

(2013) 05 KAR CK 0024
In the Karnataka High Court
Case No : Criminal Petition No. 1598 of 2013

Shri. Murugesh R. Nirani

APPELLANT

Vs

Sri. A. Alam Pasha and The Karnataka Lokayuktha

RESPONDENT

Date of Decision : 21-05-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 200
Penal Code, 1860 (IPC) — Section 120-B, 418, 465, 471
Prevention of Corruption Act, 1988 — Section 13(1)c, 13(2), 19

Citation : (2013) 05 KAR CK 0024

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : Ravi B. Naik, for Shri. B.B. Patil, for the Appellant; Murthy Dayanand Naik, Advocate for Respondent No. 1 and Shri. B.A. Belliappa, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Anand Byrareddy, J.—Heard the learned Senior Advocate, Shri Ravi B. Naik, appearing for the counsel for the petitioner and the learned counsel for the respondents. This petition is filed in the following background: Respondent no. 1 had filed a private complaint u/s 200 of the Code of Criminal Procedure, 1973 (Hereinafter referred to as the "Cr.P.C.", for brevity) before the XXIII City Civil and Sessions Court and Special Judge, Bangalore, against the petitioner herein and others.

It was alleged in the complaint that respondent no. 1 was the Managing Director of a private limited company, M/s. Pash Space International Private Limited. The said company is said to have approached the State High Level Clearance Committee, (SHLCC), a body constituted under the Karnataka Industries (Facilitation) Act, 2002 (Hereinafter referred to as the "KIF Act", for brevity), which examines and considers proposals made by entrepreneurs, of any industrial and other projects in the State of Karnataka, with a proposal for

establishing a integrated housing township. This was said to have been approved in principle by the SHLCC. A government order dated 15.7.2010 was said to have been issued in this regard. Pursuant to which the Karnataka Industrial Area Development Board was directed to allot 26 acres of land to the applicant, at Devanahalli Industrial Area.

The SHLCC consisted of 27 members - the Chief Minister of the State was the ex-officio Chairman, the Minister for large and medium Industries, the petitioner herein, was the ex-officio Vice Chairman, several other ministers and high ranking officials of virtually all departments of the government apart from officers representing various other statutory Corporations and Boards, were the other members.

It was the allegation of the complainant that the government order dated 15.7.2012 was withdrawn by a further government order dated 11.3.2011, whereby the Karnataka IADB was instructed not to allot the land in favour of the complainant's company, as resolved by the SHLCC at its meeting of 24.1.2011. It was the allegation of the complainant that the petitioner and others were instrumental in having concocted and forged a letter in the name of the complainant's company - declaring that the company was no longer interested in the land - which was said to be the basis of the resolution made by SHLCC at its meeting of 24.1.2011. The complainant had highlighted the purported circumstance that the said dubious letter had been received by the office of the Managing Director, Kamataka Udyog Mitra, a nodal agency, that assists the SHLCC in its functioning, only as on 1.2.2011 as per the tappal register extract, whereas the same is said to have been acted upon on 24.1.2011 itself. In this regard the complainant is said to have approached the Lok Ayukta, but no action had been taken. The petitioner and accused no. 2, the then Chief Minister are said to have addressed the Lok Ayuktha as regards the complaint before him, the correctness and the veracity of documents thereof are seriously disputed by the complainant before the court below. It was hence alleged that the petitioner and others had willfully forged and concocted documents to defeat the legitimate claim of the complainant's company, for their own illegal gain., etc.

The Special Judge had registered the complaint as PCR No. 25 of 2012 and by an order dated 21.5.2012 ordered the Superintendent of Police, City Division, Karnataka Lok Ayukta, Bangalore to conduct investigation u/s 156(3) of the Cr.P.C. Pursuant to the same the Police had registered a case in Crime No. 49/2012 for offences punishable under Sections 418, 465, 471 read with Section 120B of the Indian Penal Code, 1860 and Section 13(1)(c) read with 13(2) of the Prevention of Corruption Act, 1988 (Hereinafter referred to as the "PC Act", for brevity).

