

(2008) 02 KAR CK 0046

In the Karnataka High Court

Case No : Criminal Revision Petition No. 75 of 2008

Sri Pandurang alias Sathyabodh

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 13-02-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 157
Prevention of Corruption Act, 1988 — Section 13 (1) (e), 13 (2)

Citation : (2008) CriLJ 2507 : (2008) 5 KarLJ 34 : (2008) 2 KCCR 965

Hon'ble Judges : V. Jagannathan, J

Bench : Single Bench

Advocate : Padmanabha V. Mahale for Hanumantha Reddy Sahukar, for the Appellant; P.M. Nawaz, Special Prosecutor for Lokayuktha, for the Respondent

Final Decision : Dismissed

Judgement

V. Jagannathan, J.—The accused before the special court in SPL. (SVC) CC. No. 1/2002 is the petitioner herein and he is aggrieved by the trial court declining to discharge him and holding further that there is prima facie material to proceed against the accused for the offence punishable u/s 13(1)(e) read with 13(2) of the Prevention of Corruption Act, 1988 ("the PC Act" for short). Hence this petition calls in question the said order of the trial court.

2. The facts in brief for the purpose of the present order are in effect that the respondent - the police wing of the Karnataka Lokayukta Police Station, Dharwad submitted a charge sheet against the petitioner for the offence punishable u/s 13(1)(e) read with 13(2) of the PC Act on the ground that the petitioner who was working as a Junior Engineer at Hubli-Dharwad Municipal Corporation, possessed assets disproportionate to his income, in as much as it was found that the value of the assets held by the petitioner was to the tune of Rs. 1,07,60,360,38ps. as against the actual income from all sources which is Rs. 42,93,499/- and therefore an it was found that the petitioner had possessed assets worth Rs. 75,66,670.42ps. over and above the actual income, the charge sheet came to be

submitted for the aforesaid offences.

3. The petitioner appeared before the trial court and prayed for hits discharge from the case on the ground that the investigation was not conducted by an officer of the rank of Deputy Superintendent of Police as required u/s 17(c) of the PC Act And secondly the investigating officer himself is the complainant and for this reason also the proceedings were liable to be quashed and the petitioner to be discharged. The trial judge after hearing the parties in respect of the aforesaid grounds (sic) before it, (sic) the contentions put forward by the petitioner and held that there was sufficient material to proceed against the petitioner in respect of the aforesaid offences. Aggrieved by the said decision of the trial court, the petitioner its before this court.

4. I have heard learned senior Counsel Sri. Padinaimhha Mahale for the petitioner and Sri. P.M. Nawaz, Special Prosecutor for the respondent and perused the entire material placed at this juncture.

5. The learned senior Counsel for the petitioner Sri. Padmanabha Mahale at the outset submitted that there is no proper authorisation as required u/s 17 of the PC Act to investigate the case against the petitioner. In as much as it could be seen from the material placed that the investigation was conducted by the Polio Inspector, Karnataka Lokayukta, Dharwad and not by the Deputy Superintendent of Police or police officer of equal rank as contemplated in Clause (c) of Section 17 of the PC Act. Therefore, the investigation is hit by the above said provision of law and consequently it is invalid.

6. The second contention put forward is that the investigating officer is none other than the complainant himself aft could be seen from the complaint, the copy of which is produced along with the petition at page 15. Therefore, it is impermissible in law for the same person to be complainant as well as the investigating officer and even for this reason also the investigation against the petitioner cannot he sustained in law, particularly, in the light of proposition of law laid down by the Apex Court.

