

(1988) 02 KAR CK 0024

In the Karnataka High Court

Case No : CRIMINAL PETITION No. 709 of 1986

Ambasa Nagosa Kabadi and Another

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 24-02-1988

Acts Referred:

Prevention of Corruption Act, 1947 — Section 6

Citation : (1989) 3 KarLJ 208

Hon'ble Judges : A. K. Laxmeshwar, J

Judgement

Laxmeshwar, J.-The above Criminal petition is directed against the order passed by the Special Judge, Belgaum, in Special Case No. 5/1982, dated 17-7-1986, against the petitioners and others, i.e., Accused-4 & 5, respectively.

The facts of the case in brief are that:

The Deputy Commissioner of Police State-Vigilance Commission, Bijapur Division has filed this charge-sheet for the offences punishable under Sections 461, 471 and 120(B) IPC & Section 5(1)(d) r/w Section 5(2) of the Prevention of Corruption Act, against A-1 to A-6. During that period A-1 and A-2 were working as Special Land Acquisition Officers, Hidkal Project. A-3 was working 2nd Division Surveyor, A-4, as Junior Engineer, A-5, as Asst. Horticulture Officer, A-6, as 2nd Division Surveyor. R.S.No. 47/3 measuring 2 acres 39 guntas situated at Gudaganatti village, Hukeri, Taluk, belonging to A-7 to A-12 was acquired for the Hidkal Dam Project. During the acquisition proceedings the accused persons entered into a conspiracy to obtain pecuniary advantage for themselves and in pursuance of that conspiracy A-3 Sri A.S. Mali, the Second Division Surveyor, and A-4 who was then the Junior Engineer carried out joint measurements of the said land between 29-10-1974, and 31-10-1974, and fabricated a false joint measurement certificate showing the existence of 10 jali trees, 46 Tamarind trees and 35 Mango trees knowing fully well that those trees did not exist in the land. A-5 the Asst. Horticulture Officer, in pursuance of the conspiracy prepared a false valuation sheet showing the value of the said trees at Rs. 36,629/- though

he also knew that the trees did not exist. A-6 and 2nd Division Surveyor issued a false verification certificate to that joint measurement certificate prepared by A-3 and A-4 knowing that it was false. A-1 who was then the Special land Acquisition Officer, Hidkal Dam, without inspecting the land made a false inspection report dated-16-3-1976, wherein he certified about the existence of the above trees. A-2 who succeeded A-1 as the Special L.A.O. in pursuance of the same conspiracy prepared a false report dated 27-7-1977 stating that the land was submerged and as such he was unable to verify the details shown in the joint measurement certificate though actually that land was not at all submerged. A-2 then prepared a false award under Section 11 of the L.A.O. Act, on the basis of the false joint measurement certificate, false valuation report and false inspection report prepared by A-1 and A-3 to A-6 and after obtaining the approval of the Special Deputy Commissioner, declared the award on 23-7-1977 for a sum of Rs.42,337-25 ps. Subsequently A-2 ordered the said amount to be paid to A-7 to A-12. Thus A-1 to A-6 have abused their official position to secure pecuniary advantage for themselves and to A-7 to A-12 by illegal means and by fabricating all these documents. The accused in pursuance of their conspiracy have caused loss to the Government to the extent of Rs. 35,805/-. A-4 and 5 are the Government servants and they are the Junior Engineer, and Horticulture Officer, respectively and they are public officers, they cannot be proceeded-against them without proper authoritative sanction by the Government. Section 6 of the Prevention of Corruption Act is very clear that sanction is necessary to prosecute a public servant., which reads as under:

Section 6(1)(a) No court shall take cognizance of an offence punishable under Section 161 (or Section 164) or Section 165 of the Indian Penal Code, or under sub-section (2) (or sub-section (3A) of Section 5 of this Act, alleged to have been committed by a public servant, except with the previous sanction.

(b).....

(c) in the case of any other person of the authority competent to remove him from his office."

But these petitioners in law are attracted by the provisions of this Section. Therefore, the learned Counsel Sri Motaiya, vehemently urged that, under this Section they cannot be prosecuted and no cognizance can be taken against them in law for the offence is now alleged. The learned Counsel to substantiate his contention relies upon some decisions of the Supreme Court in R.S. Nayak v A.R. Antulay, reported in A.I.R. 1984, page 684, the relevant para is at page 694 in which Their Lordships have observed as under:

"Section 6 creates a bar to the Court from taking cognizance of offences therein enumerated except with the previous sanction of the authority set out in clauses (a) (b) and (c) of sub-section (1). The object underlying such provision was to save the public servant from the harassment of frivolous or unsubstantiated allegations. The policy underlying Section 6 and similar sections, is that there

should not be unnecessary harassment of public servant. (See C.R. Bansi v State of Maharashtra, (1971) 3 SCR 236: (AIR 1971 SC 786). Existence thus of a valid sanction is a pre-requisite to the taking of cognizance of the enumerated offences alleged to have been committed by a public servant. The bar is to the taking of cognizance of offence by the Court. Therefore, when the Court is called upon to take cognizance of such offences, it must enquire whether there is a valid sanction to prosecute the public servant for the offence alleged to have been committed by him as public servant. Undoubtedly, the accused must be a public servant when he is alleged to have committed the offence of which he is accused because Sections 161, 164, 165, IPC, and Section 5(2) of the 1947 Act clearly spell out that the offences therein defined can be committed by a public servant. If it is contemplated to prosecute public servant who has committed such offences, when the Court is called upon to take cognizance of the offence, a sanction ought to be available otherwise the Court would have no jurisdiction to take cognizance of the offence."

In C.R. Bansi v State of Maharashtra, reported in A.I.R. 1971, page 786, it was held that the presumption under Section 5(3) arose in the case even though the prosecution failed to prove the particular instances of bribery alleged by it. Existence thus of a valid sanction is pre-requisite to the taking cognizance which alleged to have been committed by a public servant. In the instant case their Lordships are very clear that there must be a valid sanction which is pre-requisite for taking cognizance. The bar is the taking of cognizance by the Court. Therefore such an offence deems un-fair whether it is valid sanctioned to prosecute a public servant alleged to have been committed an offence who is a public servant. Undoubtedly the accused must be a public servant when he alleged to have committed the offence. U/s 164 and Section 5(2) of the 1947 Act. The principles enunciated by the Supreme Court in these decisions let us examine the same in the instant case. Here the petitioners are undoubtedly the public servants of the State and we have to examine whether there is a sanction which must be a valid sanction. In view of the principles enunciated in the case relied upon the learned Counsel produced the corrigendum of the original sanction or in otherwords made it reads this for the words used in the Government Order No. PWD 48 SDA 79 III Bangalore dated 25-10-1982 to show that the trees in words 10 Jali trees, 46 Tamarind trees and 35 Mango trees and thereby sanction was made by the Government on 25-10-1982. The learned Counsel for the Petitioners submits that in the beginning the Government sanctioned in four cases, but later Government issued separate sanction in each case. The learned Counsel submits that when the sanction was made on 25-10-82, there was a house existing according to the material placed before the Government. The Government while sanctioning has considered and they have defined the material before them and that even the house was not existing. However, it is necessary that while sanctioning has to be accredit by the Government with out applying its mind, while sanctioning in respect of a house which was not in existence and later why invalid sanction was made. According

