



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17<sup>TH</sup> DAY OF JULY 2017

BEFORE

THE HON'BLE MR. JUSTICE ASHOK B. HINCHIGERI

**WRIT PETITION No.25568 OF 2017 (GM-RES)**

BETWEEN :

National Institute of Rock Mechanics  
A society registered under  
the Karnataka Societies Registration Act, 1960,  
an autonomous institute under the Ministry of Mines,  
Government of India,  
Outer Ring Road Eshwar Nagar,  
Banashankari 2<sup>nd</sup> Stage,  
Bengaluru – 560 070.  
Represented by its  
Senior Scientist & Estate Officer,  
Rajan Babu.

... Petitioner

(By Sri M.N.Kumar, Advocate)

AND:

1. Assistant Commissioner and Executive Magistrate  
Kolar Sub-Division, at Kolar,  
Kolar District – 563 101.
2. City Municipal Council Robertsonpet,  
Robertsonpet, Kolar Gold Fields -563 122.  
Represented by its Commissioner
3. Karnataka General Labour Union  
No.16/7, Munikadirappa Layout,  
Graphite India Road, Hoody,  
Bengaluru – 560 048.  
Represented by State General Secretary.

4. Ex-services Association, Kolar District  
BEML Nagar post, Kolar Gold Fields – 563 115.  
Represented by its' Secretary.
5. Mr.B.Ramesh Babu,  
S/o B.Shyam,  
Aged about 52 years,  
R/at near Bombay Camp,  
Oorgaum Post, KGF – 563 120.
6. Mr.Lashmaiah,  
S/o Chinna Daniel,  
Aged about 55 years,  
R/at Band Line,  
Oargaum Post, KGF – 563 120.
7. Mr.Mohan  
S/o Kaliyappa,  
Aged about 47 years,  
Residing near Marikuppam Railway Station,  
Marikuppam – 563 119.
8. Mr.Puranchnadra Das,  
S/o Chinnadorai,  
Aged about 47 years,  
R/at near New Model House,  
Oargaum Post, KGF – 563 120. ...Respondents

(By Sri T.L.Kiran Kumar, AGA for R1;  
Sri Clifton D' Rozario, Advocate for R3, R5-R8;  
R4-Served)

This writ petition is filed under Articles 226 and 227 of the Constitution of India praying to quash the order impugned in this petition at Annexure -Q, passed by the Karnataka State Commission for Safai Karmacharis, Dated 9.6.2017 and etc.

This writ petition, coming on for orders, this day, the Court made the following:

**ORDER**

The petitioner has called into question the order, dated 09.06.2017 (Annexure-Q) passed by the Karnataka State Commission for Safai Karmacharis. The petitioner has also sought the relief of declaration that the complaint (Annexure-F) of manual scavenging filed by the third respondent before the said State Commission is not maintainable.

2. Sri M.N.Kumar, learned counsel for the petitioner submits that the complaint filed by the third respondent does not disclose the material particulars. It does not even disclose on what date the alleged manual scavenging took place; it does not state as to who instructed the karmacharis to do the manual scavenging. He submits that the petitioner does not have the scavengers on its rolls. He submits that the house-keeping is being done by the workers sent by the contractor.

3. He submits that the said State Commission does not have the power to entertain the complaints of manual scavenging. He submits that entertaining such a complaint and passing the orders thereon are not the functions assigned to it

under Section 8 of the Karnataka State Commission for Safai Karmacharis Act, 2012 ('KSCSK Act' for short).

4. He submits that under Section 21 of Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 ('PEMSR Act' for short), it is the Executive Magistrate who has to hold the trial for the offences under the said Act. He submits that the third respondent has not given any complaint to the Chief Executive Officer of the local body under Section 11 of the PEMSAR Act. Under Section 11 of the said Act it is for the Chief Executive Officer of the Municipality to hold the survey and identify the persons engaged or employed in manual scavenging.

