
(2018) 09 KAR CK 0008

In the Karnataka High Court

Case No : Writ Petition No. 26160 Of 2013 (Gm-Res), Criminal Petition No.2459 Of 2013

Sri Srinath Mangalore

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 26-09-2018

Acts Referred:

Karnataka Municipal Corporations Act, 1976 — Section 34, 120B, 201, 321, 321B, 420, 406

Code of Criminal Procedure, 1973 — Section 2(s), 161

Constitution of India, 1950 — Article 226, 227

Citation : (2018) 09 KAR CK 0008

Hon'ble Judges : B. A. PATIL, j

Bench : Single Bench

Final Decision : Allowed

Judgement

1. WP.No.26160/2013 is filed by accused No.14; WP.No.26162/2013 is filed by accused No.15; and Criminal Petition No.2459/2013 is filed by

accused Nos.3, 2, 5, 8, 9, 10, 12, 11, praying to quash the complaint dated 18.4.2013 in Crime No.76/2013 registered by BMTF Police Station, for the

offences punishable under Sections 420, 406, 201 120B r/w. Section 34 and Section 321 of Karnataka Municipal Corporation Act (â??KMC Actâ??

for short).

2. I have heard the Senior Learned counsel Sri C.V.Nagesh appearing on behalf of the petitioners and the learned HCGP for the respondent-State.

3. It is the contention of the learned Senior Counsel that in the instant case there is gross abuse of process of law which will result in infringement of

constitutional rights of the petitioners including fundamental rights and other legal rights. He submitted that the complaint dated 18.4.2013 on its face

value did not disclose any offence whatsoever much less the offences under any provisions of IPC and as such the same is liable to be set aside. He further submitted that the complaint which is filed as against the petitioners-accused was without jurisdiction. He further submitted that BMTF Police Station is confined to register the case and to investigate the same in respect of the offences purported to have been committed under the IPC if they are committed along with the offences under the KMC Act or allied Acts, but the case registered by BMTF Police only discloses that the offences alleged are mainly covered under the IPC and even Section 321B of KMC Act appears to be only an innovative method resorted to by BMTF Police so as to somehow lug the complaint into its jurisdiction though there is no offence made out under Section 321B of the KMC Act. He further submitted that the said complaint does not say that the jurisdictional Officer has exercised the power to prevent any deviation or construction. He further submitted that the complaint without there being any offence committed by the petitioners under the Special Act like Karnataka Slum Areas (Improvement & Clearance) Act, Bangalore Development Authority Act, The Bangalore Water Supply and Sewerage Board Act and other allied ten Acts as notified, the BMTF police have absolutely no jurisdiction to register the case as against the accused-petitioners and therefore the same is liable to be quashed on this score itself. He further submitted that there is no evidence much less prima facie material in the complaint if it is read as a whole to establish any of the offences and as such BMTF ought not to have acted upon the same. The act of BMTF is nothing but abuse of process of law by filing a false complaint. He further submitted that though the petitioners were not arrayed as accused and at the initial stage, a notice has been given to produce certain documents and without giving sufficient opportunity the accused- petitioners were apprehended and wrongfully detained without there being any sanction of law. He further submitted that though the accused-petitioners were produced before the jurisdictional Court and they have been remanded, the BMTF were not having any authority to arrest and they are not the police officers in the eye of law and even the period of detention and remand will amount to wrongful restraint and wrongful confinement without legal authority. In that light, he submitted that for having illegally detained the petitioners without sanction of law the respondent-State are liable to pay damages or compensation. He further submitted that the