7. Yet another submission made is that the procedure contemplated u/s 9 of the Lokayukta Act has not been followed and therefore even for this reason the case cannot he proceeded with against the petitioner for violating the provisions of Section 9 of the Karnataka Lokayukta Act, 1984 (The Lokayukta Act" in short). In support of the above submissions, learned senior Counsel Sri. Padrnanabha Mahale places reliance on the decisions reported in State of Karnataka, Paper Town Police Station Vs. Sheshadri Shetty and Others, Karnataka 830, N. Gundappa Vs. State of Karnataka, and State of Karnataka Vs. B. Narayana Reddy,

5. On the other hand the learned Special Prosecutor for the respondent. Sri P.M. Nawzaz submitted that no defect or infirmity can be found either in the investigation conduct or in regard to the authorisation, in as much am there his a general authorisation by the State Government permitting the police officer below the rank of Inspector of Mice to investigate any such offence falling under

the Prevention of Corruption Act and secondly in the instant case the requirement of the second proviso to Section 17 has also been applied as could be seen from the authorisation that is produced by the petitioner himself at page 18 to the petition. Therefore there is no infirmity in the authorization. As far as the complainant being the investigating officer himself is concerned, it is submitted by the Special Prosecutor, that there is no such bar and therefore investigation by the same police officer who has lodged the FIR cannot be held to be barred by law and such investigation can only be assailed on the ground of likelihood of bias on the part of the Investigating Officer and this would depend upon the facts and circumstances of this case. As far as noncompliance of the provision of Section 9 of the Lokayukta Act is concerned, submission made is that the Police wing of the Lokayukta Acts independently of the Lokayukta or Upalokayukta and in respect of the offences falling under the provision of the PC Act, the investigation is done by the police wing, which has got independent powers to investigate and file the charge sheet and therefore there is no merit in the submission made by the learned, senior Counsel for the petitioner in this regard. In support of the aforesaid submissions the learned Special Prosecutor for the respondent placed reliance on two decisions which are reported in 2004 (5) SCC 223 and State of Karnataka and Others Vs. Basavaraj Guddappa Maliger, .

9. Having thus heard both sides the point for consideration is whether the trial court has committed any error in declining to discharge the petitioner, and proceeding to hold that there is prima facie material against the petitioner.

10. Having regard to the contentions put forward by the learned senior Counsel Sri Padmanabha Mahals for the petitioner, the first aspect that requires to be examined is whether there is proper authorisation to investigate the case and whether it can be said that there has been violation of the requirement of Section 17 of the PC Act. This takes us to the provisions of Section 17 of the PC Act and they are reproduced hereunder:

17. Persons authorised to investigate - Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no police officer below the rank-

(a) in the case of the Delhi Special Police Establishment, of an Inspector of Police;

(b) in the metropolitan areas of Bombay, Calcutta, Madras and Ahmedabad and in any other metropolitan area notified as such under Sub-section (1) of Section 8 of the Code of Criminal Procedure, 1973 (2 of 1974), of an Assistant Commissioner of Police;

(c) elsewhere, of a Deputy Superintendent of Police or a police officer of equivalent rank,

shall investigate any offence punishable under this Act without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make any arrest therefore without a warrant:

Provided that if a police officer not below the rank of an Inspector of Offence in authorised by the State Government in that behalf by general or special order, he may also investigate any such offence without the order of a Metropolitan Magistrate or a Magistrate of the first class, an the case may be, or make arrest therefore without a warrant:

Provided further that an offence referred to in Clause (e) of Sub-section (1) of Section 13 shall not be investigated without the order of a police officer riot below the rank of a Superintendent of Police.

11. On careful reading of the aforesaid provisions it becomes clear that in respect of the cases falling outside the purview of the Clause (a) and (b) of Section 17, it is the Deputy Superintendent of Police or a police officer of equivalent rank who is required to investigate any offence punishable under the PC Act. The first proviso to Section 17 further makes it clear that a police officer below rank of Inspector of Police is authorised by the State Government in thin behalf by general or special order, may also investigate any such offence. The second proviso makes it further clear that in respect of offence referred to Clause (e) of Sub-section (1) of Section 13, the investigation shall be proceeded with the order of a police officer not below the rank of the Superintendent of Police.

