

(2015) 03 KAR CK 0254

In the Karnataka High Court

Case No : Criminal Petition Nos. 4848, 5107, 5143/2014 and Writ Petition No. 38491/2014

B. Sampathkumar and Ors

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 17-03-2015

Acts Referred:

Constitution of India, 1950 — Article 21, 226
Criminal Procedure Code, 1973 (CrPC) — Section 152, 152, 153, 154, 154
Karnataka Land Revenue Act, 1964 — Section 124, 127, 127, 128, 128
Penal Code, 1860 (IPC) — Section 120(B), 420, 465, 468, 471
Prevention of Corruption Act, 1988 — Section 12(1), 13(1), 13(1)(c), 13(2), 19(1)

Citation : (2015) 3 AKR 241 : (2015) CriLJ 3726 : (2015) 4 KCCR 3007

Hon'ble Judges : K.N. Phaneendra, J.

Bench : Single Bench

Advocate : Prakash Timmanna Hebbar, for the Appellant; Venkatesh P. Dalwai, Spl. P.P., Advocates for the Respondent

Final Decision : Dismissed

Judgement

K.N. Phaneendra, J.—The petitioners who have worked as Tahsildars at Devanahalli for different periods have approached this Court seeking quashing of the entire investigation in Crime No. 18/2014 on the file of the Karnataka Lokayuktha Police, Bangalore Rural District which was initiated against all of them u/s. 13(1)(c) and (d) read with Section 13(2) of Prevention of Corruption Act, 1988 and also u/s. 120(B), 465, 468, 471, 420 of IPC and also u/s. 192A of Karnataka Land Revenue Act, 1964.

2. Before advertng to the grounds urged before this Court for quashing of the entire investigation in the above said cases, it is just and necessary to have a brief factual matrix of the cases. One Mr. M.J. Dayanand, Police Inspector, Karnataka Lokayukta, Bangalore Rural District, Bangalore lodged an FIR on 30.7.2014, wherein it is alleged that for the purpose of conducting phodi work of survey Numbers of Government lands, previous permission of the Deputy

Commissioner and also the Department of Land Records and Land Revenue is absolutely necessary. The complainant has read in the newspaper item with regard to the land grabbing at Devanahalli. On careful perusal he found that the persons by name Sri L.C. Nagaraj, Asha Parveen, Manyappagowda and Sampathkumar who were working as Tahsildars, Devanahalli at different periods and during their tenure, they have conducted Phodi Durast work of Government lands situated at Devanahalli Taluk, particularly in the villages by name Raisandra, Vishwanathapura, Hosahalli, Chikkanahalli, Hegganahalli, Koramangala and Beerasandra, by doing illegal Phodi and Durast work, they have illegally created documents like RTC and Mutation, thereafter alienated and transferred the said lands in favour of private persons. It is specifically stated that the above said Tahsildars have colluded with the private persons and hatched conspiracy in order to grab the Government land and they have created the documents for their personal benefit. Instead of protecting the Government lands, they have illegally and capriciously abused their position as public servants cheated the Government and thereby they have committed the offences. On the basis of the above said complaint, the Superintendent of Police, Karnataka Lokayuktha, directed Lokayukta police Bangalore Rural District, to register a case and investigate the matter. Accordingly, a case was registered and investigation is started for the offences as noted above.

3. Against the initiation of the above said criminal proceedings and investigation, the petitioners have approached this Court for quashing of the proceedings on several grounds.

4. The petitioner in Criminal Petition No. 5143/2014 Sri B. Sampathkumar was working as Tahsildar, Devanahalli for the period from 10.5.2007 to 30.2.2009 and he retired from service on 29.02.2012.

5. The petitioner in Criminal Petition No. 4848/2014 Sri D.C. Mariyapa Gowda was working as Tahsildar, Devanahalli for the period from 28.04.2005 to 31.03.2006 and he retired from service on 31.3.2006.

6. The petitioner in Criminal Petition No. 5107/2014 Smt. S.M. Asha Parveen, worked as Tahsildar, Devanahalli for the period from 30.01.2009 to 15.10.2010.

7. The petitioner in Writ Petition No. 38491/2014, Sri L.C. Nagaraj, claimed that he was working as Tahsildar, Devanahalli and Bangalore Rural District during the period from 22.02.2010 to 23.01.2013. Presently, he is working as Assistant Commissioner, Bangalore South Division.

8. From the above said facts, there is no dispute that the petitioners worked as Tahsildars at Devanahalli for the different periods. But, a stand is taken by the petitioners in CrI. Petition Nos. 4848/2014 and 5143/2014 that they were already retired from service and they claim that their case stand on different footing.

9. I have heard the detailed lengthy arguments of the learned senior counsels appearing for the parties in all the above said cases in support of the grounds

urged in the petitions. Almost common grounds are urged in all the petitions. Sri Uday Holla, Sri Ravi B. Naik and Sri Padmanabha Mahale, learned Senior counsels have mainly argued the matter and other counsels who were appearing for the petitioners have adopted the same arguments.

10. The sum and substance of the grounds urged and argued by the learned counsels are that:

(1) The Police have registered the case against the Government officials, public servants, without there being sanction from competent authority to investigate the matter.

(2) There was no prior opportunity given to the petitioners and no preliminary enquiry was conducted. Therefore, the case registered by the Police is bad in law.

(3) It is contended by the learned counsels that no criminal prosecution could be launched by any Police without following the procedure as contemplated u/s. 192A and 192B and the necessary circulars issued by the Government to initiate Criminal Case u/s. 192A and 192B of the Karnataka Land Revenue Act.

(4) No Criminal Case can be registered based on the News paper publication without there being a preliminary enquiry.