registration of case has no sanction of law. He further submitted that in earlier writ petitions filed by the petitioners-accused this Court already has come to the conclusion that there is no violation and even then a false case has been registered. He further submitted that the principles of res judicata will also apply to the criminal cases. He further submitted that the BMTF is not a Police Station in general sense so as to register the case under the IPC and to investigate the cases. By drawing my attention to the notification issued by the State Government he submitted that as per the said notification BMTF will get jurisdiction only under ten special Enactments and if anyone of the enactment is not applied, then under such circumstances, the said BMTF Police will lose the jurisdiction. He further submitted that the period of appointment of the officers and posting to work under BMTF Police Station was expired prior to filing of the complaint, dated 18.4.2013. Under such circumstances, the power exercised by the BMTF police is without there being any authority and as such the detention of the accused-petitioners is not justifiable in law. By referring to the decision of this Court in the case of G. D.Jayarama Vs. State by BMTF Police Station in Criminal Petition No.5340/2012 and connected matters, disposed of on 10.10.2013, he submitted that this Court has already held that Section 321B of the KMC Act is in relation to unauthorized deviation or construction over a private property and BMTF has no jurisdiction to register a case and investigate the same as the said Section does not specify the nature of the punishment in case of violation of the said Section. He further submitted that though this Court has directed to amend the said provisions, till date no such amendments have been made. He further submitted that the said activities of the petitioners is covered under the Karnataka Town and Country Planning Act and M/s.Nandi Infrastructure Corridor Enterprise Limited (NICE) is constituted under the said Act and as such the BMTF police will also not have any authority to file such complaint. By relying upon the decisions in the case of Joginder Kumar Vs. State of U.P. & others, reported in 1994 SCC (Cri) 1172; in the case of N.Sengodan Vs. Secretary to Government, Home (Prohibition & Excise) Department, Chennai & others, reported in 2013 (5) Supreme 1; in the case of Sri Shiva Kumar K M Vs. State of Karnataka & another in WP.No.49183/2012 & connected matters, disposed of on 24.2.2015, he prayed to allow the petitions by quashing the proceedings initiated against the petitioners.

4. Per contra, the learned HCGP vehemently argued and submitted that the notification dated 6.2.2013 clearly notified that the lands pertaining to Anekal Taluka have been excluded from the notification and as such BMTF Police Station has got jurisdiction to register the case and even if there is any violation or any offence under the provisions of IPC they can arrest. In that light, the accused-petitioners were apprehended and thereafter they have been produced before the jurisdictional Magistrate, who in turn by exercising his power legally remanded them to judicial custody. Under the said facts and circumstances, the said detention is not a wrongful detention and it cannot be called as without the authority of law. He further submitted that any cognizable offence is noticed as per Cr.P.C. any person is having a power to apprehend under the said circumstances that the accused-petitioners have cheated and have grabbed the lands illegally and a cognizable offence has been committed by them. In that light, BMTF police are empowered to register the case and proceed with the investigation. He further submitted that the learned Magistrate after seeing the contents of the complaint and other material on record by application of his mind has taken cognizance and issued the summons. There are no good grounds so as to interfere with the impugned order and to quash the proceedings initiated in this behalf. On these grounds, he prayed to dismiss the petitions as devoid of merits.

5. I have carefully and cautiously gone through the contents of the complaint and other material which has been produced along with the petition and brought to the notice of this Court during the course of arguments.

6. It is the main contention of the learned Senior Counsel that BMTF police have no jurisdiction to register and investigate the case for the alleged offences. The learned Senior Counsel by reiterating the grounds urged in the petitions submitted that NICE has been assigned in the construction of four lane road. Thereafter it has identified the lands required for the said project way back in the year 1995 and submitted to the State Government for its approval. Even the State had accepted the land, requirement for the project prior to execution of Frame Work Agreement (FWA). Though the complaint alleges that there were fold cheating on the part of NICE to select the land to its whims and fancies, in and around Bangalore City, there is no specific allegation that the alleged offences as stated therein have been

committed by the accused-petitioners. By drawing the attention of this Court to Section 321 of KMC Act he further submitted that there is no offence punishable under the said Section. He further submitted that the respective owners/developers of the properties have obtained orders from the competent Courts and necessary steps have been taken as contemplated under law and they are not guilty of any of the offences alleged. He further submitted that in order to prevent land grabbing and unauthorized occupation of Government land and local authorities, the Government decided to establish a Task Force for prevention, detection and investigation of offences and to launch prosecution against the persons relating to unauthorized occupation of the public properties. Accordingly, by Government Order No.HD.247.MNU.95, dated 19.3.1996, sanction was accorded to constitute a Force to be called Bangalore Metropolitan Task Force (BMTF) and a Police Officer of the rank of Deputy Inspector General of Police was ordered to head the Task Force. For the purpose of

brevity, I quote the said Government Order which reads as under:-

Â??PROCEEDINGS OF THE GOVERNMENT OF KARNATAKA Sub: Creation of Bangalore Metropolitan Task Force PREAMBLE:

It has come to the notice of the Government that large scale attempts are made by land-grabbers to occupy unauthorisedly the lands belonging to the

Government, the Bangalore City Corporation, the Bangalore Development Authority, the Municipal Councils and the Slum Clearance Board in

Bangalore Metropolitan area.

The Karnataka Municipal Corporations and certain other laws (Amendment) Act, 1984 amended the Karnataka Municipal Corporation Act, 1976,

Karnataka Municipalities Act, Bangalore Development Authority Act, Karnataka Slum Clearance Act Prohibiting unauthorized occupation of lands

belonging to the Corporations, the Bangalore Development Authority, the Municipal Council and the unauthorized occupations were made punishable

with imprisonment for term which may extend to three years and a fine which may extent to five thousand rupees.

In order to enforce these provisions effectively it has been decided to establish a task force for prevention, detection and investigation of offences and

prosecution, detection in unauthorized occupation in Bangalore Metropolitan Area. It is proposed to post of the police officers from the police

Department on deputation and declares the force as a police station to enable than to register and investigate the cases. Hence the order.

ORDER No.HD 247 MNU 95 BANGALORE DATED 19 MARCH 1996.

Sanction is accorded to constitute a force to be called the Bangalore Metropolitan Task Force (BMTF).

A Deputy Inspector General of Police shall be the head of the task force with the designation "" The Deputy Inspector General of Police, Bangalore

Metropolitan Task Force"". The command, supervision and administration shall vest in the Deputy Inspector General of Police, Task Force.

The functions of the task force shall be as follows, namely:

Better protection of the property belonging to the Government, the Bangalore City Corporation, the Bangalore Development Authority, the Bangalore

Water Supply and Sewerage Board, the City Municipal Council the Slum Clearance Board in Bangalore.

The Detection of commission of any design of committing any offence, of investigation and prosecution of such offence relating to unauthorized

occupation of any land which is an offence under the following enactment.

The Karnataka Municipal Corporation Act, 1976.

The Bangalore Development Authority Act, 1976.

The Karnataka Municipality Act, 1964.

The Bangalore Water Supply and Sewerage Act, 1964.

The Karnataka Slum Areas (Improvement, and Clearance) Act, 1973.

The Bangalore Metropolitan Task Force shall consist of the officers mentioned in Annexure-1.

Every person employed in the Bangalore City Corporation, the Bangalore Development Authority or any other local authority within the Bangalore

Metropolitan Area shall forthwith communicate to the task force any information which he may possess respecting commission or attempt to commit

any offence by any person under the Karnataka Municipal Corporation Act, 1976. The Bangalore Development Authority Act, 1976, the Karnataka

Municipalities Act, 1964 and Karnataka Slum Areas (Improvement and Clearance) Act, 1973.

The task force shall be provided with the assistance of around reserve police by the K.S.R.F. during the critical periods of operation whenever

required.

The Metropolitan Task Force will be a field unit of the Urban Development Department of Government of Karnataka and work under the over all

supervision and control of the Secretary, Urban Development.

The Deputy Inspector General shall furnish periodical statements and progress reports to Government. He shall also send a copy of the reports to the

Commissioner, Bangalore City Corporation, Commissioner, Bangalore Development Authority, Deputy Commissioner, Bangalore Urban District,

Secretary Karnataka Slum Clearance Board, Chairman, Bangalore Water Supply and Sewerage Board and Commissioners of the City Municipal

Councils, as the case may be.

The expenditure on the Metropolitan Task Force shall be shared between Government and the organizations mentioned above in proportion to be

specified by the Government. The initial expenditure however will be met by Government and debited to Head of Account 2251-Secretariat Social

Service-01- Karnatak Government Secretariat and subsequently got reimbursed for the concerned organizations.

