

(1995) 04 KAR CK 0024
In the Karnataka High Court
Case No : Criminal Petition No. 715 of 1992

K. Srinivas and others

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 07-04-1995

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 379, 447, 511

Citation : (1995) 2 ALT(Cri) 136 : (1995) 2 KarLJ 283

Hon'ble Judges : K.B. Navadgi, J

Bench : Single Bench

Advocate : S. Mahesh, for Sri R.B. Deshpande, for the Appellant; A.M. Farooq, State Public Prosecutor, for the Respondent

Judgement

1. This is a petition u/s 482 of the code of Criminal Procedure, 1973 ("the Code" for short), with a prayer to quash the investigation launched by the Office-in-charge of the Police Station at Jalahalli in Deodurg Taluk of Raichur District, on the basis of the information lodged by the Assistant Superintendent of Police, Lingsuuar Sub-Division, Lingsuuar, in Raichur District, on 6-4-1992 and to quash the First Information Report issued by the Sub-Inspector of Police on the basis of the case registered in Crime No. 14/1992 and submitted to the jurisdictional Magistrate-Judicial Magistrate First Class, Deodurg ("the learned Magistrate").

2. I have heard Sri S. Mahesh, learned counsel for petitioners 1 to 3, and Sri A. M. Farooq, the learned State Public Prosecutor.

3. I have perused the record in this petition, the record in Crime No. 14/1992, on the file of the learned Magistrate, and the record and proceedings in Writ Petition No. 17579/90 disposed of by the order dated 27-6-1994. The record in the said writ petition was called for perusal at the request of the learned counsel for petitioners.

4. The question for consideration is : Whether petitioners have made out a case

for the exercise of the inherent jurisdiction of this Court u/s 482 of the Code and to grant the prayer.

5. The facts relevant to answer the question, as emerge from the record are these :

6. M/s. Vijaya Granites is a Concern doing quarrying business. One Goutham Kumar is the proprietor. The Concern has its Head Office at Ilkal in Hungund Taluk, District Bijapur.

7. K. Srinivas, petitioner-1, is the Power-of-Attorney Holder of Gouthan Kumar. Murugesh, petitioner-2, is working as a Supervisor in the Concern. Balanagouda, petitioner-3, is a resident of Village Bhogi Ramanagunda in Deodurg Taluk.

8. M/s. Vijaya Granites applied for the grant of quarrying lease for extraction of Ornamental (Pinc) Granite from the lands bearing Survey Nos. 1 to 4, 13 to 15, 38 to 40 and 60 in the limits of Bhogi Ramanagunda village in Deodurg Taluk. The Government of Karnataka granted the lease. Annexure-A to the petition is the xerox copy of the Quarrying Lease.

9. A persual of Annexure-A would show that on behalf of the Government of Karnataka, the Deputy Director (Plans & Claims), Department of Mines and Geology, executed the lease in favour of M/s. Vijaya Granties. The duration of lease was for ten years from 23-8-1980. In accordance with the terms of lease and Rule 16 of the Mysore (Karnataka) Minor Mineral Concession Rules, 1969, ("the Rules of 1969" for short), M/s. Vijaya Granties applied for renewal of the licence before the expiry of the lease. The lease was not renewed.

10. M/s Vijaya Granties filed a writ petition in this Court in writ petition No. 17579/90 seeking the following reliefs :

"Wherefore, it is prayed that this Hon"ble Court may be pleased to :

(i) declare that Rule 3-A of K.M.M.C. Rules is unconstitutional, ultra vires of Section 15 of M.M.R.D. Act;

(ii) issue a writ of mandamus or any other appropriate writ or order directing the respondents to consider and grant renewal of quarry lease in favour of petitioner in the interest of justice.

(iii) issue such other appropriate writ or order or direction as deemed fit under the case circumstances of the case in the interest of justice."