5. He submits that Section 10 of the PEMSAR Act prescribes three months' period of limitation for filing the complaint. When the date of the offence itself is not mentioned, the computation of limitation period cannot be done at all. He relies on this Court's order, dated 23.09.2015 passed in Criminal Petition No.1684/2015 in the case of **SMT.JYOTHI C. vs. THE TAHSILDAR AND ANOTHER.**

6. He submits that the petitioner has not been given an opportunity to cross-examine the complainant and the person,

who has given a report adverse to the interests of the petitioner. He submits that the petitioner's Officer had no option but to sign the order sheet of the proceedings before the said State Commission.

7. Sri Clifton D'Rozario, learned counsel for the respondent Nos.3 and 5 to 8 submits that there is no underground sewage system in the petitioner's estate. The petitioner itself has unequivocally admitted of the said position in para 2(d) of its statement of objections filed in Case No.SKC 90/2016-17 before the Karnataka State Commission for Safai Karmacharis. He submits that there are 43 kakkas gundis (soak-pits) in the petitioner's establishment. The toilets are connected to kakkas gundis. The fifth respondent Ramesh Babu, sixth respondent Lakshmaiah and another manual scavenger, namely, Sri Y.Meshak (who is not a party to these proceedings) have been doing the work of cleaning the toilets, kakkas chambers, kakkas gundis (soak-pits). Their work involves coming directly in touch with the human excreta. They have to enter the soak-pit, lift the excreta with bare hands and carry it to other pits.

8. He submits that the petitioner is a State within the meaning of Article 12 of the Constitution of India. It has not produced any documents to show that it has purchased or hired the machine for cleaning the chambers and soak-pits in its establishment. Admittedly it does not have the underground drainage system. He has filed the list of accidents suffered by the manual scavengers in the soak-pits. As per the said list, as many as 64 manual scavengers have met their death in the course of their doing the manual scavenging work, between 1995 and 2017, in Karnataka.

9. He submits that the respondent Nos.7 and 8 are unnecessarily made parties to this petition.

10. He submits that the petitioner's contention that the petitioner's officer had no option but to sign the enquiry proceedings before the said State Commission is fallacious. There are absolutely no foundations in the pleadings. He submits that the said State Commission has not directed the registration of the FIR merely on the ipse dixit of the third respondent. It has taken into account the report of the Commissioner of the K.G.F. Municipality. In support of his submissions, he brings to my

notice the copy of the enquiry proceedings at Annexure-L. It shows that the said Commissioner has inspected the spot on 10.04.2017 and found the marks of the opening of the soak-pits in the recent past. The manual scavengers have shown the soak-pits cleaned by them. The Municipal Commissioner has opined that the photographs produced with the complaint pertain to the soak-pits in question.

11. He submits that as the manual scavengers in question belong to the Scheduled Caste, the provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 ('SCST Act' for short) are also attracted to this case. He brings to my notice the provisions contained in Section 3(1)(j) of the SCST Act which is extracted hereinbelow:

**"3. Punishments for offences of atrocities.- (1)**

*Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,- .....*

*(j) makes a member of a Scheduled Caste or a Scheduled Tribe to do manual scavenging or employs or permits the employment of such member for such purpose,*

*shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine."*

12. The learned counsel submits that it is not the case of the petitioner that the persons, who forced the karmacharis to do the manual scavenging, also belong to the Scheduled Caste or Scheduled Tribe. Therefore, the persons, who extracted the manual scavenging work, are liable to be proceeded against under the SCST Act also.

13. Nextly he brings to my notice the provisions in Section 2(g) of the PEMSAR Act containing the definition of 'manual scavenger'. It reads as follows:

*"2. (g) "manual scavenger" means a person engaged or employed, at the commencement of this Act or at any time thereafter, by an individual or a local authority or an agency or a contractor, for manually cleaning, carrying, disposing of, or otherwise handling in any manner, human excreta in an insanitary latrine or in an open drain or pit into which the human excreta from the insanitary latrines is disposed of, or on a railway track or in such other spaces or premises, as the Central Government or a State Government may notify, before the excreta fully decomposes in such manner as may be prescribed, and the expression "manual scavenging" shall be construed accordingly."*

14. He submits that there is total prohibition for employing the manual scavenger, either directly or indirectly. The petitioner



cannot be content saying that the manual scavengers have come through the contractor and that therefore it is the responsibility of the contractor to meet the allegation pertaining to manual scavenging. He submits that whoever contravenes the provisions of Section 5 of the PEMSAR Act, attracts the punishment of imprisonment and/or fine. He submits that PEMSAR Act is a social welfare legislation.

