(2014) 11 KAR CK 0247

In the Karnataka High Court

Case No : Criminal Revision Petition No. 834 of 2014

B.R. Lingaraju APPELLANT

Vs

The State of Karnataka RESPONDENT

Date of Decision : 06-11-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 227, 239, 305
Penal Code, 1860 (IPC) — Section 120B, 420
Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2)

Citation : (2014) 11 KAR CK 0247

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : Subramanya Jois, Senior Advocate for K.C. Shanthakumar, Advocate for the Appellant; K.R. Keshavamurthy, State Public Prosecutor -1, Advocate for the Respondent

Judgement

Anand Byrareddy, J.—Heard the learned Senior Advocate Shri Subramanya Jois, appearing for the Counsel for the petitioner. The learned State Public Prosecutor is directed to take notice for the respondent.

2. The petition is considered and disposed of at the initial stage, having regard to the facts and circumstances.

3. The petitioner is an officer belonging to Group-A Cadre of the services of the State and he has been deputed to Bangalore Rural and Ramanagara District Co-operative Central Bank Limited, Chamarajapet, by an order dated 31.7.2013. He was holding other positions in the cadre prior to the same.

The grievance of the petitioner is that the Central Bureau of Investigation (CBI) had initiated proceedings in Crime No. RC 01 (E)/2003, later registered as Spl. CC 111/2011. One M. Umesh Bovi was shown as accused No. 3 in the proceedings and he was said to be a deputationist to the aforementioned bank and was then the Managing Director of the said bank at the relevant point of time. It is alleged that he had committed offences punishable under Sections

13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 (Hereinafter referred to as the ''PC Act'', for brevity) and 120-B and 420 of the Indian Penal Code, 1860 (Hereinafter referred to as the ''IPC, for brevity) and apart from the petitioner, there were several others, who were named as the accused and they were all office-bearers of the bank.

M/s. Vyalikaval House Building Co-operative Society, which is shown as accused No. 10 in the proceedings, was the borrower of loans from the bank, of which the petitioner is the Managing Director. A First Information Report was filed in the year 2003 and the criminal case was registered as aforesaid in the year 2011. Shri Umesh Bhovi, who was then the Managing Director at the relevant point of time, had been removed from services and the proceedings having gone on, the present petitioner, who is now the Managing Director of accused No. 9 is arraigned as accused representing accused No. 9. It is a piquant situation since accused No. 9 is an incorporeal body and requires to be represented by a person and the petitioner, who is the Managing Director by virtue of office, is required to appear as the accused.

It is in this background that he had filed an application seeking discharge under Section 227 and 239 of the Code of Criminal Procedure, 1973. The said application was considered along with other applications filed by many other accused. The reasoning of the court below in refusing the application seeking discharge is on the ground that the bye-laws of the bank would indicate that the Managing Director is competent to sue and be sued on behalf of the bank. Therefore, notwithstanding that the present petitioner has assumed office as a Managing Director of accused No. 9 - bank, at a point of time when he had nothing to do with the incident, which is the subject matter of the criminal case, the fact remains that the bank, which is an incorporeal body, requires to be represented by a person and according to the bye laws, it is the Managing Director and therefore, the petitioner being shown as representing accused No. 9 is in accordance with law and has therefore rejected the application.

4. There cannot be any fault found with the reasoning of the court below. However, the grievance of the petitioner is also understandable, in that, the petitioner would want to avoid the ignominy of appearing before a criminal court on each date of hearing and obviously seeks the relief of enabling the accused No. 9 to be represented by such other authorised person, which is also permissible in law.

Therefore, from a reading of Section 305 of the Cr.P.C., it is a general provision as to inquiries and trials and contemplates a position when a corporation or a registered society is the accused. Sub-section (2) expressly provides that when a Corporation is the accused person or one of the accused persons in an inquiry or trial, that it may appoint a representative for the purpose of such inquiry or trial. It would hence be possible for the petitioner also to avail of such a remedy in the society acting through its managing body, resolving to appoint a person as representing the society or the bank, as the case may be, in the criminal case, in accordance with law and that should meet the requirement of accused No. 9 being adequately represented, though not necessarily through its Managing Director, who may be the present incumbent.

The petitioner, merely by virtue of being the Managing Director, being called upon to be present at every date of hearing, may indeed result in the functioning of the bank being disrupted and it would certainly affect its day-to-day functioning. Therefore, when the law itself contemplates that a Corporation or a Society can be represented before a criminal court in an inquiry or trial by such an authorised person, it is open for the petitioner to take such a measure through the bank to have a person duly authorised to represent accused No. 9 before the court, to which the court below could have no reservation, if the same is done in accordance with law.

Consequently, the petition is disposed of leaving open the remedy available to the petitioner, which he may avail of before the court below in the manner known to law.