
(2015) 02 KAR CK 0039

In the Karnataka High Court

Case No : Criminal Petition No. 11138/2013 and Criminal Revision Petition No. 2154/2013

Jayaramappa and Others

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 27-02-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 154(1), 227, 482
Penal Code, 1860 (IPC) — Section 164, 326-A, 326-B, 354, 354-A
Prevention of Corruption Act, 1988 — Section 12, 13(1)(d), 13(2), 7

Citation : (2015) 02 KAR CK 0039

Hon'ble Judges : Rathnakala, J.

Bench : Single Bench

Advocate : Shankar P. Hegde, HCGP, for the Appellant; V.P. Sonwalkar, S.P.P., for the Respondent

Final Decision : Dismissed

Judgement

Rathnakala, J.—Since lis involved in both the cases is about the registration of Crime No. 3/10 registered by the Karnataka Lokayukta Hospet, police station. In which charge sheet was filed against the petitioners in SC No. 11/12 in respect of offence under Section 7 , 12 , 13(1)(d) r/w. 13(2) of PC Act 1988, both the cases are taken together for final disposal.

2. The petitioners of CrI. RP No. 2154/2013 are arrayed as accused Nos. 3 and 4 in the charge sheet and they filed an application before the learned Special Judge under Section 227 of Cr.P.C. to discharge them of the charges, which after consideration was dismissed by considered order dated 1/1/2013. The petitioners of CrI. P. 11138/2013 are accused Nos. 1, 2, 5, 6 have directly come before this Court under Section 482 of Cr.P.C. seeking to quash the charge sheet. The facts not in dispute between the parties is, the Police Inspector of Karnataka Lokayukta, Hospet, on receiving a credible information on 7/5/2010, around 5.00 p.m., proceeded to the spot along with his staff and panchas. They reached

Hagan check post and stopped the trucks, which were proceeding on the road. On enquiring with the drivers, they disclosed that the officials of the Forest, Mines and Geology and police department were putting seal on the permit after receiving the bribe money. The drivers also undertook to show those persons who received the gratification from them. Accordingly, those drivers were also taken by the raid party to the check post and the Police Inspector noticed that the officials of Mines and Geology, Police department and Forest department were taking documents and putting seals on them and also receiving illegal gratification on demand from the concerned persons. On noticing the raid party, those persons fled away and on further enquiry, the inmates of the check post revealed their names and address. As per the information of the driver, S. Prasad and Hemaginyappa-accused Nos. 5 and 6 being private persons have received an illegal gratification from them. On the direction of the Police Inspector, accused No. 1-Jayaramappa produced Rs. 5,100/-, accused No. 2-Somanna produced Rs. 7,200/-, accused No. 3-Kumarrappa produced Rs. 5,800/-. The accused No. 4 had already disappeared from the scene of occurrence. No money was found with the accused Nos. 5 and 6, but they stated that they were paid Rs. 150 per day. The Total gratification amounted to Rs. 18,100/- and the same was seized. No cash declaration register was maintained in the office. The photo copies of the records submitted by the drivers were seized. The movement register in respect of the lorries passing through the check post were also seized. The register maintained by the forest department along with their seal, Register of Mines and Geology Department were also seized. The first accused denied of having receiving any illegal gratification. As per the version of the second accused, he was there to watch the disputed land, as per the order of the Court. Since there was no accommodation, he was sleeping in the check post after his duty. Mahazar was drawn. After return to the Lokayukta police Station, FIR was registered.

3. It is the submission on behalf of the petitioners that FIR subsequent to the raid was illegal and has no legal sanctity in view of the various judicial pronouncements of this Court (Crl. P. No. 10616/2013 D.D. 23.08.2013 K. Yernswamy vs. State of Karnataka, Lokayuktha, Bellary; Crl. P. No. 15941/2012 c/w. Crl. P. No. 15852/2012 D.D. 05.02.2013 Sri Girishchandra and Another vs. The State by Lokayuktha Police, Yadgir (D.B.); Crl. P. No. 1001/2013 D.D. 09.04.2013 Sri K. Ashwath Reddy and Another vs. Karnataka Lokayuktha Police, Police Wing, City Division, Bangalore; Crl. P. No. 3213/2012 c/w. Crl. P. Nos. 2142, 2877, 2910 and 2942 of 2012 D.D. 03.09.2012 - L. Shankaramurthy, N.A. Ramesh, B.H. Shankare Gowda, S. Dinesh, Smt. H. Jayamma and Another vs. The State by Lokayuktha Police, City Division, Bangalore Urban Division, Bangalore; Crl. P. No. 10442/2013 D.D. 18.03.2013 Somashekhappa vs. The Karnataka Lokayukta, Belgaum; Crl. P. No. 11477/2011 D.D. 26.03.2013 Shri C. Hemanth Kumar vs. Karnataka Lokayuktha, Hospet, Bellary District). When the Lokayuktha challenged the judgment of this Court in Crl. P. 2142/2012 (N.A. Ramesh's case) in Special Leave Petition, it was considered along with bunch of

cases and was rejected.

4. In view of the dismissal of special leave petition by the Apex Court, in State of Karnataka Vs. N.A. Ramesh disposal dated 24/9/2014. The confusion if any with regard to the obligation on the Investigating Officer to register a case on receiving the first information report, with regard to the commission of a cognizable offence before proceeding for investigation. In the case on hand, since the seizer Mahazar was not proceeded by registration of FSR, both Mahazar and FSR are liable to be adjusted.

