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(2015) 12 KAR CK 0187

In the Karnataka High Court

Case No : Writ Petition No. 46915 of 2014 (GM-RES)

Kantharaju APPELLANT

Vs

State by Karnataka Lokayuktha Police and Others RESPONDENT

Date of Decision : 15-12-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 196, 197, 219, 220, 482
Prevention of Corruption Act, 1988 — Section 12, 13(1)(d), 13(1)(e), 13(2), 17

Citation : (2016) 2 KarLJ 457

Hon'ble Judges : Rathnakala, J.

Bench : Single Bench

Advocate : Ashok Haranahalli, Sr. Advocate for Sandeep S. Patil, Advocate, for the Appellant; Venkatesh P. Dalwai, Spl. PP, for the Respondent

Final Decision : Dismissed

Judgement

Rathnakala, J.—The petitioner is arrayed as an accused in the case registered by the respondent/Lokayuktha Police in respect of the offence under Sections 7 , 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (''the Act'' for short).

2. The facts not in dispute between the parties is, the Police Inspector of the respondent/Lokayuktha on a suomoto report registered the case on the allegation that the petitioner being the Personal Secretary of the Hon''ble Minister for Labour, Government of Karnataka, basically from Rural Development and Panchayat Raj Department, is indulging in collecting bribe amount under the pretext of getting recognition to the I.T.I. Colleges through Labour Department; he received bribe during the general transfers in the Labour Department; for the last two weeks, as per the information collected about his corrupt practices, probably he has stored corrupt money so collected by him in his house.

3. Subsequent to the registration of the case, the house of the petitioner was raided under Search Warrant; some articles and documents were seized on 2.8.2014 under Mahazar. Thereafter, the Investigating Officer gave up the

allegation in respect of 13(1)(d) and incorporated Section 13(1)(e) and 13(2) of the Act. The petitioner is cooperating with the investigating agency by furnishing the documents called for by the Investigating Officer.

4. Sri. Ashok Haranahalli, learned Senior Counsel appearing for the petitioner submits that, in pursuance of the confidential information and on conducting a preliminary enquiry, the case was registered in respect of the offence under Sections 7 , 12 , 13(1)(d) and 13(2) of the Act. After noticing that they could not collect any incriminating evidence during the search mahazar, the respondent has changed the investigation from 13(1)(d) to 13(1)(e) of the Act. The inclusion of a distinct and unconnected offence in an already existing FIR makes the FIR liable to be quashed. It is not permissible to proceed with a common FIR in respect of different transactions arising out of different circumstances, as observed by the Apex Court in Anju Chaudhary Vs. State of U.P. and Another, . Law contemplates certain procedure in respect of the offence under Section 13(1)(e) of the Act. First and foremost being the preparation of ''Source Report'', the respondent has to firstly ascertain the income and sources of such income of the petitioner. The check period has to be stipulated to collect the income and assets of the petitioner (in the light of the judgment of the Apex Court in V.K. Puri Vs. Central Bureau of Investigation, . As on the date of the search of the residence of the petitioner, no case was registered under Section 13(1)(e) of the Act. Without there being any necessary information about the assets and income of the petitioner, without holding a preliminary enquiry before registration of the FIR, without ascertaining commission of a cognizable offence, the Investigating Officer has incorporated Section 13(1)(e) of the Act, which is against the principles laid down by the Apex Court in State of Haryana and others Vs. Ch. Bhajan Lal and others, and Lalita Kumari Vs. Govt. of U.P. and Others, . The learned Special Judge without application of mind as to whether there is any material to include Section 13(1)(e) of the Act, has permitted the Investigating Officer to include and investigate in respect of the offence under Section 13(1)(e) of the Act. No speaking order was passed by him while permitting the Investigating Officer to incorporate Section 13(1)(e) of the Act. That apart, the first respondent has written to the Government to keep the petitioner under suspension. The procedure adopted by the Investigating Officer is arbitrary and whimsical. Hence, the entire complaint and the FIR so also the order of the learned Special Judge permitting inclusion of Section 13(1)(e) of the Act in the F.I.R. may be quashed.

5. In reply, learned Special Public Prosecutor for respondent No. 1/Lokayuktha submits that, based on a credible information, the FIR was registered under Sections 7 , 13(1)(d) read with Section 13(2) of the Act. After obtaining the Search Warrant from the Special Court, the house of the petitioner and his relatives were searched and many documents are unearthed indicating that the petitioner has amassed wealth disproportionate to his known sources of income. That led the Police Inspector to request to the Superintendent of Police for necessary orders. The Superintendent of Police vide order dated 7.8.2014

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permitted investigation into the offence under Section 13(1)(e) of the Act. Except the statutory requirement under Section 17 of the Act, no other procedure is contemplated under the statute to proceed with the investigation in respect of the offence under Section 13(1)(e) of the Act. This petition was filed at the stage when the ADGP attached to the respondent addressed a letter to the Government of Karnataka either to transfer him or suspend as there was apprehension of destruction of the material documents by him. Law does not contemplate that the check period shall be fixed before conducting the raid. At this stage, it is too premature to claim that registration of the case and consequential investigation as illegal. It is the established procedure that during the investigation if some other offence other than the one for which case is registered is disclosed, investigation can be proceeded in respect of other offence also. Law does not contemplate permission from the Court to investigate into such new offence at the stage of investigation. It is only after final report is submitted against the petitioner, the Court can decide the same in terms of Sections 219 and 220 of the Code of Criminal Procedure. But at the stage of investigation, no such bifurcation is applicable.

