KARNATAKA AT
BENGALURU
(Original Jurisdiction)**

Criminal Petition No. /2021 (482)

BETWEEN:

Smt. Jaikiran & Others

Petitioners

AND:

State of Karnataka & Anr.

Respondents

SYNOPSIS

The present Criminal Petition is filed under Section 482 of the Code of Criminal Procedure seeking the quashing of impugned FIR in Crime No. 03/2021 dated 09.01.2021 (**Annexure A**), complaint dated 09.01.2021 (**Annexure B**), the impugned order of the Learned Magistrate dated 09.01.2021 (**Annexure C**), and all proceedings emanating therefrom . The same is being filed in the interest of securing the ends of justice as a bare perusal of the complaint will reveal that the same has been made with a view to abuse the process of law and to harass the Petitioners herein in an act of revenge. The Complaint does not make out any offences as against any of the Petitioners herein, moreover, a brief glance at the mitigating circumstances and the impugned order of the learned magistrate will reveal that criminal proceedings have been initiated against the Petitioners herein in a most thoughtless manner and have

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caused the Petitioners herein grave distress. Hence, aggrieved by the actions of the Respondents No. 1 and 2, the present Petitioners have been constrained to file this petition.

List of Dates

Date	Event
March, 2019	Petitioner No. 1, a visually disabled person, clears the State Civil Service Examinations .
September, 2019	After receiving the appropriate training, Petitioner No. 1 is posted as the Child Development Project officer (CDPO), Hassan.
10.08.2020	The Petitioner No. 1 having faced numerous instances of sexual harassment from one Mr. Dileep (who also worked at the office of the CDPO, Hassan, at the time) and registered an F.I.R in Crime No. 85/2020 against him at Hassan Women's Police Station.
19.08.2020	In retaliation, Mr. Dileep filed a counterblast FIR against the Petitioner No. 1 herein, i.e, FIR No. 122 / 2020 at Sakleshpura Rural Police Station.
20.10.2020	The Petitioner No. 1 herein sought for the quashing of the aforementioned FIR pending as Crime No. 122/2020 on the file of the Pri. Civil J.M.F.C, Sakleshpura. This Hon'ble Court was pleased to grant the same for the reasons elaborated in this Petition.
December, 2020	The Petitioner No. 1, in the process of discharging her duties as the CDPO, Hassan, came to know that some of the staff (including the Respondent No. 2 herein) had obtained fake experience letters in order to unlawfully obtain their current jobs. Consequently, the Petitioner No. 1 complained of the same, in writing, to higher

	authorities.
December, 2020 – January, 2021	The Respondent No. 2 along with the other persons complained against by the Petitioner No. 1 got together with Mr. Dileep to hatch a plan whereby the Petitioner No. 1 would be further harassed.
07.01.2021	In pursuance of the above plan, the Respondent No. 2 intentionally provoked the Petitioner No.1 into a heated altercation in which the Respondent No. 2 was about to strike the Petitioner No. 1 and cause her grave injury had it not been for the timely intervention of the Petitioner Nos. 2 and 3. However, the story has been falsely fabricated and used in a manner to claim that the Petitioners herein instigated the altercation and been given a criminal colour to harass the Petitioners herein.
09.01.2021	The Respondent No. 2 approached the Respondent No. 1 – police and gave a written complaint dated 08.01.2021 as against the Petitioner herein with a false, concocted fictitious story that makes out no offences as against the Petitioners herein.
09.01.2021	Despite the complaint having been received on a statutory holiday after working hours, and despite the complaint making out no urgency, much less any offence, a typed copy of the complaint was sent to the Magistrate who was pleased to, order permission under section 155(2) of the CrPC for the police to investigate the alleged non-cognizable offences made out in complaint.
09.01.2021	Accordingly, the Respondent No. 1 was pleased to register an FIR bearing Crime No. 003/2021 as against the Petitioners herein. Hence, the present petition.