A final report had also been submitted by the police dated 1.3.2013, the same is to the following effect:

(i) There was no reference in agenda note prepared for 24th SHLCC meeting held

on 24.01.2011 regarding recalling the approval of the project of the said company;

(ii) No letter was available with KUM for recalling the Project of the said company in the 24th SHLCC meeting;

(iii) After participating in the meeting held on 24.01.2011 the petitioner and others who affixed their signature to final proceedings have not found the disputed letter in 24th SHLCC meeting and have not brought to the (notice of other members present at the meeting;

(iv) In file No. KUM/SHLCC/DD-3/324/2010-11 maintained at KUM relating to the said Company the disputed letter is found. The Forensic Science Laboratory has issued a report on 06.08.2012 stating the "The questioned printing, seal impression, signature marked as A.B.C. are the reproduced copies of the standard printings, seal impression, signature marked as D, E, F respectively by means of scanning and printing process";

(v) The original file pertaining to the said company was directly under custody of the Accused No. 4 Sri. K.S. Shivaswamy, the Managing Director of KUM and he misusing the same, has created a false letter to cheat the respondent No. 1 of 26 acres of land approved for the project. The same has been sent with the proceedings of 24th SHLCC meeting prepared on 31.01.2011.

(vi) It is found that, Sri. S.R. Satish, Joint Director on examination had prepared the draft proceeding of SHLCC meeting and has sent to the managing Director for further action, the accused No. 4 without assistance of the Joint Director has prepared the proceedings of the 24th SHLCC meeting held on 24.01.2011.

(vii) Without looking into any letter sent by Accused No. 4 Sri. K.S. Shivaswamy, the accused persons Sri. Murugesh R. Nirani, Sri. B.S. Yeddyurappa and Sri. V.P. Baligar have sanctioned by affixing their signature to the copy of the draft proceedings.

(viii) On 31.01.2011 the Managing Director, KUM had prepared the draft proceedings of the 24th SHLCC meeting held on 24.01.2011, and sent the same for approval. At Sl. No. 4.55 of the draft proceedings, it was mentioned that respondent No. 1 is not interested in continuing with the project and has requested for the recall of the approval accorded earlier. There is no mention of the disputed letter which is found in the later dates.

(ix) The above referred letter has reached the office of the KUM on 01.02.2011. But it was decided in the 24th SHLCC committee proceedings to recall the project of said company.

(x) The Respondent No. 1 submitted a representation on 22.03.2011 to the Managing Director, KUM seeking legal action stating that he has not given any letter to recall the approval of his company's project.

(xi) On 23.03.2011, the accused No. 5 Sri. Gangadharaiah, Deputy Director, KUM

has forwarded the file mentioning about the complaint sent by the respondent No. 1 to the Joint Director for further orders. On 24.03.2011 the Accused No. 3 Sri. V.P. Baligar has seen the registered objection-letter of the above respondent No. 1 and has not issued any further directions.

(xii) When Industries Department did not take any action on the complaint, respondent No. 1 submitted the same to the media.

(xiii) On 02.04.2011 Sri. V.P. Baligar, the then Officer, KUM, and respondent No. 1 Sri. Alam Pasha held a meeting at his office and decided to recall the government order dated 11.03.2011 directing the Managing Director, KUM sending the file by referring the same.

(xiv) On 05.04.2011, Sri. M. Maheshwar Rao, Managing Director, KUM recalled the government order relating to the respondent No. 1's company dated 11.03.2011 and he has requested Sri. V.P. Baligar, Principal Secretary to re issue the government order dated 15.07.2010 with respect to this project.

(xv) On 06.04.2011 along with the approval of the then Principal Secretary, Sri. V.P. Baligar a government order is also issued by their office regarding respondent No. 1's company project. It is stated in the order that, the government order dated 11.03.2011 is recalled. Within two days of publishing this order, consequential permission is obtained on 08.04.2011 from Sri. Murugesh R. Nirani, Minister of Large and Medium Scale Industries.

(xvi) In the government order dated 06.04.2011 approval passed in 24th SHLCC meeting is recalled and the government order earlier submitted on 15.07.2010 with respect to the project is re issued.

Based on the above observations regarding the petitioner, in the report it is concluded that:

(i) Petitioner and other accused misused the power by cancelling the approval granted to the respondent No. 1 by creating a false letter and recalling the order in the 24th SHLCC.

(ii) The petitioner who is the Minister of Large and Small Scale Industries, Government of Karnataka without discussing in 24th SHLCC meeting about the project being approved to the respondent No. 1's company with an intention to defraud has colluded with accused No. 2, 3 and 4 and the accused No. 4 has created a false letter as if given by the respondent No. 1 by using the original records which were in his custody. In the proceedings prepared for the meeting held on 31.01.2011 have stated about the said letter and recalled the order by affixing the signature.

