

(2015) 05 KAR CK 0018

In the Karnataka High Court

Case No : Criminal Petition No. 918/2013 C/W CrI. P. Nos. 912/2013, 5845/2012, 5844/2012, 913/2013, 914/2013, 915/2013, 917/2013, 919/2013, 943/2013 C/W CrI. P. Nos. 6130, 6131, 6132, 6133, 6134, 6135, 6137, 6138, 6139, 6140, 6141, 6142, 6143, 6144, 6145, 6146, 6147

H.S. Cheluvaraju and Others

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 21-05-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173(2), 197, 197(1), 482
Penal Code, 1860 (IPC) — Section 109, 120-B, 166, 34, 420

Citation : (2015) 3 AKR 324 : (2015) 3 Crimes 470 : (2015) ILR Kar 3983 : (2015) 3 KCCR 2717

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

Bench : Single Bench

Advocate : M.S. Bhagwat and D. Pavanesh, for the Appellant; Vijay Kumar Majage, HCGP, Advocates for the Respondent

Final Decision : Dismissed

Judgement

A.N. Venugopal Gowda, J.—The petitioners, facing prosecution for the offences punishable under Ss. 465, 467, 468, 471, 166, 420 r/w 34 IPC, in several criminal cases pending on the file of the PrI. Civil Judge and JMFC, Mandya, filed these petitions, to quash all the pending proceedings.

2. The petitioners, at the relevant point of time, worked as Sub-Registrars, in the Office of the Sub-Registrar, Mandya. The 2nd respondent, on the instructions of the Departmental Head, filed the complaint/s on 27.04.2006, before the 1st respondent, alleging that certain challans as having been forged at the time of registration of the deeds by the petitioners and thus, loss having caused to the State Exchequer. The 1st respondent, after investigation has filed separate charge sheet/s against the petitioner/s and others, alleging commission of offences punishable under Ss. 465, 467, 468, 471, 166, 420 r/w 34 IPC.

Cognizance having been taken and process having been issued, these petitions were filed by contending that during the course of discharge of the official duty, the acts relating to registration having been done by them in good faith, prior sanction for prosecution being required and no such sanction having been obtained and produced, the criminal proceedings cannot continue.

3. Sri M.S. Bhagwat and Sri D. Pavanesh, learned advocates, contended that the learned Magistrate has committed illegality in taking cognizance of the alleged offences, without there being any sanction accorded by the competent authority. They contended that there being no sanction for prosecution of the petitioners, the entire proceedings of all the cases pending before the Court below i.e., in so far as petitioners are concerned, are liable to be quashed. Reliance was placed on Rakesh Kumar Mishra Vs. The State of Bihar and Others, AIR 2006 SC 820 : (2006) CriLJ 808 : (2006) 1 JT 1 : (2006) 1 SCALE 15 : (2006) 1 SCC 557 : (2006) 1 SCR 124 : (2006) AIRSCW 189 : (2006) 1 Supreme 14 and it was submitted that there being abuse of process of law and in view of the decision in State of Haryana and others Vs. Ch. Bhajan Lal and others, AIR 1992 SC 604 : (1992) CriLJ 527 : (1990) 4 JT 650 : (1990) 2 SCALE 1066 : (1992) 1 SCC 335 Supp : (1990) 3 SCR 259 Supp , the impugned proceedings are liable to be quashed.

4. Sri Vijay Kumar Majage, learned HCGP, on the other hand contended that, Rakesh Kumar Mishra's case was considered in Parkash Singh Badal and Another Vs. State of Punjab and Others, AIR 2007 SC 1274 : (2007) CLT 567 Supp : (2007) 1 JT 89 : (2006) 13 SCALE 54 : (2007) 1 SCC 1 : (2006) 10 SCR 197 Supp : (2007) AIRSCW 1415 : (2006) 8 Supreme 964 , and the Apex Court having held that the offence of cheating, under S. 420 or for that matter, offences relating to Ss. 467, 468, 471 and 120-B IPC, can by no stretch of imagination, by their very nature, be regarded as having been committed by any public servant while acting or purporting to act in discharge of official duty, these petitions are liable to be dismissed.

5. Considered the rival contentions and perused the petitions. The question is with regard to the applicability of S. 197 of Cr.P.C. A reading of the said provision makes it clear, that if any offence is alleged to have been committed by a public servant, who cannot be removed from office except by or with the sanction of the Government/competent authority, the Court is precluded from taking cognizance of such offence/s, except with the previous sanction of the competent authority specified in the provision. The sanction, however, is necessary, if the offence alleged against the public servant is committed by him "while acting or purporting to act in the discharge of his official duties".

6. It is trite that, not every offence committed by a public servant requires sanction for prosecution under S. 197(1) of Cr.P.C, nor even every act done by him, while he is actually engaged in the performance of his official duties. The act complained of should be directly concerned with the official duty, so that, if questioned, it could be claimed to have been done by virtue of the office. It is

only in such circumstances, sanction would be necessary, as has been held in by the Apex Court in *Amrik Singh Vs. The State of Pepsu*, AIR 1955 SC 309 : (1955) CriLJ 865 : (1955) 1 SCR 1302 .