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Date:

Place: Bangalore

Counsel for the Petitioners



**BEFORE THE HON'BLE HIGH COURT OF KARNATAKA AT
BENGALURU
(Original Jurisdiction)**

Criminal Petition No. _____ / 2021 (482)

IN THE COURT OF THE HON'BLE IV CJ AND JMFC, HASSAN

CR No. 35/2021

PCR No. 3/2021

**BEFORE THE HON'BLE HIGH COURT OF KARNATAKA AT
BENGALURU
(Original Jurisdiction)**

Criminal Petition No. _____ / 2021 (482)

BETWEEN:	Rank of Parties	
	Trial Court	High Court
1. Smt. Jaikiran C. K. D/o C H Keshavamurthy Aged 40 years Residing at 212, Hoysalanagara Main Road, Beeranahallikere, Hassan – 573 201	Accused No. 3	Petitioner No. 1
2. Shri. Shiva Prasad Murthy C. K. S/o C H Keshavamurthy Aged about 33 years Residing at 212, Hoysalanagara		



Main Road, Beeranahallikere,
Hassan – 573 201

Accused No. 1 Petitioner No. 1

3. Smt. H. K. Saroja
W/o C H Keshavamurthy
Aged about 62 years
Residing at 212, Hoysalanagara
Main Road, Beeranahallikere,
Hassan – 573 201

Accused No. 2 Petitioner No. 2

AND:

1. State of Karnataka
By Police Sub-Inspector,
Extension Police Station,
Hassan – 573 201

Investigating Respondent No.
Agency 1

2. Sharath Kumar S. G.
Somanahalli Village,
Duddahobli, Hassan Tq,
Hassan – 573 136

Complainant Respondent No.
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**MEMORANDUM OF PETITION UNDER SECTION 482 OF THE CODE
OF CRIMINAL PROCEDURE, 1973**

The petitioners above named begs to submit as follows:

1. The address of the Petitioner, for the purpose of notice, summons or any other similar correspondence is as stated in the cause title and in the alternative, the Petitioner may be served through his Counsels Mr Rohan Kothari, Naveen Chandra V, Azhar Ali Farooqi,

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Shivani Pegataraju and Aamna Khan of Ashira Law, Advocates and Solicitors, D6, Dona Cynthia, 35 Primrose Road, Ashok Nagar, Bangalore 560025.

2. The present criminal petition under Section 482 of the Code of Criminal Procedure has been instituted by the Petitioners who are aggrieved by the complaint in Crime No. 03 / 2021 and all proceedings initiated pursuant thereto, including the order of the learned IV Civil Judge & J.F.M.C, Hassan, taking cognizance and permitting the initiation of investigation by the jurisdictional police and F.I.R in Crime No. 03 / 2021 dated 09.01.2021 registered under Sections 504, 323, r/w 34 of the Indian Penal Code (IPC), and hence, has preferred this petition praying that this Hon'ble Court will be pleased to quash the complaint and all the pursuant proceedings.

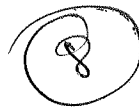
(A certified copy of the F.I.R in Crime No. 03 / 2021 registered pursuant to the order of the Magistrate is produced hereto and marked as **ANNEXURE – A.)**

(A certified copy of the complaint in Crime No. 03 / 2021 along with typed and translated copies are produced hereto and marked as **ANNEXURE –B).**

(A certified copy of the order of the IV Civil Judge & J.F.M.C, Hassan dated 09.01.2021 is produced hereto along with a translated copy and marked as **ANNEXURE –C).**

ARRAY OF PARTIES

3. The Petitioner No. 1 is a visually disabled person that joined the State Civil Service in 2019 and was the Child Development Project Officer at Hassan at the time of the incident. The Petitioners No. 2



and 3 are the brother and mother, respectively, of the Petitioner No. 1 and occasionally accompany the Petitioner No. 1 to her workplace to assist the Petitioner No. 1 with tasks since she is visually impaired. Petitioner No. 3 is a senior citizen. The address of the petitioners for the purpose of service of court notices etc., is as shown in the cause title and also that of their counsel, Ashira Law, D6, Dona Cynthia, 35, Primrose Road, Bangalore – 560 025.

