

(2015) 05 KAR CK 0022

In the Karnataka High Court

Case No : Writ Petition No. 40304 of 2014 (GM-RES)

G. Gayithri

APPELLANT

Vs

Government of Karnataka and Others

RESPONDENT

Date of Decision : 19-05-2015

Acts Referred:

Prevention of Corruption Act, 1988 — Section 19, 7

Citation : (2015) 3 AKR 401 : (2015) 4 Crimes 165 : (2015) 4 KarLJ 469 :
(2015) 4 KCCR 3493

Hon'ble Judges : A.N. Venugopal Gowda, J

Bench : Single Bench

Advocate : C.R. Gopalaswamy, for the Appellant; Anitha R., High Court
Government Pleader and Bahubali A. Danawade, Advocates for the Respondent

Final Decision : Allowed

Judgement

A.N. Venugopal Gowda, J—The 5th respondent having lodged a complaint dated 28-3-2011 vide Annexure-B, the 3rd respondent registered a case in Crime No. 2 of 2011 against the petitioner for an offence punishable under Section 7 of the Prevention of Corruption Act, 1988 (for short, "the Act"), vide Annexure-A and submitted FIR to the Principal District and Sessions Judge and Special Judge, Kodagu-Madikeri. The 3rd respondent having drawn an entrustment mahazar vide Annexure-C and having conducted search and seizure on 18-4-2011, drew up a mahazar vide Annexure-D. The voice recording mahazar vide Annexure-E was also drawn on 8-6-2012 by the respondent-Police. The 3rd respondent submitted a requisition on 15-9-2012 to the 2nd respondent to accord sanction for prosecution of the petitioner and the request was rejected on 5-1-2013 vide Annexure-F. A requisition having been submitted on 14-3-2013, the 2nd respondent again refused to grant sanction on 26-4-2013 vide Annexure-G. Thereafter, another requisition having been submitted, the 2nd respondent has accorded sanction on 21-7-2014 vide Annexure-H. The 3rd respondent having requested the 2nd respondent, on 4-8-2014, to rectify the mistake committed in

the sanction order dated 21-7-2014, as at Annexure-H, and the 2nd respondent having passed an order of sanction in respect of the offence punishable under Section 7 of the Act, an order dated 14-8-2014 as at Annexure-J was issued. Assailing the registration of crime in FIR No. 2 of 2011, dated 28-3-2013 and the sanction orders dated 21-7-2014 and 14-8-2014 vide Annexures-H and J, this writ petition was filed. Sri C.R. Gopalaswamy, learned Advocate, contended that the orders vide Annexures-F and G having been passed after careful consideration of the materials on record, the 2nd respondent is precluded from passing a fresh order on the same material. He submitted that the sanction accorded on 21-7-2014 vide Annexure-H and the rectification order issued on 14-8-2014 vide Annexure-J being illegal are liable to be quashed. Reliance was placed on the order dated 7-4-2015 passed in Criminal Petition No. 7386 of 2014.

2. Smt. Anitha R., learned High Court Government Pleader, appearing for respondents 1 and 2 and Sri Bahubali A. Danawade, learned Advocate appearing for respondents 3 and 4, on the other hand submitted that on careful examination of the final report of the Investigation Officer and keeping in view the ratio of decisions in Mubarakali Vs. The State, AIR 1958 MP 157 : (1958) CriLJ 764 : (1958) 3 MPLJ 166 ; Damodar Krishna Kamli Vs. State, AIR 1955 Bom 61 : (1954) 56 BOMLR 1021 : (1955) CriLJ 181 ; D.V. Narasimham Vs. State, AIR 1969 AP 271 : (1969) CriLJ 1016 , the order dated 21-7-2014 was passed. Smt. Anitha, submitted that by considering the request dated 4-8-2014, to rectify the bona fide mistake which had crept in the order as at Annexure-H, the 2nd respondent passed the order dated 14-8-2014 vide Annexure-J. She submitted that in view of the dismissal of W.P. No. 38512 of 2014, on 26-8-2014 and also the record of the case, the petition is liable to be dismissed.

3. Considered the rival contentions and perused the record, including the file of respondent 2, leading to the decisions taken, resulting in issuance of orders vide Annexures-F, G, H and J.

4. There being no dispute with regard to the rejection of the request made by the 3rd respondent, by the 2nd respondent, as per orders dated 5-1-2013 and 26-4-2013 vide Annexures-F and G, the sole question which arises for consideration is with regard to the power vested in the sanctioning authority in reviewing the order refusing to accord sanction for prosecution of the petitioner, in terms of Section 19 of the Act.

5. In the case of Sri L. Megha Naik v. State of Karnataka and Others (Criminal Petition No. 7386 of 2014, decided on 7-4-2015), it was held, that sanction to prosecute a public servant, on review, could be granted only when fresh materials have been collected by the Investigating Agency, subsequent to the earlier order i.e., reconsideration could be done by the sanctioning authority, in the light of the fresh material.

6. In the instant case, the learned Advocates appearing for the respondents did not contend that any fresh material was collected by the Investigating Agency

and was placed before the Sanctioning Authority for reconsideration and/or for review of the earlier orders, refusing grant of sanction vide Annexures-F and G. A request having again been made on 24-6-2014 and the file having been put to the 2nd respondent, despite the Joint Director having pointed out that permission for conducting Department enquiry being granted, sanction for prosecution can be refused; the 2nd respondent without any consideration of the record has passed an order, which reads as follows:

"Permission is given for prosecution. Sd/- 11-7-2014".

7. It is clear from the perusal of the file, that the 2nd respondent on the same material has changed his opinion and granted sanction vide Annexure-H, which was rectified vide Annexure-J. There is total non-application of mind and arbitrariness on the part of the 2nd respondent. The impugned orders are contrary to the proposition of law laid down by the Apex Court in the case of *State of Himachal Pradesh Vs. Nishant Sareen*, AIR 2011 SC 404 : (2011) 1 Crimes 47 : (2011) 1 JCC 36 : (2011) 1 RCR(Criminal) 193 : (2011) AIRSCW 3699 : (2010) 8 Supreme 496 . The order passed in the case of *L. Megha Naik*, squarely applies to the instant case.

8. The orders as at Annexures-F and G having not been assailed by respondents 3 and 4, the power of sanctioning authority being not of continuing character, i.e., in the absence of any other fresh material, could not have been exercised and the orders passed vide Annexures-H and J, being wholly arbitrary and illegal are unsustainable. W.P. No. 38512 of 2014 was filed to quash the order dated 21-7-2014, as at Annexure-H. The said petition was dismissed as having become infructuous in view of the memo filed and sanction order issued on 14-8-2014 vide Annexure-J i.e., subsequent to the filing of the said writ petition. Since the said writ petition was not decided on merit and was disposed of on a memo filed stating that it has become infructuous and also in view of the rectification of sanction order, issued on 14-8-2014, which has been assailed in this writ petition, the principle of *res judicata* is not attracted.

In the result, petition is allowed and the order as at Annexure-H, rectified vide Annexure-J, passed by the 2nd respondent, on 21-7-2014 and 14-8-2014 respectively, is quashed.

No costs.