

(2015) 02 KAR CK 0252

In the Karnataka High Court

Case No : Criminal Revision Petition No. 100016/2015

H.M. Somashekarayya

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 24-02-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 227, 239, 397, 401

Penal Code, 1860 (IPC) — Section 149, 409

Prevention of Corruption Act, 1988 — Section 13(1)(c), 13(2), 2(c)(i)

Citation : (2015) 02 KAR CK 0252

Hon'ble Judges : Rathnakala, J.

Bench : Single Bench

Advocate : Srinand A. Pachhapure, for the Appellant; V.T. Sonwalkar, S.P.P.,
Advocates for the Respondent

Final Decision : Disposed off

Judgement

Rathnakala, J.—Though the matter is listed for admission, it is heard on both sides and taken up for final disposal.

2. This revision petition is filed under Section 397 read with Section 401 of Cr.P.C. assailing the order passed by the Prl. Sessions Judge/Special Court, Ballari in Special Case No. 118/2012 dated 08.01.2015. The learned Sessions Judge has rejected the applications filed by this petitioner (accused No. 8) along with accused Nos. 1 to 4, 6 and 7 filed under Sections 227 and 239 of Cr.P.C. to discharge them for the offences punishable under Sections 13(1)(c) read with Section 13(2) of Prevention of Corruption Act, 1988 and Section 409 read with Section 149 of I.P.C.

3. Facts briefly stated, the respondent herein has chargesheeted the accused persons for the offence punishable under Sections 13(1)(c) read with Section 13(2) of Prevention of Corruption Act, 1988 and Section 409 read with Section 149 of I.P.C.

4. The gist of the allegation was the accused No. 1 is the Chief Officer in Town Municipality, Shiruguppa, accused No. 2 is the Junior Engineer in Town Municipality, Shiruguppa, accused No. 3 is Assistant Executive Engineer, D.U.D.C. Ballari, accused No. 4 is S.D.A. in Town Municipality, Shiruguppa, Accused No. 5 (dead) was the First Divisional Assistant in the Municipality of Shiruguppa. Accused No. 6 is the President of Town Municipality, Shiruguppa. Accused No. 7 is the Class-I Contractor of Shiruguppa. Accused No. 8 is the Proprietor of Premier Technical Consultancy, appointed by the Deputy Commissioner for Supervision of the quality of the work done by the contractors. The accused Nos. 1 to 7 colluded with each other, mis-used and mis-appropriated the amount sanctioned for the purpose of laying the tar road from Ballari main road to Shanimahatma Temple near culvert Shiruguppa and CC road and drainage from the house of one Venkobanna Setty to the house of Dr. Younus. They have mis-appropriated Rs. 11,00,000/- and Rs. 9,00,000/- respectively. No tar road was laid and only metal road work is done and without completion of the work the accused has paid the amount to the contractor. The specific allegation against the petitioner is, he has co-operated with accused Nos. 1 and 2 to fabricate the documents and get the same sanctioned in the Municipal Council, got the bill passed in respect of the Work Order No. 1 for Rs. 7,27,409/- and Rs. 5,34,885/- in Work Order No. 2, thereby he was responsible for mis-appropriation of the public money and cheating the Government.

5. Learned counsel for the petitioner submits that initially he was not cited as an accused in the F.I.R., but at the time of filing the charge sheet all of a sudden his name is inserted. The charge sheet is filed on the basis of the report submitted by Dy. S.P., Karnataka Lokayuktha, wherein he had submitted that no work was done in both the places as per the tender. In fact, the petitioner is not an employee of the State Government. He is the proprietor of M/s. Premier Technical Consultancy. He was appointed vide order Annexure-E by the Deputy Commissioner: as per the terms and conditions of his appointment, he was obliged only to inspect and submit report about the quality of work and proper utilisation of the building materials. In fact, accused Nos. 1 to 5 never undertook the second work i.e., laying the road from Shiruguppa town to Shanimahatma temple. As regards the first work, laying the road commencing from the house of Venkobanna Setty till the house of Dr. Younus, they have done the work. But, instead of laying the road as per the sanctioned plan they have deviated the work and laid a straight road and the work was incomplete without laying drain by the side of the road.

6. He has not given any false certificate to the Chief Officer of the Municipal Council; as to what work was done and he has certified the same. He is not responsible for the irregularity committed in carrying out the work done by accused Nos. 1 to 5. The work has to be executed by accused No. 7, the contractor. Even otherwise, he is not a public servant to be encompassed by the provisions of P.C. Act. So far, he has not received any monetary benefits of the work done by him or the bills said to have been passed by the treasury. That

apart, there is no incriminating material against him which can fix him in the alleged offence, as could be seen from the charge sheet papers. But the learned District Judge, without application of mind, has dismissed the application which has resulted in mis-carnage of justice. The money released after passing of the bill is now in the account of accused No. 7 - class-I Contractor. The said cheques were issued by accused No. 1 on the approval given by accused Nos. 2 and 3. Hence, he may be discharged from the charges by setting aside the order passed by the court below.

7. In reply, learned Special Public Prosecutor for respondent - Lokayuktha submits that the petitioner is a public servant within the meaning of definition clause Section 2(c)(i) of P.C. Act, 1988. As per the terms of his employment it was the bounden duty of the petitioner herein to report to the Government on the work not being carried out in accordance with the work order. Though he is not the direct beneficiary of the mis-appropriated amount, his omission in not reporting the deviation committed by the accused persons has resulted in pressing of the bill and mis-appropriation of the money. Hence, he cannot escape from the vicarious liability for the offences punishable under Sections 13(1)(c) read with Section 13(2) of Prevention of Corruption Act, 1988 and Section 409 read with Section 149 of I.P.C. The order passed by the court below is well reasoned and does not call for interference.

8. In the light of the above, the sole point that arises for my consideration is--

"Whether the court below was justified in holding that there is sufficient material to proceed against him?" 9. There is no much dispute about the facts as to how the events have flown. The sole allegation against this petitioner is he has not carried out his consultancy work as ordered, which he was obliged under Annexure-E his appointment order. The terms and conditions of his appointment read thus--

10. It is not the case of prosecution that the petitioner has submitted any false certificate by colluding with co-accused persons. It is also not their case that the work which is done is below the requirement of ISI mark. They are not contending that he has violated any of the conditions enshrined in his appointment order, Annexure-E. None of the witnesses have attributed his indulgence in the offence vide their statement recorded under Section 161 of Cr.P.C.

11. That being so, proceeding against the petitioner without any incriminating material, against him, would be a waste exercise. The court below except mentioning its omnibus inference that he has not done his consultancy work, has not stated on what basis such inference is drawn and has mechanically rejected the application, which was filed by the petitioner along with co-accused. The order is perverse and passed without application of mind about the facts available on record and is not tenable.

12. Accordingly, petition is allowed. The order of the court below in S.C. No.

118/2012 dated 08.01.2015, insofar as the petitioner herein is concerned, is set aside. Petitioner is discharged of the offences punishable under Sections 13(1)(c) read with Section 13(2) of Prevention of Corruption Act, 1988 and Section 409 read with Section 149 of I.P.C.

13. In view of disposal of main revision petition, I.A. No. 1/2015 for grant of stay does not survive for consideration. Accordingly, it is disposed of.