

(2012) 01 KAR CK 0199
In the Karnataka High Court
Case No : Criminal Petition No. 6177 of 2011

Sri H.R. Nagaraja

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 04-01-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 227, 239
Prevention of Corruption Act, 1988 — Section 13 (2), 19, 19 (1), 7

Citation : (2012) 01 KAR CK 0199

Hon'ble Judges : N. Ananda, J

Bench : Single Bench

Advocate : S.R. Krishnakumar, for the Appellant; S.G. Rajendra Reddy, for the Respondent

Final Decision : Allowed

Judgement

N. Ananda

1. With the consent of learned Counsel for parties, the matter is taken up for final disposal.

2. The petitioner, working as a Junior Engineer at Hemavathi Canal Sub Division, Hedagarahalli, was prosecuted for the offences punishable under Sections 7 and 13(1)(d) r/w. 13(2) of the Prevention of Corruption Act, 1988, After investigation, charge sheet was filed. It is pending trial in Spl Case No.58/2007 on the file of II Additional District and Sessions Judge, Tumkur.

3. The petitioner made an application u/s 239 and 227 Cr.P.C raising several contentions. The main contention being that the petitioner cannot be prosecuted without obtaining sanction, as required u/s 19(1) of the Prevention of Corruption Act, 1988. The learned Special Judge, while accepting the contention of the petitioner that no sanction was obtained to prosecute petitioner has held that the petitioner has raised the objection belatedly. The learned Special Judge has held when the trial is half a way, that the petitioner cannot be permitted to raise such

an objection.

4. In my considered opinion, the learned Sessions Judge before commencing the trial should have verified whether the prosecution has obtained the sanction as required u/s 19 of the Prevention of Corruption Act. The objection regarding maintainability of the prosecution for want of sanction as required u/s 19(1) of the Prevention of Corruption Act, 1988 can be raised at any stage.

5. In a decision reported in R.S. Nayak Vs. A.R. Antulay, the Supreme Court has held:

The policy underlying Section 6 and similar Sections, is that there should not be unnecessary harassment of public servants. The object is to save the public servant from the harassment of frivolous or unsubstantiated allegations. Existence thus of a valid sanction is a prerequisite to the taking of cognizance of the offences. In absence of such sanction the Court would have no jurisdiction to take cognizance of the offences, A trial without a valid sanction where one is necessary u/s 6 is a trial without jurisdiction by the Court.

6. In the case on hand, we are dealing with Section 19 of the Prevention of Corruption Act, 1988. Section 19 is analogous to Section 6 of the Prevention of Corruption Act, 1947, except Clause 19(3) which provides that on the ground of irregularity of sanction, no finding of the Court can be reversed unless the Court is of the opinion, a failure of justice has occasioned there by u/s 19(4) objections as to validity of sanction on the ground enumerated u/s 19(3)(a) has to be raised at an earlier stage of proceedings.

Therefore, it is necessary to bear in mind the distinction between objections regarding want of sanction and validity of sanction

In the case on hand, the objection is raised regarding want of sanction, which would touch up on the jurisdiction of the Court.

The learned Special Judge, having found that no sanction was obtained to prosecute the petitioner, should not have (sic) the application on the ground of delay.

7. In view of what has been held in the decision referred supra, I find that the trial before the Court below is without jurisdiction. Therefore the accused cannot be tried.

The course left open to the learned Special Judge is to return the final report to the presenting agency reserving liberty to file a final report after obtaining valid sanction as required u/s 19 of the Prevention of Corruption Act.

8. In the result, I pass the following order:

The petition is accepted. The petitioner is discharged as the trial Court below is without jurisdiction, The learned Sessions Judge is directed to return the final report to Prosecuting Agency reserving liberty to represent the charge sheet,

after obtaining sanction as required u/s 19 of the Prevention of Corruption Act, 1988.