11. It is contended that the action of the Revenue Officers particularly Tahasildars in these petitions are in the nature of quasi judicial powers exercised by, them, under Karnataka Land Revenue Act and Rules which are amenable to Appeals and Revisions. Therefore, they all entitle for the immunity u/s. 196 of the Karnataka Land Revenue Act and no prosecution can be lodged.

12. The Lokayukta Police have no jurisdiction under Section 7, 8 and 9 of the Karnataka Lokayuktha Act or under the Prevention of Corruption Act to investigate such matters. The petitioners in fact acted as per the directions of the Government and higher-ups. Therefore, while discharging their duty, they have done such acts and it is not a criminal act and no criminal prosecution can be launched and no investigation can be continued.

13. There is no information given by any aggrieved private individual. Only on the basis of vague allegations in the paper publication and vague allegations in the alleged FIR, the Police on suo-motu initiated proceedings which are bad in law and the same is liable to be quashed.

14. It is noticed that the petitioner in Crl. P. No. 4848/2014 Sri D.C. Manyapa Gowda and the petitioner in Crl. P. 5143/2014 Sri B. Sampathkumar, are the retired Tahsildars and they have specifically taken up the contention that the criminal case initiated against the two retired persons is in violation of Rule 214 of KCSR Rules as 4 years have already been elapsed from the date of alleged offences.

15. Further, it is strenuously argued by all the learned counsels that even if the allegations made in the FIR are translated into evidence, at this stage, it will not

constitute any offence under any of the provisions of the Prevention of Corruption Act or under any other penal laws. The allegations are very vague and no prudent man can come to the conclusion that those allegations constitute any offence under any penal law for the time being in force. Further, added to that, when there is a legal bar for initiation of the criminal proceedings, no investigation can order to be continued. If it is allowed, the same would amounts to abuse of process of the Court.

16. Sri Ravi B. Naik, learned Senior counsel has specifically contended that Tahasildars have followed the Land Grant procedures with regard to the Phodi work under the Karnataka Land Revenue Act and Rules and such acts are covered u/s. 24 of KLR Act and violation of any such Act or Rules by the Tahasildars are amenable to Appeals and Revisions and therefore, no offence is committed by them and hence the proceedings are liable to be quashed.

17. Sri Uday Holla, learned senior counsel, in support of his elaborate arguments has also drawn my attention to several documents produced before the Court, which I am going to discuss little later.

18. Before advertng to the facts of those cases coupled with the grounds urged before this Court by different counsels, it is just and necessary for this Court to bear in mind as to under what circumstances, the Court can quash the criminal proceedings.

19. "Right from the case of State of Haryana and Others Vs. Bajanlal and others reported in 1992 Supplement (1) SCC 335 up to the latest decision of the Supreme Court in the year 2013, in the case of Vinod Raghuvanshi Vs. Ajay Arora and Others, , the Hon"ble Supreme Court has been consistent in its opinion as to under what circumstances, the criminal proceedings can be quashed.

20. It is worth to note here the guidelines issued by the Hon"ble "Supreme Court in the case of State of Haryana and Others Vs. Bajanlal and others reported in 1992 Supplement (1) SCC 335. Though the guidelines are not so exhaustive but they are explicit and informative and they have to be borne in mind, whenever me Court is exercising powers u/s. 482 of Cr.P.C., the Hon"ble Supreme Court has categorized by way of illustration wherein the extraordinary power under Article 226 or the inherent powers u/s. 482 of Cr.P.C. can be exercised by the High Courts either to prevent abuse of process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down in precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases where such powers should be exercised. However, the Hon"ble Supreme Court making such observations laid down the following guidelines:

(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 u/s. 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 u/s. 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.

21. Further, in another ruling which has quoted above in the case of Vinod Raghuvanshi Vs. Ajay Arora and Others, wherein the Hon"ble Supreme Court has held that-

"When a prosecution at the initial stage is to be quashed, the test to be applied by the Court is whether the uncontroverted allegations as made, prima facie establish the offence. At this stage neither the Court can embark upon an inquiry, whether the allegations in the complaint are likely to be established by evidence nor should the Court judge the probability, reliability or genuineness of the allegations made therein. More so, the charge sheet filed or charges framed at the initial stage can be altered/amended or a charge can be added at the subsequent stage, after the evidence is adduced in view of the provisions of Section 216 Cr.P.C. Court should not "kill a still born child", and appropriate prosecution should not be stifled unless there are compelling circumstances to do so. An investigation should not be shut out at the threshold if the allegations have some substance."

22. Bearing in mind the above said guidelines, now let me consider the grounds urged before this Court. There are certain legal grounds and factual grounds urged before this Court by the learned counsels as noted above.

23. The learned senior counsels have strenuously contended putting stress on first and foremost ground raised that, registration of a Crime without there being a valid sanction order from the competent authority is not proper. In this regard, they relied upon a decision between Anil Kumar and Others Vs. M.K. Aiyappa and Another, , wherein the Hon"ble Apex Court has observed that-

