

(2016) 03 KAR CK 0143

In the Karnataka High Court

Case No : Criminal Revision Petition No. 1129/2015

H. Ramamurty

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 10-03-2016

Acts Referred:

Constitution of India, 1950 — Article 20
Criminal Procedure Code, 1973 (CrPC) — Section 161, Section 164, Section 173(8),
Section 397
Evidence Act, 1872 — Section 132
Penal Code, 1860 (IPC) — Section 120B, Section 201, Section

Citation : (2016) 03 KAR CK 0143

Hon'ble Judges : A.V. Chandrashekara, J.

Bench : Single Bench

**Advocate : Shankarappa S., Advocate, for the Appellant; C.H. Jadhav, Senior
Adv. for Hegde Devaru Ganapathi, Advocate, for the Respondent**

Final Decision : Dismissed

Judgement

A.V. Chandrashekara, J.—1. Heard Sri. S. Shankarappa, learned counsel for the petitioner and Sri. C.H. Jadhav, learned Senior counsel for the respondent - CBI.

2. The petitioner is arraigned as accused No. 8 in Spl.C.C. 116/2012 pending on the file of Court of the XLVI Addl. City Civil and Sessions Judge and Special Judge for CBI Cases, Bangalore City (CCH-47).

3. The petitioner had requested the court to discharge him from the case registered against him for the offences punishable under Sections 120B, 511 read with 201 of IPC and under Section 13(1)(d) read with Section 15 of Prevention of Corruption Act, 1988. His plea was rejected and hence, he has approached this Court.

4. The facts leading to filing of this petition under Section 397 of Cr.P.C. is as follows:--

"Accused No. 1-Sri. G. Janardhana Reddy was the Former Tourism Minister of Karnataka and District In-charge Minister of Bellary District. He had a Personal Assistant by name Sri. M. Alikhan, who is arraigned as accused No. 5. A detailed enquiry was conducted by the Karnataka Lokayuktha about the alleged illegal extraction and transportation of lakhs of tones of iron ore outside the country. Subsequently, the Hon"ble Apex Court took note of the seriousness and magnitude of illegally extracting and transporting of iron ore from different mines in Bellary. Ultimately, direction was given to CBI to register cases in regard to the same by conducting effective and thorough investigation."

5. Accordingly several cases came to be registered. It is alleged that accused No. 1 being District in-charge Minister of Bellary District exercised his power over different officials and was responsible for illegally extracting and transporting tones of iron ore. During investigation, it was found that few fake permits had been issued by various guards in regard to illegal transportation of iron ore from Bellary. During the course of investigation, 23 guards were enquired about the fake permits issued. Out of them, statement of 5 guards have been recorded under Section 164 of Cr.P.C. This petitioner took over as RFO from 28.2.2011 and alleged illegal extraction and transportation of the iron ore relates to from 18.3.2010 to 23.3.2010. The alleged issuance of fake permits of guards also relates to this period. The statement of this petitioner was recorded under Section 161 of Cr.P.C. on 15.12.2010 and further statement was recorded on 11.3.2012. Initially, this petitioner had been cited as CW-130 and after conducting further investigation under Section 173(8) of Cr.P.C., he is shown as accused No. 8.

6. What is argued before this Court by the learned counsel for the petitioner is that this petitioner is protected in view of proviso to Section 132 of Indian Evidence Act. He has submitted that even if the petitioner is examined as witness and if he is bound to answer which would incriminate himself, he is covered under the protection found under proviso to Section 132 of Indian Evidence Act. Section 132 of Indian Evidence Act and proviso found thereunder is extracted hereinbelow:

"132. Witness not excused from answering on ground that answer will criminate.- A witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any suit or in any civil or criminal proceeding, upon the ground that the answer to such question will criminate, or may tend directly or indirectly to criminate, such witness, or that it will expose, or tend directly or indirectly to expose, such witness to a penalty or forfeiture of any kind:

(Proviso) - Provided that no such answer, which a witness shall be compelled to give, shall subject him to any arrest or prosecution, or be proved against him in any criminal proceeding, except a prosecution for giving false evidence by such answer.