11. During the pendency of the writ petition, in terms of the interim prayer, this Court granted an interim order on 28-8-1990 staying the operation of Rule 3-A of the Rules of 1969 as against M/s. Vijaya Granites and restraining the State of Karnataka by its Secretary, I & C., V.S., Bangalore, the Director of Mines and Geology and the Joint Director of Mines and Geology, Department of Mines and Geology, impleaded as respondents 1, 2 and 3 respectively in the writ petition, from interfering with the right of M/s. Vijaya Granites to carry on the quarrying

operations in the lands bearing Survey Nos. 1 to 4, 13 to 15, 18, 39 to 40 and 60 in Bhogi Ramanagunda village under Quarrying Lease 2844, Annexure-B is the xerox copy of the interim order made by this Court in the writ petition.

12. The writ petition came up for disposal on 27-6-1994. It was disposed of with the following order :

ORDER

In this matter, the petitioner is questioning the Constitutional validity of Rule 3A of the Karnataka Minor Mineral Concession Rules, 1969 as ultra vires the Mines and Minerals (Regulation and Development) Act, 1957 and seeks for certain directions in relation to renewal of quarrying lease granted in favour of the petitioner/s and certain other incidental reliefs.

(2) The respondent have refused to grant the renewal sought for on the basis of the said Rule as it stood at the relevant time. The said Rule 3A has undergone several changes and it has also been interpreted by this court on several occasions. In the meanwhile the respondents have repealed the old Rules and have introduced new Rules i.e., Karnataka Minor Mineral Concession Rules, 1994 replacing the Rules of the year 1969 in which Rule 3A occurs. In the light of the later developments the respondents have to consider the applications filed by the petitioner/s for renewal of the licence in the light of the law laid down by this Court and in the light of the Rules. Until then status quo shall be maintained subject to relevant Rules. On this basis several petitions have been disposed of.

(3) Learned counsel however submits under the new Rules renewal is not automatic and therefore the position as regards status-quo should not be continued. But I do not think that I should detract from the earlier position now unless respondents themselves take appropriate action in that regard. Petition shall stand disposed of accordingly."

13. A close look to the narration of the facts would indicate that this court, while disposing of the writ petition, directed that status quo should be maintained subject to the relevant Rules and the respondents in the writ petition have to consider the application filed by M/s. Vijaya Granites for renewal of the licence in the light of the law laid down by this Court and in the light of the Rules of 1969 and the Karnataka Minor Mineral Concession Rules, 1994 ("the Rules of 1994"), which have replaced the Rules of 1969, in which Rule 3-A occurs.

14. The Assistant Superintendent of Police, Lingsuuar Sub-Division, Lingsuuar, on 4-4-1992 received information that M/s. Vijaya Granites was quarrying and taking out the granite from the lands which had not been given to it on lease, bearing Survey Nos. 11 and 13 of Bhogi Ramanagunda village. The Assistant Superintendent of Police visited the village and made enquiries. He flashed a wireless message to the Tahsildar, Deodurg, to send a Surveyor to survey the lands on 6-4-1992.

15. On 6-4-1992, he went to Jalahalli at about 2-00 p.m. He collected the Village

Accountant of Ganjihal village. One Sugappa and Sharanappa met him and informed that they had surveyed the lands and found that M/s Vijaya Granites was quarrying in Survey Nos. 11 and 13. They also informed that M/s. Vijaya Granites had done quarrying operations in 20 guntas in the land bearing Survey Nos. 11 and 4 guntas in the land bearing Survey No. 13.

16. On 6-4-1992, the Assistant Superintendent of Police collected Venkob and Usman, residents of Jalahalli, to act as Panchas. From Jalahalli, accompanied by Panchas, the Circle Inspector of Police, the Constabulary, the Village Accountant and the Surveyor, he proceeded to the land. On the way, he collected Sukumani, the Dalapathi of Bhogi Ramanagunda, and visited the lands at 3-00 p.m. On the lands, he learnt that petitioners 1 to 3 were doing quarrying operations on behalf of M/s. Vijaya Granites and that M/s. Vijaya Granites had transported granite blocks from the lands about 24 in number. Granite blocks were found loaded in a Crane.

17. The Assistant Superintendent of Police did not seize the stones which were not capable of being seized because of their heaviness. He posted two Constables to watch them. But, he seized the Crane and shifted it to the Police Station.

18. Thereafter, at about 6-15 p.m., he left the lands leaving his report, the Panchanama and the seized Crane with the Police with a direction to register the case against petitioners 1 to 3.

