

(2014) 04 KAR CK 0156
In the Karnataka High Court
Case No : Crl. P. No. 11 358/2012

Hemant Nimbalkar

APPELLANT

Vs

N. Santosh Hegde

RESPONDENT

Date of Decision : 21-04-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 190, 197, 2(d), 200, 203
Karnataka Lokayukta Act, 1984 — Section 15(4), 16, 16(1), 3
Penal Code, 1860 (IPC) — Section 34, 499, 500, 501, 502
Prevention of Corruption Act, 1988 — Section 13(1)(e), 13(2)

Citation : (2014) 3 AKR 373 : (2014) ILR 3294 : (2014) 4 KCCR 2975

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

Bench : Single Bench

Advocate : Swaroop Anand and Shivaraj C. Bellakki, Advocate for the Appellant;
Mrutunjay Tata Bangi, V.M. Sheelavant, Hanumanthareddy Sahukar, Nalina
Mayegowda and V.M. Banakar, Advocate for the Respondent

Final Decision : Dismissed

Judgement

A.V. Chandrashekara, J.—Heard the Learned Counsel for the petitioner and the Learned Counsel for the respondents.

2. Present petition is filed u/s 482 of Cr.P.C., requesting this Court to set-aside the Order dated 24.03.2012 passed by the Learned JMFC-IV, Belgaum in Private Complaint bearing PCR No. 66/2012 and confirmed in Criminal Revision Petition No. 236/2012. Petitioner herein was the complainant in a case bearing Private Complaint No. 66/2012. Respondents herein were the accused 1 to 13 in the said case.

3. The main allegation made in the complaint filed u/s 200 of Cr.P.C., against the accused is that, they have defamed the complainant by making false allegations in a press conference held by accused Nos. 1 and 2. Accused No. 1 was the Lokayukta during the year 2009 and accused No. 2 was the Additional Director General of Police, Karnataka Lokayukta during the year 2009. On 18.03.2009, a

joint press conference was held by accused Nos. 1 and 2 in the office of Lokayukta at Bangalore disclosing some false information about the complainant, relating to a case registered against him u/s 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as the "PC. Act", for short) in regard to the alleged acquisition of assets disproportionate to the known source of income to an extent of Rs. 250 crores.

4. On the basis of the source report, a case came to be registered against the complainant in Crime No. 3/2009 on the file of the Belgaum Lokayukta Police for the offences punishable u/s 13(1)(e) read with Section 13(2) of the P.C. Act. On the basis of the same, search was conducted at various places inclusive of the residences of the complainant, his wife and her parents.

5. According to the complainant, a false information was given by accused Nos. 1 and 2 in the press conference held on 18.03.2009, stating that complainant had amassed wealth disproportionate to his known source of income to an extent of Rs. 250 crores. This disclosure, according to the complainant, is defamatory in nature and had no basis at all.

6. After registration of the complaint and conducting investigation, a "B" report has been filed against the complainant-petitioner herein. The said "B" report has been accepted by the Learned Special Judge dealing with P.C. Act cases in Belgaum. After the acceptance of "B" report, a private complaint u/s 200 of Cr.P.C., came to be filed before the Learned Magistrate Belgaum to take cognizance for offences punishable under Sections 499, 500, 501, 502 read with Section 34 of IPC. The Learned Magistrate did not take cognizance of the same. On the other hand, Learned Magistrate has chosen to dismiss the complaint by formulating two points for consideration and they are as follows:

- i. Whether the complaint is not maintainable against accused No. 1?
- ii. Whether complaint is not maintainable without prior sanction from the Government as contemplated u/s 197 of Cr.P.C.?
- iii. What order?

7. Ultimately points 1 and 2 have been answered in the affirmative and complaint came to be dismissed by a considered Order dated 24.03.2012, as against which a Criminal Revision Petition came to be filed in Criminal Revision Petition No. 236/2012 u/s 397 of Cr.P.C. before the Court of IV Addl. District and Sessions Judge at Belgaum, who is the designated Special Judge (Lokayukta) dealing with the cases under Prevention of Corruption Act, 1988. The Learned Special Judge has dismissed the revision petition after contest on 26.07.2012. The Learned Special Judge has held that the revision petition filed u/s 397 of Cr.P.C., is not maintainable.