7. It will be appropriate to notice the ratio of decision in *Shambhoo Nath Misra Vs. State of U.P. and others*, AIR 1997 SC 2102 : (1997) CriLJ 2491 : (1997) 2 Crimes 26 : (1997) 4 JT 203 : (1997) 3 SCALE 286 : (1997) 5 SCC 326 : (1997) 2 SCR 1139 : (1997) AIRSCW 1938 : (1997) 3 Supreme 538 , wherein, the Apex Court has held as follows:

"4. Section 197(1) postulates that "when any person who is.... a public servant not removable from his office, save by or with the sanction of the Government, is accused of any offence alleged to have been committed by him, while acting or purporting to act in the discharge of his official duty, no court shall take cognizance of such offence except with the previous sanction" of the appropriate Government/authority. The essential requirement postulated for the sanction to prosecute the public servant is that the offence alleged against the public servant must have been done while acting or purporting to act in discharge of his official duties. In such a situation, it postulates that the public servant's act is in furtherance of the performance of his official duties. If the act/omission is integral to the performance of public duty, the public servant is entitled to the protection under Section 197(1) of Cr.P.C. Without the previous sanction, the complaint/charge against him for the alleged offence cannot be proceeded with in the trial. The sanction of the appropriate government or competent authority would be necessary to protect a public servant from needless harassment or prosecution. The protection of sanction is an assurance to the honest and sincere officer to perform his public duty honestly and to the best of his ability. The threat of prosecution demoralizes the honest officer. The requirement of the sanction by competent authority or appropriate Government is an assurance and protection to the honest officer who does his official duty to further public interest. However, performance of official duty under colour of public authority cannot be camouflaged to commit crime. Public duty may provide him an opportunity to commit crime. The Court to proceed further in the trial or the enquiry, as the case may be, applies its mind and records a find that the crime and the official duty are not integrally connected.

5. The question is when the public servant is alleged to have committed the offence of fabrication of record or misappropriation of public fund etc., can be said to have acted in discharge of his official duties. It is not the official duty of the public servant to fabricate the false records and misappropriate the public funds etc., in furtherance of or in the discharge of his official duties. The official capacity only enables him to fabricate the record or misappropriate the public fund etc. It does not mean that it is integrally connected or inseparably interlined with the crime committed in the course of the same transaction, as was believed by the learned Judge. Under these circumstances, we are of the opinion that the view expressed by the High Court as well as by the trial court on the question of

sanction is clearly illegal and cannot be sustained".

(emphasis is supplied)

From the above, it is clear that even while discharging official duty, if a public servant indulges in criminal misconduct, such misdemeanor on his part is not to be treated as an act in discharge of his official duty and, therefore, provisions of S. 197 Cr.P.C, will not be attracted.

8. In the instant cases, the allegations against the petitioners pertain to fabrication of challans and thereby causing loss of the State Exchequer. Such allegations, prima facie, cannot be treated as the petitioners' normal official duties. In *Prakash Singh Badal's case*, (at para 49), Apex Court has held that the offence of cheating under S. 420 or the offences relatable to Ss. 467, 468, 471 and 120-B IPC, can by no stretch of imagination, by their nature, be regarded as committed by any public servant, while acting or purporting to act, in discharge of their official duty.

9. In *Inspector of Police and Others Vs. Battenapatla Venkata Ratnam and Others* (2015) 2 ACR 1843 : (2015) 7 AD (SC) 121 : AIR 2015 SC 2403 : (2015) 3 AJR 465 : (2015) 90 ALLCC 706 : (2015) ALLMR(Cri) 2064 : (2015) 2 CCR 282 : (2015) 2 CGLJ 272 : (2015) CriLJ 2942 : (2015) 2 JCC 1390 : (2015) 2 JLJR 450 : (2015) 2 KLJ 511 : (2015) 2 MLJ(Cri) 328 : (2015) 2 OLR 383 : (2015) 3 PLJR 32 : (2015) 3 RCR(Criminal) 86 : (2015) 5 SCALE 253 : (2015) 2 UC 954 , a complaint was filed alleging that the respondents, while working as Sub-Registrars, in various offices in the State of Andhra Pradesh, conspired with stamp vendors, document writers and other staff, to gain monetary benefit and resorted to manipulation of registers and got the registration of the documents with old value of the properties, resulting in wrongful gain to themselves and loss to government, and thereby cheated the public and the government. Case was registered and FIR was submitted and after investigation, report under S. 173(2) Cr.P.C, against 41 persons, including the respondents, was submitted to the Magistrate. The respondents raised the objection that there was no sanction under S. 197 Cr.P.C, and hence the proceedings could not be initiated. The contention having not been accepted by the Magistrate, the accused persons moved the High Court under S. 482 Cr.P.C. The criminal proceedings having been quashed on the sole ground that there was no sanction under S. 197 Cr.P.C, appeals were filed by the State, before the Apex Court. Taking into consideration the rival contentions, the question raised for consideration was "Whether sanction under S. 197 of Cr.P.C, is required to initiate criminal proceedings in respect of offences under Ss. 420, 468, 477-A, 120-B read with 109 of IPC". Despite finding that the respondents had worked as public servants at the relevant point of time i.e., when they indulged in the alleged criminal misconduct, it has been held that the question is not whether they were in service or on duty or not, but whether the alleged offences have been committed by them "while acting or purporting to act in discharge of their official duty". After referring to the decisions in, (1) *SHAMBOO NATH MISRA*, (2) *PRAKASH*