"Sanction u/s. 19(1) is a precondition for ordering investigation against the public servant u/s. 156(3) of Cr.P.C., even at pre cognizance stage. When a private complaint is filed against the public servant u/s. 200 Cr.P.C., reference of complaint by Magistrate u/s. 156(3) of Cr.P.C. for investigation by police, complaint cannot be referred to police without previous sanction u/s. 12(1) of the Prevention of Corruption Act, 1988." 24. The above said ruling, in my opinion, is not strictly applicable to the facts of these cases as it is evident from the facts that, the police have registered a case u/s. 154 of Cr.P.C. not on the basis of any reference by the Magistrate u/s. 156(3) of Cr.P.C. The distinguishing feature is that if a private complaint is filed u/s. 200 Cr.P.C., the Magistrate has got two options one is either he can take cognizance on the basis of the allegations made in the complaint constituting any offence under any penal law for the time being in force or the Magistrate can refer the matter for investigation u/s. 156(3) of Cr.P.C. Therefore, when the complaint is filed, the Magistrate either can take cognizance or refer the matter for investigation. When the Magistrate is empowered to take cognizance even for reference, he has to go through the contents of the complaint to ascertain whether, it is a fit case to take cognizance, then only he can refer the matter to investigation by the police or he himself can take cognizance. So far as the FIR u/s. 154 of Cr.P.C. is concerned, it is not a stage where, on the basis of the FIR itself, the court can take cognizance of any offence. The Police have no jurisdiction to take cognizance of the offences as per section 190 of Cr.P.C. The first information is only an indication that a criminal law has been set into motion and the Police have to see whether the contents of the complaint discloses any allegations of cognizance offence so as to investigate the matter and to file charge sheet enabling the court to take cognizance of the offence. Therefore, the FIR u/s. 154 Cr.P.C. and the complaint u/s. 2(d) of Cr.P.C. cannot be treated on par with each other. On the other hand, the complaint filed u/s. 200 Cr.P.C. can be equated with the charge sheet by the Police because the Magistrate can take cognizance u/s. 190 of Cr.P.C. either on the basis of a private complaint or on the basis of a Police report submitted. Therefore, when FIR is lodged, it is a too premature stage, and the Police are yet to collect material. Therefore, for registering a case under section 154 Cr.P.C. by the police, sanction u/s. 19(1) of Cr.P.C. is absolutely not necessary and therefore, the said ruling is not applicable to the facts and circumstances of these cases.

25. The second important aspect raised before this court is that the Police before registering the FIR in this case, particularly, under the Prevention of Corruption Act, they have not done any preliminary enquiry in order to ascertain whether the allegations are sufficient to constitute any offence which are cognizable in

nature and to investigate the matter.

26. For this, the learned senior counsel particularly Sri Uday Holla, relied upon some of the documents produced before the court, to canvass before the court that, some of the notifications of the Government clearly discloses that the accused persons while discharging their duties as public servants as Revenue Officers, they have done their duty as per the directions of the Government. Therefore, when such being the case, no offence can be alleged against them.

27. In this context, Sri Uday Holla, drawn my attention to the several documents filed in WP No. 38491/2014. Annexure-C at page 31 of the paper book, which is a notification of the Government issued in No. RV 70 Bhusa 2005 dated 6.5.2005, under which notification, under Rule 72 of the Karnataka Land Revenue Rules, the powers of the Assistant Director of Land Records are also delegated to the Tahsildars for all practical purposes. The said notification says that where additional ADLR, City Survey are functioning, it is ADLR, City Survey has to conduct the survey and Phodi work and in all other places, it is the Tahsildar concerned can do such Survey and Phodi work. This document only shows that the Tahsildar are empowered to conduct Land Survey as per the said notification. At page No. 39 Annexure-D, a Circular is issued by the Government in No. Kame 197/Bhu das 2008 dated 18.8.2008, wherein it was found by the Government that there was inordinate delay in conducting Land survey and Phodi work in respect of the landed properties of the Government etc. It is directed that while doing the Land Survey, the Asst. Commissioners and Deputy Commissioners have to give proper and appropriate directions to the Tahsildars and in turn the Tahsildars have to conduct the Phodi work and submit the report to the Commissioner and to the Government within 5th of every month. The Assistant Commissioners and the Tahsildars have to give prominence for conducting, the survey and Phodi work as expeditiously as possible. This document also clearly discloses that a direction was issued to the Tahsildars for the purpose of conducting the Land Survey and phodi work. Annexure-E at page 43 is another document relied upon, wherein the Secretary to the Government, Revenue Department, wrote a letter to the Deputy Commissioner, Bangalore Rural on 14.10.2011, wherein it is stated that a lady by name Smt. Anantha W/o. Dyavappa, gave an application on 14.10.2011 stating that though in the year 1977-78, land was granted to her, but Phodi work has not been done. Therefore, the Deputy Commissioner is directed to remind the work of the Tahsildar to see that the Phodi work is done as early as possible. Annexure-F at page No. 44 also a letter of the Deputy Commissioner, in pursuance of the letter of the Revenue, Secretary Noted above, to the Tahsildar dated 17.10.2011, wherein the Deputy Commissioner has directed the Tahsildar, Devanahalli to conduct the Phodi work and Land survey in order to avoid unnecessary complications. Annexure-G is the proceedings before the Deputy Commissioner in No. Ta ha Deva High Court 2011-12, where in the said proceedings, the Deputy Commissioner vide order dated 20.11.2010 passed an order relying upon the orders of the High Court in CCC No. 654/2010 directed the Tahsildar, Devanahalli to conduct enquiry with

regard to the lands granted to several persons as the High Court has cancelled the earlier Phodi work. Therefore, the Tahsildar has to make alternative arrangement to provide lands to the said persons who have lost their lands.

28. Apart from the above, the learned counsel also drawn my attention to the document R1 produced by the counsel who is appearing for Lokayukta Police, before this court along with their objections which is in No. Kum E 158 Bhu Da Aa 2014 dated 11.8.2014, wherein the Principal Secretary to Revenue Department wrote a letter to the Deputy Commissioner, Bangalore Rural District, Bangalore, wherein it has stated that-

"Revenue department has referred to some documents to the Tahsildar and also observed that there are some irregularities and illegalities with regard to the mutation entries and also Land survey etc. Therefore, the Commissioner for Land Records and Commissioner for Land survey Departments have recommended for taking appropriate disciplinary action against the concerned Officers. It is also stated in the said letter that according to the provisions under the Karnataka Land Revenue Act, 1964, action should be initiated u/s. 136(3) of the Karnataka Land Revenue Act, exercising suo-motu powers of revision with regard to the illegal phodi work and Land survey and submit the report to the Government."