8. The Learned Special Judge has referred to the various provisions of the Karnataka Lokayukta Act, 1984 (hereinafter referred to as "Lokayukta Act", for short) and has ultimately come to the conclusion that Lokayukta had called for a

press conference in his official capacity and the information provided by him in the press conference was on the basis of the information furnished to him by the officers subordinate to him and who were entrusted with the investigation. These two orders are called in question in this petition filed u/s 482 of Cr.P.C.

9. Learned Counsel for the petitioner-complainant has filed a memo with documents before this Court on 16.10.2012. The first document is in regard to the endorsement dated 30.09.2009 provided by Karnataka Lokayukta, Bangalore to the petitioner herein and another is endorsement dated 18.04.2011 provided by Karnataka Lokayukta, Bangalore. Learned Counsel for the petitioner has submitted his arguments at length and has contended that, neither the Lokayukta nor the ADGP, Karnataka Lokayukta Police have powers to provide any information relating to the investigation conducted under the P.C. Act. It is in this regard, he has relied upon the endorsement dated 30.09.2009 issued by the Superintendent of Police (Special Enquiries) Public Information Officer, Karnataka Lokayukta, Bangalore. The entire endorsement is reproduced below:

ENDORSEMENT

Sub: Providing information under RTI Act.

Ref: Your application dated 9/9/2009.

With reference to the application cited above, the following information is provided:

1. "Prevention of Corruption Act, 1988 does not confer any power on Hon''ble Lokayukta. There are no orders issued by any other authority conferring any power under the provisions of Prevention of Corruption Act, 1988 on Hon''ble Lokayukta. However, u/s 15(4) of the Karnataka Lokayukta Act, the officers and other employees of the Lokayukta referred to in sub-section (1), who also include the Lokayukta Police, shall be under the administrative and disciplinary control of Hon''ble Lokayukta.

2. There is no specific provision in any law empowering Hon''ble Lokayukta to conduct press meets. Press meets are held in public interest to share such information in respect of which there is no legal bar for disclosure. u/s 16 of the Karnataka Lokayukta Act, 1984, any information obtained by the Lokayukta or Upalokayukta or members of his staff in the course of or for the purpose of any investigation under the Lokayukta Act shall be treated as confidential. Information collected during the investigation in cases under the Prevention of Corruption Act, are not information collected during investigations under the Karnataka Lokayukta Act, 1984 and therefore, Section 16(1) is not applicable to the information obtained by Lokayukta in the course of investigation conducted by Lokayukta Police under Prevention of Corruption Act, 1988.

3. Press statements are given by the Hon''ble Lokayukta as Head of the institution since u/s 15(4) of the Karnataka Lokayukta Act, Lokayukta is the administrative and disciplinary head of all officers including the Lokayukta Police.

There is no specific provision in any law or any order passed by any Competent Authority specifically empowering Hon"ble Lokayukta to share the information with the press, regarding investigations conducted under the Prevention of Corruption Act, 1988.

4. The powers and functions of Hon"ble Lokayukta are defined in Karnataka Lokayukta Act, 1984.

5. Karnataka Lokayukta Act, 1984 deals with appointment, duties and powers conferred on Hon"ble Lokayukta."

10. Lokayukta is the head of Karnataka Lokayukta, an institution established u/s 3 of the Karnataka Lokayukta Act. Section 15(4) of the Lokayukta Act empowers the Lokayukta, as the head of the institution, to hold press conference and to give press statements. Second accused was the Additional Director, ADGP, Karnataka Lokayukta working under the supervision of Lokayukta. He had participated in the press conference called by the Lokayukta on 18.03.2009.

11. Admittedly, Lokayukta is the administrative and disciplinary head of all officers including Lokayukta police. Though there is no express provision in any law or any order passed by any competent authority, specifically empowering Lokayukta to share the information with the press regarding investigation conducted under the P.C. Act, there is no specific prohibition by which the Lokayukta is inhibited to disclose the information given to him by his subordinates relating to the investigation conducted under the P.C. Act. Unless there is a statutory prohibition in the Lokayukta Act or any other statute prohibiting the Lokayukta from giving information to the press in respect of the investigation conducted under the P.C. Act, disclosing of information by the Lokayukta as the head of Lokayukta institution along with a responsible Police Officer working under him cannot be found fault with.