(iii) The Managing Director, KUM has submitted this created letter on 01.02.2011 to inward by affixing a "short signature" on the last working day. When respondent No. 1 came to know the said fact and when the same was discussed before the media, the then Principal Secretary Sri. V.P. Baligar has re-issued the

approval which was cancelled. It is proved that, the petitioner has misused his power on the above said reasons.

In the report dated 1.3.2013, the respondent No. 2 has recorded final opinion:

Accused No. 1 and Accused No. 2, Sri. Murugesh R. Nirani, Large and Small Scale Industries Minister, Government of Karnataka and Sri. B.S. Yeddyurappa, Ex-Chief Minister, Government of Karnataka have misused the power which was with them with an intention to allot the land to the person known to them on re-grant and to gain illegal profits have availed assistance of Under Secretary, Accused No. 3, Sri. V.P. Baligar, the then Principal Secretary, Department of Commerce and Industries and Accused No. 4 Sri. K.S. Shivaswamy, the then Managing Director, Karnataka Udyog Mitra. Accused No. 4 misusing the original file which was under his custody in the name of the complainant by creating a false letter. Even after knowing that the said letter was a false document but has used the said letter colluding with other accused persons. The accused persons who had to guard the public interest without following the rules have tried to cheat the complainant approved land by misusing their power. So, it is certified that, they have committed the above offence punishable u/s 418, 465, 471 and 120(B) IPC and Section 15 read with 13(1)(c) of Prevention of Corruption Act, 1988.

It is at that stage that the present petition is filed.

2. The learned Senior Advocate, Shri. Naik while highlighting the circumstance that the allegations do not pertain to any action which is taken by or with the specific approval of the Chief Minister, Minister, Secretary of any Department or any other public servant and hence registration of an FIR, in the face of Section 7 of the PC Act was without jurisdiction.

It is pointed out that the resolution of the SHLCC comprising of 27 members who include the Chief Minister and other Ministers apart from high-ranking officials and the petitioner being one of the members, without attributing any specific act or imputation to the petitioner, he could not be selectively subjected to criminal prosecution, in respect of a collective decision of a body of members.

It is further contended that the proceedings initiated against the petitioner are vitiated both on primary issues of law and that it would not also stand a prima facie test of acceptability, on facts.

As regards the point of law, on which the proceedings are vitiated, the learned Senior Advocate would contend that the petitioner is a public servant, the complaint brought against him without being accompanied by a valid sanction order could not have been entertained by the special court, on allegations of offences punishable under the PC Act. It is contended that the court while exercising power u/s 156(3) of the Cr.P.C., would have to apply its mind and the act of referring the matter for investigation under the said provision is not an empty formality. In support of this proposition, reliance is placed on the following authorities:-

- a) Jamuna Singh and Others Vs. Bhadai Sah,
- b) Gopal Das Sindhi and Others Vs. The State of Assam and Another
- c) P.R. Venugopal Vs. S.M. Krishna and Others,
- d) Guruduth Prabhu and Others Vs. M.S. Krishna Bhat and Others,
- e) Maksud Saiyed Vs. State of Gujarat and Others,

It is contended that even though the power to order investigation u/s 156(3) can be exercised by a Magistrate or the Special Judge at a pre-cognizance stage, yet the requirement of a sanction being obtained by the complainant cannot be dispensed with. It is contended that the requirement of a sanction is a pre-requisite even to present a private complaint in respect of a public servant concerning the alleged offence said to have been committed during the discharge of public duty.

Per contra, the learned Counsel for the respondent would contend that the present petition is misconceived and would result in an abuse of the process of law in seeking intervention of this court in the face of the circumstance that the law has been set in motion in the usual course and the court having formed an opinion that the facts alleged would require to be investigated further, and a report having been submitted it is futile to challenge the proceedings on that front.

The learned Counsel would therefore contend that it is by way of abundant caution that the court below has thought it fit to refer the matter for further investigation - without taking cognizance of the complaint or issuing process to the accused having regard to the allegations being made against a public servant and in respect of acts performed by him in the discharge of his duties. The court below was acting well within its powers in having passed the impugned order.