29. By referring to the above said documents, the learned counsel submitted that the acts of the petitioners are in accordance with the directions of the Government and higher-ups. Therefore, it cannot be held that they have committed any offence under the Prevention of Corruption Act. But, on plain reading of the above said documents, it clearly discloses that on several documents, Government and the higher officials have also come to a conclusion that there was an illegality or irregularity in recording the mutations, conducting the Land survey and carrying the Phodi work in the Government lands which are granted to several persons. On some occasion, High Court has also quashed such proceedings. Therefore, who actually committed such illegality and who is responsible for all these things have to be ascertained either by the Government or by means of proper investigation. In fact, these documents also should be considered and looked into by the investigating agency to ascertain whether the petitioners have committed any illegality deliberately for the purpose of their wrongful gam or they are mere irregularities while following the directions of the Government. Therefore, at this stage, only relying upon these documents, which are not yet considered even by the investigating agency, this court cannot give any conclusive finding with regard to the misconduct or otherwise of the persons who are in the helm of affairs while conducting the Land survey and Phodi work. Therefore, on these documents, the court cannot quash the proceedings. It should be borne in mind that the documents relied upon by the petitioners should be of such a sterling quality, so that the Court can with all certainty draw an inference conclusively regarding the total innocence of the petitioners. Other wise those documents cannot be solely made basis for quashing of the proceedings. In my opinion these documents create doubt regarding the complicity of the petitioners but not conclusively establish their innocence.

Hence, this cannot be a ground to quash the proceedings.

30. Further added to that, the preliminary enquiry is contemplated only under certain circumstances by the investigating agency. When, the Police have to conduct preliminary enquiry is clearly enunciated in a decision between Lalita Kumari Vs. Govt. of U.P. and Others, wherein, the Hon''ble Supreme Court after considering the relevant provisions under several enactments including Cr.P.C. has laid down some conclusive directions at paragraph 111 specifically stating that under what circumstances, preliminary enquiry is contemplated. The sum and substance of the observations made in paragraph 111 of the decision cited supra reads as under:

"Conclusion/Directions:

111. In view of the aforesaid discussion, we hold:

(i) Registration of FIR is mandatory u/s. 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

(ii) If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

(iii) If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

(iv) The police Officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

(v) The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

(vi) As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

(a) Matrimonial disputes/family disputes

(b) Commercial offences

(c) Medical negligence cases

(d) Corruption cases.

(e) Cases where there is abnormal delay/laches in initiating criminal prosecution,

for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

(vii) While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case, it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

(viii) Since the General Diary/Station Diary/Daily Diary is the record of all information received in a Police Station, we direct that all information relating to cognizable offences, whether resting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above."

If the first information report itself is clear and unambiguous, which discloses commission of a cognizable offence, no preliminary enquiry is required. But when it is doubtful or the FIR does not disclose any cognizable offence, then only the discretion vests with the investigating officer to conduct preliminary enquiry in order to confirm whether any cognizable offence is committed and to ascertain whether any investigation into any cognizable offence is absolutely necessary. Merely because some preliminary enquiry is required, it does not mean to say that the Police Officer should not register a case, it is his bounden duty to register a case when there are certain materials available in the FIR if broadly accepted, discloses commission of any cognizable offence.

31. It is made it clear in the above said decision that it is not for the purpose of fortifying the veracity or otherwise of the information found in the FIR, the preliminary enquiry has to be conducted, but it is only with the sole intention to ascertain whether the FIR did or did not disclose any cognizable offence. The preliminary enquiry can be conducted to ascertain whether cognizable offence is committed or attempted to be committed or even planned to be committed, then such preliminary enquiry can also be considered as part and parcel of the FIR and then the Police can proceed with the investigation.

32. It is also clearly understood that in what type of matters, the preliminary enquiry has to be conducted, whether preliminary enquiry is absolutely necessary or not is purely the discretion of the investigating officer. Such a discretionary power, in my opinion, should not be unreasonably interfered by the courts while exercising power u/s. 482 of Cr.P.C. because varieties of men have got varieties of perceptions of law and facts. It all depends upon the intelligence, understanding capacity, experience of the investigating officer in taking such decision, in a given case, whether preliminary enquiry is required in such a case or not. Even admitting for a moment, that without a preliminary enquiry, a Criminal case is registered, wherein preliminary enquiry would have been done,

but that itself is not sufficient to quash the proceedings because the investigating officer while taking a decision to register a case, on going through the contents of the FIR must have exercised the discretion and found that the information is sufficient to attract a cognizable offence so that he can proceed with the investigation. Therefore, in my opinion, merely because preliminary enquiry has not been conducted, the criminal proceedings cannot be quashed.

33. Further, added to the above as I have already noted, that the documents which are produced before the court have to be considered by the investigating officer during the course of investigation to ascertain whether any offence being committed by the accused persons or not. Only after filing of the report to the court by the Police, the court would be in a position to find out whether there are sufficient material against the accused persons to hold that they have committed or involved in the commission of any offences. Therefore, this ground is not available for quashing of the proceedings at this threshold stage.

34. The learned counsel for the petitioners again very strenuously argued before this court that the Police have invoked the provisions of Section 192A and 192B of the Karnataka Land Revenue Act, and no criminal prosecution can be launched by Police without following the procedure as held by this Court between Smt. Lalitha Sastry Vs. State of Karnataka and Others, wherein this court has held that Section 192A stipulates the procedure under which a show cause notice is to be given calling upon those alleged government land encroachers to file their objections within 15 days, if no objections are received, authorities are called upon to visit the place, conduct the Mahazar in the presence of the villagers, obtain their signature and thereafter to initiate criminal proceedings, if they are satisfied that there is encroachment. In the event of alleged encroachers failed to produce any documents or the documents produced found to be fabricated then only a criminal proceedings can be initiated u/s. 192A of the Act.