12. On the other hand, the Lokayukta did not give any information to the press on his own. As rightly pointed out by the IV Addl. Sessions Judge, Belgaum who is the designated Special Judge, information was given to the press by the Lokayukta on the basis of the information given to him by the officers working under him including the Lokayukta Police. The said information was on the basis of a source report prepared and submitted by a responsible Police Officer working under the supervision of Superintendent of Police, Belgaum (Lokayukta).

13. What is argued by the Learned Counsel for the petitioner - complainant is that, the Learned Magistrate was not justified in dismissing the complaint without recording the sworn statement of the complainant and witnesses of the complainant, if any. Therefore, it is argued that the very procedure adopted by the Learned Magistrate is in violation of the mandatory provisions of Section 200 and 203 of Cr.P.C. But Section 200 of Cr.P.C., comes into picture only after cognizance is taken u/s 190 of Cr.P.C. Therefore dismissal of complaint without recording sworn statement is not improper or illegal in a case like this. Hence dismissal of the complaint at the threshold cannot be found fault with.

14. The Learned Magistrate is of the opinion that Lokayukta respondents 1 and 2 are Government Officials and disclosing of the information in the press conference is an official act and therefore, sanction is required u/s 197 of Cr.P.C. Learned Counsel for the petitioner - complainant has argued that, sanction had been sought from the Government to prosecute the accused and that the Government has given an endorsement to him stating that question of granting sanction to prosecute Lokayukta is not available with the Government and therefore, complainant can get his grievance redressed in the proper forum. Therefore, it is argued that the endorsement given by the Government is nothing but a sanction.

15. It is to be seen that Section 190 provides for taking cognizance either on the report submitted by the Police or on the complaint filed u/s 2(d) of Cr.P.C. or by the Magistrate suo moto. Unless cognizance is taken, Magistrate cannot proceed to invoke Section 200 of Cr.P.C. If the Magistrate had directed the office to register the case as PCR and to post the case for recording statement, inference could have been drawn to the effect that the order so made was as good as taking cognizance. In the light of such a direction being not given to the office to register the case or in the light of having not recorded the sworn statement, Section 200 of Cr.P.C., will not be applicable. Therefore, the dismissal of the complaint cannot be found fault with.

16. Even otherwise, it is to be seen that the complainant had kept quiet till the investigation was concluded and "B" report was filed against him. If the information given by the Lokayukta in the press conference called on 18.03.2009 was with an oblique motive to defame him, the complainant would not have kept quiet till the investigation was concluded and "B" report was filed and the "B" report was accepted by the Special Judge. In fact the petitioner herein chose to keep quiet till investigation was concluded and "B" report was accepted. It can be said that petitioner was selective in the matter of filing complaint. Even otherwise, it is to be seen that as per the decision reported in Laloo Prasad Vs. State of Bihar and Another, , a person cannot be said to have committed an offence under Sections 500 or 501 or 502 or 504 of Cr.P.C., merely because some news item or article is published attributing certain allegations to that person.

17. In this view of the matter, this is not a fit case in which Section 482 of Cr.P.C., could be invoked to set-aside the considered orders passed by the Learned Magistrate as well as the Learned Sessions Judge. Section 482 of Cr.P.C., can be invoked only in rarest of the rare cases that too when the process of law is abused. Learned Counsel for respondents 1 and 2 have submitted that it is not unusual for the Lokayukta holding press briefings about the outcome of the searches made in cases connected with the amassing of wealth by public servants disproportionate to the known source of income and that this is not for the first time such a press briefing was held. There is a lot of force in the submission made by the Counsel representing respondents 1 and 2. There are no merits in the petition filed u/s 482 of Cr.P.C., and the same is liable to be

dismissed.

ORDER

Petition filed u/s 482 of Cr.P.C., is dismissed.