
(1980) 01 KAR CK 0028

In the Karnataka High Court

Case No : Writ Petition No's. 1781, 3139, 12579 and 12580 of 1979

B. Krishna Bhat

APPELLANT

Vs

The Superintendent of Police

RESPONDENT

Date of Decision : 17-01-1980

Acts Referred:

Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 406, 409, 420

Citation : AIR 1980 Kar 81

Hon'ble Judges : K.S. Puttaswamy, J

Bench : Single Bench

Advocate : B.V. Deshpande and T.S. Ramachandra, for the Appellant;
Annadanayya Puranik, Additional Government Advocate, B. Thilak Hegde and P.R. Ramesh, for the Respondent

Judgement

1. All these cases which are closely interlinked, heard together, can be conveniently disposed of by a common order and, therefore, I propose to dispose of them by a common order.

2. Some time in 1969, an Association called as Karnataka Young Writers and Artist's Association (hereinafter referred to as "the Association" registered under the provisions of the Karnataka Societies Registration Act of 1960 (Karnataka, Act No. 11 of 1960) and a Co-operative Society called as the Writers' and Artists' House Building Co-operative Society Limited (here, after referred to as "the Society") registered under the provisions of the Karnataka Co-operative Societies Act of 1959 (hereinafter referred to as "the Act") were formed, inter alia, with the object of acquiring lands, forming sites and distributing the sites to the members of the Society. The Society has on its rolls about 2,000 members, one of them being one Sri S.Sitaram is respondent No. 3 in Writ Petition No. 1781 of 1979. Sriyuths: B. Krishna Bhat and R. Rangarao, who are the petitioners in Writ Petn. Nos. 1781 and 3139/1979 respectively were the Secretary and, the Joint Secretary of the Association and Society respectively at the material time.

3. On 1-12-1975 Sri Sitaram lodged a complaint before the Inspector of Police, Basavanagudi, inter alia, stating that Sri Krishna Bhat had played fraud on the members and has cheated them. He also alleged that Sri Krishna Bhat had fabricated the accounts of the Association and the Society and had misappropriated their funds. On these allegations Sri Sitaram requested the said Inspector to initiate proceedings against Sri Krishna Bhat under the Criminal law of the country. On receipt of that complaint, the Inspector of Police, registered a case in Crime No. 309 of 1975 under Ss. 406, 409 and 420 of the 1. P. C. against Sri Krishna Bhat and started his investigation which was later transferred to a specialised investigation agency called the Corps of Detective (Fraud Branch) (hereinafter referred as to "COD") whose Supdt. and Inspector that are in-charge of that crime have, therefore, been impleaded as respondents 1 and 2 in these cases. In the course of their investigation, the Inspector of Police, Basavanagudi as also respondents 1 and 2 have virtually seized all the documents of the Association and the Society which were under the management of the Government for some time.

4. On the basis of the complaint given by Sitaram and on the investigation conducted thereto the COD representing the State filed as many as eight criminal cases against the petitioners in Writ Petn. Nos. 1781 and 3139 of 1979 for offences alleged to have been committed by them under the various provisions of the I. P. C., which were naturally contested by them .Even though all these cases have proved abortive, the COD has neither ended its investigation in Crime No. 309 of 1975 nor it has decided not to file further cases before the Courts. Some of the records that had been produced in the above cases are stated to have been returned, but a large number if documents seized from the Association and the Society have not been returned to them in spite of repeated demands. In these circumstances Sriyuths B. Krishna Bhat and R. Rangarao, have moved this Court in Writ Petn. Nos. 1781 and 3139 of 1979 for a writ in the nature of mandamus to restrain respondents 1 and 2 from further investigating the case in Crime No. 309 of 1975 and launching further prosecutions against them. In the other two writ petitions viz., Writ Petn. Nos. 12579 and 12580 of 1979, the Association and the Society have sought for a mandamus to the respondents to return all the documents that are still available with them. With this general background that is common to all the cases, I will notice the specific material allegations in the two sets of cases, the justification pleaded and then deal with the contentions in those cases in that order.