7. In order to properly understand the objectives for which the BMTF was constituted and what are its powers and functions, he referred to the said

proceedings of the Government of Karnataka. For the purpose of brevity, I quote the said Government Order, which read as under:-

â??ORDER NO.UDD 110 MNU 97, BANGALORE DATED 28TH AUGUST 1997

After considering the above aspects, in partial modifications of the Government Order read at (1) and (2) above, Government are pleased to order the

following namely:-

The Inspector General of Police shall be the head of the task force with the designation ""The Inspector General of Police, Bangalore Metropolitan

Task Force"". The Command, Supervision and Administration shall vest in the Inspector General of Police Task Force.

The functions of the Task Force shall be as follows:

1. Better protection of the property (including lands) belonging to the Bangalore City Corporation, the Bangalore Development Authority, The

Bangalore Water Supply and Sewerage Board, the Karnataka Slum Clearance Board, the City Municipal Councils, the Town Municipal Council and to

the Government, including tanks, lakes and tank-beds handed over for maintenance to the Forest Department within the Bangalore District excluding Anekal Revenue Taluk but including Bangalore Metropolitan Area.

2. The detection of Commission or any design to commit any offence, the investigation and prosecution of such offences relating to the unauthorised

occupation of any land belonging to the Government, the Bangalore City Corporation, the Bangalore Development Authority, The Bangalore Water

Supply and Sewerage Board, the Karnataka Slum Clearance Board, the City Municipal Councils, the Town Municipal Council within Bangalore

Metropolitan and also other offences and irregularities committed under the following enactments.

a) The Karnataka Municipal Corporation Act, 1976

b) The Bangalore Development Authority Act, 1976

c) The Karnataka Municipalities Act, 1964

d) The Bangalore Water Supply and Sewerage Board Act, 1964

e) The Karnataka Slum Areas (Improvement and Clearance) Act, 1973.

f) The Karnataka Land Revenue Act, 1964

g) The Karnataka SC & ST (Prohibition of Transfer of Certain Lands) Act, 1978

h) The Karnataka Land Reforms Act, 1961

i) Inam Abolition Act

j) The Indian Penal Code

k) The Karnataka Police Act, 1963

3. To identify those employees and officers of the above organizations who collude with the public in committing the offences by creating false and

forged documents and which involves loss of revenue and to take action against them as per law.

4. All the employees and officers of the concerned organizations shall furnish all the information regarding the offences and irregularities

aforementioned to the Bangalore Metropolitan Task Force and shall provide all assistance and co-operation without delay for the effective

performance of its duties.

5. The Police Department shall provide all the necessary and adequate assistance and support including the armed police platoons without any delay

whenever requisitioned by the Bangalore Metropolitan Task Force.

6. The Bangalore Metropolitan Task Force will be a field unit of the Urban Development Department of Government of Karnataka and work under the over all supervision and control of the Principal Secretary, Urban Development Department.

In respect of revenue lands, tanks, lakes and tank-beds the Inspector General of Police, Bangalore Metropolitan Task Force will directly report to the Principal Secretary, Revenue Department, Government of Karnataka and co-ordinate the operations.

The Inspector General of Police, Bangalore Metropolitan Task Force shall furnish periodical statements and progress reports to the Government. He

shall also send copy of the reports to the Commissioners, Bangalore City Corporation, the Bangalore Development Authority, Commissioner of City

Municipal Council or Chief Officer of Town Municipal Council, Deputy Commissioner, Bangalore District, Secretary,

Karnataka Slum Clearance Board, Chairman, Bangalore Water Supply and Sewerage Board and the Divisional Commissioner, Bangalore Division, as

the case may be. By order and in the name of the Governor of Karnataka,

Sd/-

Under Secretary to Government,

Urban Development Department??

