
(2015) 12 KAR CK 0112
In the Karnataka High Court
Case No : Writ Petition No. 870 of 2006 (GM-KLA)

S.N. Hegde

APPELLANT

Vs

The Lokayukta and Others

RESPONDENT

Date of Decision : 01-12-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 197
Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2), 14, 17, 7

Citation : (2015) 12 KAR CK 0112

Hon'ble Judges : Anand Byrareddy, J.

Bench : Single Bench

Advocate : K. Shashikiran Shetty, Senior Advocate for Pavan G.N. and Farah Fathima, Advocates for Shetty and Hegde Associates, for the Appellant; G. Devaraj, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Anand Byrareddy, J.—The facts of the case are as follows.

The petitioner was the Vice Chancellor of the University of Mysore. He was said to have been appointed for a term of three years in September, 1997. The term of office was said to have been extended for a further period of three years in the year 2000. The petitioner was holding a Ph.D. degree in Zoology. In his 40 years of service, he is said to have had a glowing academic record as a teacher and as a member of various national and international bodies in his field of study.

2. It transpires that one Prof. Ashwathnarayan had made a complaint against the petitioner to the effect that an e-mail, sent in the name of Dr. K.L. Ramadas from the USA, to the first respondent on 14.09.2002, was registered as a complaint. The e-mail was seen to have originated from Southern California, USA, and was actually sent by one V.M. Kumaraswamy, as disclosed from the e-mail I.D. It was alleged that the petitioner had demanded bribe from Dr. K.L. Ramadas to show him favours.

Dr. K.L. Ramadas is said to have died in the USA, as on 4.11.2002. Thereafter, Prof. Ashwathnarayan is said to have filed a complaint, purportedly on behalf of Dr. Ramadas received by the respondent and registered as a complaint on 12.11.2002, which was to the same effect. Dr. Ramadas was dead by then. The above two complaints were said to have been clubbed together and a common report was said to have been filed.

It was alleged that the petitioner had demanded and received US \$ 7000 from Dr. Ramadas, in order to afford permanent affiliation to one TTL College, to grant permission to commence the B.Com. course and to enhance its intake of students to the MBA Course from 40 to 60. It was also alleged that the petitioner had received Rs. 25,000/- on 4.7.2002 by way of cash from TTL College to finance a trip to Delhi.

It is the petitioner's belief that one Dr. K. Mahadev is the master mind behind these complaints, who is known to have a history of having filed such complaints against several former Vice Chancellors. All of which were found to be baseless. The petitioner's belief flows from the fact that Dr. Mahadev was also in the USA when Dr. Ramadas was there. They along with Kumaraswamy had engineered the complaint.

The respondents having passed the impugned order dated 21.4.2003 under Section 12(3) of the Karnataka Lokayukta Act, 1984, the petitioner is said to have challenged the same before this court in a writ petition in WP 25339-40/2003. It was held that the Lokayukta had no jurisdiction to investigate the complaint against a Vice Chancellor and professor of a University. The said petition was allowed and the report was quashed. However, liberty was reserved to initiate fresh proceedings.

Pursuant to the above order, the matter is said to have been entrusted to the Superintendent of Police, Mysore District, to take further action. The same had been in turn entrusted to the Inspector of Police, Karnataka Lokayukta, who had concluded that the petitioner had committed offences punishable under Sections 7, 8, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as "the PC Act", for brevity) and had directed the registration of an FIR and submitted to the Special Court. Subsequently, a charge sheet having been submitted on the footing that the petitioner had admitted the receipt of money as aforesaid and cognizance having been taken by the court below and summons having been issued to the petitioner, the present writ petition is filed.

3. It is contended that the FIR is registered at the instance of the second respondent on the assumption that this court had granted permission to take appropriate action. Such a direction is misconceived. The FIR and the Charge sheet filed only on the basis of the direction issued by the Superintendent of Police to the Inspector of Police, is liable to be set aside.

The above said direction having been issued on 3.8.2005, the FIR was filed on

6.8.2005, against the petitioner and four others. It is contended that the charge sheet came to be filed in a great hurry against the petitioner alone without completing the investigation and without filing any charge sheet against the other accused. The charge sheet against the petitioner filed on 30.8.2005 itself, would indicate the want of bona fides on the part of the respondents and smacks of an attempt to deliberately foist a false case against the petitioner.

It is contended that under Section 17 of the PC Act, it is the Deputy Superintendent of Police or a police officer of equal rank who could investigate a complaint for an offence under the Act. In the instant case, an Inspector having been authorized to investigate without any reasons being assigned, is in blatant contravention of Section 14 of the PC Act and vitiates the entire proceedings.

It is not established that there was any complaint by late Dr. K.L. Ramadas. Any complaint by Prof. Ashwathnarayan on behalf of Ramadas, that too after his death, could not be the basis for initiating action under the provisions of the PC Act.

The petitioner was not in a position to grant the favours promised against which he is said to have received any bribe amount. It is also pointed out that the petitioner had retired from service when investigation into the complaint was undertaken, subsequent to the direction issued as on 3.8.2005. However, it is the settled legal position that even against a retired official, criminal prosecution cannot be initiated without prior sanction under Section 197 of the Code of Criminal Procedure, 1973. There is no such prior sanction in the instant case on hand.

4. Though there is a weak attempt to justify the action of the respondents which is under challenge, it is evident that there is no complaint shown to have been made by Dr. Ramadas, who is said to have paid the bribe amount to the petitioner. The investigation by an Inspector of police in respect of an offence punishable under the provisions of the PC Act, was in violation of the procedure prescribed. And there is no prior sanction for prosecution. Hence, the proceedings initiated against the petitioner are clearly vitiated and cannot be sustained. The petition is allowed. The impugned Annexures, "A", "B" & "C" are quashed.