4. The Respondent No. 1 is the State of Karnataka through the Police Station where the FIR was registered. The Respondent No. 2 is the Complainant. The address of the first respondent and second respondent (complainant before the trial court) for the purpose of service of court notices etc., is as shown in the cause title.

BRIEF FACTS OF THE CASE:

5. The Petitioner No. 1 is a visually disabled person. The Petitioner No. 1 entered the State Government Services in March, 2019. After receiving the appropriate training, she was posted as the Child Development Project Officer (CDPO), Hassan in September, 2019. (A copy of the Petitioner No. 1's disability certificate has been produced hereto and marked as **ANNEXURE – D** along with the typed copy of the relevant portions of the same.)
6. The Petitioner No. 1 is a mild natured woman who rarely agitates a matter unless push comes to shove. However, after facing numerous instances of sexual harassment at the hands of one Mr. Dileep, who also works at the office of the Child Development Project Office, the Petitioner No. 1 registered F.I.R. No. 85 / 2020



dated 10.08.2020 under sections 354, 504 and 506 of the Indian Penal Code, 1860 (IPC) at the Hassan Women's Police Station.

(A copy of the F.I.R No. 85 / 2020 dated 10.08.2020 is produced hereto as **ANNEXURE – E**)

7. In retaliation, Mr. Dileep also filed a counter case against the Petitioner No. 1 herein. This was registered as FIR No. 122 / 2020 dated 19.08.2020 at Sakleshpura Rural PS under Sections 505 and 120B IPC.

(A copy of the FIR No. 0122 /2021 dated 19.08.2020 - is produced hereto as **ANNEXURE – F**)

8. As against the FIR No. 122 / 2020 dated 19.08.2020, the petitioner no. 1 herein challenged the same before this Hon'ble Court and sought for the quashing of Crime No. 122 / 2020 pending on the file of the Prl. Civil Judge and J.M.F.C, Sakleshpura. On 20.10.2021, this Hon'ble Court was pleased to quash the aforementioned proceedings as this Hon'ble Court "is of the considered opinion that the Magistrate is required to apply his mind and pass orders in terms of Section 155(2) of the CrPC after appreciating the allegations made".

(A copy of the order of this hon'ble court in Crl. P. 4866 of 2020 is produced hereto as **ANNEXURE – G**)

9. It is important to keep this past of chequered litigation in mind, to fully appreciate the present scenario. In December, 2020, the Petitioner No. 1 came to know that some of the staff working in the Computer section at the Office of the CDPO had fake experience letters and were not up to the job. Upon, receipt of the above information, the petitioner no. 1 herein sent a written complaint about the same to higher authorities. Among the people she

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complained about, were the present complainant – respondent no. 2 herein – who works in the capacity of a 'messenger'.

(A copy of the written complaint has been produced hereto and marked as **ANNEXURE – H**).

10. The aforementioned persons got in touch with Mr. Dileep (the complainant in FIR No. 122 / 2020 which has since been quashed) and in retaliation, they hatched a plan to further harass the Petitioner No. 1 herein. In furtherance of this conspiracy, on 07.01.2021, the Petitioner No. 1 came to know that the Respondent No. 2 herein was obsessively staring at security footage of anganwadi workers and zooming in on them. When she went to confront the Respondent No. 2 herein about the same, later on the same day, the Respondent No. 2 got defensive and there was a heated altercation.
11. At around 4:00 pm the same day, the Petitioner No. 2 and 3 happened to arrive at the scene in order to assist the Petitioner No. 1 in writing a letter (the Petitioners No. 2 and 3 often acted as Petitioner No.1's scribe given her visual impairment). When they reached the Petitioner No.1's office, the Petitioners No. 2 and 3 attempted to intervene and stop the heated argument between Petitioner No. 1 and Respondent No. 2 herein.
12. At this juncture, when the Respondent No. 2 attempted to physically attack the Petitioner No. 1 herein. Petitioner No. 2 was constrained to stop the Respondent No. 2 from doing the same as Petitioner No. 1 was not even aware of Respondent No. 2's intentions due to her disability.
13. The Respondent No. 2 – who, as has been demonstrated above, holds a grudge against the Petitioner No. 1 herein - used this

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opportunity to file a complaint against the Petitioners in order to harass them and also as a counter to the FIR No. 85 / 2020 dated 08.10.2020 (**Annexure E**) which is still pending in the Hassan Police Station against Mr. Dileep.