8. On going through the above said proceedings of the Government, it indicates that the BMTF was constituted for the purpose of protection of the

property belonging to the Government and other local authorities and in that regard, it was also empowered to detect commission or any design for

committing of any offences and if it is noticed it can undertake investigation into unauthorized occupation of public property which constitutes an

offence under the enactments referred to therein and also to launch prosecution against any such persons in respect of such offences. It further

clarifies that it is meant for special and specific purpose. Subsequently, the said order was extended by notification dated 15.4.1996 issued by the

Government of Karnataka, which reads as under:-

PROCEEDING OF THE GOVERNMENT OF KARNATAKA Sub: Creation of Bangalore Metropolitan Task Force.

Read: 1) G.O.No.UDL 247 MNU 95 dated 19.03.1996 Government letter No.HUD 646 MNY 95 dated 21.12.1995. Preamble:

Bangalore Metropolitan Task Force (BMTF) is constituted under G.O.No.UDD 247 MNU 95 dated 19.03.1996 headed by Deputy Inspector General

of Police at Government level to enforce the provisions of the following Acts to safeguard the properties of respective local bodies and Boards:

- a) The Karnataka Municipal Corporation Act, 1976.
- b) The Bangalore Development Authority Act, 1976.
- c) The Karnataka Municipality Act, 1964.
- d) The Bangalore Water Supply and Sewerage Act, 1964.
- e) The Karnataka Slum Areas (Improvement, and Clearance) Act, 1973.

Now, the Deputy Inspector General of Police has proposed following further powers to Bangalore Metropolitan Task Force for smooth and proper

enforcement of provisions of above acts in addition to G.O.read at Sl.No.(1) above.

The employees of Bangalore City Corporation, Bangalore Development Authority. The Bangalore Water Supply and Sewerage Board, Karnataka

Slum Areas (Improvement & Clearance) Boards and Municipal Councils in Bangalore.

Metropolitan Area shall give every assistance required by Bangalore Metropolitan Task Force in its work;

The Police Department shall provide all the assistance whenever required by the Task Force in its operations.

The detection of commission or any design or committing any offences of investigation and prosecution of such offences relating to unauthorized

occupation of any land which is an offence under the above referred enactments will also include any other offences & irregularities including change

of khatas.

To identify the employees/officers of the above organization who collude with the public in making them to commit the offences.

Hence this order.

Government Order No.UDD 247 MNU 95, Bangalore Dated 15.04.1996 In continuation of Government Order read at Sl.No.1 (1) above, Government

are pleased to extend further powers to Deputy Inspector General of Police, Bangalore Metropolitan Task Force, as indicated in item Nos. 1 to 4 in

preamble for smooth and proper functioning of the force.

9. From the above extended notification, it clarifies the fact that in addition to the powers conferred under the earlier notification dated 19.3.1996,

BMTF was empowered to detect commission of or any design for committing of any offence to investigate and launch prosecution for such offences

relating to unauthorized occupation of any land which is an offence under the enactments referred to therein including any other offences and

irregularities and it has also been empowered to identify the commission of the offences. Even by notification dated 27.5.1996, issued by the Home

Department, Government of Karnataka, the BMTF was declared as a "Police Station" in terms of Section 2(s) of Cr.P.C. and its area of

jurisdiction.

10. This Court has already taken a decision by referring to the notifications dated 19.3.1996 and 27.5.1996 that BMTF was declared as a "Police

Station" within the meaning of Section 2(s) of Cr.P.C. and it can register and proceed with the investigation of case if the facts contain in the FIR

disclose the offences under the said special Acts enumerated therein read with or without those under the IPC and the Karnataka Police Act. The

said particular fact is not in dispute as on today. Even the subsequent notifications dated 19.3.1996 and 15.4.1996 have also been interpreted and

observed that the Government never intended to create BMTF as a "General Police Station" for dealing with all kinds of offences and thereby

created overlapping of powers conferred on General Police Station. In that light, if the entire material which has been produced along with petitions

and the notifications issued in this behalf is perused, it clarifies the fact that the object of constituting BMTF was to protect the public properties and it

has been empowered to detect any unauthorized occupation, construction or encroachment over the public property and to launch prosecution against

any such persons. It also makes it very clear that it has no power to register and to investigate the cases under the IPC.