5. In reply, the learned Special Public Prosecutor for the Lokayukta would submit that in the case on hand the Investigating Officer received a credible information at 5.00 p.m. on 7/5/2010. To ascertain the credibility of the information, he had no other go, except to personally visit the alleged place of occurrence. He has gone to the place with all care and preparation by procuring in panchas and also a photographer and his staff with him. He enquired with the drivers of the trucks who were passing through the check post and ascertained about as to what was happening in the check post. It is only after searching the place seizure of the bribe money and recording of the statement of the witness and seizure could be done. After drawing the Panchanama at this spot, he returned to his office and immediately registered the F.S.R. As such there was no undue delay on his part in registering the case. As per the judgment of the Apex Court in Lalita Kumari Vs. Government of U.P. and Others, preliminary enquiry is permissible in certain category of cases, among which corruption cases also of that type. Wherefore, there is no illegality committed by him in registering the case after visiting the spot and conducting Panchanama.

6. The learned Special Prosecutor, further adds that it is not only on the basis of Panchanama, the charge sheet is filed, the Investigating Officer after thorough investigation, has collected the materials about the involvement and indulgence of all the accused persons in the offence, he has registered the case. Assuming for a while that there was some delay in registering case that would not go to the root of the matter to topple the entire case itself.

7. In the light of the above rival submissions, sole point that gains consideration is--

"Whether the FIR registered subsequent to raid and seizure mahazar is illegal?"

8. Since the focus in this case is on the primary duty of the Investigating Officer, on receipt of an information in respect of a cognizable offence, we will go to the relevant provision under Section 154(1) of Cr.P.C.

9. Section 154 of Cr.P.C. enumerates the duty of the police officer on receipt of the information in respect of a cognizable case. Section 154 of Cr.P.C. reads thus--

154. Information in cognizable cases.

(1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf:

[Provided that if the information is given by the woman against whom an offence under section 326-A , section 326-B , 354 , 354-A , 354-B , 354-C , 354-D , 376 , 376-A , 376-B , 376-C , 376-D , 376-E or section 509 of the Indian Penal Code, 1860 (45 of 1860) is alleged to have been committed or attempted, then such information shall be recorded, by a woman police officer or any woman officer; 1

Provided further that--

a. in the event that the person against whom an offence under section 326-A , section 326-B , 354 , 354-A , 354-B , 354-C , 354-D , 376 , 376-A , 376-B , 376-C , 376-D , 376-E or section 509 of the Indian Penal Code, 1860 (45 of 1860) is alleged to have been committed or attempted, is temporarily or permanently mentally or physically disabled, then such information shall be recorded by a police officer, at the residence of the person seeking to report such offence or at a convenient place of such person's choice, in the presence of an interpreter or a special educator, as the case may be;

b. the recording of such information may be videographed.

c. the police officer shall get the statement of the person recorded by a Judicial Magistrate under clause (a) of sub-section (5-A) of section 164 as soon as possible.]

(2) A copy of the information as recorded under subsection (1) shall be given forthwith, free of cost, to the informant.

(3) Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in subsection (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer-in-charge of the police station in relation to that offence.

10. Accordingly, the police officer is authorized to proceed for investigation, if the said information is sufficient to register a case. As per the judgment of constitutional Bench of the Apex Court in Lalita Kumari's case, seven days time is permissible to the Investigating Officer to make a preliminary enquiry to ascertain the truthfulness of the information so received. The term "inquiry",

which appears in the definition clause 2(g) of Cr.P.C. reads as under--

"2(g) -- "inquiry" means every inquiry, other than a trial, conducted under this Code by a Magistrate or Court."

11. Wherefore, by necessary implication inquiry is the regime of the Court and preliminary enquiry which is not defined in the criminal Procedure Code is informal collection of information. The Apex Court in Lalita Kumari's case has held as under--

"119. Therefore, in view of various counterclaims regarding registration or non-registration, what is necessary is only that the information given to the police must disclose the commission of a cognizable offence. In such a situation, registration of an FIR is mandatory. However, if no cognizable offence is made out in the information given, then the FIR need not be registered immediately and perhaps the police can conduct a sort of preliminary verification or inquiry for the limited purpose of ascertaining as to whether a cognizable offence has been committed. But, if the information given clearly mentions the commission of a cognizable offence, there is no other option but to register an FIR forthwith. Other considerations are not relevant at the stage of registration of FIR, such as, whether the information is falsely given, whether the information is genuine, whether the information is credible, etc. These are the issues that have to be verified during the investigation of the FIR. At the stage of registration of FIR, what is to be seen is merely whether the information given ex facie discloses the commission of a cognizable offence. If after investigation, the information given is found to be false, there is always an option to prosecute the complainant for filing a false FIR."

12. In the case on hand the action of the Investigating Officer in proceeding to the place of occurrence with all equipments to conduct a raid without registering the case is illegal in view of judgment of the Division Bench of our Court in Girish Chandra case (Supra) and dismissal of Special Leave Petition by Apex Court in N.A. Ramesh's case. That is why pre-FIR, search and seizure mahazar have no legal sanctity. On search and seizure mahazar having become illegal and entire post FIR investigation is shallow and charge sheet becomes invalidated. In that view of the matter, under the supreme jurisdiction of Section 482 of Cr.P.C. the F.I.R. with the complaint and the consequential charge sheet are all liable to be quashed.

13. Accordingly, Crl. P. No. 11138/2013 and Crl. R.P. 2154/2013 are allowed. The F.I.R. registered by Karnataka Lokayuktha, Hospet, in their P.S. No. 3/2010 and the charge sheet submitted in pursuance of the said panchanama before the Special Court, which is registered in S.C. No. 11/2012 are quashed. Consequently, the order passed by the learned Special Judge on his file in S.C. No. 11/2012 in dismissing the application filed by accused Nos. 3 and 4, which was filed under Section 227 of Cr.P.C. is also set aside.