5. The petitioner in Writ Petn.No. 1781 of 1979 has alleged that he was summoned to the chamber of the then Minister for Co-operation Sri K. H. Ranganath on 25-8-1976 in connection with the affairs of the Society. He has asserted that the discussion between him and Ranganath was not cordial but was provocative and abusive and that there were many hot exchanges between them, at the end of which the Minister asked him to leave his chamber. He dates that immediately he left the chamber, he was encircled by high ranking Police Officers and top officials of the department of Co-operation and was served with

an order of detention under the Maintenance of Internal Security Act of 1971 (Central Act No. 26 of 1971) (hereinafter referred to as "MISA") that was then in force and that he was taken to his residence and the office of the Society at which places, the said officers raided and ransacked the records and thereafter he was kept as a MISA detenu in Central Jail till 22-3-1977. He has asserted that the action of the authorities was at the instance of Sri Ranganath.

6. The other material allegations made by this petitioner are contained in paras 22 and 23 of his petition and it is useful to reproduce the relevant portions thereof and they read thus:

"From the facts as stated in Exhibit-A the COD Police under the supervision of respondents 1 and 2 could very well have sent the consolidated charge-sheet and close the entire in- The petitioner respectfully submits that the entire case is politically motivated and at the behest of the then Minister for Co-operation as stated earlier and of the active help of the disgruntled members of the Association. Cases after cases are invented and picked up and sent to the Court in installments just to harass and humiliate the petitioner. There is absolutely no reason or explanation as to why the police have kept up the investigation alive and did not send the charge sheets at a stretch. These actions on the part of the investigating officers respondents 1 and 2 clearly show their mala fide intentions in harassing the petitioner and with innumerable charge-sheets by misusing their legal power of investigations,

"The observation as stated in the earlier paragraph made by the Metropolitan Magistrate while discharging the petitioner clearly bear out the mala fide nature and action of the investigating officers - respondents 1 and 2. The petitioner apprehends out of the same F. 1. R. Exhibit-A, respondents 1 and 2 are about to invent many more cases and send cases of frivolous nature."

7. Earlier, I have noticed that in all the 8 cases filed against them the Criminal Court has discharged the Petitioners in Writ Petn. Nos. 1781 and 3139 of 1979. Against the order of discharge dated 22-3-1979 in C. C. No. 9 of 1979 filed against Sri Krishna Bhat, the State has filed a criminal revision petition in Cr. R. P. No 411 of 1979 before this Court and the same admitted on 7-9-1979 is still pending disposal. In this view, I do not propose to refer to that case which arises out of an incident stated to have occurred on 10-6-1976. In C. C. No. 504 of 1978, the Petitioners In Writ Petn. Nos. 1181 and 3139 of 1979 were charged for offences under Ss. 9, 408, 477-A read with S. 34 of the I. P. C. Among others, the charge against them stated that in between 10-12-1973 and 29-3-1974, they as the office-bearers of the Society had collected share amounts and deposit advances from the members of the Society to the extent of Rs. 10,95,6,52-05 on several dates and had misappropriated the said amounts. On a consideration of the charge levelled and the records, the learned Magistrate by his order dated 12-12-1978 held that the charge alleged against the petitioners was groundless and a trial of the case in which as many as 247 witnesses were cited would be a sheer waste of public time and money. In the absence of any

challenge to the said order by the State, the same has become final. I have referred to this case in particular for the reason that that was the substance of the complaint made by Sri Sitaram against the petitioners which has been registered as Crime No. 309 of 1975. In the other cases the Criminal Court has expressed the same view.

8. The allegations of the petitioner in Writ Petn. No. 3139 of 1979, who was the co-accused in almost all the criminal cases, are to the same effect and, therefore, a narration of the allegations made by him is not called for.