35. On perusal of the above case, the Government officials have taken action u/s. 192A against the land grabbers or land encroachers much against to the Circular in RD 674 LPG 2008 dated 8.9.2008 wherein the concerned Government servants are mandatorily directed that, before initiating criminal proceedings against the private individual who have encroached the Government lands, they have to follow certain procedures, i.e., they have to issue notice enquire into the matter, look into the documents produced by them, inspect the spot and after being satisfied, then only they have to initiate criminal proceedings u/s. 192A of the said Act. Here, in this particular case, according to the learned senior counsel, no such procedure has been found. But it is very much char that Section 192A is invoked by the Police in the FIR only on facts that, the officers-(petitioners) themselves have mis-used their powers and made the parties to encroach into the land or illegally granting the lands for the purpose of their wrongful gain. Therefore, the said provision is not at all applicable to the officers, but it is only applicable to the persons who were alleged to be the encroachers of land and without following procedure, a criminal case cannot be foisted against

them. There is no complaint filed against any land encroachers as such, but it is filed only against the Officers. Even otherwise, merely because Section 192A is invoked on the basis of the allegations in the FIR ultimately, after the investigation, if the investigating agency finds that there is no violation of the Government circular, or the violation of Section 192A of the Karnataka Land Revenue Act, an appropriate action can be taken by the investigating officer by submitting proper and truthful report to the court by deleting the said provision if necessary. Therefore, merely because some irregularity is there in registering the case, it cannot be said that it is an illegality and therefore, that can be a ground to quash the entire proceedings. Therefore the ruling cited above is not applicable to the facts and circumstances of the present case.

36. Another ground raised before this court is that all the alleged acts of the petitioners are virtually done while discharging their duties as quasi judicial officers by exercising quasi judicial functions Under the Karnataka Land Revenue Act and Rules, All the acts are virtually amenable to appeals and revisions. Therefore their acts are protected under section 196 of the Karnataka Land Revenue Act. Of course, u/s. 127 to 129 of the Karnataka Land Revenue Act, the Tahsildars are empowered to make the entries in the revenue records, and also by virtue of the notification noted above, the Tahsildars are also delegated with the powers of conducting the Land survey and also phodi work. It is also an undisputed fact that u/s. 24 of the Karnataka Land Revenue Act, the Revenue proceedings done by the Revenue Officers is that of a Revenue court. Land grant and procedure for phodi work have to be followed by them while doing Land survey and also the phodi work. Whatever the act done by them u/s. 124, 127 and 129 and other provisions of the Karnataka Land Revenue Act are amenable to Appeal before the Assist Commissioner u/s. 49 of the Karnataka Land Revenue Act and amenable to Revision u/s. 136(3) of Karnataka Land Revenue Act before the Deputy Commissioner. Section 136(3) of KLR Act also empowers the Deputy Commissioner to exercise suo-motu action and set aside the illegality or irregularity committed by the Revenue officials. Therefore, when it is amenable to Appeals and Revisions, whether any criminal proceedings can be initiated against them. Section 196 of the Karnataka Land Revenue Act is a protection arm to the said persons if anything done in good faith or intended to be done under the Karnataka Land Revenue Act or Rules, in good faith.

37. On plain reading of the above said provisions of the Karnataka Land Revenue Act, particularly Section 24, 127, 128, 129 and 136 of the Karnataka Land Revenue Act, they all say what is the procedure to be followed for the purpose of Appeal, Revision and for effecting the entries in the Revenue records etc., but these provisions will not provide any punishment or penal provisions to punish or to take action against the persons who have committed any offence while discharging their duties as public servants. The FIR though it is a very important and in a very short form, but it is specifically alleged that while doing the Land survey, Phodi work, the allotments have been made illegally in order to have wrongful gain by the Officers. If the word wrongful gain is proved to the

satisfaction, then it not only attract the correction of the illegalities or set right the illegalities committed by the Officers, but also it will lead to taking appropriate criminal action against the officers and that also has to be thrashed out during the course of investigation. At the cost of repetition, I may say, the investigating agency has to ascertain whether the act committed by the Officers is only an irregularity or illegality which can only be corrected by way of appeal or by way of revision or whether it is something more than that where apart from committing illegality, irregularity they have also committed an offence indulging themselves in grabbing the Government land for their wrongful gain. Therefore, whether Section 196 is attracted or not, whether the petitioners are entitled for the benefit under the said provisions can only be ascertained after the full fledged investigation by the Police. If the investigating officer comes to the conclusion, that the act of the Officers are not only irregular or illegal but done in good faith, then the Police Officer would file appropriate report to the court in this regard. Therefore, at this stage, this ground, in my opinion, is also not sufficient to quash the entire proceedings.

38. It is contended by citing several rulings, stating that Lokayuktha Police have no jurisdiction under the Karnataka Lokayuktha Act or under the Prevention of Corruption to register any case as per Section 7, 8 and 9 of the Karnataka Land Revenue Act.

39. The learned counsels have relied upon the rulings reported in--

(1) Sri M.A. Parthasarathy Vs. The Spl. Deputy Commissioner, The State of Karnataka and The Commissioner, Survey, Settlement of Land Records, ;

(2) State of Karnataka and Others Vs. Kempaiah, ; and

(3) The Tahasildar and Another Vs. Sunayana Sayonara and Another reported in AIR 2012 (NOC) 332 (KERALA).

The sum and substance of the principles laid down in all the above said cases irrespective of the factual aspects involved are:

(a) Under the scheme of the Lokayukta Act, the Lokayukta and Upalokayukta are concerned, power to investigate in to a complaint involving a grievance or allegations against a public servant. Section 7 deals with the power and the subject matter of investigation by them. The grievance or the allegations should be in respect of an action as defined under me Lokayukta Act. The jurisdiction does not extend beyond what is specifically contained in section 7 of the Act. Section 8 expressly set out what are the matters over which the Lokayukta and Upa-Lokayukta has no power to conduct investigation under Act involving grievance made after the expiry of a period of six months from the date on which the action complained against becomes known to the complainant. And they shall not investigate any complaint involving allegations after the expiry of five years.