19. The report of the Assistant Superintendent of Police was taken in the Police Station at Jalahalli on 6-4-1992. On the strength of the report, the Sub-Inspector of Police registers a case against petitioners 1 to 3 in Crime No. 14/1992 u/s 4 of the Mines and Minerals (Regulation and Development) Act, 1957 ("the Act of 1957") and Sections 447, 379 read with Section 511 of the Indian Penal Code. He issued F.I.R. and took up investigation. Annexure-C is the certified copy of the report of the Assistant Superintendent of Police. Annexure-D is the certified copy of the First Information Report issued by the Sub-Inspector of Police, Jalahalli.

20. This petition came to be filed on 21-4-1992. It was admitted on 22-4-1992 and interim stay was granted. The stay has been continued till today. By virtue of the stay, it appears that there is no further progress in the investigation.

21. Before I proceed further in the matter, I feel it necessary and advantageous to refer to the scope and ambit of the jurisdiction of this Court u/s 482 of the Code as crystallized by the various pronouncements made by the Highest House of Law in the country, the Hon"ble Supreme Court.

22. In Daulat Ram Vs. State of Punjab, the facts were these :

The appellant was working as a Patwari. On August 19, 1958, he wrote a letter to the Tahsildar of Pathankot that on the previous day, he had been set upon by two persons Hans Raj and Kans Raj who beat him severely and robbed him of certain of his official papers and some money, which were with him, partly belonging to

him and partly to the Government. At the end of the letter, he had stated that the letter had been written for the information of the Tahsildar. The Tahsildar, however, had forwarded the letter to the Sub-Divisional Officer, who had sent it, in turn, to the Police. The Police had enquired into the facts and reported that the allegations in the letter were false. In the meanwhile, the appellant had entered into some sort of compromise with Hans Raj and Kans Raj and had written another letter stating that as they were his relatives and he had found the papers and money, the proceedings, if any, be dropped and the papers be consigned to the record room. The matter had, however, been pursued further and when the report of the Police stated that the allegations in the original letter were false, the Tahsildar had asked the Police to draw up a calendar. The Police, however, had launched a prosecution against the appellant u/s 182 of the Indian Penal Code. The appellant, on due trial, had been held guilty of that offence and had been sentenced to three months' rigorous imprisonment. The appeal and revision filed by him had failed. He had served out the entire sentence.

23. The question before the Hon''ble Supreme Court was, whether a complaint in writing as required by Section 195 of the Code of Criminal Procedure, 1898 ("the Code of 1898" for short if and when necessary) had been presented by the public servant concerned. The public servant, who was moved by the appellant, was the Tahsildar. Whether the appellant wanted the Tahsildar to take action or not, the fact was that he had moved the Tahsildar on what was stated to be a false averment of facts. He had charged Hans Raj Kans Raj with offences under the Indian Penal Code and had moved his superior Officer for action even though he might have stated in the letter that it was only for the information of the Tahsildar. The Hon''ble Supreme Court assumed that the appellant expected that some action would be taken. In fact, in the second letter, the appellant had stated that he had compromised the matter and that the proceedings, if any taken, might be dropped. This clearly had shown that he anticipated some action on the part of his superior Officer. The Hon''ble Supreme Court held that it was incumbent on the part of the Tahsildar to present a complaint in writing against the appellant and not leave the Court to be moved by the Police by putting a Charge-sheet.

24. Interpreting the provisions contained in Section 195 of the Code of 1898, the Hon''ble Supreme Court held that there was an absolute bar against the Court taking cognizance of the case u/s 182 of the Indian Penal Code except in the manner provided u/s 195 of the Code.

25. In Dr. Sharda Prasad Sinha Vs. State of Bihar, the Hon''ble Supreme Court has laid down that the allegations in complaint or Charge-sheet not constituting any offence, the order taking cognizance can be quashed by High Court in exercise of inherent powers.

26. In Smt. Maharaji and Others Vs. Rama Shanker and Another, the High Court of Judicature at Allahabad held that a Tahsildar conducting mutation proceedings u/s 34 of the U.P. Land Revenue Act, 1901, was a Revenue Court, that an offence

u/s 467 of the Indian Penal Code was covered by the words "any offence described in Section 463" occurring in Section 195(1)(bI)(ii) and that criminal proceedings taken under Sections 467 and 471 of the Indian Penal Code on the basis of a complaint that the sale deed relied upon by the accused in the mutation proceedings was a forged and fabricated document and that cognizance of offences under Sections 467 and 471 could be taken only on a written complaint by the Revenue Court concerned and not on the complaint of a private person.

27. In *Yeshvir Goyal v. Union of India* (ILR 1992) Kar 198, this Court, on a review of the judicial decisions on the point, held :

"The inherent powers u/s 482, Cr.P.C. are to be used sparingly and with circumspection. But, it cannot be said that, if the allegations made in the complaint are either vague and frivolous in nature or vexatious, this Court should close its eyes and refuse to quash the proceedings initiated on such baseless allegations. Thus powers u/s 482, Cr.P.C. to quash the FIR or investigation be exercised when it is shown on consideration of relevant material that : (i) Grounds made out in the complaint to suspect that an offence has been committed are not reasonable; (ii) Allegations in the complaint if read as a whole do not constitute an offence; (iii) FIR is quite frivolous and vexatious in that prima facie no cognizable or non-cognizable offence has been made out; (iv)(a) Interference u/s 482, Cr.P.C. is required to correct any order passed under this Code, or, (b) to prevent abuse of process of the Court, or (c) to secure the ends of justice."

(As stated in the Head Note)

28. Having covered the ground so far, I now proceed to examine the factual and legal aspects of the matter.

29. As can be seen from the narration of the facts, the information lodged by the Assistant Superintendent of Police against petitioners 1 to 3 is, the contravention of Section 4 of the Act of 1957 and the offences punishable under Sections 447, 379 read with Section 511 of the Indian Penal Code. Bearing in mind that the attempt to commit the offences punishable under Sections 447 and 379 of the Indian Penal Code as alleged in the information finds its root in contravention of the provisions contained in Section 94 of the Act of 1957, I propose to read Section 4 of the Act as amended by the Mines and Minerals (Regulation and Development) Amendment Act, 1986. That Section reads :

"4(1) No person shall undertake any prospecting or mining operations in any area, except under and in accordance with the terms and conditions of a prospecting licence or, as the case may be, a mining lease, granted under this Act and the rules made thereunder :

Provided that nothing in this sub-section shall affect any prospecting or mining operations undertaken in any area in accordance with the terms and conditions

of a prospecting licence or mining lease granted before the commencement of this Act which is in force at such commencement.

Provided further that nothing in this sub-section shall apply to any prospecting operations undertaken by the Geological Survey of India, the Indian Bureau of Mines, the Atomic Minerals Division of the Department of Atomic Energy of the Central Government, the Directorates of Mining and Geology of any State Government (by whatever name called), and the Mineral Exploration Corporation Limited, a Government company within the meaning of Section 617 of the Companies Act, 1956.

(2) No prospecting licence or mining lease shall be granted otherwise than in accordance with the provisions of this Act and the rules made thereunder.

(3) Any State Government may, after prior consultation with the Central Government and in accordance with the rules made u/s 18, undertake prospecting or mining operations with respect to any minerals specified in the First Schedule in any area within that State which is not already held under any prospecting licence or mining lease."

30. Having regard to the admitted facts, it is difficult to say even prima facie that M/s. Vijaya Granites committed contravention of Section 4 by undertaking quarrying operations in the land bearing Survey No. 13, one of the lands covered by the Quarrying Lease. Indeed, it is true, as on 6-4-1992, the quarrying lease granted in favour of M/s. Vijaya Granites had stood determined by the expiry of the duration of the lease. But, in the writ petition filed by M/s. Vijaya Granites, this Court, by the interim order dated 28-8-1990, had restrained respondents 1 to 3 in the writ petition, from interfering with the right of M/s. Vijaya Granites to carry on the quarrying operations in the lands including the land bearing Survey No. 13. That interim order was in operation and enured to the benefit of M/s. Vijaya Granites till 27-6-1994. By virtue of the order made in the writ petition on the said date, the right given to M/s. Vijaya Granites to carry on the quarrying operations in the lands including the land bearing Survey No. 13 has continued. In the said view of the matter, it cannot be stated by any stretch of imagination that the petitioners, who were working on behalf of M/s. Vijaya Granites—petitioner 1, the Power of Attorney Holder of the proprietor, petitioner 2, a Supervisor, and petitioner-3, a servant, committed contravention of Section 4 of the Act of 1957 as amended by the Amendment Act of 1986 in so far as the quarrying operations in the land bearing Survey No. 13 is concerned.

31. As regards the quarrying operations in the land bearing Survey No. 11, the facts emerging from the record are these.

32. The land bearing Survey No. 11 is a Pattedar land measuring 2 acres 22 guntas. It belonged to the ownership of one Kasaraiah S/o Sabaiah, resident of Bhogi Ramanagunda. It appears that the said Kasaraiah agreed to sell the land to Murugesh s/o Palaniswamy (petitioner 2) on 20-4-1991 for a sum of Rs. 15,000/-. The Agreement Deed placed on record would show that on 20-4-1991,

i.e., nearly a year prior to 6-4-1992, Kasaraiah agreeing to sell the land to petitioner-2 for a sum of Rs. 15,000/-, received the entire consideration amount and handed over the possession of the land. A reading of the recitals in the Agreement Deed would show that Kasaraiah sold the land to petitioner 2 to meet the family necessities and agreed to execute the registered sale deed in favour of petitioner-2 as and when requested.

33. It appears that this Agreement Deed was given effect to. The extract of the Record of Rights of the land bearing Survey No. 11 would show that pursuant to the agreement, the name of petitioner-2 was entered as owner in Column No. 9 as well in Column No. 12. The entry has been duly certified in the mutation proceedings by the Revenue Authorities having jurisdiction under Mutation Entry No. 1D dated 17-8-1992. If the Pattedar land bearing Survey No. 11 was agreed to be purchased by petitioner-2 on 20-4-1991 and if in part performance of the contract, the vendor put petitioner-2 in possession of the land on the same day as it appears to be, it is difficult to say that M/s. Vijaya Granites or petitioners 1 to 3 carrying on quarrying operations in the land bearing Survey No. 11 after attempting to commit or committing the offence punishable under Sections 447 and 379 of the Indian Penal Code. But, it can be said that for the quarrying operations in the land bearing Survey No. 11, M/s. Vijaya Granites or petitioners 1 to 3 or any of them, had no licence. In that view of the matter, it can be said prima facie that there was contravention of Section 4 of the Act of 1957 as amended by the Amendment Act of 1986, by them.

34. The question that survives for consideration is, whether the information lodged by the Assistant Superintendent of Police, Lingsugur Sub-Division, Lingsugur, against petitioners 1 and 2 could have been the basis for registering the case against them by the Sub-Inspector of Police, Jalahalli Police Station, u/s 4 of the Act of 1957.

35. Annexure-E to the petition is the notification issued by the Government of Karnataka on 20-7-1990 in supersession of the earlier orders/Notification empowering the Officers of the Department of Mines and Geology and the Revenue Department, for the purposes stated in the notification. The notification reads as under :

"In supersession of all earlier orders/Notifications, the Government of Karnataka hereby empowers the following Officers of the Department of Mines & Geology and Revenue Department for -

- (1) Prevention of illegal extraction of Minor Minerals in general and ornamental granite in particular.
- (2) Stopping and checking of illegal movement of minerals.
- (3) Seizing any tool, equipment, vehicle and the minerals including granite.
- (4) To book cases.

(5) Enter and inspect any quarrying lease, survey and take measurement in any such workings, weigh, measure or take measurements if the stocks of the minor minerals lying at any quarry or quarry blocks, examine any document, book, registers or record in the possession or power of any person having the control of, or connected with any quarrying lease or quarrying licence and take extracts from or make copies of such document, book, register or record under the production of any such document, book, register, record any examine any person having the control of or connected with, any quarry or quarrying block u/s 21(4) and Section 22 of MM (R&D) Act, 1957, read with Rule-62 of KMMC Rules, 1969.

of	the	Areas	Revenue	Department	Sl. No.	Designation Officer
-----						I. 1) Director of
Mines and Whole of the						1. The Asst. Respective Geology State Commissioner
Sub-Dvn. 2) Additional Directors "						2. The Tahsildars Respective Taluks 3) Joint
Directors " 3. The Revenue Respective Inspector Hoblies 4) Deputy Directors						" 5) Sr. Geologists Within their jurisdiction 6) Geologists Within their
jurisdiction						7) Asst. Geologists

This issues with the concurrence of Revenue Department vide their No. ED 96 LGP 90 dated 19-7-1990."

36. It was not stated by Sri A. M. Farooq, the learned State Public Prosecutor, that between 20-7-1990 and 6-4-1992, the Government of Karnataka issued any notification authorising the Assistant Superintendent of Police of any Sub-Division to exercise the powers in respect of the subjects mentioned at Serial Nos. 1 to 5 in the notification. If we have to assume that the notification (Annexure-E) held the field as on 6-4-1992, the inevitable and inescapable impression would be that the Assistant Superintendent of Police, Lingsugur Sub-Division, Lingsugur, had no power to do the things mentioned in his report. If he had no power, it is obvious and it needs not much exercise to hold that the information furnished by the Assistant Superintendent of Police could not have been the basis for the Sub-Inspector of Police, Jalahalli Police Station, to register a case against petitioners 1 to 3.

37. The Assistant Superintendent of Police having regard to the definition of the expression "Controlling Officer" in Section 2(c) of the Act of 1957 cannot be called as "Controlling Officer". Absolutely there is no shred of material to show that the Controlling Officer had authorised the Assistant Superintendent of Police, Lingsugur Sub-Division, Lingsugur, to exercise the powers under Rule 62 of the Rules of 1969.

38. It may be some relevance to refer to Section 22 of the Act of 1957. It reads :

"22. No Court shall take cognizance of any offence punishable under this Act or any rules made thereunder except upon complaint in writing made by a person authorised in this behalf by the Central Government or the State Government."

39. A close and careful reading of Section 22 extracted hereinabove, would shown that there is a blanket prohibition on the Court from taking cognizance of any offence punishable under the provisions of the Act of 1957 or the rules made thereunder except upon a complaint in writing made by a person authorised in that behalf by the Central Government or the State Government. If the investigation undertaken by the Jalahalli Police Station on the strength of the information lodged by the Assistant Superintendent of Police not competent to exercise the powers, which formed the basis for his information, were to culminate in the formation of opinion by the Sub-Inspector of Police that petitioners 1 to 3 would be required to be forwarded for inquiry and trial for the offence punishable u/s 4 of the Act of 1957 and Sections 447 and 379 read with Section 511 of the Indian Penal Code, in so far as the quarrying operations in the land bearing Survey No. 11 and if the final report is to be submitted in accordance with the opinion, it is evident from Section 22 that the learned Magistrate cannot take cognizance. The Charge-Sheet would be merely a scrap of paper. If the learned Magistrate could not take the cognizance of the offences, he cannot try the offences in accordance with law. In that view of the matter also, the registration of the case on the basis of the information furnished by the Assistant Superintendent of Police and the investigation taken up on the basis of the registration of the case and issuance of F.I.R., would be a futile and fruitless exercise.

40. From what has been stated above, it becomes crystal clear that the failure to exercise inherent powers in favour of the petitioners would result in the failure of justice. In my view, there is a strong case made out for the exercise of inherent powers to prevent abuse of the process of the Court and to secure the ends of justice. Both on factual and legal aspects, the petitioners have shown that the registration of the case against them in Crime No. 14/1992 in the Police Station at Jalahalli and the investigation undertaken on the basis of the registration of the case are required to be quashed to secure the ends of justice.

41. Answering the question accordingly, I proceed to make the following :

ORDER

The petition is allowed. The case registered against petitioners 1 to 3 in Crime No. 14/1992 on the basis of the information lodged by the Assistant Superintendent of Police, Lingsugur Sub-Division, Lingsugur, is quashed. In view of this order, all further proceedings taken on the basis of the registration of the case, stand quashed.

42. Petition allowed.