Learned Special Public Prosecutor continues his submission, conducting preliminary enquiry as indicated in Bhajan Lal''s case (supra) as explained by the Constitutional Bench of the Apex Court in Lalita Kumari''s case (supra), is to the discretion of the Investigating Officer. There is no such mandate on the Investigating Officer in respect of the corruption cases to hold preliminary enquiry before registering the case. Having complied the requirement of proviso to Section 17 of the Act, for the offence under Section 13(1)(e) of the Act, no illegality can be attributed in proceeding with the investigation against the petitioner in respect of the offence under Section 13(1)(e) of the Act. The Apex Court in the matter of Superintendent of Police, C.B.I. and Others Vs. Tapan Kr. Singh, brushed aside the contention that the FIR was vague and did not contain full details of the offence. It was held that, mere suspicion of the cognizable offence will entitle the Police Officer to intercept the accused and investigate the case. In the matter of Union of India (UOI) Vs. Prakash P. Hinduja and Another, , in furtherance of the law laid down in Bhajan Lal''s case (supra), the Apex Court enunciated the grounds on which power under Section 482 of Cr.P.C. can be exercised to quash the criminal proceeding thus,

"The grounds on which power under Section 482 , Cr.P.C. can be exercised to quash the criminal proceedings basically are (1) Where the allegations made in the FIR or complaint, even if they are taken at their face value and accepted in their entirely do not prima facie constitute any offence or make out a case against the accused. (2) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused, (3) Where there is an express legal bar engrafted in any of the provisions of Code of Criminal Procedure or the concerned Acts to the institution and continuance of the proceedings. But this power has to be exercised in a rare case and with grant

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circumspection. There are some statutes, which create a bar on the power of the Court in taking cognizance of an offence in absence of a sanction by the competent authority like Section 6 if Prevention of Corruption Act, 1947 or Section 19 of Prevention of Corruption Act, 1988. Similar provision is contained in Section 196 , Cr.P.C. which mandates that no Court shall take cognizance of the offences enumerated in the Section except with the previous sanction of the Central Government or of the State Government. Section 197 , Criminal P.C. also creates an embargo on the power of the Court to take cognizance of an offence alleged to have been committed by any person who is or was a Judge or an Magistrate or a public servant not removable from his office save by or with the sanction of the Government."

In the case on hand, none of these grounds are available to the petitioner. In the matter of Yunus Zia Vs. State of Karnataka and Others , the investigation conducted suomoto by the Police Officer in respect of the offence under Section 13(1)(d) and 13(2) of the Act on the basis of a Press Report, was endorsed by the Apex Court.

Learned Special Public Prosecutor concludes his submission stating that, petitioner is cooperating with the Investigating Officer in respect of the investigation (Annexure-H is the letter addressed by him to the Government). The Lokayuktha Police have given an undertaking to this Court that in respect of the cases, which are pending investigation for more than one year, investigation will be concluded and final report will be submitted by fourth week of April. Under the circumstance, there is no reason to quash the proceedings.

6. In the light of the above submissions made by the learned Counsel appearing for the parties, I have taken note of the fact that, as of now there is no legal bar for the respondent/Lokayuktha Police to investigate in respect of the offence under Section 13(1)(e) of the Act since the Superintendent of Police in compliance of Section 19 of the Act has accorded permission to the Investigating Officer to conduct investigation against the petitioner in respect of the offence under Section 13(1)(e) of the Act. The registration of the case in respect of Sections 7 , 13(1)(d) read with Section 13(2) of the Act did not come to an end after the seizure of the residence of the petitioner. The evidence unearthed during the mahazar has led the Investigating Officer to investigate further in respect of the offence under Section 13(1)(e) of the Act. It is not alien to criminal procedure that the FIR registered for one offence will end up with the charge sheet in respect of another offence. However, it is for the concerned Court, which takes cognizance of the matter, to consider whether said offence for which charge sheet is filed, is made out from the materials tabled before it or not. In view of the fact that the petitioner is cooperating with the Investigating Officer during the course of investigation and very soon the final report will be filed, at this stage, I do not deem it fit to exercise the jurisdiction of this Court under Section 482 of Cr.P.C. to quash the FIR and the investigation.

In the result, the petition is dismissed. However, the petitioner is at liberty to

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raise all the contentions available for him, if aggrieved by the final report that may be filed.

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