(b) Lokayukta or Upa-Lokayukta cannot investigate a complaint that a public servant amassed wealth etc.

40. With great respect to the submissions of the learned Senior counsels, I differ from their views, as it appears there is some mis-conception of law and fact involved in these cases, for the simple reason that Section 7 to 12 of Karnataka Lokayukta Act envisages What are the powers of Karnataka Lokayukta and Upa Lokayukta in investigating the matters and submitting their reports to the Government.

41. On perusal of the provisions of Sections 7 to 12 of the Karnataka Lokayukta Act, it is clear that the said provisions empower the Lokayukta or Upalokayukta to investigate the matter and the matters subject to investigation are also stated in Section 8 of the Karnataka Lokayukta Act. Section 9 to 11 and rules 2 and 4 of the Karnataka Lokayukta rules prescribe procedure relating to complaints and investigation by the Lokayukta or Upa-Lokayukta Section 12 requires that report of investigation to be submitted to the competent authority who is enjoined to take action thereon, and section 14 contemplates initiation of prosecution by the Lokayukta or Upa-Lokayukta where he is satisfied that the public servant has committed any criminal offence and should be prosecuted. In order to investigate a case there should be a complaint under section 9 of the Act. But here, there is no such complaint u/s. 9 of the Act filed by any person before Lokayuktha or Upa-Lokayuktha and no action has been taken by Upa-Lokayuktha or Lokayuktha to investigate the matter on the basis of which any FIR is registered by the Lokayukta Police. The Lokayuktha Police are distinct and separate from Lokayuktha or Upa-Lokayuktha. The Lokayuktha Police have got dual jurisdiction. The Lokayuktha Police can investigate the matter, if it is sought to be investigated by Lokayuktha or Upa-Lokayuktha. Lokayukta Police can also investigate the matters independently whenever any private person files an FIR u/s. 154 of Cr.P.C., where any cognizable offence is made out in the said report. Though they are called as Lokayuktha Police, but they are as good as an independent Police having independent powers and jurisdiction under Criminal procedure Code for investigation. The only restriction is that they cannot investigate the cases under the I.P.C. Provisions exclusively without there being any provisions being invoked under the Prevention of Corruption Act. The Lokayuktha Police are empowered to investigate and file the appropriate report to the court under the Prevention of Corruption Act, if any offence also incidentally committed under the IPC along with the provisions of the Prevention of Corruption Act, then also the Lokayuktha Police can investigate and submit the report. However, if there is no provision is attracted under the Prevention of Corruption, but only the provisions under the IPC is attracted, then, the Lokayuktha Police have no exclusive jurisdiction to investigate provisions only under I.P.C. Therefore, the above said rulings and provisions u/s. 7, 8 and 9 of the Act are not at all applicable to the present scenario.

42. In this regard, the learned counsel for the petitioners cited a ruling (Vishwanath and another Vs. State of Karnataka) reported in 2011 (6) KLJ 632 where the proceedings were quashed by the court.

43. On careful perusal of the above said decision, the court has held that the Police Inspector of Lokayuktha registered a case exclusively in Crime No. 6/1995 under the provisions of Sections 465, 468, 471 and 420 read with Section 511 of IPC and not under any of the provisions under the Prevention of Corruption Act. On analyzing the notification of the Government, Home Secretary, notification in No. HD 244 PEG 92 Bangalore, dated 22.12.1992, the court has observed that the functions and duties assigned to each of the Lokayuktha Police Officers and also analyzing the duties of Police Inspector attached to the Lokayuktha Office. It is observed that Lokayukta police is empowered to register and investigate cases under the Prevention of Corruption Act and secondly they are also empowered to assist the Lokayuktha and Upa-Lokayuktha in the cases registered under the Karnataka Lokayukta Act. In other words, except in respect of Prevention of Corruption Act, 1988 and Karnataka Lokayukta Act, with regard to other acts are concerned, the Police Inspector by virtue of the notification is not empowered to register or investigate cases falling under other acts and consequently he is also not empowered to register cases which falls exclusively under the purview of the IPC. In the said decision itself it is clearly stated that the Lokayukta police have dual power that is to say they have independent power to register any case under the Prevention of corruption Act 1988, and they have to assist the Lokayukta and Upa-Lokayukta under the Provisions of Lokayukta Act.

44. Therefore, even adopting the above observation in the above case to the case on hand, it is crystal clear in this particular case, the case is registered under the Prevention of Corruption Act coupled with other consequential offence under other Acts, therefore, it can definitely be investigated by the Lokayuktha Police. Hence, the above said rulings are not applicable to the facts and circumstances of this case.

45. The learned senior counsels have strenuously argued that even if the FIR is read in its proper perspective, it does not disclose any cognizable offence. Therefore, no investigation can be adverted to by the Lokayuktha Police. In this regard, the learned counsels have cited innumerable rulings. Amongst them, two of which are reported in--

(1) Secretary, Minor Irrigation and Rural Engineering Services, U.P. and Others Vs. Sahngoo Ram Arya and Another, ; and

(2) Common Cause, A Registered Society Vs. Union of India and Others, .

