
(2016) 09 KAR CK 0031

In the Karnataka High Court

Case No : Criminal Petition No. 816 of 2014 Connected with Writ Petition No. 9733 of 2016 (Gm-Res)

Smt. Usha R. Patwari

APPELLANT

Vs

Karnataka Loka-yuktha

RESPONDENT

Date of Decision : 14-09-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154

Prevention of Corruption Act, 1988 — Section 13(1)(a), Section 13(1)(e), Section 13(2)

Citation : (2016) 4 AirKarR 594

Hon'ble Judges : Anand Byrareddy, J.

Bench : Single Bench

Advocate : Belliappa and B. S. Prasad, Standing Counsels, for the Respondent;
M. S. Bhagwat, Advocate, for the Petitioner

Final Decision : Allowed

Judgement

Anand Byrareddy, J. - These petitions are heard and disposed of together as they give rise to a common question of law.

2. The facts are said to be as follows.

The Government of Karnataka, through the Women and Child Welfare Department is said to have formed an Integrated Child Development Scheme, for supply of nutritious food to young children, teenaged girls and pregnant women. The Central Government was also said to be funding the Scheme. It transpires there was an agreement with a private entity, M/s. Christie Fried Grams Industries, who was the exclusive supplier of the food. It was claimed in an anonymous complaint that the Director of the Department, one Shamala Iqbal, the Joint Director, one Usha Patwari, who is the petitioner in CrI.P. 816/2014 and the Assistant Director, one Muniraju, the petitioner in the petition in WP 9733/2016 were all being paid huge amounts of bribe to enable the above said supplier to palm off sub-standard goods. It is on information thus received that an FIR in Crime No.20/2012 is said to have been registered on 8-3-2012 by the

respondent - Police for offences punishable under Sections 12, 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 (Hereinafter referred to as the "PC Act", for brevity). It is said that in the course of investigation and search conducted on 9-3-2012, it was claimed that incriminating material was said to have been found, that disclosed that both the above said petitioners had amassed wealth disproportionate to their known sources of income.

The matter was said to have been investigated without a First Information Report being lodged insofar as Crime No.20/2012 was concerned. But after the alleged investigation, the Inspector of Police is said to have submitted a report, implicating Usha Patwari. The search conducted at the house of the petitioner on 9-3-2012, was pursuant to the registration of Crime No.20/2012. Thereafter, there was no other investigation conducted by the respondent - police. However, the police are said to have registered a case for an offence under Section 13(1) (e), as on 3-4-2012 in Crime No.28/2012.

Similarly, in the case of Muniraju, the petitioner in WP 9733/2016, on the basis of a source report said to have been prepared only on the information gathered at the search conducted on 9-3-2012, a case is said to have been registered in Crime No. 35/2012, for offences punishable under Sections 13(1)(e) and 13(2) of the PC Act.

It is this action on the part of the respondent - police that is sought to be questioned as being contrary to the law laid down in *L. Shankar Murthy v. Karnataka Lok Ayuktha Police*, 2012 (5) Kar.LJ 545 and *Girish Chandra v. Karnataka Lok Ayuktha Police*, 2013 (5) Kar LJ 470 : (2013 (2) AKR 611). It is asserted that it is the settled legal position that unless a First Information Report (FIR) is registered, the police cannot investigate a case. A Constitution Bench of the Apex Court in *Lalita Kumari v. Govt, of U.P.*: (AIR 2014 SC 187), has settled the legal position in this regard.

It is further contended that entrustment of investigation under Section 13(1)(e) shall be to an officer designated under Section 17 of the PC Act and not to any other. In the present case on hand, there has been a violation in that regard as well, in a police inspector having conducted the search and investigation, instead of an officer not below the rank of a Deputy Superintendent of Police.