14. On 09.01.2021, the Respondent No. 2 approached the Hassan Extension Police Station with a concocted written complaint. As can be seen from the complaint, the same was received by the Respondent No. 1 on 09.01.2021 at 6:45 P.M. (**Annexure B**). The Respondent No. 1 forwarded a typed copy of the complaint to the Hon'ble IV Civil Judge & J.M.F.C, Hassan in accordance with Section 155 of the Code of Criminal Procedure (CrPC hereinafter) since the alleged offences under Section 504, 323 r/w 34 IPC are non-cognizable in nature.
15. Within a span of less than half an hour, by 7:10 pm, on a Second Saturday of the month at that, the Hon'ble IV Civil Judge & J.M.F.C has erroneously given its permission to the Police to start investigation in the matter, by merely writing the word 'permitted' and signing below on the same on the typed copy of the complaint that the Respondent No. 1 forwarded to the Learned Magistrate (**Annexure C**).
16. Pursuant to the aforementioned hasty permission given by the Learned Magistrate, the Respondent No. 1 registered the impugned FIR in Crime No. 03 / 2021 dated 09.01.2021 u/s. 504 and 323 r/w 34 IPC as against the Petitioners herein.
17. Aggrieved by this, and having no other alternative and equally efficacious remedy, the Petitioners have filed the present petition seeking the quashing of complaint dated 09.01.2021, the impugned order of the Learned Magistrate dated 09.01.2021, impugned FIR in

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Crime No. 03/2021, and all proceedings emanating therefrom on the following, among other grounds, without prejudice to one another.

GROUNDS

18. **THAT** the impugned complaint is completely false and baseless, and consequently the impugned order by which the learned magistrate gave Respondent No. 1 the permission to investigate the matter, pursuant to which the impugned FIR in Crime No. 03 / 2021 dated 09.01.2021 was registered is without due regard to applicable law, and has been carried out in a mechanical manner, without application of mind. A bare perusal of the said complaint and FIR would reveal that it is nothing but a ploy to harass the Petitioners herein by falsely implicating them in a criminal case with a motive of attempting to scare the Petitioners and make them subservient.
19. **THAT** the impugned complaint and subsequent FIR are extraordinarily vague and do not make out any offence against the Petitioners herein. In fact, the hasty manner in which the Respondent No. 1 – Police has forwarded the complaint to the Magistrate seeking permission to investigate the matter and subsequent registration of FIR, all in a span of an hour, reeks of *mala fide* intent and collusion between the respondents. Further, it is submitted that an investigation arising out of such an FIR can only be termed as suspicious, at best.
20. **THAT** from the manner in which the Respondent No. 2 has made the complaint, and given the chequered history of police complaints and FIRs in the past, it is patently clear that the Respondent No. 2 has filed the complaint only as a means of harassing and intimidating the Petitioners herein and also to show their clout. It is

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humbly submitted that in the average course of action, no complaint in a non-cognizable case is forwarded to a magistrate after court hours, that too on a statutory holiday, to seek permission for investigation, when there is no ground made out in the complaint, much less any urgency. This clearly shows that the Respondent No. 1 and Respondent No. 2 colluded to harass the Petitioners herein.