SINGH BADAL (supra) and (3) Rajib Ranjan Vs. R. Vijaykumar, (2014) 4 CCR 409 : (2014) 4 Crimes 328 : (2015) 1 JCC 42 : (2014) 4 RCR(Criminal) 723 : (2014) 10 SCJ 153 , it has been held that the question is no more "Yes integra" and it was concluded as follows:

"11. The alleged indulgence of the officers in cheating, fabrication of records or misappropriation cannot be said to be in discharge of their official duty. Their official duty is not to fabricate records or permit evasion of payment of duty and cause loss to the Revenue. Unfortunately, the High Court missed these crucial aspects. The learned Magistrate has correctly taken the view that if at all the said view of sanction is to be considered, it could be done at the stage of trial only."

(emphasis is supplied)

10. The petitioner - H.S. Cheluvraj, facing trial for the same offences and on the very same set of allegations i.e., in C.C. Nos. 1003, 1069, 1092, 1094, 1095, 1096, 1097, 1099, 1100 of 2009, had filed Criminal Petitions Nos. 7190, 7241, 7245, 7244, 7195, 7194, 7196, 7242, 7243 of 2011 respectively, to quash the entire proceedings therein. The said petitions having been dismissed by this Court, on 20th March, 2012, interlocutory applications for recalling the said orders were filed on 17.12.2013. Said applications, after hearing, have been dismissed on 20.04.2015. While passing the order dated 20.03.2012, this Court has found, that in terms of a Government Circular dated 03.02.2006, when stamp duty and registration charges are remitted to the bank under challans, the Sub-Registrars should keep the document/s pending, until receipt of the challans from the Bank and on confirmation that necessary stamp duty and registration charges are paid, shall register the document/s. It was found that as per the investigation records, the petitioner had entered into conspiracy with other accused and fabricated challans, after remittance of stamp duty/registration fee to the Bank and misappropriated the difference. It was also found that during the course of investigation, forged documents were sent to handwriting experts and the opinion of the handwriting expert, prima-facie indicates, that after the amount towards stamp duty/registration charges was remitted to the bank, numerical figures in the challans were altered to make it appear that stamp duty/registration charges as having been duly remitted to the Bank. Since the investigation record reveals that the petitioner, in connivance with other accused, committed forgery of challans and misappropriated stamp duty/registration fee payable to the government, finding no ground to quash the proceedings, the petition/s were dismissed.

11. Sri M.S. Bhagwat and Sri D. Pavanesh, learned advocates, conceded that the allegations which the petitioners are facing in the pending criminal cases before the Magistrate, are identical in all respects i.e., to those cases which became the subject matter of consideration in Criminal Petition Nos. 7190, 7241, 7245, 7244, 7195, 7194, 7196, 7242, 7243 of 2011. The said criminal petitions having been dismissed on 20.04.2015, the said orders squarely apply to the instant petitions.

12. In my opinion, the protection under S. 197 Cr.P.C, would be available only when there is a direct or reasonable nexus between the nature of the duties cast upon the public servant and the act constituting an offence and not otherwise. Merely because the accused is a public servant is not enough. A reasonable connection between his duty as a public servant and the act/s complained of is what will determine, whether he was acting in discharge of his official duties or purporting to do so, even if the acts were in excess of what was enjoined upon him as a public servant, within the meaning of that expression under S. 197 Cr.P.C. (See, (i) para 6 of P. Arulswami Vs. The State of Madras, AIR 1967 SC 776 : (1967) CriLJ 665 : (1967) 1 SCR 201 , (ii) para 17 of B. Saha and Others Vs. M.S. Kochar, AIR 1979 SC 1841 : (1979) CENCUS 461 : (1979) CriLJ 1367 : (1979) 4 SCC 177 : (1979) SCC(Cri) 939 : (1980) 1 SCR 111 and (iii) para 42 of General Officer Commanding Vs. CBI and Another, AIR 2012 SC 1890 : (2012) 2 Crimes 178 : (2012) 2 RCR(Criminal) 818 : (2012) 5 SCALE 58 : (2012) 6 SCC 228 .

13. The instant cases being identical to the decision of the Apex Court, in INSPECTOR OF POLICE AND ANOTHER v. BATTENAPATLA VENKATA RATNAM (supra), at this stage, there is no scope for interference, with the cases pending before the learned Magistrate.

14. The question, whether the petitioners acted in the course of performance of official duties and/or whether the defence is pretended or fanciful, should be examined during the course of trial, by giving opportunity to both sides. The question of sanction, in the said view of the matter, is left open to be decided, upon conclusion of the trial.

In the result, subject to the observation made supra, these petitions are dismissed. The Criminal Cases having been instituted during 2009, learned Magistrate shall decide the same expeditiously and before 31.12.2016.