12. As far as the authorisation by the State Government as required under the first proviso of the Section 17 is concerned it is not in controversy between the parties that there does exists a notification in that regard. The said notification has also been culled out in a decision reported in ILR 2002 Kar 830 and it reads thin (only the relevant portion);

In exercise of the powers conferred by the first proviso to Section 17 of the Prevention of Corruption Act, 1988 (Central Act 49 of 1968) and in suppression of Notification No. FD 55 TEG 95, dated 10.4.1995 the Government of Karnataka hereby authoring all the Inspector of Police, Office of the Karnataka Lokayukta for the purpose of the said proviso subject to the general and overall control and supervision by the Lokayukta or Upalokyukta as the case may be.

By Order and in the name of the Governor of Karnataka.

Sd/- P.P. Terdat, Under Secretary to Government, Home & Transport Department, (Police Services)

13. As far ail the requirement of the second proviso in concerned the petitioner has produced ft copy of the proceedings of the Superintendent of Police at page 18 to the petition arid the said order reads as under:

ORDER No. KLA:BGM:SP:SR-97/98, DATED 01.04.1997

In exercise of the powers vested in me u/s 17 of Prevention of Corruption Act - 1988, I.G. Ramesh, Supdt. of Police, Bureau of Investigation, Karnataka Lokayukta, Belgaum, do hereby accord sanction to register a case u/s 13(1)(e) R/ w. 13(2) of Prevention of Corruption Act - 1988, against Sri. Satyabhodh Alias

Panduranga S/o Bhimrao Laxmeshwar, Junior Engineer, Hubli-Dharwad Municipal Corporation, Hubli arid to be investigated by Police Inspector, Bureau of Investigation, Karnataka Lokayukta, Dharwad.

Given under my hand and seal on this 1st day of April 1997.

14. Therefore, in my view there has been full compliance of requirement of Section 17 in so far as authorisation to investigate the case is concerned, The contentions put forward by the learned senior Counsel for the petitioner in this regard and the (sic) therefore cannot be of much assistance to him.

15. The second point that is urged by the learned senior Counsel for the petitioner is that in the instant case, the Investigating Officer to also the complainant and this is clear from the authorization given to the complainant by the Superintendent of Police and also from a plain reading of the complaint itself a copy of which has been produced at page 15 to 17 of this petition. As far as this contention to concerned learned senior Counsel places reliance on the decision of the Apex Court in the case of Bhagwan Singh v. State of Rajasthan 1975 SCC (Cri.) 737. In the said decision, the Apex Court has held that investigation by the complainant - Head Constable himself for the offence of offering bribe to improper and the relevant observations of the Apex Court referred to by Senior Counsel are to be found at para 5 of the aforesaid decision. In the said para 5, the Apex Court considered the question as to how the complainant himself could be the investigator and having found that it was so in the said case, the Apex Court went on to observe that the infirmity arising from investigation by a Head Constable who was himself the person to whom the bribe was alleged to have been offered and who lodged the first information report as informant or complainant in therefore an infirmity which is bound to reflect on the credibility of the prosecution case. As against this decision the ruling cited by the learned Special Prosecutor for the respondent is in the case of State rep. by Inspector of Police, Vigilance and Anti-Corruption, Tiruchirapalli, Tamil Nadu Vs. V. Jayapaul, . In the said cane Apex Court has observed that where the investigation was done by the same police officer who lodged FIR, the same cannot on held barred by law and such investigation could be assailed only on the ground of bias or real likelihood of bias, on the part of the Investigating Officer. Therefore, the Apex Court held that where the Inspector of Police Vigilance and Anti-Corruption are received information about commission of the offences in question and prepared the FIR and registered the crime and therefore investigated the matter and submitted the final report to the court. the said investigation cannot be held to be vitiated on the ground of bias or the like factor and having observed thus the Apex Court held that High Court was in error in quashing tine proceedings on the said ground.

13. Elaborating the aforesaid observations the Apex Court has also observed in the course of the said decision thus:

There is nothing in the provisions of the Criminal Procedure Code which

precluded the appellant from taking up the Investigation. The fact that the said police officer prepared the FIR on the basis of the information received by him and registered the suspected crime does not disqualify him from taking up the investigation of the cognizable offence. A suo motu move on the part of the police officer to investigate a cognizable offence impelled by the information received from some source is not outside the purview of the provision contained in Section 154 to 157 of the Code or any other provisions of the Code.

The State of Uttar Pradesh Vs. Bhagwant Kishore Joshi, relied on.

There is no principle or binding authority to hold that the moment the competent police officer, on the basis of information received, makes out an FIR incorporating his name as the informant, he forfeits his right to investigate. If at all, such investigation could only be assailed on the ground of bias or real likelihood of bias on the part of the investigating officer. The question of bias would depend on the facts and circumstances of each case and it is not proper to lay down a broad and unqualified proposition, in the manner in which it has been done by the High Court, that whenever a police officer proceeds to investigate after registering the FIR on his own, the investigation would necessarily be unfair or biased.

In the present case, the police officer received certain discreet information, which, according to his assessment, warranted a probe and therefore he made up his mind to investigate. The formality of preparing the FIR in which he records the factum of having received the information about the suspected commission of the offence and then taking up the investigation after registering the crime, does not, by any semblance of reasoning, vitiate the investigation on the ground of bias or the like factor. If the reason, which weighed with the High Court could be a ground to quash the prosecution, the powers of investigation conferred on the police officers would be unduly hampered for no good reason. What is expected to be done by the police officers in the normal course of discharge of their official duties will then be vulnerable to attack. Thus, there is no illegality in the process of investigation set in motion by the appellant police officer and his action in submitting the final report to the Court of Special Judge.

17. On a careful reading of the aforesaid decision in Jayapaul's case it also becomes clear that the decision rendered earlier in Bhagwan Singh's case 1975 8CC (Cri.) 737 was also considered and the Apex Court noted that the case in Bhagwan Singh v. State of Rajasthan pertaining to the Head Constable to whom offer of bribe was allegedly made and then the said Head Constable gave the first information and took up the investigation.

18. In the light of the above observations of the Apex Court in Jayapaul's case and taking note of the facts and circumstances of the case referred to by the learned senior Counsel for the petitioner and also the facts and circumstances of the present case, I am of the opinion that the decision in Bhagwan Singh's case is not applicable to the case on hand. But on the other hand the decision of the

Apex Court in State v. Jayapaul applies with all force to the instant case. Therefore the 2nd contention put forward also does not appear to be convincing, particularly in the law laid down by the Apex Court in the State v. Jayapaul's case.

19. Yet another aspect to which reference has to be made is with regard to violation of the procedure contemplated in Section 9 of the Lokayukta Act. The learned senior Counsel for the petitioner referred to the provision contained in Section 9 of the Lokayukta Act and submitted that there is no compliance of the said provisions and therefore for this reason also the investigation cannot be sustained in law. As regard this aspect is concerned, the said point is covered by a Division Bench ruling of this court in the case of State of Karnataka and Others Vs. Basavaraj Guddappa Maliger, . Referring, to provisions of the Lokayukta Act in particular to Section 9 and also to the provisions of the Prevention of Corruption Act the Division Bench has observed thus in the aforesaid case:

Once the police wing, takes up the investigation to accordance with law, the Upalokayukta or Lokayukta has no power to issue directions. The Police Wing acts independently as a police office on deputation to the Lokayukta and needs to say that the police wing shall conduct investigation without any further directions from the Lokayukta.

17. Therefore even with regard to the contention raised concerning Section 9 of the Lokayukta, I am unable to subscribe myself to the view expressed by the learned senior Counsel for the petitioner.

16. As far as the merits of the case are concerned it has to be kept in view that the matter is posted for framing charge before the trial court and any observation touching upon the merits is unwarranted at the stage and therefore, I refrain from making any such comments on the merits at this case. In the result, I pass the following order.

(a) Criminal Revision Petition is dismissed.

(b) It is also made clear that the observations made herein above shall not confer to this order and shall not have any bearing on the merits of the case and the learned trial judge shall proceed with the matter being uninfluenced by any of the observations made in this order.