

(2015) 05 KAR CK 0009

In the Karnataka High Court

Case No : Writ Petition No. 21848/2015 (GM-RES)

Ravi Raj Guru Raj Kulkarni

APPELLANT

Vs

Selvi J. Jayalalitha and Others

RESPONDENT

Date of Decision : 21-05-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 20(c)
Constitution of India, 1950 — Article 226, 226(2)
Penal Code, 1860 (IPC) — Section 120B
Prevention of Corruption Act, 1988 — Section 13(1)(e), 13(2)

Citation : (2015) 3 AKR 560 : (2016) 1 KCCR 572

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

Bench : Division Bench

Advocate : S.B. Muttalli, for the Appellant

Judgement

A.N. Venugopal Gowda, J.—The first respondent, Selvi J. Jayalalitha, was the Chief Minister of State of Tamilnadu till 27.09.2014. She having been convicted by the learned Special Judge in Special CC No. 208/2004 on 27.09.2014 for the offences punishable under S.13(1)(e) read with S. 13(2) of the Prevention of Corruption Act, 1988 and Section 120B of the Indian Penal Code, resigned to the post of "Chief Minister". First respondent filed appeal against the Judgment of conviction and the order of sentence. By a Judgment dated 11.05.2015, learned Appellate Judge set aside the said Judgment of conviction and the order of sentence. Legislature party of AIADMK having elected the first respondent as its party leader and the news having appeared in the press and electronic media, that her swearing in ceremony as the Chief Minister of the State of Tamilnadu would take place on 23.05.2015, this petition was filed under the brand name of public interest litigation, asking for a mandamus against, (i) the Secretary, Governor's Secretariat, Raj Bhavan, Chennai - 600 022 and, (ii) the Chief Secretary, Government of Tamilnadu, Chennai - 600 009, to desist from making any arrangement pertaining to the swearing in ceremony of the first respondent as the Chief Minister of the State of Tamilnadu, until the final verdict against the

Judgment dated 11.05.2015 in Criminal Appeal Nos. 835-838/2014 and 17-22/2015 passed by the High Court of Karnataka, Bengaluru is decided.

2. The petitioner, an Advocate, enrolled during 2004 and stated to be practising in the law Courts at Kushtagi, Koppal District, filed this petition. The petition is not accompanied by any document, including a copy of the Judgment dated 11.05.2015 passed in the Criminal Appeal Nos. 835-838/2014 and 17-22/2015.

3. Heard Sri S.B. Muttalli, learned advocate and perused the petition. The writ petition has been drafted in a most casual and cavalier fashion betraying lack of study, research and any kind of seriousness. At this stage itself, it is sufficient to notice the pertinent observations made by the Apex Court in the case of S.P. Anand Vs. H.D. Deve Gowda and others, (1996) 8 AD 459 : AIR 1997 SC 272 : (1996) 10 JT 274 : (1996) 8 SCALE 191 : (1996) 6 SCC 734 : (1996) 8 SCR 486 Supp : (1997) AIRSCW 18 : (1996) 8 Supreme 1 . The relevant portion reads as follows:--

"18. Before we part, we cannot help mentioning that on issues of constitutional law, litigants who can lay no claim to have expert knowledge in that field should refrain from filing petitions, which if we may say so, are often drafted in a casual and cavalier fashion giving an extempore appearance not having had even a second look. This is the impression that one gets on reading the present petition. It is of utmost importance that those who invoke this Court's jurisdiction seeking a waiver of the locus standi rule must exercise restraint in moving the Court by not plunging in areas wherein they are not well-versed. Such a litigant must not succumb to spasmodic sentiments and behave like a knight-errant roaming at will in pursuit of issues providing publicity. He must remember that as a person seeking to espouse a public cause, he owes it to the public as well as to the court that he does not rush to court without undertaking a research, even if he is qualified or competent to raise the issue. Besides, it must be remembered that a good cause can be lost if petitions are filed on half-baked information without proper research or by persons who are not qualified and competent to raise such issues as the rejection of such a petition may affect third party rights. Lastly, it must also be borne in mind that no one has a right to the waiver of the locus standi rule and the court should permit it only when it is satisfied that the carriage of proceedings is in the competent hands of a person who is genuinely concerned in public interest and is not moved by other extraneous considerations. So also the court must be careful to ensure that the process of the court is not sought to be abused by a person who desires to persist with his point of view, almost carrying it to the point of obstinacy, by filing a series of petitions refusing to accept the Court's earlier decisions as concluding the point."