It is contended that insofar as Crime No.20/ 2012 is concerned, the same was subject-matter of challenge by the petitioner and other accused therein, which was the subject-matter of the final order dated 30-10-2015 in the petitions in WP 6225-26/2014 and connected cases, whereby the said proceedings were quashed. Yet another case in Crime No.25/ 2012, which was quashed along with the Crime No.20/2012, was on identical facts against one Shamala Iqbal - as the first petitioner stands on the same footing in Crime No.28/2012, it is claimed that the same ought to be quashed on a parity of reasoning.

It is emphasised that without there being an FIR, an investigation having been conducted and the said report having been lodged before the FIR was registered

in Crime No.20/ 2012 and the same having been quashed as being ex-facie illegal, the material gathered during the search conducted in those proceedings cannot form the basis for a second FIR in Crime No.28/2012. Reliance is placed on Anju Choudhary v. State of U.P., (2013) 6 SCC 384 : (2013 AIR SCW 245), Amitbhai Anilchandra Shah v. Central Bureau of Investigation, (2013) 6 SCC 348 : (AIR 2013 SC 3794) and Surender Kaushik v. State of U.P., (2013) 5 SCC 148 : (AIR 2013 SC 3614).

Insofar as the case of the petitioner, Muniraju in WP 9733/2016 is concerned, it is pointed out by the learned Senior Advocate, Shri. S.M. Chandrashekar, appearing for the counsel for the petitioner that the Source Report was submitted by the Deputy Superintendent of Police to the Superintendent of Police, Karnataka Lokayuktha on 26.4.2012 and thereafter the Deputy Superintendent of Police registered a case under Section 13(l)(e) read with Section 13(2) of PC Act in Crime No.35/2012. The relevant paragraph of the source report is extracted hereunder:

"On 09.03.2012 the house of A-3 Sri. Muniraju M., was searched by Sri. Lokesh D.S.P. Rural District. During the search it is found that some properties were registered in the name of himself, his wife and relative. Also jewelleries of gold, silver articles, and the cash of Rs.1,70,000/- was also found. A number of documents pertaining to the sites and various Bank accounts were also found and the same were seized under a detailed Mahazars in the presence of Panchayathdars. As per the orders of ADGP, KLA, Bengaluru I took further investigation in this case from Sri. Abdul Ahad, Deputy Superintendent of Police-4, City Division, Bengaluru on 22.03.2012."

(Emphasis supplied)

It is contended that conducting investigation and thereafter preparing a Source Report and the registration of a FIR is illegal and cannot be sustained in the eyes of law.

It is contended that searching the house of the petitioner, seizing the articles, searching the locker, etc., would amount to collecting evidence before registering a FIR. Therefore, the mandatory provisions of Section 154 and Section 157 of the Code of Criminal Procedure, 1973 read with Articles 14 and 21 of the Constitution of India are violated.

It is contended that the respondents have prepared the final report in respect of First Information Report in Crime No.20/2012 which was filed under Section 13(l)(d) of the PC Act filed on 2.3.2013. In the final report, it is stated that there was no evidence available against the petitioner (in page No.94 of the writ petition). Therefore, the petitioner had not challenged the institution of the case in Crime No.20/2012.

It is contended that after registration of the first FIR in Crime No.20/2012, the respondent have registered the second FIR against the petitioner and other

accused in Crime No.20/2012. It is contended that the other accused have challenged both FIRs before this Court in W.P.No.6225- 26/2014, W.P.No.2172-73/2015, CrI.P.No.7997/2013, CrI.P.No.815/ 2014, and CrI.P.No.7996/2013. This Court had allowed the above said petitions on 30.10.2015 and quashed both FIRs, which were registered under Section 13(1) (d) read with 13(2) and Section 13(1)(e) read with Section 13(2) of the PC Act.

It is contended that on receipt of a complaint (either oral or written) the Criminal proceedings is set in motion. The Police Officer would be armed with the power of investigation into the alleged crime. But till then, the Police officer has no authority or jurisdiction to interfere with the liberty of a citizen. This, being a fundamental principle, the police are required to strictly adhere to the same. The respondent - police have searched the house of petitioner, his bank locker and accounts and seized the alleged incriminating materials. A source report was prepared on the basis of the said investigation. Therefore, it is contended that the respondent - police have abused the process of law and hence, the proceedings are liable to be quashed for arbitrary exercise of power, violative of Articles 14 and 21 of the Constitution of India, apart from being violative of Sections 154 and 157 of the CrPC.