15. He submits that the Hon'ble Supreme Court in the case of **ANJU CHAUDHARY vs. STATE OF U.P. AND ANOTHER** reported in **(2013) 6 SCC 384** has this to say in paras 29 and 30:

*"29. Section 154 of the Code places an unequivocal duty upon the police officer in charge of a police station to register FIR upon receipt of the information that a cognizable offence has been committed. It hardly gives any discretion to the said police officer. The genesis of this provision in our country in this regard is that he must register the FIR and proceed with the investigation forthwith. While the position of law cannot be dispelled in view of the three Judge Bench Judgment of this Court in State of Uttar Pradesh v. Bhagwant Kishore Joshi [AIR 1964 SC 221], a limited discretion is vested in the investigating officer to conduct a preliminary inquiry pre-registration of a FIR as there is absence of any specific prohibition in the Code, express or implied. The*

*subsequent judgments of this Court have clearly stated the proposition that such discretion hardly exists. In fact the view taken is that he is duty bound to register an FIR. Then the question that arises is whether a suspect is entitled to any pre-registration hearing or any such right is vested in the suspect.*

30. .... On examination, the scheme of the Criminal Procedure Code does not provide for any right of hearing at the time of registration of the First Information Report. As already noticed, the registration forthwith of a cognizable offence is the statutory duty of a police officer in charge of the police station. The very purpose of fair and just investigation shall stand frustrated if pre-registration hearing is required to be granted to a suspect. It is not that the liberty of an individual is being taken away or is being adversely affected, except by the due process of law. Where the Officer in-charge of a police station is informed of a heinous or cognizable offence, it will completely destroy the purpose of proper and fair investigation if the suspect is required to be granted a hearing at that stage and is not subjected to custody in accordance with law. There would be the predominant possibility of a suspect escaping the process of law. The entire scheme of the Code unambiguously supports the theory of exclusion of *audi alteram partem* pre-registration of an FIR. Upon registration of an FIR, a person is entitled to take recourse to the various provisions of bail and anticipatory bail to claim his liberty in accordance with law. It cannot be said to be a violation of the principles of natural justice for two different

*reasons. Firstly, the Code does not provide for any such right at that stage. Secondly, the absence of such a provision clearly demonstrates the legislative intent to the contrary and thus necessarily implies exclusion of hearing at that stage. This Court in the case of Union of India v. W.N. Chadha (1993) Suppl. (4) SCC 260 clearly spelled out this principle in paragraph 98 of the judgment that reads as under:*

*"98. If prior notice and an opportunity of hearing are to be given to an accused in every criminal case before taking any action against him, such a procedure would frustrate the proceedings, obstruct the taking of prompt action as law demands, defeat the ends of justice and make the provisions of law relating to the investigation lifeless, absurd and self-defeating. Further, the scheme of the relevant statutory provisions relating to the procedure of investigation does not attract such a course in the absence of any statutory obligation to the contrary."*

16. He submits that there is no provision in PEMSR Act corresponding to Section 17(3) of the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 ('1993 Act' for short). He submits that under Section 22 of PEMSR Act, every offence under the said Act is made cognizable and non-bailable. He submits that under Section 4 of the SCST Act the first information report or complaint has to be

compulsorily registered. The failure to do so itself is made a punishable offence.

17. He submits that the Commissioner of Municipality, who held the spot-inspection, has given the report that the manual scavengers were indeed employed in the petitioner's establishment. But he did not conduct any survey and did not identify the manual scavengers.

18. He submits that when the FIR does not disclose the persons, who are actually responsible for employing the manual scavengers, it is for the Police to find out who are the persons who are responsible for the alleged acts in the course of their investigation. If the petitioner is indeed not responsible for employing them, then the petitioner and its officials have nothing to be afraid of.

19. He submits that under Section 8(1)(c) of the KSCSK Act, it is one of the enumerated duties of the State Commission to enquire into the specific grievances and take up the matter with the concerned authorities.

20. He submits that under Section 31(1) of PEMSR Act, the National Commission for Safai Karmacharies is endowed with the task to enquire into the complaints regarding the contravention of the provisions of the said Act and to convey its findings to the concerned authorities with recommendations requiring further action. Under Section 32 of the said Act, the powers and functions of the National Commission are mutatis mutandis made applicable to the State Commission for Safai Karmacharis.

21. He submits that the petitioner's resistance to the registration of FIR is untenable. This petition is premature as the Police have not yet registered the FIR, much less conducted the investigation. He submits that the petitioner is not entitled to hearing before the registration of the FIR. By the Commission's directions to the Police to register the FIR, it cannot be said that the petitioner has suffered any prejudice. On holding the enquiry, the Police may file 'B' report that there is no substance in the allegation. If there is substance, then the Police are bound to file the charge-sheet. In support of his submissions, he has relied on the decision of the Allahabad High Court in the case of **RAM PRAPANNA vs. STATE OF U.P.**

reported in **Manu/UP/0203/2007**. Paras 11, 21 and 28 of the said decision, read out by him, are extracted below:

*"11. The first contention for determination is whether this Court can thwart the lodging of FIRs of cognizable offences at the instance of accused of cognizable offences by issuing a writ of certiorari. The arguments in support which has been advanced by the learned Counsels here in these petitions are not the maiden contentions raised by the accused before me. The same stale arguments which has been advanced in all these petitions regarding violation of Fundamental rights of accused Jeopardizing the right of an individual, the petitioner being the affected persons, all these submissions have been vehemently argued innumerable number of times on many earlier occasions and have been repelled by all the high courts and the Supreme Court and recently in a full bench judgement of this Court in Ajeet Singh v. State of Uttar Pradesh 2006 (5) ALJ 110. However the distinction between those cases and the present writ petition is that in those cases FIRs were already registered but here the FIR has not even seen the light of the day and the petitioners wants to install its registration by issuance of a writ of certiorari. With this distinction the critical appreciation and legal analysis leads to the conclusion that this Court can not thwart the registration of FIRs of cognizable offences before it is registered. Such an order will be pre-emptive order which can not be passed in a writ jurisdiction. More over the writ of Certiorari is meant for issuance of directions for observance of law and*

*statutory provisions and not for violating it. The discretionary remedy of prerogative writ is for enforcement of statutory provisions for the protection of Fundamental Rights of the citizens and not for violating the statues and Fundamental Rights of the victims.*

.....

*21. Resultantly the extra ordinary power of this Court under Article 226 of the Constitution can not be allowed to be utilized by offenders of cognizable offences to escape the clutches of law. At this stage this Court should lean in favour of victim and aggrieved person rather than accused and should allow the law to take its own course.*

.....

*28. The above two judgments of the apex court clearly lays down the law that before summoning the accused has no right to be heard and certainly he can not say that the FIR of cognizable offences should not be registered against him. Conferring such a right on the accused will amount to putting cart before the investigation horse which is not sanctified by statute as well as by the binding precedents of the Apex Court."*

22. He has also relied upon the Hon'ble Supreme Court's decision in the case of **SAFAI KARAMCHARI ANDOLAN AND OTHERS vs. UNION OF INDIA AND OTHERS** reported in **MANU/SC/0233/2014** for advancing the submission that the obnoxious practice of manual scavenging is squarely rooted in the concept of the caste-system and untouchability.

23. In the course of rejoinder, Sri Kumar, learned counsel for the petitioner submits that the complaint filed by the respondent No.3 is deficient in as much as it does not even disclose the names of the persons who are alleged to have been employed as manual scavengers. He submits that there are only two soak-pits in the petitioner's establishment and that all the toilets are connected to them. He submits that the petitioner is not the owner of the premises in question. The premises belonging to BEML and that the petitioner is only in permissive possession of the premises.

24. He submits that the contesting respondents and Meshak have not filed any application before the Commissioner of Municipality under Section 12 of the PEMSR Act. He submits that PEMSR Act requires the filing of the complaint before the Magistrate and not the filing of the FIR before the Police. He sought to draw support from the Supreme Court's judgment in the case of **GORIGE PENTAIHAH vs. STATE OF A.P. AND OTHERS** reported in **2009 Cri.L.J.350**. Para 9 of the said decision relied upon by him is extracted hereinbelow:

*"9. In the instant case, the allegation of respondent No.3 in the entire complaint is that on 27.5.2004, the*



*appellant abused them with the name of their caste. According to the basic ingredients of Section 3(1)(x) of the Act, the complainant ought to have alleged that the accused-appellant was not a member of the Scheduled Caste or a Scheduled Tribe and he (respondent No. 3) was intentionally insulted or intimidated by the accused with intent to humiliate in a place within public view. In the entire complaint, nowhere it is mentioned that the accused-appellant was not a member of the Scheduled Caste or a Scheduled Tribe and he intentionally insulted or intimidated with intent to humiliate respondent No. 3 in a place within public view. When the basic ingredients of the offence are missing in the complaint, then permitting such a complaint to continue and to compel the appellant to face the rigmarole of the criminal trial would be totally unjustified leading to abuse of process of law."*

25. The learned counsel submits that the workmen in question have not whispered that they are the manual scavengers in the contemporary proceedings. He submits that the Union of workmen in question has filed the petitions before the Assistant Labour Commissioner (Central) at Bengaluru and the documents before the Central Government Industrial Tribunal-cum-Labour Courts. In none of them, a claim is made to the effect that they are the manual scavengers in the petitioner's establishment.

26. He submits that the State Government vide its notification, dated 5.6.2014 gazetted on 3.5.2014, has conferred the powers of Judicial Magistrate First Class upon the Sub-divisional Magistrates for the trial of the offences punishable under the PEMSAR Act. Therefore, the complaint has to be filed only with the Assistant Commissioner. The State Commission for Safai Karmacharis cannot direct the Police to register the FIR. Relying on the Apex Court's judgment in the case of **BABU VERGHESE AND OTHERS vs. BAR COUNCIL OF KERALA AND OTHERS** reported in **AIR 1999 SC 1281**, he submits that if a statute prescribes that a particular act has to be done in a particular manner, it must be done in that manner or not at all.

27. The submissions of the learned counsel have received my thoughtful consideration. The following questions fall for my consideration:

- (i) Whether the suspect/accused is entitled to be heard before registering the FIR?
- (ii) Whether the Karnataka State Commission for Safai Karmacharis has the power to direct the Police to register the FIR in respect of the alleged acts of manual scavenging?

- (iii) Whether the complaint of manual scavenging has to be filed with the Executive Magistrate only?
- (iv) Whether the non-filing of the application to the Chief Executive Officer of the Municipality for being identified as manual scavenger precludes the karmacharis from filing the complaint of manual scavenging?
- (v) Whether not conducting the survey to identify manual scavengers comes in the way of filing the complaint of manual scavenging?
- (vi) Whether the complaint is barred by limitation?

**In re. question No.(i):**

28. By Section 22 of the PEMSR Act, every offence under the said Act is made cognizable. Therefore, it is mandatory for the Police Officer to register the FIR and conduct the investigation. But the grievance sought to be ventilated by the petitioner is that it was not given an opportunity to cross-examine the complainant and the Municipal Commissioner, who has given a report adverse to the interests of the petitioner. This grievance raises a fundamental question as to whether a suspect is entitled to any pre-registration hearing. As held by the

Apex Court in the case of **Anju Chaudhary (supra)**, the scheme of Criminal Procedure Code does not provide for any right of hearing at the time of registration of the FIR. The very purpose of fair and just investigation would get frustrated, if pre-registration hearing has to be granted to the suspect. The entire scheme of the Cr.P.C. supports the theory of exclusion of audi alteram partem at the stage of registering the FIR. If an opportunity of hearing is to be given to an accused in every criminal case before registering the FIR, it would frustrate the criminal proceedings and make the provisions of law relating to investigation lifeless, absurd and self-defeating.

29. In the case of **Ram Prapanna (supra)**, the Allahabad High Court has expressed the considered view that the extraordinary power of the High Courts under Article 226 of the Constitution of India cannot be allowed to be utilized by the offenders of the cognizable offences to escape the clutches of law. When the FIR itself has not yet seen the light of the day, the courts should lean in favour of the victim and aggrieved person rather than the accused. The discretionary remedy of prerogative writ is for the enforcement of statutory provisions for

the protection of fundamental rights of the citizens and not for violating the rights of the victims. The Allahabad High Court has held that conferring the right of hearing on the accused before registering the FIR of cognizable offence amounts to putting the cart before the investigation horse.

30. Considering the decisions to which the elaborate references are made hereinabove, I have no hesitation in answering the first question against the petitioner. Besides, the State Commission has given adequate opportunities to the petitioner to put forth its case. It is also to be noticed that even when the spot-inspection of the petitioner's establishment, where kakkas gundis are said to be situated, was made by the Municipal Commissioner, the petitioner's learned advocate was present.

31. I am also not impressed of the submission made on behalf of the petitioner that its officer had no option but to sign the order- sheet of the proceedings. Such an argument is raised without there being any foundation in the pleadings. When the contesting respondents have taken the objection to that effect, it is then that the petitioner has filed the affidavit.

32. It is quite possible that the complaint of manual scavenging does not contain the material particulars. On that ground the complaint cannot be closed. It is trite that a complaint in a criminal case is not like a plaint in a civil case. It is not necessary for a complainant to set out in a complaint all the evidence in his possession. The administration of criminal law is more a matter of substance than of form and should not be allowed to be befogged by hair-splitting technicalities. The concept of strict rules of pleadings in a civil law cannot be imported in criminal pleadings. In saying so, I am fortified by this Court's decision in the case of **R.P.BALAKRISHNA vs. MUTHOOT LEASING AND FINANCE LTD.** reported in **2002 AIR Kant HCR 2688.**

33. Way back in 1970, the Apex Court has this to say in para 11 of its decision in the case of **BHIMAPPA BASAPPA BHU SANNAVAR vs. LAXMAN SHIVARAYAPPA SAMAGOUDA AND OTHERS** reported in **1970 (1) SCC 665:**

*"11. The word 'complaint' has a wide meaning since it includes even an oral allegation. It may, therefore, be assumed that no form is prescribed which the complaint must take. It may only be said that there must be an allegation which prima facie discloses the commission of*

*an offence with the necessary facts for the Magistrate to take action. Section 190(1)(a) makes it necessary that the alleged facts must disclose the commission of an offence."*

34. I may usefully refer to the Hon'ble Supreme Court's decision in the case of **RAJESH BAJAJ vs. STATE OF DELHI AND OTHERS** reported in **(1999) 3 SCC 259**. Para 9 of the said decision reads as follows:

*"9. It is not necessary that a complainant should verbatim reproduce in the body of his complaint all the ingredients of the offence he is alleging. Nor is it necessary that the complainant should state in so many words that the intention of the accused was dishonest or fraudulent. Splitting up of the definition into different components of the offence to make a meticulous scrutiny, whether all the ingredients have been precisely spelled out in the complaint, is not the need at this stage. If factual foundation for the offence has been laid in the complaint the court should not hasten to quash criminal proceedings during investigation stage merely on the premise that one or two ingredients have not been stated with details. For quashing an FIR (a step which is permitted only in extremely rare cases) the information in the complaint must be so bereft of even the basic facts which are absolutely necessary for making out the offence."*

35. In the instant case, it cannot be said that there are no materials for holding the investigation in the matter. The

Municipal Commissioner after holding the spot-inspection in the presence of the petitioner's learned advocate, has given the sensible affirmation of the manual scavenging.

36. The FIR can be filed even against unknown persons. It is in the course of investigation that the Police have to unearth whether manual scavenging has taken place and who are directly and/or indirectly responsible for the same. On completing the investigation, the Police may even file 'B' false report against the petitioner. As of now, no firm cause of action has accrued to the petitioner to approach this court. This petition itself is premature and is therefore liable to be rejected.

37. As the petitioner has no vested right to demand that the FIR should not be registered without permitting it to cross-examine the complainant and the Municipal Commissioner, the challenge to the impugned directions for the registration of FIR is liable to be negated. Manual scavenging is an affront to human dignity. The Hon'ble Supreme court in the case of **DELHI JAL BOARD vs. NATIONAL CAMPAIGN FOR DIGNITY AND RIGHTS OF SEWERAGE AND ALLIED WORKERS AND**



**OTHERS** reported in **(2011) 8 SCC 568** has this to say in para 32, which is extracted hereinbelow:

*"32. Given the option, no one would like to enter the manhole of sewage system for cleaning purposes, but there are people who are forced to undertake such hazardous jobs with the hope that at the end of the day they will be able to make some money and feed their family. They risk their lives for the comfort of others. Unfortunately, for last few decades, a substantial segment of the urban society has become insensitive to the plight of the poor and downtrodden including those, who, on account of sheer economic compulsions, undertake jobs/works which are inherently dangerous to life. People belonging to this segment do not want to understand why a person is made to enter manhole without safety gears and proper equipments. They look the other way when the body of a worker who dies in the manhole is taken out with the help of ropes and cranes. In this scenario, the Courts are not only entitled but are under constitutional obligation to take cognizance of the issues relating to the lives of the people who are forced to undertake jobs which are hazardous and dangerous to life"*

38. On the ground that the Safai Karmacharis in question and their Union has not shown them as manual scavengers in the petitions filed before the Assistant Labour Commissioner or before the Central Government Industrial Tribunal, the registration of FIR cannot be resisted with any rate of success.

39. On the ground that the petitioner is not the owner of the premises in question, it cannot resist registration of the FIR of a cognizable offence.

**In re. question No.(ii):**

40. The State Commission for Safai Karmacharis is established with a view to mitigate the hardship of Safai Karmacharis, as is evident from the statement of objects and reasons of the KSCSK Act. Under Section 8 of the said Act, the State Commission is given the function to enquire into the specific grievances of karmacharis and take up the matter with the concerned authorities.

41. Further, the perusal of Sections 31, 32 of the PEMSR Act reveals that similar functions are assigned to the National Commission and to the State Commission. The provisions in Sections 31 and 32 of PEMSR Act are extracted hereinbelow:

*"31. (1) The National-Commission for Safai Karmacharis shall perform the following functions, namely:*

- (a) to monitor the implementation of this Act:*
- (b) to enquire into complaints regarding contravention of the provisions of this Act, and to*

*convey its findings to the concerned authorities with recommendations requiring further action; and*

*(c) to advise the Central and the State Governments for effective implementation of the provisions of this Act.*

*(d) to take suo moto notice of matter relating to non-implementation of the provisions of this Act.*

*(e) To take suo moto notice of matter relating to non-implementation of this Act.*

*(2) In the discharge of its functions under sub-section (i), the National Commission shall have the power to call for information with respect to any matter specified in that sub-section from any Government or local or other authority.*

*32. (1) The State Government may, by notification, designate a State Commission for Safai Karmacharis or a State Commission for the Scheduled Castes or such other statutory or other authority, as it deems fit, to perform, within the State, mutatis mutandis, the functions specified in sub-section (1) of Section 31.*

*(2) An authority designated under sub-section (1) shall, within the State, have, mutatis mutandis, the powers of the National Commission for Safai Karmacharis as specified in sub-section (2) of Section 31."*

42. In view of the afore-extracted legislative provisions, I cannot but answer the second question in the affirmative. I do

not see any legal impediment for the State Commission for Safai Karmacharis to take up the remonstrance of manual scavenging with the Police.