(emphasis is supplied)

4. None of the respondents in this petition being from the State of Karnataka and the petition filed being for issue of a writ of mandamus, at the threshold, the question of territorial jurisdiction is required to be considered. Simultaneously,

we will have to consider, whether the petitioner has established that a legal right claimed in the matter has been infringed by the respondents within the territorial limits of this Court's jurisdiction?

5. Article 226 of the Constitution of India was amended by insertion of Clause (1A) by Constitution (Fifteenth) Amendment Act, 1963 and subsequently, renumbered as Clause (2) by the Constitution (Forty-second) Amendment Act, 1976. In view of the said Amendments, the High Court can issue a writ, when a person or authority against whom writ is sought to be issued is located outside its territorial jurisdiction, if the cause of action wholly or partially arises within the court's territorial jurisdiction.

6. The "cause of action" for the purpose of Article 226(2) of the Constitution, for all intent and purpose must be assigned the same meaning as envisaged under Section 20(c) of Code of Civil Procedure.

7. In *Union of India and Others Vs. Adani Exports Ltd. and Another*, AIR 2002 SC 126 : (2002) 79 ECC 457 : (2001) 134 ELT 596 : (2001) 9 JT 318 : (2001) 8 SCALE 72 : (2002) 1 SCC 567 : (2002) 1 UJ 261 : (2001) AIRSCW 4690 : (2001) 8 Supreme 48 , Apex Court has held, that in order to confer jurisdiction on a High Court to entertain a writ petition, the petition must disclose that the integral facts pleaded in support of the cause of action, do constitute a case, so as to empower the Court to decide the dispute and the entire or part of it arose within its jurisdiction. However, it has been made clear that each and every fact pleaded in the writ petition does not ipso facto lead to the conclusion that those facts give rise to "cause of action" within the territorial jurisdiction, unless those facts are such, which have nexus or relevance with the lis involved in the case.

8. In *Alchemist Limited and Another Vs. State Bank of Sikkim and Others*, AIR 2007 SC 1812 : (2007) 136 CompCas 665 : (2007) 4 JT 474 : (2007) 4 SCALE 412 : (2007) 11 SCC 335 : (2007) 75 SCL 421 : (2007) 4 SCR 46 : (2007) 1 UJ 405 : (2007) AIRSCW 3023 , on exhaustive survey of the previous judgments and the principle to be applied in the matter of determination of "cause of action" within the territorial limits of the High Court, Apex Court has held as follows:--

"37. From the aforesaid discussion and keeping in view the ratio laid down in a catena of decisions by this Court, it is clear that for the purpose of deciding whether facts averred by the appellant-petitioner would or would not constitute a part of cause of action, one has to consider whether such fact constitutes a material, essential or integral part of the cause of action. It is no doubt true that even if a small fraction of the cause of action arises within the jurisdiction of the court, the court would have territorial jurisdiction to entertain the suit/petition. Nevertheless it must be a "part of cause of action", nothing less than that.

38. In the present case, the facts which have been pleaded by the appellant Company, in our judgment, cannot be said to be essential, integral or material facts so as to constitute a part of "cause of action" within the meaning of Article

226(2) of the Constitution. The High Court, in our opinion, therefore, was not wrong in dismissing the petition."

(emphasis is supplied)

9. We have perused the facts pleaded in the instant petition. The petitioner, as can be seen from para 6 of the petition, is allegedly aggrieved by the probable schedule of administering of oath of office to the first respondent as Chief Minister for the State of Tamilnadu. It is clear therefrom that the proposed administration of the oath is to the 1st respondent is the subject matter with which the petitioner is aggrieved and is seeking the remedy.

10. Legislature party of AIADMK having elected the first respondent as its leader, at Chennai, the swearing in ceremony of the first respondent as the Chief Minister of Tamilnadu, is likely to take place on 23.05.2015, at Chennai. Thus, the lis that is involved in this petition is, only, with regard to the proposed administering of oath of office to the first respondent, by His Excellency, the Governor of State of Tamilnadu. The relief sought, noticed supra, is to restrain the respondents Nos. 2 and 3 from making any arrangement in the matter relating to the swearing in ceremony of the first respondent, until final verdict against the Judgment dated 11.05.2015 in Criminal Appeal No. 835-838/2014 and 17-22/2015, is passed. We are satisfied, that the facts pleaded in the petition have no nexus or relevance with the lis that is actually involved in this petition. Since the 2nd and 3rd respondents are located outside the territorial jurisdiction of this Court and as the cause of action to the lis i.e., the making of arrangement to the swearing in ceremony of the 1st respondent, being made at Chennai, wholly or partially has not arisen within the territorial limits of this Court, the petition is liable to be rejected.