11. Keeping in view the above said aspects, let me consider the complaint which is produced at Annexure-D to WP.No.26160/2013, wherein several

allegations have been made against the accused-petitioners contending that

there is a breach of trust, conspiracy to cheat the Government and public project for taking up illegal development without approval of the competent authority and a case has been registered in Crime No.76/2013 for the offences punishable under Sections 420 406, 120B r/w. 34 of IPC and Section 321B of KMC Act.

12. It is the contention of the learned Senior Counsel that the case came to be registered on 18.4.2013 but as per the Government Order

No.Na.Aa.E.366 MNU 2011 Bangalore, dated 12.9.2012 the constitution of BMTF and its tenure was from 7.12.2011 to 18.3.2013. Under the said

order nine Officers have been authorized to work with BMTF. It is his further contention that the said power which has been given, expired on

18.3.2013 and thereafter there is no extension of the authority or authorization to the said police and Police Station. Under such circumstances, it

cannot be called as a "General Police Station" and it has no authority to register the case either under IPC or even under the special Acts. He

also brought to the notice of this Court to the letter dated 29.4.2013 of Public Information Officer and the Assistant Secretary to Government, Urban

Development Department, BBMP, Bangalore, stating that under Right to Information Act, information was sought about the extension of the power of

BMTF after 18.3.2013 and it is informed that any order/notification is not available with regard to extension of power of BMTF after 18.3.2013.

13. Even the learned HCGP has also not made it clear that the said power of BMTF has been extended. In that light, if the entire material is

scrutinized, admittedly the complaint was filed on 18.4.2013 and the power of BMTF was expired on 18.3.2013. Under such circumstances, it clearly

goes to show that the complaint which has been registered is without there being any authority. In that light, there appears to be some force in the

arguments advanced by the learned Senior Counsel that the complaint filed in this behalf is liable to be quashed.

14. Even as could be seen from the order passed by the Division Bench of this Court in WP.No.12556/2013, disposed of on 3.4.2013, the said writ

petition came to be disposed of as it did not survive for consideration upon the statement being made by the learned Additional Advocate General that

BMTF is not abolished and there is no proposal to abolish the Force in the near future. The said order passed by the Division Bench of this Court in

the aforesaid writ petition reads thus:-

1. Upon the statement being made by learned Additional Advocate General Sri Sajan Poovayya that the Bangalore Metropolitan Task Force is not

abolished and there is no proposal to abolish that Force in the near future, the petition admittedly does not survive for consideration any longer.

Accordingly, it is disposed. However, the above statement recorded herein as made on behalf of the State would not preclude the authorities

concerned from changing the composition of the Task Force.

15. As could be seen from the above order, though on the basis of undertaking of the Government of Karnataka that BMTF is continuing and

functioning, without specific notification from the Government, it cannot be presumed that in view of explicit order of the Government, BMTF is

having authority to exercise its power and even the submission of the learned HCGP that there is no need for any such notification is not acceptable.

It is only through such notification the power is going to be confirmed. In that context, the submission of the learned HCGP is not acceptable.

16. It is the further contention of the learned Senior Counsel that as per Chapter-15 and Section 321B of KMC Act, it is not an offence at all. For the

purpose of brevity I quote Section 321B of KMC Act, which reads as under:

321B. Penalty against jurisdictional officer failing to prevent unauthorized deviations or constructions. "The jurisdictional officer who is proved

to have failed to prevent unauthorized deviation or construction that have taken place in his jurisdiction shall be liable for such punishment as may be

prescribed.