9. In Writ Petn. No. 1781 of 1979, respondents 1 and 2 have filed their return, which may be taken as their return in Writ Petn. No. 3139 of 1979 also. At the threshold they have urged that these writ petitions under Article 226 of the Constitution are not maintainable. But, at the hearing, this contention was not rightly pressed by them as the same is concluded by the ruling of the Supreme Court in S.N. Sharma Vs. Bipen Kumar Tiwari and Others, . They have denied the allegation of the petitioners that the action taken by them was at the instance of Sri Ranganath. They have also denied the allegations of mala fides attributed by the petitioners against them and have asserted that all actions taken by them were in bona fide exercise of their power. They have alleged that the accounts of the Society with the transactions to the tune of Rs. 80 lakhs were voluminous and it was not possible for them to file a consolidated charge-sheet in the matter. According to them, the accounts require a detailed examination by the auditors and thereafter by them and then only cases can be filed before the appropriate Criminal Court where it is open to the petitioners to defend themselves. On these grounds, they justify their action to proceed with the further investigation in Crime No. 309 of 1975 and other crimes that might have been committed by the petitioners that may come to their light and the filing of further prosecutions before Criminal Courts.

10. Sri Ranganath, against whom serious allegations, have been made by Sri Krishna Bhat, has not filed his counter denying the allegations made against him. A general denial by respondents 1 and 2 verified by an officer who is holding the post of respondent No. 1 as on 22-8-1979 cannot be a substitute to a denial by Sri Ranganath. Likewise, respondent No. 3 whose complaint has given rise to these proceedings and against whom also various allegations are made by two petitioners has not also filed his return.

11. In Writ Petn. Nos. 12574 and 12580 of 1979, the petitioners have alleged that there was no justification for the respondents to retain the records after a lapse of more than four years. They have asserted that "the records retained are absolutely necessary for carrying on their legitimate activities and they have refused to return them without complying with their demand. Both the petitioners have also filed a memo undertaking to make available for inspection such records as are necessary by the respondents or any other Police Officer at any time for investigation purposes.

12. In their joint return, the respondents have denied the allegation that the records have been unnecessarily retained. They have asserted that the records are necessary for investigation of several offences alleged to have been committed by the petitioners in Writ Petn Nos. 1781 and 3139 of 1979 and the prosecutions to be launched against them in the Criminal Courts.

13. Sri B. V. Deshpande, learned counsel for the petitioners in Writ Petitions Nos. 1781 and 3139 of 1979, contended that respondents Nos. 1 and 2 were misusing their legal powers mala fide and in these circumstances, this Court should restrain them from misusing their legal powers. In support of his contention, Sri Deshpande strongly relied on the ruling of the Supreme Court In Sharma's case.

14. Sri Annadanayya, Puranik, learn Ist Additional Government Advocate, appearing for respondents 1 and 2 maintained that the action of the authorities was neither mala fide nor were they misusing their legal powers. Elaborating his contention Sri Puranik maintained that the plea of mala fides alleged by the petitioners was vague and general and there was no justification to restrain the authorities from investigating the offences and filing prosecutions before the Criminal courts. In support of his contention, Sri Puranik strongly relied on the rulings of the Supreme Court in E.P. Royappa Vs. State of Tamil Nadu and Another, and The Asstt. Collector of Assistant Collector of Central Excise Vs. Jainson Hosiery Industries,

15. One Vijay Shankar lodged a complaint on 10-4-1968 in Gorakhpur Police Station, inter alia, alleging that one Sri S. N. Sharma who was then functioning as the Additional District Magistrate (Judicial) Gorakhpur, had committed various offences punishable under the I. P. C. On that complaint, the Police registered a case and started investigation. On an application made by Sri Sharma on 13-4-1968 the jurisdictional Judicial Magistrate directed the Police not to proceed with the investigation, which was quashed by the High Court of Allahabad exercising its inherent power under S. 561-A of the Cr. P. C. of 1898 that was then in force, on the ground that the Judicial Magistrate had no jurisdiction to make such an order under S. 159 of the said Code. On appeal by Sri Sharma, the Supreme Court while affirming the said decision of the High Court, dealing with the contention of the appellant of possible misuse by the police and the remedy that is open to a person in such cases observed thus:

