

(2013) 12 KAR CK 0080

In the Karnataka High Court

Case No : Criminal Revision Petition No. 819 of 2013

Mr. H.D. Ananda Kumar, ACP, Devanahalli Sub-Division

APPELLANT

Vs

Lokayukta Police City Division

RESPONDENT

Date of Decision : 05-12-2013

Acts Referred:

Citation : (2013) 12 KAR CK 0080

Hon'ble Judges : H.S. Kempanna, J

Bench : Single Bench

Advocate : M. Krishnappa, for the Appellant; T.M. Gayathri, Spl. P.P., for the Respondent

Final Decision : Dismissed

Judgement

H.S. Kempanna, JJ.—Though this matter is listed for admission with consent it is taken up for final disposal. The petitioner in this petition has challenged the order dated 5.8.2013 passed in Special C.C. No. 132/2010 by the XXIII Addl. Civil and Sessions Judge, Bangalore City dismissing his application filed u/s. 227 of Cr.P.C. seeking for his discharge.

2. The petitioner/accused has been sent-up for taking his trial for the offences punishable under Sections 7, 13(1)(d) r/w. Section 13(2) of Prevention of Corruption Act, 1988.

3. It is the case of the prosecution the accused during the year 2009 while working as ACP, Devanahally Sub Divn. Devanahalli on 7.12.2009 when the complainant approached him and requested to take action against one Mr. Atul Kumar who is said to have committed offence of forgery, he demanded a sum of Rs. 5,00,000/- as bribe and also portion of the sale amount. In pursuance of the same on 7.12.2009 at about 5.55 p.m. in his office he demanded bribe amount of Rs. 5,00,000/- from the complainant and when the complainant tried to give Rs. 1,00,000/- he directed the complainant to give the same to CW5-Raghavappa, who accepted the said amount on his behalf as illegal gratification

to show an official favour to CW1 as a motive for rendering an official favour and he has accepted the said illegal gratification from CW1 through CW5 by abusing his official position as a Government Servant and thus he has committed the aforementioned offences.

4. When the case was set down for hearing before charge before the learned Special Judge, the petitioner herein filed an application u/s 227 of Cr.P.C. and sought for his discharge. It was contended that money is not recovered from the possession of the accused. There was no case pending in the office of the accused to show any official favour to the complainant. He had not made any demand from the complainant. There is nothing to show that the accused on the relevant date had demanded bribe and had accepted by himself. The case that was registered is on the basis of the complaint filed by the complainant and was being investigated by the Sub-Inspector and the Circle Inspector of Police Chikkajala police station. The accused has no nexus with the said case as the said case has been registered on being referred by the Jurisdictional Magistrate for investigation and report. He further contended CW5 who has received money on his behalf has not been made as accused in the case instead he has been cited as witness in the charge-sheet. It was further contended the trial Judge without appreciating these material on record has come to an erroneous conclusion that there are no sufficient grounds to proceed against him. Therefore, the order dismissing his application cannot be sustained, it be set aside and he be discharged by allowing his application filed before the Trial Judge. In support of his submission the learned counsel relied upon the decision in the case of P.S. Rajya Vs. State of Bihar,

5. Per contra, the learned Special Public Prosecutor representing the respondent-Lokayukta contended the material now on record, more particularly 164 statements of the complainant and Sri. Raghava, who has received money on behalf of the accused, clearly go to show that the accused has demanded and accepted the bribe to show official favour to the complainant in the case which he had filed against one Atul Kumar. She further contends as on the date of trap the accused has demanded the amount of Rs. 5,00,000/- and when the complainant pleaded with him that he has brought Rs. 1,00,000/-, he has directed to pay the same to CW5 which has been paid to the hands of CW5 as directed by him which is supported in the statement recorded of the said witness u/s. 164 of Cr.P.C. She further contends the learned Trial Judge on going through the entire material placed on record has come to the right conclusion in holding that there are sufficient grounds to proceed against the petitioner and accordingly has rejected the application. The same does not call for any interference. Hence, the petition be dismissed. In support of her submission she also relied upon the decision in the case of State of N.C.T. of Delhi Vs. Ajay Kumar Tyagi, . I have perused the records called from the Trial Court. A perusal of the records disclose during the course of investigation the Investigating Officer has got recorded 164 statements of CW1- the complainant and also CW5- Raghavappa in the case. A perusal of the statements of the said two witnesses

would clearly disclose that the accused has demanded a sum of Rs. 5,00,000/- from the complainant to show official favour in the case that has been registered in Chikkajala Police station on the complaint filed by him referred for investigation to the said police. It further discloses on the date of trap the petitioner has demanded a sum of Rs. 5,00,000/- from the complainant. In response to the same the complainant replied that he has brought Rs. 1,00,000/- and as per the direction of the accused it was paid to CW5. Apart from this the investigating agency has also placed pen camera proceedings and also button camera proceedings which discloses the conversation that has taken place between the complainant and this petitioner. No doubt as submitted by the counsel for the petitioner in the last sentence of the said two proceedings it is stated the conversation is not clearly audible and visible. However, a perusal of the same discloses that the conversation has been translated as recorded in the said button camera and pen camera. The said material would go to show at this stage there are sufficient grounds to proceed against the petitioner as contemplated u/s. 239 and as we are not appreciating the case after full fledged trial, I do not find any merit in the submissions made by the counsel for the petitioner.

Insofar as the decision relied upon by the counsel for the petitioner, adverted to above, it would not be binding in view of the decision relied upon by the learned SPP which clearly discloses that the judgment in Rajya's case is not the law laid down by the Apex Court. In the State (NCT of Delhi) v. Ajay Kumar Tyagi, it is clearly indicated exoneration in departmental proceedings ipso facto would not lead to exoneration or acquittal in a criminal case.

In that view of the matter I do not find any merit in this petition. Accordingly, it is dismissed.

Registry is directed to send the records forthwith to the Trial Court.