17. On going through the aforesaid provision, it sets out the power of Commissioner of the Corporation in relation to unauthorized or illegal

construction by any person over the property owned by him or developed by him. Even the Commissioner has delegated the said general power to the

Engineers of the Town Planning Section and they have been authorized to issue necessary orders where there are constructions in violation of any

permission obtained or where construction is undertaken without permission. It is implicit in it that such Engineers are under an obligation to prevent

such unauthorized or illegal construction and take necessary action. The main question which arises is wherever the Engineers fail to take any such

actions as required by Section 321 of the KMC Act, then the BMTF police have

jurisdiction to take action against such Engineers or Officers for the alleged offences by invoking the provisions of Section 321B of KMC Act. Even on close reading of Section 321B of KMC Act, if an offence is committed thereunder the BMTF has no jurisdiction to register the case and to investigate the same as Section 321B of KMC Act makes such omissions an offence, it does not specify the nature of the punishment which is going to be imposed in this behalf. When no punishment has been prescribed, then under such circumstances, though if any person is found guilty of the said offence, he cannot be punished. In that light, the accused-petitioners have made out a case that even the case registered under Section 321B of the KMC Act is also not sustainable in law.

18. Though Section 321B of KMC Act has been introduced in the statute in the year 2007 and even in spite of the observations/directions made by this Court in Criminal Petition No.5340/2012 & connected matters, disposed of on 10.10.2013 at paragraph-18 to take appropriate steps to amend the said provision suitably so as to include the punishment in violation of the said Section, the Government has not opened its eyes for the reasons best known to it. The relevant portion of the observations made by this Court in Criminal Petition No.5340/2012 & connected matters, disposed of on 10.10.2013, at Paragraph-18 reads as under:-

18. Therefore, even where the alleged offence is one under Section 321B of KMC Act, if it is in relation to an unauthorized deviation or construction over private property, in my considered opinion, the BMTF has no jurisdiction to register the case and investigate the same. In addition to this, though Section-321B makes such omissions an offence, it does not specify the nature of punishment. Though this section was introduced into the statute in the year 2007, till today, nature and extent of punishment to be imposed, is not prescribed. As a result, even if a person is found guilty of said offence, he cannot be punished. It is for the Government to look into this and take necessary steps in this regard.

19. In that light, I hereby direct the Registrar General to send a copy of this order to the Chief Secretary, Government of Karnataka, Bangalore and also to the Chairman of the Law Commission to look into the matter and give a suitable direction in this behalf to take necessary steps to amend the

provisions in accordance with law.

20. It is the contention of the learned Senior Counsel for the petitioners that the action taken by the respondents is without authority and the arrest and

detention will be a wrongful arrest and detention without sanction of law. It is further contention of the learned Senior Counsel that the notices issued

by the Deputy Superintendent of Police, BMTF dated 22.4.2013 (Annexure-F, F1 to F4 annexed to WP.No.26160/2013) to all the petitioners have

been received on 22.4.2013 and therein certain documents and maps have been asked to

be produced by fixing the date on 29.4.2013 at 3.00 p.m. Without giving any opportunity to the accused-petitioners that they were apprehended and

produced before the Court with remand application on 22.4.2013 itself as per Annexure-G to WP.26160/2013. Even the order sheet dated 22.4.2013

of IV Additional CMM indicates that accused Nos.14 and 15 were produced on the same day and they were remanded to judicial custody till 6.5.2013

as per Annexure-H to WP.No.26160/2013 and however they were released on 26.4.2013. Similar is the position in respect of the other accused-

petitioners. Though it is contention of the learned HCGP that if a cognizable offence has been noticed by the police, the police have got power to

arrest the accused. Though the arrest may be lawful for the police officer in a cognizable offence, the existence of the power to arrest is one thing.

The justification for the exercise of it is quite another. The police officer who arrests must be able to justify the arrest apart from his power to do so. It

is also well established principle of law that no arrest can be made in a routine manner on a mere allegation of commission of an offence made against

a person. It would be prudent for a police officer in the interest of protection of constitutional rights of a citizen and perhaps in his own interest that no

arrest should be made without reasonable satisfaction reached after some investigation as to the genuineness and bona fides of a complaint and a

reasonable belief both as to the person's complicity and even so as to the need to effect arrest. Denying a person of his liberty is a serious matter.