It is mandatory to register the FIR and thereafter proceed to investigate the alleged offence as required under Section 157, CrPC. A preliminary enquiry may be conducted under Section 159, CrPC if the circumstances warrant. Such preliminary enquiry is always on the orders of the concerned Magistrate on receiving the FIR. Section 159, CrPC reads thus:

"such Magistrate, on receiving such report, may direct an investigation, or, if he thinks fit, at once proceed, or depute any Magistrate Subordinate to him to proceed, to hold a preliminary inquiry into, or otherwise to dispose of, the case in the manner provided in this Code".

Whereas the Supreme Court in Lalitkumari's case, a Constitutional Bench Judgment has carved out an exception to hold a preliminary enquiry in certain cases including corruption cases, prior to registration of the FIR and the maximum time limit specified therein is only 7 days.

The object of registering an FIR and thereafter proceeding for investigation is to ensure transparency in criminal proceedings. Registration of FIR will set the path for investigation so as to prevent any manipulation in the course of investigation. This being a first principle, the respondent has blatantly violated this mandatory requirement, as a result, the entire course of investigation is manipulated with mala fide intention to falsely implicate the petitioner at the instance of persons who are inimically disposed towards the petitioner.

There is a distinction between the concept of preliminary enquiry and an investigation, and therefore, the respondent cannot justify the act of search and seizure, recording of statement and drawing mahazar as permissible in law, as a preliminary enquiry, as per the judgment of Apex Court in AIR 1964 SC 221,

wherein it is observed thus:

"18. Where however, a police officer makes some preliminary enquiries, does not arrest or even question an accused or question any witness but merely makes a few discreet enquiries or looks at some documents without making any notes " (it may not be violative of the law)

In the case of Ashok Kumar Thodi v. Kishwar Jahan, (2011) 3 SCC 758 : (AIR 2011 SC 1254, Para 23), the Apex Court has considered the definition of "investigation" under Section 2(h) of the Code and has gone on to observe thus:

"48. Under the scheme of the Code, investigation commences with lodgment of information relating to the commission of an offence. If it is a cognisable offence, the officer-in-charge of the police station, to whom the information is supplied orally has a statutory duty to reduce it to writing and get the signature of the informant. He shall enter the substance of the information, whether given in writing or reduced to writing as aforesaid, in a book prescribed by the state in that behalf. The officer-in-charge has not escape from doing so if the offence mentioned therein is a cognisable offence and whether or not such offence was committed within the limits of that police station. But when the offence is non-cognisable, the officer-in-charge of the police station has no obligation to record it if the offence was not committed within the limits of his police station. Investigation thereafter would commence and the investigating officer has to go step by step".

In Lalitkumari's case, the mandatory requirement of registration of FIR and thereafter conducting investigation is expressed thus:

"7.19.1 According to the Section 154 of the Code of Criminal Procedure, the officer-in-charge of a police station is mandated to register every information oral or written relating to the commission of a cognisable offence. Non-registration of cases is a serious complaint against the police. Besides, the complainant gets an opportunity to consult his friends, relatives and sometimes even lawyers and often tends to exaggerate the crime and implicate innocent persons. This eventually has adverse effect at the trial. The information should be reduced in writing by the SH, if given orally, without any loss of time so that the first version of the alleged crime comes on record.

7.20.11 It has come to the notice of the Committee that even in cognisable cases quite often the Police Officers do not entertain the complaint and send the complainant away saying that the offence is not cognisable. Sometimes the police twist facts to bring the case within the cognisable category even though it is non-cognisable, due to political or to her pressures or corruption. This menace can be stopped by making it obligatory on the police officer to register every complaint received by him. Breach of this duty should become an offence punishable in law to prevent misuse of the power by the police officer.