3. A preliminary issue of law as to the requirement of a sanction order accompanying the complaint in the first instance, arises for consideration. Though the power to order investigation u/s 156(3) Cr.P.C. is exercised by a court at a pre-cognizance stage, yet the requirement of sanction is a prerequisite even for a presenting a private complaint u/s 200 Cr.P.C., in respect of a public servant who is alleged to have committed an offence in discharge of a public duty. This is evident from the dictum of the apex court in the case of Dr. Subramanian Swamy Vs. Dr. Manmohan Singh and Another, wherein, while considering the contention as regards the stage at which a sanction to prosecute would become relevant, it was held thus:

34. The argument of the learned Attorney General that the question of granting sanction for prosecution of a public servant charged with an offence under the 1988 Act arises only at the stage of taking cognizance and not before that is neither supported by the plain language of the section nor the judicial precedents relied upon by him. Though, the term "cognizance" has not been defined either

in the 1988 Act or the Cr.P.C., the same has acquired a definite meaning and connotation from various judicial precedents. In legal parlance cognizance is "taking judicial notice by the court of law, possessing jurisdiction, on a cause or matter presented before it so as to decide whether there is any basis for initiating proceedings and determination of the cause or matter judicially.

64. I also entirely agree with the conclusion of learned brother Singhvi, J., that the argument of the learned Attorney General that question for granting sanction for prosecution of a public servant charged with offences under the 1988 Act arises only at the stage of cognizance is also not acceptable. In formulating this submission, the learned Attorney General substantially advanced two contentions. The first contention is that an order granting sanction is not required to be filed along with a complaint in connection with a prosecution u/s 19 of the P.C. Act. The aforesaid submission is contrary to the settled law laid down by this Court in various judgments.

(emphasis supplied).

64.1. Recently a unanimous three-judge Bench decision of this court in the case of State of U.P. Vs. Paras Nath Singh, speaking through Justice Pasayat and construing the requirement of sanction, held that without sanction:

6.... "10.... The very cognizance is barred. That is, the complaint cannot be taken notice of. According to Black's Law Dictionary the word "cognizance" means "jurisdiction" or the exercise of jurisdiction" or power to try and determine causes". In common parlance, it means taking notice of. A court, therefore, is precluded from entertaining a complaint or taking notice of it or exercising jurisdiction if it is in respect of a public servant who is accused of an offence alleged to have been committed during discharge of his official duty.

64.2. The other contention of the learned Attorney General is that in taking cognizance under the P.C. Act the court is guided by the provisions u/s 190 of the Code and in support of that contention the learned Attorney General relied on several judgments.

The apex court has also highlighted the object of the requirement of such sanction, thus:

72. The right of private citizen to file a complaint against a corrupt public servant must be equated with his right to access the Court in order to set the criminal law in motion against a corrupt public official. This right of access, a Constitutional right should not be burdened with unreasonable fetters. When a private citizen approaches a court of law against a corrupt public servant who is highly placed, what is at stake is not only a vindication of personal grievance of that citizen but also the question of bringing orderliness in society and maintaining equal balance in the rule of law.

73. It was pointed out by the Constitution Bench of this Court in Sheonandan Paswan Vs. State of Bihar and Others,

14....It is now settled law that a criminal proceeding is not a proceeding for vindication of a private grievance but it is a proceeding initiated for the purpose of punishment to the offender in the interest of the society. It is for maintaining stability and orderliness in the society that certain acts are constituted offences and the right is given to any citizen to set the machinery of the criminal law in motion for the purpose of bringing the offender to book. It is for this reason that in A.R. Antulay vs. R.S. Nayak this court pointed out that (SCC P. 509, para 6).

6.... Punishment of the offender in the interest of the society being one of the objects behind penal statutes enacted for larger good of the society, right to initiate proceedings cannot be whittled down, circumscribed or fettered by putting it into a strait jacket formula of locus standi...

Therefore the law is settled that the requirement of a sanction order cannot be dispensed with even in respect of a private complaint filed by a person against a public servant, alleging offences punishable under the PC Act, said to have been committed while discharging duties as a public servant.

In the above circumstances, it is clear that as on the date of the complaint, the petitioner was a public servant and the allegations pertained to his acts, though not specific, in his capacity as such public servant - the complaint could not have been entertained without the same being accompanied by an order of sanction. But however, the petitioner has ceased to be a public servant subsequent to the present petition being reserved for passing of final order, this court has taken judicial notice of the same. Therefore, the question of obtaining sanction is no longer relevant and hence the settled legal position would not enure to the benefit of the petitioner.

Further, it is not shown that the court below has either accepted or negated the report submitted by the police. It is always possible that the court below may view the circumstances of the case as is sought to be urged on behalf of the petitioner, that the entire allegations being vague and disjointed to justify the prosecution of the petitioner, in the absence of specific acts attributable to the petitioner.

In that view of the matter, it is appropriate that the petitioner await the further consideration of the case by the court below, in accordance with law. There is no warrant for interference by this court at this point of time. The petition is dismissed.