21. **THAT** the impugned order of the trial court permitting the Respondent No. 1 to investigate the matter, is wholly contrary to the law and facts of the case apart from being perverse and capricious.
22. **THAT** the trial court has failed to appreciate that the complaint was merely filed as a counter complaint to harass and cause mental agony to the petitioners herein since the Petitioner No. 1 has, in December 2020, questioned the validity of the Complainant's credentials and the basis on which he got the job. In order to get back at the Petitioners, the Complainant got together with other persons that harbor a grouse against the Petitioners and hatched a plan to provoke and intimidate the Petitioners. Assuming, but not admitting, that the contents of the complaint are true, it would still only reveal actions that deserve disciplinary action and not a criminal complaint.
23. **THAT** since the alleged offences under Sections. 504, 323 and 34 IPC are non-cognizable in nature, it is necessary that the procedure laid down in Section 155(2) of the Code of Criminal Procedure, 1973 is followed. Section 155(2) CrPC requires that *'no police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial'*.

24. **THAT** in order to give it's permission under Section 155(2) CrPC, to allow the police to investigate the matter in a non-cognizable offence, the Magistrate Court cannot simply write the word 'permitted' on the complaint forwarded to it by the Police. It is a well settled position of law that the Magistrate must give reasons as to why he/she believes the complaint is worth investigation. In the present case, the Magistrate has merely written the word 'permitted', such action is bad in law and vitiates the criminal process initiated.
25. **THAT** it is not disputed that when the procedure as contemplated under Section 155(2) of the CrPC is not followed, the entire proceeding is vitiated. It is submitted that the Magistrate using the word 'permitted' and the date, in itself is not sufficient endorsement and that there has not been compliance with Section 155 (2) of the CrPC. As has been held in a catena of cases, if the magistrate gives permission to investigate as contemplated under Section 155 of the CrPC, then it requires application of mind to the factual situation at hand and mere endorsement of the word permitted will not give any significance.
26. **THAT** in ***Tilak Nagar Industries Limited vs. State of Andhra Pradesh***(2011) 15 SCC 571, the Apex Court has held that the '*Statutory safeguard which has been given under Section 155(2) of the Code must be strictly followed since they are conceived in public interest and as a guarantee against frivolous and vexatious investigation*'. In the present case, a plain reading of the complaint makes it obvious that the complaint has been made as a counterblast and it was bad in law for the Learned magistrate to permit investigation under Section 155(2) CrPC.

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27. **THAT** in **VaggeppaGurulingaJangaligi vs. The State of Karnataka** 2020 (2) AKR 177, this Hon'ble Court has specifically held that

" 17. In the cases referred above, invariably the learned Magistrates have passed the orders on the requisition submitted by the SHO of the police station by writing a word "permitted" or "permitted to investigate". This Court has held that making such an endorsement on the requisition submitted by the police is not passing orders and there is no application of judicious mind in permitting the police officer to take up the investigation for non-cognizable offence."

(emphasis supplied)

28. **THAT** the Supreme Court in **State of Haryana vs. Bhajan Lal** 1992 Supp (1) SCC 335 has made the position in this regard abundantly clear by laying out scenarios where the inherent powers of this Hon'ble Court under Section 482 may be exercised to prevent the abuse of the process and to secure the ends of justice:

"102. ...

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police

officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

(emphasis supplied)

It is humbly submitted that the case of the Petitioners is squarely covered by the above observation in so much that the Complaint has clearly been made with *mala fide* and vexatious intentions, the

allegations made therein are absurd and improbable, and there is no case made out against the petitioners herein.

29. **THAT** the learned Magistrate has also failed to appreciate that the Petitioner No. 1 herein, accused no. 3 before the trial court is a visually impaired woman and the Petitioner No. 3 is a senior citizen. Not only have explicit allegations not been made out against them, but the overall accusation is so absurd and improbable that it is obvious that the Learned Magistrate did not apply his mind before granting the permission, as required by law.
30. **THAT**, further, no offences have been made out against the Petitioners in the complaint. The complaint suggests that Petitioner No.s 1 and 3 verbally abused the complainant. In ***Vikram Johar vs State of Uttar Pradesh and Anr.*** (2019) 14 SCC 207, it was held that on face value, for an offence to have been committed under Section 504 of the IPC, the intentional insult must be of such nature that it "gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence". In the present case, even if the contents of the Complaint are to be believed, there is nothing in the same to show that all ingredients of the offence have been met. Merely using abusive language is hardly reason enough to lodge a criminal complaint and it is apparent that the present complaint was being filed as a way to harass the Petitioners.
31. **THAT** the learned Magistrate has further failed to appreciate that no grounds have been made out or ingredients constituting the offences mentioned under section 323 IPC in Complaint. If it were assumed that the complaint is true, the only allegation therein that could fall under the purview of Section 323 of the IPC is that against Petitioner No. 2 insofar as the allegation that he attempted to hit