Para 96: Therefore, reading Section 154 in any other form would not only be

detrimental to the Scheme of the Code but also to the society as a whole. It is thus seen that this Court has repeatedly held in various decided cases that registration of FIR is mandatory."

It is contended that this Court had an occasion to consider the effect of investigation prior to registration of FIR in Criminal Petition No.3213/2012 (L. Shankar Murthy and others v. Karnataka Lokayuktha Police). This court had held that a mandatory duty is cast upon the police to register the FIR and thereafter proceed to investigate. The proceedings were quashed. It was held thus:

"33. The scheme of Cr.P.C also makes it clear that, Section 157 of the Cr.PC gives power to the Police Officer to take up investigation only after sending a report to the Magistrate, and power to take cognizance of such offence where the officer concerned, from the information received or otherwise, has reason to suspect the commission of an offence which he is empowered to investigate under Section 156 of the Cr.P.C, he shall follow the requirement of Section 157 before embarking upon the investigation. It is therefore, clear from the aforesaid provisions of Cr.PC. that the police officer concerned cannot proceed with the investigation without first registering the case upon the information received by him".

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"35. In the light of the aforesaid position in the law laid down by the Apex Court in particular in the aforementioned cases, the entire proceedings leading to conducting the seizure panchanama even without registering the cases as required under Section 154 of the Cr.P.C is illegal contrary to law and is in violation of the mandatory provision of the Cr.P.C and the act on the part of the police officer concerned is nothing but an act which could be termed as abuse of process of law."

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"45. Though it was brought to the notice of this Court a recent decision of the Apex Court in the case of Daljit Singh Grewal v. Ramesh Indersingh, reported in (2012) 2 SCC (Cri) 2, to point out that the question has to whether registration of the FIR is a mandatory or not whether the police has discretion to conduct preliminary enquiry before registering the FIR has been referred by the Apex Court for clear enunciation of law and adjudication by a Larger Bench as of now the settled position in law is registering the case upon the information received is sine qua non before proceeding to take up the investigation."

"46. Thus, the entire procedure followed by the concerned police officer is an abuse of the process of law and, therefore, I have no hesitation in agreeing with the contentions put forward by the learned counsel for the petitioners that these cases are fit enough to be brought within the rarest of rare cases and in order to prevent abuse of process of law and meet the ends of justice, exercise of inherent power conferred under Section 482 of Cr.P.C therefore, becomes

imperative and inevitable.

The above judgment in Shankaramoorthy's case was challenged by the Lokayuktha police before the Supreme Court wherein the Apex Court declined to interfere with the order.

Hence, it is sought that the proceedings be quashed in the light of the legal position.

3. On the other hand, it is contended on behalf of the respondent that the petitioner in WP 816/2014 was accused No.2 in Crime No.20/2012, along with 3 others, for offences punishable under Sections 12, 13(l)(d) read with Section 13(d). That during the search conducted on 9-3-2012 it was said to have been discovered that the petitioner herein had amassed wealth disproportionate to her known sources of income. It is claimed on the basis of that information a source report was prepared. On the basis of that source report an FTR is said to have been registered on 3-4-2012 in Crime No. 28 /2012 for the offences punishable under Section 13 (1) (e) read with Section 13 (2) of the PC Act.

Insofar as the petitioner in WP 9733/2016 is concerned, his house was searched on 9.3.2012. Pursuant to which the case in Crime No.20/2012 was instituted, however, the petitioner was dropped from the array of accused parties as on 2.3.2013. Thereafter, the Superintendent of Police is said to have passed an order dated 26.3.2012 authorising the Deputy Superintendent of Police to conduct investigation. A source report is then said to have been submitted on 26.4.2012, and thereafter a case under section 13(1)(e) read with Section 13(2) of the PC Act in Crime No.35/2012 is said to have been registered.

It is contended that insofar as a source report is concerned, a police officer is protected under Section 125 of the Evidence Act, 1872 and hence he need not reveal the source of information. Hence, registering a FIR or mentioning in the general diary did not arise at that stage.

