

(2016) 12 KAR CK 0076

In the Karnataka High Court

Case No : Criminal Revision Petition No. 699 of 2016

S. Jagannatha

APPELLANT

Vs

Justice Subray Rama Nayak

RESPONDENT

Date of Decision : 16-12-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3)
Prevention of Corruption Act, 1988 — Section 13

Citation : (2017) 2 AICLR 289 : (2017) 1 AirKarR 501

Hon'ble Judges : Mr. John Michael Cunha, J.

Bench : Single Bench

Advocate : Sri. Madhusudhan Adiga, B., Advocate, for the Petitioner

Final Decision : Dismissed

Judgement

John Michael Cunha, J.—This revision petition is filed under section 397(1) r/w. section 401 of Cr.P.C., questioning the correctness and legality of the order dated 22.3.2016 passed by the XXIII Addl. City Civil and Sessions Judge, Special Judge, Bengaluru Urban District, (CCH.24), Bengaluru, refusing to take Cognizance of the alleged offence punishable under section 13(1)(d)(i), (II), (III) & 2 of Corrected Inserted and page No.2 has been replaced vide chamber order dated 26.12.2016 Prevention of Corruption Act 1988 and for not referring the complaint to the Karnataka Lokayuktha Police Wing for investigation.

2. The facts leading to the revision petition are that the complainant namely the revision petitioner herein filed a private complaint under section 13(1)(d)(i)(II) and (III) & 2 of the Prevention of Corruption Act, 1988 read with sections 190 and 200 of the Cr.P.C., alleging that the respondent herein being a public servant got allotted a site bearing No.859/C on 8.11.2002 from the Karnataka State Judicial Department Employees House Building Cooperative Society Limited by suppressing the fact that two sites and a house bearing No.644 and 399 were already owned by the wife of the respondent within the city of Bengaluru.

3. Considering the allegations made in the complaint and the documents made available by the complainant, the learned Special Judge dismissed the private complaint by the impugned order. The reasoning assigned by the learned Special Judge finds place in para 14 of the impugned order which reads as under:

"14. In view of the law laid down by our Hon'ble Supreme Court in the above decision this Court has to go through the allegations in the complaint and the documents made available and then to find out whether there are grounds to proceed against the accused. Prime allegation is that despite the fact that the wife of the accused owned and possessed a site and a house at Bengaluru the accused being fully aware of the same purchased the site from the above said society which act of the accused attracts the above alleged offences. The said allegation needs to be appreciated by meticulously going through section 13(1) (d) (II) (III) of the Act. Nothing worthy could be traced from the complaint that the accused, in order to purchase the site from the society indulged in corrupt practices. Nothing worthy is forthcoming in the complaint to show that the accused purchased the site from the society by resorting to any illegal means and by abusing position as public servant. What was the manner in which the accused abused his position as public servant is not specifically forthcoming in the complaint. At the time of purchase of the site the accused though was holding office as public servant nothing worthy is found in the complaint to hold that without any public interest the accused misused his then office and then got allotted the site from the above society. Therefore, the allegations levelled in the complaint would not attract the above offences and therefore on that ground I find no grounds to either take Cognizance or refer the complaint for investigation under section 156(3) Cr.P.C. At the time of purchase of the site from the above society the accused was holding the office as public servant and therefore this complaint without sanction from the competent authority is not maintainable."

4. I have heard the learned counsel for the revision petitioner.

5. Learned counsel would submit that the allegations made in the private complaint supported by the copies of the registered documents produced by the complainant prima facie make out the ingredients of the offences alleged against the respondent. The reasoning assigned by the lower court are contrary to the settled principles of law and therefore, the impugned order calls for interference by this Court.

6. On going through the impugned order, I am of the opinion that the reasoning assigned by the lower Court for not taking cognizance against the respondent do not call for interference by this court in exercise of the revisional jurisdiction. Needless to say, a private complaint can be entertained by the Special Judge in respect of the offences mentioned in the Prevention of Corruption Act, 1988. The Special Judge can take cognizance of the alleged offence only upon the facts which constitute the offence and not otherwise.

7. In the instant case, the material allegations made against the respondent are

that he has committed the offence of criminal misconduct within the meaning of section 13(1)(d) of the Act by acquiring a site from the Karnataka State Judicial Department Employees House Building Co-operative Society Limited in violation of the bye-laws of the society. According to the complainant, Rule 10 of the bye-laws of the society prohibits purchase of a house site by any member of the society who owns and possess any site, house or flat or apartment either in the name of the member of the society or in the name of any member of his family. Assuming that there is any such violation, in my view, by no stretch of imagination, it can be said that the alleged violation amounts to a misconduct within the meaning of section 13 of the Prevention of Corruption Act.

8. The Prevention of Corruption Act is a penal statute. It defines what is criminal misconduct and specifically provides that a prosecution under the Act could be launched only for commission of any offence specified therein. As rightly observed by the learned Special Judge, none of the allegations made in the complaint attract the provisions of section 13 of the Prevention of Corruption Act. The complainant has not produced any material to show that the sites formed by the society were purchased by the respondent by abusing the official position or with intent to make private gain. Corruption, pithily stated, is an abuse of public resource for private gain. It is the result of in satiate greed for wealth. When public fund is abused in the pursuit of illegal gratification for discharge of official duty, stringent measures are provided under the Act against such public servant. But unless the act complained against the public servant falls within the mischief of the Act, the Special Court has no jurisdiction to take cognizance of any of the offence under the provisions of the Prevention of Corruption Act.

9. In the instant case, the respondent having not produced any material prima facie making out an offence under section 13 of the Prevention of Corruption Act, the learned Special Judge is justified in refusing to take cognizance of the offence and direct investigation under section 156(3) of Cr.P.C. There is nothing in the material produced before the court to indicate that at the time of the alleged transaction, the society had any dealing with the respondent or that the site was allotted as a quid pro quo for the favour received by the society. In the absence of any such material, solely because the respondent was a public servant, it cannot be said that the transaction in question amounts to a criminal misconduct within the meaning of section 13 of the Prevention of Corruption Act, 1988. There is no error or illegality in the impugned order. Hence, the interference under the revisional jurisdiction is not called for in the fact situation of the present case. Hence the following

ORDER

1. Revision petition is dismissed.