the Complainant. It is humbly submitted that, this in itself does not meet the ingredients of Section 323 IPC which requires that the accused person *voluntarily causes hurt* to the victim. In the present case, it is the case of the Petitioners, that the Petitioner No. 2 merely attempted to stop the Respondent No. 2 from striking the Petitioner, and that there was no hurt caused to anyone, voluntarily or otherwise. Therefore, a case under Section 323 IPC has not been made out and is an abuse of the process of the law.

32. **THAT**, further, Section 319 of the IPC defines 'hurt' as '*whoever causes bodily pain, disease or infirmity to any person is said to cause hurt*'. The complainant has not complained of any bodily injury, disease or infirmity caused to him by the Petitioners. It is humbly submitted that the mere allegation that the Petitioner No. 2 caused hurt to the Respondent No. 2, in the absence of any medical report or injuries proving the same, is not sufficient reason for the Learned Magistrate to give an order permitting the Police to start investigating in the matter.
33. **THAT** the present dispute between the parties has only been instituted and given a colour of criminality with a view to extract a settlement or extort / harass the petitioners, who are upstanding citizens in society. Such actions are a flagrant abuse of the legal process and further discourage persons such as Petitioner No. 1 who have fought against several odds to honestly and dutifully discharge their duties.
34. **THAT** the complainant has miserably failed to establish any direct link between the alleged actions and the specific role played by the Petitioners herein in the carrying out of such alleged actions. Other than the general overly dramatic impossible story that has been concocted, there is no specific averment as against the Petitioner

No. 1 or 3 accusing them of any particular act of criminality. Without admitting to the allegation, it is submitted that the averments against Petitioner No. 2 may also be described as minor tussle, at best, and attempting to bring it under the fold of Section 323 IPC is a gross abuse of the law. Further, in the mitigating circumstances as have been established above, it is pertinent to note that the learned magistrate must apply his/her mind and give reasons before permitting investigation under Section 155(2) CrPC or else the safeguards it provides in the interest of the public and as against malicious complaints will be futile.

35. Therefore, in light of all of the above grounds and in order to prevent the abuse of justice and to secure the ends of justice, it is humbly prayed that this Hon'ble Court may be pleased to quash the complaint in FIR No. 003 / 2021 dated 09.01.2021 and all proceedings pursuant thereto pending on the file of the IV Civil Judge and J.M.F.C, Hassan, and to grant any other just reliefs to the petitioner.
36. The impugned order suffers from various other infirmities which the petitioners crave leave to point out, at the time of hearing.
37. The petitioners have not preferred any other petition / petitions or appeal against the respondents against the impugned complaint and the order for investigation made pursuant thereto. The petitioners have moved for bail by way of CR 181 / 2021 and were granted the same on 15.01.2021 before the IV Addl. Civil Judge and JMFC, Hassan, subject to certain conditions.

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PRAYER

WHEREFORE, the petitioners above named pray that this Hon'ble Court may be pleased to call for records in FIR No. 003 / 2021 dated 09.01.2021 on the file of the IV Civil Judge and J.M.F.C, Hassan (**Annexure A**) and quash the complaint and all proceedings pursuant thereto, as against the petitioners and grant such other and further reliefs as are just.

Place: Bengaluru

Date:

Counsel for Petitioner

Address of service:

Ashira Law,
D6, Dona Cynthia,
35, Primrose Road,
Bangalore – 560 025.