A person is not liable to arrest merely on the suspicion complicity in an offence. There must be some reasonable justification in the opinion of the

officer in the effect that such arrest is necessary and justified. This proposition of law has been laid down by the Hon'ble Apex Court in the case

of Joginder Kumar Vs. State of U.P. & others (quoted supra). At paragraph-20 of the said decision it has been observed as under:-

20. In India, Third Report of the National Police Commission at p.32 also suggested:

An arrest during the investigation of a cognizable case may be considered justified in one or other of the following circumstances:

(i) The case involves a grave offence like murder, dacoity, robbery, rape etc., and it is necessary to arrest the accused and bring his movements under

restraint to infuse confidence among the terror stricken victims.

(ii) The accused is likely to abscond and evade the processes of law.

(iii) The accused is given to violent behaviour and is likely to commit further offences unless his movements are brought under restraint.

(vi) The accused is a habitual offender and unless kept in custody he is likely to commit similar offences again.

It would be desirable to insist through departmental instructions that a police officer making an arrest should also record in the case diary the reasons

for making the arrest, thereby clarifying his conformity to the specified guidelines.

The above guidelines are merely the incidents of personal liberty guaranteed under the Constitution of India. No arrest can be made because it is

lawful for the police officer to do so. The existence of the power to arrest is one thing. The justification for the exercise of it is quite another. The

police officer must be able to justify the arrest apart from his power to do so. Arrest and detention in police lock-up of a person can cause incalculable

harm to the reputation and self-esteem of a person. No arrest can be made in a routine manner on a mere allegation of commission of an offence

made against a person. It would be prudent for a police officer in the interest of protection of the constitutional rights of a citizen and perhaps in his

own interest that no arrest should be made without reasonable satisfaction reached after some investigation as to the genuineness and bona fides of a

complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest. Denying a person of his liberty is

a serious matter. The recommendations of the Police Commission merely reflect the constitutional concomitants of the fundamental right to personal

liberty and freedom. A person is not liable to arrest merely on the suspicion of

complicity in an offence. There must be some reasonable justification in the opinion of the officer effecting the arrest that such arrest is necessary and justified. Except in heinous offences, an arrest must be avoided if a police officer issues notice to person to attend the Station House and not to leave the Station without permission would do.â??

21. Keeping in view the above said proposition of law on perusal of Annexures-F, F1 to F4 as stated above, the police notices have been issued to the petitioners under Section 161 of Cr.P.C. on 22.4.2013 asking them to produce the documents on 29.4.2013 and subsequently accused-petitioners have been apprehended and produced before the Court on the same day with remand application as per Annexure-G to WP.No.26160/2013. When the Deputy Superintendent of Police issued a notice by fixing the date as 29.4.2013, at 3.00 p.m. for production of the documents, then under such circumstances, before the said date the apprehension of the accused-petitioners amounts to nothing but deprivation of the right and personal liberty of the accused-petitioners and the above said proposition of law is squarely applicable to the case on hand. It is also well settled principle of law that the personal liberty of an individual is of the widest amplitude covering variety of rights. Its deprivation shall be only as per the procedure prescribed in the Cr.P.C. and the Indian Evidence Act. If the said liberty is curtailed by wrongful arrest or detention without due process of law, the said arrest becomes illegal and unauthorized and it will be a wrongful arrest and detention. Even the facts and other material which has been discussed above, if it is carefully seen, without lawful authority and without giving an opportunity to the accused-petitioners to explain, that too when a notice has been issued and thereafter if they have been arrested and detained, it is a serious aspect.

22. Be that as it may, even as discussed above, BMTF power has not been extended after 18.3.2013, then under such circumstances, the police officials who were working under BMTF were not having any authority to arrest and detain the accused-petitioners. As held in this order as well as earlier orders of this Court, the power of BMTF is limited and it is not having a power of â??general police stationâ?? to take cognizance of any of the offences under the IPC. In that light, the arrest which has been made is not justifiable. Hence, the persons who have exercised their power

without any authority, then under such circumstances, it will be a wrongful detention and confinement and as such, compensation has to be paid to the

accused-petitioners in this regard. It is well settled principle of law that if there is a wrongful detention and confinement, the State has to pay the

compensation to the detinue. This proposition of law has been laid down by the Honâ??ble Apex Court in the case of N.Sengodan Vs. