

(2014) 09 KAR CK 0212

In the Karnataka High Court

Case No : Criminal Petition No. 7497 of 2012 C/w. Criminal Petition No. 1053 of 2013

G.D. Jayarama

APPELLANT

Vs

The State by Bangalore Metropolitan Task Force Police Station

RESPONDENT

Date of Decision : 12-09-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 155
Penal Code, 1860 (IPC) — Section 109, 214, 217

Citation : (2014) 09 KAR CK 0212

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

Bench : Single Bench

Advocate : D. Pavanesh and M.S. Bhagwat, Advocate for the Appellant; B. Visweswaraiah, HCGP, Advocate for the Respondent

Final Decision : Allowed

Judgement

K.N. Phaneendra, J.—These two petitions respectively filed seeking quashing of the First Information Report in Crime No. 162/2012 and Crime No. 20/2013 registered by Bangalore Metropolitan Task Force Police wherein BMTF has sought permission of the learned Magistrate to investigate the matter for the offence punishable u/s 217 of IPC so far it relates to Crime No. 162/2012 and under Sections 217, 214, 109 of IPC and Section 321(d) of the K.M.C. Act, so far as it relates to Crime No. 20/2013.

2. The brief factual matrix in Crime No. 162/2012 is as under:

On 17.04.2012 a person by name Abdul, Editor and Publisher of Night Star, No. 1, B.D.G. Lane, Ranasingh Pet, Bangalore, has lodged a complaint alleging that the owner of site No. 3/1, Bilikeri Mandi, B.B.M.P. Ward No. 139, has constructing a building in utter disregard to the approved plans, rules and regulations of B.B.M.P., therefore action has to be taken against the concerned. On receipt of the said complaint, the Bangalore Metropolitan Task Force Police (for short "B.M.T.F.") inspected the spot and found irregularities and violations in

construction of the said building. The petitioners being the Assistant Executive Engineer and Assistant Engineer working in B.B.M.P., under whose jurisdiction the said construction work and violations being taken place, they were issued with the notice by the B.M.T.F., and the B.M.T.F., also registered a case u/s 217 of IPC, after the reports submitted by the petitioners herein stating that they have taken appropriate action in accordance with law, issued notice to the owner, and awaiting the Commissioner to pass appropriate orders for further action. At this stage, the B.B.M.P., has also requested the jurisdictional Magistrate to permit the B.M.T.F., to investigate the matter as the offence u/s 217 of IPC is a non cognizable offence.

3. So far it relates to Crime No. 20/2013 is concerned, brief factual matrix is that M/s. Malleswaram Residency Association, No. 22/2, 10th Cross, West Park Road, Malleswaram, Bangalore, filed a complaint before the B.M.T.F., stating that in Ward No. 45, Malleswaram 15th Cross, Margosa Road, III Main, the owner of site No. 47, has in utter violation of the rules and regulations and approved, plan without leaving the proper setback and etc., constructing a building in the said site. On receiving the said complaint, the B.M.T.F., has issued notice to the petitioners, who are the Assistant Executive Engineer and Assistant Engineer, within whose jurisdiction the said building being constructed by the owner in utter violation of the rules and regulations. In this case also, a notice had been issued to the petitioners and they have replied in the same manner as stated above in the earlier case. In spite of that, the B.M.T.F., has registered a case against the petitioners in CrI. P. No. 1053/2013 for the offences noted above and started the investigation. At this juncture, the petitioners have approached this Court for quashing of the entire proceedings.

4. Learned counsel for the petitioners drawn my attention that under similar set of facts and circumstances of the case, this Court has in detail dealt with the powers and jurisdiction of B.M.T.F., and also whether the B.M.T.F., can take action against the officers of the B.B.M.P., in such a manner and quashed similar types of cases against the B.M.T.F. He has produced the Judgment before this Court, which is passed by this Court on 10.10.2013 in CrI. P. No. 5340/2012 connected with other criminal petitions.