The sum and substance of the observations made by the Hon"ble Apex Court in the above said cases are that:

"Right to life under Article 21 of the Constitution of India includes the right of a person to live without being hounded by the Police or CBI to find out whether he has committed any offence or he is living as a law abiding citizen and inter alia it is also observed that only if an offence is prima facie found to have been committed or involvement is prima facie established, the investigation has to be adverted to, otherwise it would be contrary to the definition, concept and

philosophy of life as guaranteed under the Constitution of India." 46. Bearing in mind the above said principles, in my opinion, the legal position is settled more than once by the Hon"ble Apex Court as I have already referred to the Bajanlal's case. It is now settled principle that the court will not normally interfere with an investigation into the case but normally permits the investigation to be completed if the allegations are sufficient to constitute a cognizable offence. The learned counsels have also cited innumerable decisions to enunciate the principle that, if the materials do not disclose any cognizable offence or complaint is vexatious, and to wreck private vengeance, then such investigation should not be allowed to be permitted. There is no need for me to over burden this judgment by citing those decisions. It is ultimately, the petitioners particularly at the preliminary stages have to show to the court that the continuation of the prosecution amounts to abuse of process of law. At this stage, there are no allegations made against any of the Police Officers who have registered the case and initiated the investigation, what personal grievance they have against the petitioners is also not stated before the court. Therefore, depending upon the facts and circumstances of each case the court has to ascertain whether there are any such circumstances which are sufficient to proceed with the case by way of investigation. There is no strait jacket formula as such available to apply, and there cannot be any binding precedent on facts, it is the perseverance and perception of the court on the basis of facts and circumstances of each case.

47. It is worth to note here a decision of the Apex court for further guidance in the case of Amit Kapoor Vs. Ramesh Chander and Another, , in the following manner.

"Quashing of charge is an exception to the rule of continuous prosecution where the offence is even broadly satisfied the Court should be more inclined to permit continuation of the prosecution rather than its quashing at the initial stage. The Court is not expected to marshal the record with a view to decide the admissibility of the documents or records but is an opinion formed prima facie.

48. Therefore, it is clear from the facts and circumstances of the case and judicial pronouncements, the High Court being the Highest Court of the State normally should not give prima facie decision in a case where the entire facts are incomplete, hazy, when the evidence has not been collected and produced before the court and the issues involved whether factual or legal or of larger magnitude and cannot be seen in their true perspective with sufficient material. Of course, there is no hard and fast rule can be laid down with regard to a particular case in which, High Court can exercise its extraordinary jurisdiction for quashing the proceedings at any stage. Court must be very careful to see that its decision in exercise of its power is based on sound principles. It would not be proper for the High Court to analyze the case in the light of the probabilities in order to determine whether the case end in charge sheet or the Police may file B-report etc. When the first information is lodged at the Police Station and a case is registered, then the mala fide's of the complainant would be of secondary importance. It is the material collected during the investigation and the individual

evidence led in court which can only decide the fate of the petitioners. The allegations if any of mala fide's against the complainant or the investigating agency is of no consequence at the initial stages and cannot itself be a foundation for quashing of the proceedings. Therefore in my opinion, the above said grounds are not available at this stage for quashing of the proceedings.

49. Of course, the learned counsels are right in arguing that if no cognizable offence is made out in the FIR or even if they are vague and they are only on the basis of a private vengeance, if the case is registered, then also Court can quash the proceedings.

50. As I have already narrated, it is clear from the allegations in the FIR that, a Police Officer lodged an FIR before the Superintendent of Police, Lokayukta and in turn, it was directed to another Police Officer to register a case and investigate the matter. The contents show that though the complainant has received the information from the news Paper publication, but it is categorically alleged that, not only irregularities, illegalities committed by the petitioners, but it is specifically alleged that unlawfully, the Government properties were parted with for their wrongful gain by the petitioners and such important allegations have to be investigated by the Police, when it is specifically alleged that by mis-using their office, while discharging their duties as public servants, they have wrongfully parted with the Government properties for their personal wrongful gain, it definitely attract the provision of Section 13(1) of Prevention of Corruption Act, and that should be investigated by the Police. Even broadly accepting some cognizable offence is made out and once the criminal law has been set into motion that should reach its logical end, through investigation and submission of appropriate report by the Police to the Court. Therefore at this stage, in my opinion, it cannot be said that the contents of the complaint does not disclose any cognizable offence at all and they are so vague and they cannot be accepted. Therefore, in my opinion, this ground is also not available to the petitioners.

51. Another important aspect raised before this court is that so far as the petitioner in Crl. Petition No. 4848/2014 filed by Sri D.C. Mariyapa and Crl. P. No. 5143/2014 filed by Sri P. Sampathkumar, claim that they were retired from the service long back and therefore, no action can be initiated against them as there is a specific bar under the Karnataka Civil Services Rules. I have carefully perused the rules, particularly Rule 214 of the said Rules which is relevant, reads as follows.

"(2) (a) The departmental proceedings referred to in sub-rule (1), if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service.

(b) The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his reemployment--

(i) Shall not be instituted save with the sanction of the Government;

(ii) Shall not be instituted in respect of any event which took place more than four years before such institution; and

(iii) Shall be conducted by such authority and in such place as the Government may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation an order of dismissal from service could be made in relation to the Government servant during his service.

(3) No judicial proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment, shall be instituted in respect of a cause of action when arose or in respect of an event which took place, more than four years before such institution.

(4) In the case of a Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2), a provisional pension as provided in Rule 214A shall be sanctioned.

(5) Where the Government decided not to withhold or withdraw pension but orders recovery of pecuniary loss from pension, the recovery shall not ordinarily be made at a rate exceeding one third of the pension admissible on the date of retirement of a Government servant.

(6) For the purpose of this rule-

(a) Departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner, or if the Government servant has been placed under suspension from an earlier date, on such date; and

(b) Judicial proceedings shall be deemed to be instituted-

(i) In the case of criminal proceedings, on the date on which the complaint or report of a Police officer, of which the Magistrate takes cognizance is made; and

(ii) In the case of civil proceedings, on the date the plaint is presented in the Court."