"Counsel appearing on behalf of the appellant urged that such an interpretation is likely to be very prejudicial particularly to officers of the judiciary who have to deal with cases brought up by the police and frequently give decisions which the police dislike. In such cases, the police may engineer a false report of a cognizable offence against the Judicial Officer and may then harass him by carrying on a prolonged investigation of the offence made out by the report. It appears to, us that though the Cr P. C. gives to the Police unfettered power to investigate all cases where they suspect that a cognizable offence has been committed in appropriate cases an aggrieved person can always seek a remedy by invoking the power of the High Court under Art. 226 of the Constitution under

which, it the High Court could be convinced that the power of investigation has been exercised by a police officer male, fide, the High Court can always issue a writ of mandamus restraining the police officer from misusing his legal powers. The fact that the Code does not contain any other provisions giving power to a Magistrate to stop investigation by the police cannot be a ground for holding that such .a power must be read in S. 159 of the Code."

Section 159 of the old Code which was interpreted by the Supreme Court in Sharma's case and S. 159 of the new Cr. P. C. are in pari materia. So far as the powers of the Police, the scheme and object of the two codes are substantially the same. In these circumstances, the above principle enunciated by the Supreme Court in Sharma's case continues to be valid and binding. Any action of an authority even though the same is within its power, if actuated by mala fides, established either by direct or circumstantial evidence, is liable to be struck down under Art. 226 of the Constitution. In examining a plea of mala fides the Court must necessarily have regard to the object of the statute conferring power and whether the power conferred has been exercised for the purposes and object of the statute or for any other purpose (vide S. Pratap Singh Vs. The State of Punjab, In Royappa's case the Supreme Court has only reiterated, the principles enunciated in Pratap Singh's case. It is in the light of these principles; I have to examine whether the petitioners have made out a case for this Court's interference under Art. 226 of the Constitution and not in the light of the principles enunciated in Jainson Hosier industry's case that has no bearing.

16. Earlier, I have pointed out that the serious allegations of mala fides alleged by the petitioners have not been denied by Sri Ranganath who was the Minister for Co-operation at the material point. In the absence of such a denial by Sri Ranganath a strong circumstance is made out by the petitioners against the action of the respondents, though the same cannot be said to have established the case of the petitioners.

17. On the basis of the complaint made by Sri Sitaram as early as on 1-12-1975, the contents of which I have already referred, so far, the respondents had filed as many as seven cases against the petitioners excluding the case that is the subject-matter at Cr. R. P. No. 411 of 1979. Legally the respondents could have filed only one case against the petitioners, Even Sitaram could have filed a complaint before a Criminal Court and prosecuted the petitioners. But still the respondents chose to file as many as eight cases for the last four years on the basis of the complaint made by Sri Sitaram and the investigation of the records seized by them. "Ordinarily a crime is a wrong which affects the security or well being of the public generally so that the public has an interest in its suppression. A crime is frequently a moral wrong in that it amounts to conduct which is inimical to the general moral sense of the community" (vide pars 1, definition of crime, Vol. XI of the Halsbury's Laws of England, IV Edn. (Criminal Law)). "The purpose of the penal law is to express a formal social condemnation of forbidden conduct, buttressed by sanctions calculated to prevent it (vide Wechsler, "the