5. There is no necessity for this Court to in detail deal with the said Judgment, it would suffice what was the points for consideration raised in the said case and what was the answer given by this Court, whether those points and answers are sufficient to dispose of the cases on hand. In the said case at Paragraph 8 at Page 168, this Court has formulated three important points for consideration, which read as under: (out of points 1 and 2 are only relevant)

1. Whether BMTF police had jurisdiction to register the cases and to investigate the matter against the official/officers of BBMP in relation to unauthorized/illegal construction of buildings on private properties ?

2. Whether the procedures adopted by BMTF police in submitting reports and

seeking permission of the jurisdictional Magistrate to investigate cases involving non-cognizable offences is in accordance with law?

6. Ultimately at length discussing the matter, this Court has come to the conclusion at Paragraph 18, Page No. 193 by giving its finding in the following manner:

"18) Having regard to the specific powers and functions of BMTF as narrated in various notifications including the clarificatory notification recently issued by the Government on 02.02.2013, it is clear that BMTF has no jurisdiction to register any cases and investigate any offences relating to the alleged unauthorized/illegal constructions over the private properties. No doubt, as per Section 321-B of KMC Act, the jurisdictional officer who is proved to have failed to prevent unauthorized deviation or construction that have taken place in his jurisdiction shall be liable for such punishment as may be prescribed. Thus, failure to prevent unauthorized deviation or construction is an offence under the K. MC Act. However, as noticed supra, the object and purpose of constituting BMTF is to protect the public properties and to prevent any encroachment or illegal construction over the public properties belonging to the Government or authorities enumerated therein. Therefore, even where the alleged offence is one u/s 321-B of KMC Act, if it is in relation to an unauthorized deviation or construction over private property, in my considered opinion, the BMTF has no jurisdiction to register the case and investigate the same. In addition to this, though Section-321(B) makes such omissions an offence, it does not specify the nature of punishment. Though this section was introduced into the statute in the year 2007, till today, nature and extent of punishment to be imposed, is not prescribed. As a result, even if a person is found guilty of said offence, he cannot be punished. It is for the Government to look into this and take necessary steps in this regard."

and also at Paragraph No. 27 at Page No. 203, this Court has given its finding as follows, so far as second point is, concerned:

"27. In the cases on hand, the allegations made in the reports lodged by the private individuals disclosed only commission of non-cognizable offence's. It was for that reason only, the officer-in-charge of BMTF Police Station submitted reports to the jurisdictional Magistrate and sought permission to investigate. The jurisdictional Magistrate in all such cases has accorded permission and it was thereafter the cases were registered and investigation was taken-up. In none of these cases, the informants approached the Magistrate seeking a direction to the police for investigation. Thus, the procedures adopted by BMTF police in submitting reports to the jurisdictional Magistrate and seeking permission, are contrary to the provisions of Section 155 of Cr.P.C. and the permission accorded thereon by the Magistrate on such requisitions, are without authority of law. Therefore, the entire procedures adopted by the BMTF police in registering the case are contrary to the provisions of Section 155 of Cr.P.C. and also opposed to the principles of law laid-down in the aforesaid decision. In view of this, the

orders taking cognizance on the charge sheets filed are vitiated, therefore, the prosecutions launched are liable to be quashed. Therefore, I answer Point No. 2 accordingly."

7. On perusal of the above said finding, the factual aspects involved in these two cases are virtually one and the same. Therefore, in view of the same I do not find any other view than the one taken by this Court holding that the BMTF has absolutely no jurisdiction to take any action against the officers of the BBMP, if there is any violation of plan or rules and regulation of BBMP in constructing the buildings on the private properties. Further the procedure followed by the BMTF, in requesting the Court to permit the BMTF to investigate the matter is also bad in law. Therefore, I do not find any strong reason to disallow these petitions. Further, the petitioners have made a strong ground in view of the above facts and circumstances to quash the proceedings.

8. Accordingly both the petitions are hereby allowed. Consequently all further proceedings in Crime Nos. 162/2012 and 20/2013 on the file of Bangalore Metropolitan Task Force Police, for various offences under the IPC and as well as under the K.M.C. Act, are hereby quashed.