52. On plain reading of the above said provisions, it is only applicable for the purpose of recovery of pecuniary loss from the pension, of course the judicial proceedings mentioned in the above said provision is applicable to both criminal and civil proceedings. Section (6) makes it abundantly clear as to when the departmental proceedings shall be deemed to have been instituted, so far as criminal cases are concerned, it is deemed to have been initiated on the date of

which the complaint or report of the Police Officer on which the Magistrate takes cognizance and in the civil cases on the date of plaint being presented before the court. Therefore, in this particular case, no judicial proceedings deemed to have been initiated so far as these two petitioners are concerned, because, it arises only after the Police submit a charge sheet before the court for the purpose of taking cognizance. In this particular case, admittedly, it is still in the stage of FIR and at no stretch of imagination, it can be said that the judicial proceedings are initiated against them and started against them. Therefore, the said ground urged before this court is not tenable and on this ground also, the proceedings cannot be quashed.

53. Last, but not least, the learned counsel strenuously contended that on the basis of the news report, the Police have initiated criminal proceedings against the petitioners. If such an authority is given to the Police, to suo-motu register cases on the basis of the news report, a will open up Pandora box, so that the Police can register a case on each and every news item. But, in my opinion, such an argument cannot be accepted at this stage because if a false case is registered on the basis of the news report without any basis, the investigating officer will be held responsible to answer the illegality, irregularity in the investigation, if not, is liable for malicious prosecution and for damages to the persons aggrieved. Therefore, not only on the basis of the news report, it should be based on some other sufficient knowledge about the commission of the offence as I have narrated that the documents produced before this court produced by the Lokayuktha counsel which is also relied upon by the petitioners counsel, at R1, (already discussed supra) the said document clearly discloses that the Government has also taken action directing the Deputy Commissioner concerned to take action u/s. 136(3) of Karnataka Land Revenue Act and submit a report to the Government to ascertain the illegalities, irregularities and the misconduct committed by the Tahsildars, Devanahalli in order to take appropriate action against them. That also in fact in addition to the news report alleged in the FIR supports the case of the investigating agency. Apart from the above, Sections 152, 154 and 157 of Cr.P.C. if we read them harmoniously, they provide a suo-motu power to the Police to protect the property of the Government, which reads thus-

"152. Prevention of injury to public property - A Police Officer may of his own authority interpose to prevent any injury attempted to be committed in his view to any public property, movable or immovable, or the removal or injury of any public landmark or buoy or other mark used for navigation.

154. Information in cognizable cases - (1). Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a Police Station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in

such form as the State Government may prescribe in this behalf;

157. Procedure for investigation - (1) If, from information received or otherwise, an officer in charge of a Police Station has reason to suspect the commission of an offence which he is empowered u/s. 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report and shall proceed in person, or shall depute one of his subordinate officers not being below such rank as the State Government may, by general or special order, prescribe in this behalf, to proceed, to the spot, to investigate the facts and circumstances of the case, and, if necessary, to take measures for the discovery and arrest of the offender;

(2) xxx"

54. On meaningful reading of the above said provisions, to my perception, it gives full power to the Police Officer, that on his own authority interpose to prevent any injury attempted to be committed to any public property moveable or immoveable or the removal or injury of any public landmark or other mark used for navigation etc. It goes without saying that the Government property, landed properties which are meant for public distribution can be considered as a public property. If there is any harm or any injury attempted to be committed to that property, the Police Officers can definitely even suo-motu take appropriate action by registering a case. Section 154 deals with information relating to commission of a cognizable offence that should be in writing or orally to in charge of the Police Station, if it is given orally, that should be reduced into writing and signed and it should disclose any cognizable offence. Here, in this case, the FIR is in writing to the Superintendent of Police disclosing the cognizable offences suspected to have been committed by the petitioners on the basis of the news report read by him and that was submitted to the Superintendent of Police, Lokayuktha and in-turn, he referred the same to another Police Inspector, Lokayukta police for registration and investigation. Therefore, it complies with the provisions of Sections 152 to 154 of Cr.P.C. Even Section 157 of Cr.P.C. says that if from the information received or otherwise, an officer in charge of the Police Station has reason or suspect the commission of offence which he is empowered u/s. 156 of Cr.P.C. to investigate, then, he shall forthwith send a report of the same to the Magistrate and depute one of his subordinate to start investigation. This also clearly goes go show even on the basis of the information received by him, even if he has got reasonable grounds to suspect the commission of offence, then also he can start the investigation. Therefore by reading the above said provisions, it is clear that the Police Officer can investigate the cognizable offence on receiving the information, the source of information whether it is credible information or not is not at all spoken to in the above said two provisions, therefore, plainly if it is said that if any information received by the Police Officer, who is empowered to investigate such an offence, if he has reason to suspect even the commission of an offence that would suffice the registration of the case and investigate the matter.

55. Looking from the above said circumstances and looking from any angle, at this stage, in my opinion, the petitioners have not made any grounds to quash the criminal proceedings. At this stage, one cannot expect or imagine what report the Police may submit to the court, ultimately after the thorough investigation, the Police may come to a conclusion that no case is made out against the petitioners in order to submit any charge sheet, then they have to submit B-Summary report to the court. If on the basis of the materials on record, if they can file the charge sheet against the petitioners, then also so far as the offences under the Prevention of Corruption Act, the persons who are in service, to prosecute them, a sanction order has to be obtained by the competent authority, then also, the petitioner will get an opportunity, that the competent authority will look into the contents of the charge sheet papers and only if necessary, accord sanction to prosecute them. Even merely the charge sheet is filed, it is not the end of the case, the court also applies its judicious mind thoroughly to the contents of the charge sheet and find out whether, it is fit case to take cognizance or not.

56. When these are all the checks and bounds by means of legislative enactments which can protect the interest of the petitioners, in my opinion, this is too premature stage to quash the proceedings. Therefore, I am of the considered view that the petitions are liable to be dismissed.

Accordingly, all the petitions being devoid of merits are dismissed.

In view of the dismissal of the main petitions, the pending consideration of I.As. does not survive for consideration and accordingly, they are dismissed.