That as per Section 172 of CrPC, the police have to make an entry in the general diary during the course of an investigation, but not at the time of an enquiry. Investigation is therefore a formal process as contrasted with an inquiry. It is further clear under Section 172(1), CrPC, that he shall make an entry in the diary only when he registers a case and begins the investigation. Section 172(3) further makes it clear that it is for the purpose of refreshing his memory.

It is contended that in Pulukuri Kottaya v. King Emperor, AIR (1947) PC 67, it is laid down that breach of Section 172, CrPC does not amount to any illegality and the same does not vitiate the trial.

In Niranjana Singh and others v. State of Uttar Pradesh, AIR 1957 SC 142, it was urged that there was failure to comply with para 109 of Chapter 11 of U.P. Police Regulation, which lays down that when the investigation is closed for the day, a copy of the case diary should be sent to the superior police officer and such failure amounted to infraction of the rule of law. A Bench of three Judges of the

Supreme Court considered this aspect and following the ratio in Pulukuri Kottaya's case, has held as under:

"The Criminal Procedure Code in laying down the omissions or irregularities which either vitiate the proceedings or not does not anywhere specifically say that a mistake committed by a police officer during the course of the investigation can be said to be an illegality or irregularity. Investigation is certainly not an inquiry or trial before the court and the fact that there is no specific provision either way in Chapter XLV with respect to omissions or mistakes committed during the course of investigation except with regard to the holding of an inquest in our opinion, is sufficient indicating that the legislature did not contemplate any irregularity in investigation as of sufficient importance to vitiate or otherwise form any infirmity in the inquiry or trial."

After filing a Source Report, the police officer may register the case and proceed with the investigation or make a mention in the general diary and start a preliminary enquiry and thereafter it may culminate in the registration of a FIR.

A preliminary enquiry is conducted for ascertaining the genuineness or the veracity of the complaint, and to ascertain if there is a cognisable offence committed. In any other case, involving a cognisable offence, the police has to register the case. If cognisable offence is not made out in the complaint, the police may conduct a preliminary enquiry to ascertain whether a cognisable offence is made out. But in corruption cases, in exceptional situations, he can conduct a preliminary enquiry even if cognisable offence is made out in the complaint, register an FIR and proceed with the investigation.

The main contention of the petitioners is that the decision of this Court in WP 6225/ 2014 would cover their case. It is contended that the case is distinguishable on facts and there is no law laid down in that decision and the following distinguishing features are asserted:

(a) The offence of possessing disproportionate wealth varies from person to person and the facts of individual cases. Therefore, no precedent can be squarely applied when the facts vary and the nature of income does not compare with the case cited.

(b) That during the course of investigation in Crime No.20/2012, some material having been collected and on the basis of the said material, a separate case having been registered in Crime No.28/2012, and Crime No.35/2012 on further investigation conducted. That this Court was pleased to quash the FIR in Crime No.20/2012 for the reason that it was a tainted investigation. In these proceedings there is no question of tainted investigation.

(c) That in the present petitions there are no averments or allegations of any search and seizure being illegal. The search and seizure conducted in crime No.20/2012 was held as illegal and the same would not affect the present cases. It is contended that the judgment of the Constitutional Bench of the Supreme

Court in the case of Pooran Mai v. Director of Inspection (Investigation) of Income Tax, New Delhi and others, AIR 1974 SC 348, where in the Supreme Court has held that even assuming that a search and seizure was illegal, even then the material seized could be used subject to the law. It is hence contended that even when the search and seizure is held to be illegal, the evidence and the documents collected can be used to further the proceedings under the PC Act and which cannot be disturbed alleging illegal search or any such technicality.