to the learned Counsel when the charges were framed against all the accused after investigation and in the investigation it was revealed that the corrigendum that exists of 10 Jali trees, 46 Tamarind trees and 35 mango trees. That was also equally false and there was over-writing for 46 tamarind trees. However, he submits that the Government had not applied its mind and they have given a sanction for the things which are not concerned in the case. Therefore, under no circumstances it can be said that it is a valid sanction. However, the Charge-sheet was filed by the Vigilance on 6-12-1982. But the corrigendum was issued on 21-1-1986. Therefore, he submits that there was no valid sanction when the charge-sheet was sent. Therefore, the Court ought not to have taken the cognizance on that charge-sheet, which is based on concocted or invalid sanction of the date i.e., 25-10-1982. If at all the charge-sheet was filed after the corrigendum it would have been taken as the charge sheet filed after due sanction. Therefore in other words he wants to submit that there was no such valid sanction. Therefore, the Court should not have taken the cognizance. He also invited me to the principles enunciated that their Lordships clearly stated in their Judgment that without valid sanction the Court have no jurisdiction to take cognizance of the offence. Therefore, the whole thing is done in the instant case as illegal and it is liable to be quashed. Sri Motaiya, relied upon in another Supreme Court Decision in Mohammed Iqbal Ahmed v State of Andhra Pradesh, reported in A.I.R. 1979 p. 677, Their Lordships have observed that:

"It is incumbent on the prosecution to prove that a valid sanction has been granted by the sanctioning Authority after it was satisfied that a case for sanction has been made out constituting the offence. This should be done in two ways; either (1) by producing the original sanction which itself contains the facts constituting the offence and the grounds of satisfaction and (2) by adducing evidence aliunde to show the facts placed before the sanctioning Authority and the satisfaction carried at by it. Any case instituted without a proper sanction must fail because this being a manifest defect in the prosecution the entire proceedings are rendered void ab-initio. What the Court has to see is whether or not the Sanctioning Authority at the time of giving sanction was aware of the facts constituting the offence and applied its mind for the same; any subsequent fact which may come into existence after the grant of sanction is wholly irrelevant."

Therefore, the learned Counsel submits that the charges framed in this case are baseless and unsustainable, and there are no materials to file a case for criminal conspiracy against the petitioners and to bold that no charge for an offence punishable under Section 193 with or without the aid of Section 120-B I.P.C. can be framed against the petitioners.

As against this the learned High Court Government Pleader Mr. Jadhav, submitted that there is a sanction and that is sufficient for our purpose. The Court has therefore, taken the cognizance of the offences and proceedings continued. For that the learned High Court Government Pleader relied upon a decision in S.B.

Saha and others v M.S. Kochar, reported in A.I.R. 1979 S.C. 1841. The learned Government Pleader invited my attention to Head Note-A, which reads thus:

"(A) Criminal P.C. (1974), Section 197-sanction to prosecute-State at which question of sanction can be raised-Factors to be considered while considering the question whether sanction is required."

He pointed out from the Judgment the following passage:

"The question of sanction under Section 197 can be raised and considered at any stage of the proceedings. In considering the question whether or not sanction for prosecution was required, it is not necessary for the Court to confine itself to the allegations in the complaint. It can take into account all the materials on the record at the time when the question is raised and falls for consideration."

The learned High Court Government Pleader tried to argue that the question of sanction will have to be taken at any stage, but he submits that it should be taken at the later stage and not at the beginning because some better material may come on record for the appreciation of evidence. For this Sri. Motaiya, learned counsel for the petitioner submitted that I am of opinion that the question of sanction is a pre-requisite or the condition precedent for the Courts to take cognizance. If there is no valid sanction, both the decisions are very clear on the point-even the cognizance cannot be taken. In these circumstances the two decisions relied upon by Mr. Motaiya, learned counsel for the petitioner are applicable, to the present case, and the other decision of the Supreme Court, which is relied upon by Sri Jadhav, learned H.C.G.P. can also be made use of, but it says at any stage, in which their Lordships decision, which relied upon by Mr. Jadhav, have not categorically stated that the question regarding the sanction cannot be taken into consideration at the time of institution. But their Lordships in another two decisions have made it clear that it can be raised even in the beginning for not taking cognizance without valid sanction to render proceedings. This is the question which is to be considered by the Court at the time of taking cognizance. Wherefore, I think there is some force in the contention advanced by Sri Motaiya, learned Counsel for the Petitioner. In these circumstances of the case and the reasons stated above, the proceedings for taking cognizance etc., are liable to be quashed. In the result, the Criminal Petition is allowed. The proceedings in Special Case-No.5/1982, dated 17-7-1982, on the file of the Special Judge, Belgaum, are quashed.