**In re.question No.(iii):**

43. It is the case of the petitioner that the complaint has to be lodged by an Authorized Officer with the Executive Magistrate. This argument is raised based on Section 17(3) of the 1993 Act. Section 17(3) reads as follows:

"17. ....

*(3) No Court shall take cognizance of any offence under this act except upon a complaint made by a person generally or specially authorized in this behalf by the Executive Authority."*

44. But the afore-extracted provisions do not find a place in PEMSR Act. As there is no provision in PEMSR Act corresponding to Section 17(3) of the 1993 Act, I find it hard to give acceptability to the submissions urged on behalf of the petitioner that the State Commission for Safai Karmacharis cannot lodge any first information report with the Police. Section 21 of PEMSR Act only enables the Government to confer certain powers on the Executive Magistrate.

45. The case on hand is governed by the provisions of PEMSR Act and not by 1993 Act. Section 3 of PEMSR Act contains a non-obstante clause providing for the primacy of PEMSR Act over all other Acts including the 1993 Act. Section 3 of PEMSR Act reads as follows:

*"3. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 or in any other law or in any instrument having effect by virtue of any other law."*

46. The contention that the complaint is only to be filed with the Executive Magistrate is not traceable to any provision of PEMSR Act. Therefore, the third question is liable to be answered in the negative and it is answered accordingly.

**In re. question No.(iv):**

47. If a safai karmachari has not made any application to the Municipality, invoking Section 12 of PEMSR Act for being identified as a manual scavenger, it cannot be fatal to karmacharis or their Union filing the complaint of manual scavenging. Section 13 of PEMSR Act is for rehabilitating the manual scavenger. Section 9 of the said Act is for punishing the

perpetrator of the crime. Purposes of the two Sections are entirely different. I therefore answer question No.(iv) to the effect that the non-filing of an application to the Chief Executive Officer of the Municipality for being identified as a manual scavenger does not preclude a safai karmacharis or their Union from filing the complaint of manual scavenging.

**In re.question No.(v):**

48. An argument is raised with reference to Section 11 of PEMSAR Act that the Municipality has to cause the survey to be undertaken to identify such persons, who are engaged or employed in manual scavenging within its jurisdiction. But if the Chief Executive Officer of Municipality fails to cause a survey in that regard, it does not mean that no FIR can be lodged with the State Commission for Safai Karmacharis or with the Police. Besides, in the instant case, the Municipal Commissioner has given his sensible affirmation to the effect that the manual scavenging has indeed taken place and has also identified the persons, who were employed to do it. I answer question No.(v) to the effect that the failure to take affirmative action by the concerned authorities do not come in the way of the aggrieved persons or their Union seeking punitive action.

**In re.question No.(vi):**

49. In the instant case, it is not in dispute that the safai karmacharis belong to the Scheduled Caste. If they were made to do manual scavenging by the persons not belonging to Scheduled Caste or Scheduled Tribe, the latter are liable to be punished under Section 3(1) (j) of SCST Act.

50. Three months' limitation period prescribed by Section 10 of PEMSAR Act has no application, if the accused persons are to be tried under the SCST Act also. Further, Section 4 of the said Act states that if a public servant who is not a member of Scheduled Caste or Scheduled Tribe wilfully neglects his duties required to be performed under the SCST Act, he shall be punished with imprisonment.

51. Be it as it may, if the complaint is barred by limitation it is open to the accused persons to make the application before the concerned forum for the discharge, etc. But on the ground that the complaint/representation does not disclose the date of the occurrence of the alleged offence, the Police cannot be directed not to register the FIR.

52. Thus not finding any acceptability in any of the arguments raised on behalf of the petitioner, I dismiss this petition. However it is made clear that the dismissal of this petition would not come in the way of the petitioner giving its version before the investigating officer. I have no reason to disbelieve that the investigating officer will investigate, form an opinion independently and file the report thereon without any bias and prejudice. No order as to costs.

53. Now that the main matter itself is disposed of, nothing survives for any consideration of I.A.No.1/2017 for vacating the interim stay. It is dismissed as having become unnecessary.

**Sd/-  
JUDGE**

Cm/-MD