(d) That in the cited decision, para 78 discusses as regards quashing of the FIR in Crime No.20/2012 as against one Shyamala Iqbal for the offence punishable under Section 13(1)(e) of the PC Act. There is a finding that the investigation in Crime No.20/2012 had started even before registration of the FIR and the investigation went on for a considerable length of time and it was beyond the scope of a discreet enquiry and beyond the permissible period of 7 days. Such a tainted investigation and preliminary enquiry was held to be bad.

(e) But in the present case, the allegation of acquisition of disproportionate asset is registered in Crime No.28/2012. The same is registered when the investigation officer acquired evidence during the course of investigation in crime No.20/2012. Hence, the question of preliminary enquiry did not arise. The source report was submitted on 31.3.2012 and due procedure was followed and registered the crime on 3.4.2012. So also in Crime No.35/2012.

(f) That above decision cited is against the principle laid down by the judgment of the Constitutional Bench of the Supreme Court in the case of Pooran Mai v. Director of Inspection (Investigation) of Income Tax, New Delhi and others, AIR 1974 SC 348.

(h) Section 125 of the Evidence Act, 1872, lays down that the respondent need not reveal . the source of information. But in this case, the question of revelation does not arise as it is clear that the source is revealed at the time of investigation in another case. When source report is submitted since from that date, the preliminary enquiry has to be conducted within 42 days as per Lalitha Kumari's (AIR 2014 SC 187) case rendered by the Supreme Court. The source report has been submitted well in time and the cases are registered as per the procedure.

Further, the contention of the petitioners that the main crime is quashed by this Court and on the basis of the said crime, another case is registered and hence it has to be quashed, is not tenable. It is contended that if for example, on the basis of a complaint for theft, a case is registered and during the course of investigation of the said offence, the investigation officer comes across information that the accused person has also committed murder. At that point of time, the investigation officer has to register a FIR for the offence of murder. If the investigation conducted for the offence of theft is found illegal and has been quashed on any of the grounds, but during the course of investigation, a heinous offence of murder comes to light, registering a crime for the said offence is not

illegal and it is a separate crime. The said crime has to be registered and investigated as per law.

It is further contended that the petitioner in WP 816/2014 has produced Annexures-A to J, which pertains to two different crime numbers and it may be noted that Annexures-A, E2 E4 and F are pertaining to Crime No.28/ 2012 and Annexures-B, C, D, E,E1, E3 are pertaining to Crime No.20/2012. Annexures-G to J are citations.

The Counsel for the respondents hence seek that the petitions be dismissed.

4. In the light of the above contentions and the facts and circumstances, the short point that arises for consideration whether on the basis of alleged incriminating material said to have been unearthed on the search conducted on 9.3.2012 in the houses of each of the petitioners - pursuant to which a case in Crime No.20/2012 was registered. And which was said to have been quashed in proceedings before this court in WP 6225- 26/2014 and connected cases by an order dated 30.10.2015, a second FIR against each of the petitioners, in Crime No.28/2012 and Crime No.35/2012, respectively, could be registered for offences punishable under Section 13(1)(e) of the PC Act.

5. Firstly, if incriminating material had already been found on the search of each of the petitioners' houses as on 9.3.2012, to make out a case for an offence even under Section 13(1)(e), it is inexplicable that the said offence was also not alleged in the case in Crime No.20/ 2012, that was brought against both these petitioners and others. Therefore, if the proceedings initiated in Crime No.20/2012 has been held to be bad for reasons stated already, the subsequent proceedings in Crime Nos.28/2012 and 35/2012 would suffer from the same lacunae. The intervening order of the Superintendent of Police directing an investigation and the preparation of a source report by the Deputy Superintendent and the filing of FIRs subsequently are a mere "smoke screen" to create an off-shoot pursuant to the search conducted on 9.3.2012. It is also to be kept in view that it was not merely the search which was held to be illegal, it was the very lodging of the FIR, after having conducted substantial investigation and a search and seizure that was held to be bad. Hence, the subsequent FIRs filed in Crime Nos.28/2012 and 35/2012 are also to be held as being bad in law.

6. Accordingly, the writ petitions are allowed. The impugned proceedings initiated against the petitioners are hereby quashed.