11. The petition filed by styling it as public interest litigation, also does not conform to the directions issued by the Apex Court, in State of Uttaranchal Vs. Balwant Singh Chaufal and Others, AIR 2010 SC 2550 : (2010) 1 JT 329 : (2010) 1 SCALE 492 : (2010) 3 SCC 402 : (2010) 1 SCC(L&S) 807 : (2010) 2 SCR 678 : (2010) 1 SLR 581 : (2010) 2 UJ 511 : (2011) AIRSCW 2486 : (2010) 6 Supreme 569 . The directions issued therein, which are relevant to this petition are extracted herein below:

"(1) XXX XXX XXX

(2) xxx xxx xxx

(3) The courts should prima facie verify the credentials of the petitioner before entertaining a P.I.L

(4) The court should be prima facie satisfied regarding the correctness of the contents of the petition before entertaining a PIL.

(5) The court should be fully satisfied that substantial public interest is involved before entertaining the petition.

(6) xxx xxx xxx

(7) The courts before entertaining the PIL should ensure that the PIL is aimed at redressal of genuine public harm or public injury. The court should also ensure that there is no personal gain, private motive or oblique motive behind filing the public interest litigation.

(8) The court should also ensure that the petitions filed by busybodies for extraneous and ulterior motives must be discouraged by imposing exemplary costs or by adopting similar novel methods to curb frivolous petitions and the petitions filed for extraneous considerations."

12. In Divine Retreat Centre Vs. State of Kerala and Others, AIR 2008 SC 1614 : (2008) CriLJ 1891 : (2008) 3 JT 353 : (2008) 3 SCALE 532 : (2008) 3 SCC 542 : (2008) AIRSCW 1793 , Apex Court has reiterated that the public interest litigation can only be entertained in a bona fide litigation and it cannot be permitted to be used by unscrupulous persons. It has been made clear that the facts placed on record should clearly indicate the person having come to the Court, has approached with clean hands and credentials with regard to the public interest litigation.

13. The instant petition does not contain any averment with regard to the credentials of the petitioner. The sole prosecuting agency, the State of Karnataka, as per the Judgment of the Apex Court in CrI.A. No. 637/2015 dated 27.04.2015, has not been arrayed as a party-respondent. Though it has been stated in the writ petition and contended by Sri S.B. Muttalli, learned advocate, that if the calculations are done in correct form, then the percentage would definitely increase to the extent of 20% and then, there will be no option, except to convict the first respondent and her associates, for the alleged charges leveled against the first respondent and other accused in Spl.CC No. 208/2014, we can only observe that there is an assumption and presumption on the part of the petitioner, in as much as, even a copy of the judgment rendered by the learned appellate Judge has not been produced along with this petition. Though Mr. S.B. Muttalli made reference to a statement of the learned Special Public Prosecutor, which allegedly appeared in the press and electronic media, that the acquittal of the 1st respondent was due to glaring arithmetical errors committed by the learned Appellate Judge i.e., in the judgment acquitting the accused persons in the disproportionate assets case and submitted that by allowing the 1st respondent to assume the post of "Chief Minister", before the final verdict by the Apex Court, would send a wrong message to the Society, that VVIPs can get away easily, we can only observe that it is not within the jurisdiction of this Court to record any finding with regard to the correctness or otherwise of the judgment of acquittal passed by the learned appellate Judge. Indisputably, neither the prosecution nor the de facto complainant, have questioned the Judgment of acquittal of first respondent, before the Apex Court.

14. This petition being wholly misconceived, should not have been filed in this

Court. Since the petition is more of a publicity interest litigation and as the petitioner has attempted to garner publicity by abuse of process of Court by way of easy access to justice by styling the case as public interest litigation, in order to discourage filing of such petitions, which results only in wasting valuable judicial time, we reject the petition with costs, which is quantified at Rs. 25,000/-.

15. The cost be deposited with the Karnataka State Legal Services Authority, within a period of four weeks. If the petitioner fails to deposit the cost, the Secretary, Karnataka State Legal Services Authority, shall take steps to recover the same as arrears of land revenue.

Registry shall send a copy of this order to the Secretary of Karnataka Legal Services Authority, for necessary action.