7. The learned counsel for the petitioner has relied upon the decision of the Hon"ble Apex Court rendered in the case of R. Dineshkumar alias Deena v. State Rep. by Inspector of Police & Ors. reported in , AIR 2015 SC 1816. Paragraph 46 is relevant and same is extracted hereinbelow:

"46. Section 132 existed on the statute book from 1872 i.e. for 78 years prior to the advent of the guarantee under Article 20 of the Constitution of India. As pointed out by Justice Muttusami Ayyar in Gopal Doss (supra), the policy under Section 132 appears to be to secure the evidence from whatever sources it is available for doing justice in a case brought before the Court. In the process of securing such evidence, if a witness who is under obligation to state the truth because of the Oath taken by him makes any statement which will criminate or tend to expose such a witness to a "penalty or forfeiture of any kind etc.", the proviso grants immunity to such a witness by declaring that "no such answer given by the witness shall subject him to any arrest or prosecution or be proved against him in any criminal proceeding". We are in complete agreement with the view of Justice Ayyar on the interpretation of Section 132 of the Evidence Act."

8. Sri. C.H. Jadhav, learned senior counsel for CBI has vehemently argued that the decision rendered by the learned counsel for the petitioner is not applicable to the facts of the present case and that the prosecution is not interested in examining this petitioner as witness in the light of serious allegation being made against him by few of the guards about pressuring them to give statement as desired by the Minister and his Personal Assistant. He has referred to the statement of Sri. Sanjeev Kumar Mahadev Agsar, Forester recorded on 25.10.2011, 9.12.2011 and on 10.3.2012. In the statement recorded on 9.12.2011, Sri. Sanjeev Kumar, who was asked by this petitioner to go the house of Janardhana Reddy at Bellary has told to the police that Sri. Ramamurthy, the then RFO and their controlling officer had made slight alterations in the letter in consultation with Sri. G. Janardhana Reddy and his PA Sri. Alikhan. After seeing the said draft letter, they refused to sign. Sri. G. Janardhana Reddy and his PA Sri. Alikhan had threatened them that without signing this letter, they would not be allowed go outside the gate. Being left with no other alternate, they put their signature.

9. It is true that this petitioner had been cited as witness (CW-130) on the basis of statement of Sri. Sanjeev Kumar recorded on 25.10.2011. Further statement of Sanjeev Kumar recorded on 9.12.2011 and 10.3.2012 and they speak about the involvement of this petitioner. Whatever observation made by this court is for the limited purpose of disposal of this petition and it will not influence the learned Judge while disposing of the matter. Whenever serious allegation is made in regard to the Government officials, serious omissions and commissions would be considered as basis to invoke the relevant provisions of Prevention of Corruption Act, 1988.

10. Suffice to state that the statement of Sri. Sanjeev Kumar, one of the Forester who was asked to go to the house of Sri. G. Janardhana Reddy, District Incharge

Minster of Bellary District by this petitioner would disclose the role of this petitioner also. The role of this petitioner was known only after further investigation conducted under Section 173(8) of Cr.P.C. and therefore, he is arraigned as accused No. 8.

11. It is to be seen that in the initial stage, only 7 persons had been arraigned as accused and this petitioner was examined as witness (CW-130). Consequent upon further investigation by the respondent-police, role of this petitioner is made known.

12. As rightly pointed by the Sri. C.H. Jadhav, learned Senior counsel, the decision rendered in the case of Dineshkumar alias Deena stated supra can be made applicable only if the witness is examined and if some of the answers would incriminate him. In such an event, a witness cannot be roped as an accused since protection is available to such witness under the proviso to Section 132 of Indian Evidence Act. Therefore, the decision referred to above is clearly distinguishable of facts and circumstances. Hence, the said decision is not applicable to the facts of this case.

13. Necessary discussion is found in paragraph 53 of the impugned order. No good grounds are made out to interfere with the order dated 8.10.2015 passed in Spl.C.C. 116/2012 by the Court of the XLVI Addl. City Civil and Sessions Judge and Special Judge for CBI Cases, Bangalore City (CCH-47).

Accordingly, the revision petition is dismissed.