Criteria of Criminal Responsibility" 22, Un. of Chicago LR, 374 (1955) extracted with approval by the eminent jurist. W. Friedman in his book "Law in a changing society" Chapter 6 "Criminal Law"). A person that has committed an offence cannot and should not escape a trial and punishment if ultimately found guilty of that offence. But at the same time, a person cannot be exposed to an endless investigation and prosecutions in Criminal Courts and allow the Dam clean sword hanging over his head till his death in respect of one and the same crime alleged to have been committed by him in the absence of any valid grounds thereto. By any test and standard, the period already occupied in the investigation of offences and the number of cases already filed in which the petitioners have come unscathed from out of a complaint made by one of the members whose motives in seriously challenged by the petitioners, justifies their claim that the investigation by the respondents and the possibility of prosecutions by them is almost endless and may even turn out be propose less as it has so far appended. An examination of all the circumstances of the case reasonably leads the conclusion, that the investigation by the Police and the prosecution of the petitioners is mala fide and, is a case of misusing the legal powers vested in them under the Cr. P. C. For these reasons the petitioners in Writ Petn. Nos. 11781 and 3139 of 1919 are entitled to succeed.

18. Sri T. S. Ramachandra, learned counsel for the petitioners in Writ Petn. Nos. 12579 and 12580 of 1979 contended that the retention of the records and the refusal of the authorities to return them, is wholly unjustified.

19. Sri Puranik contended that the records are necessary for the completion of the investigation and the prosecutions to be launched by the respondents against the petitioners in Writ Petn. Nos. 1781 and 3139 of 1979.

20. On the basis of my conclusion in Writ Petn. Nos. 1761 and 3139 of 1979 petitioners in Writ Petn. Nos. 12570 and 12580 of 1979 are also entitled to succeed. But, I will assume that the petitioners in Writ Petn. Nos. 1781 and 3139 of 1979 have not established their case and independently examine these cases on their own merits.

21. The complaint of Sri Sitaram was against Sri B. Krishna Bhat, who was one of the office-bearers of the Society at that time and who is stated to be its President currently. The cases filed by the respondents were against the petitioners in Writ Petn. Nos. 1781 and 3139 of 1979. For well over four years, the respondents have been in possession of the records. A perusal of the list of documents of the records seized, reveals that the respondents have seized practically all the documents of the Association and the Society. Even after hearing the elaborate arguments addressed by Sri Puranik, I am unable to appreciate as to why all the records of the Association and the Society should be indefinitely retained all in the name of investigation and filing prosecutions. Whatever may be the setbacks in the functioning of the Association and the Society, there cannot be any justification to unnecessarily retain all their records and thus, paralyse their smooth working. Even if the respondents had any

apprehension that the records would be tampered, by this time, they could have, as well, made photostat copies of all such documents and returned the originals, to the petitioners. Whatever may be the result of Writ Petn Nos. 1781 and 3139 of 1979, I am clearly of the opinion. that the retention of the records by the respondents is wholly unjustified and their refusal to return them to the Association and the Society As demanded by them is, without any Justification and is manifestly illegal, For these reasons, the petitioners in Writ Petn. Nos. 12579 and 12580 of 1979 are entitled to succeed.

22. In the light of my above discussion, I make the following order:

(a) In Writ Petn. Nos. 1781 and 3139 of 1979, I issue a writ in the nature of mandamus to respondents 1 and 2 from further investigating in Crime No. 309 of 1975 registered in Basavanagudi Police Station and filing any more prosecutions from out of the said crime against the petitioners.

(b) In Writ Petn. Nos. 12579 and 12580 of 1979, I issue a writ in the nature of mandamus to respondents 1 and 2 to deliver to the petitioners all the records that have been seized from them and the records that have been subsequently obtained from them by the officials of the Co-operation Department that have been delivered and that are still available with them, with all such expedition as is possible in the circumstance of the case and in any event within a period of 30 days from the date of receipt of the order of this Court.

23. Rule issued is made absolute in all these cases.

24. In the circumstances of the cases, I direct the parties to bear their own costs.

25. Let copies of this order be communicated to respondents 1 and 2 within 10 days from this day. Let a copy of this order be also furnished to the learned Government Advocate within the same time.

26. Rule made absolute.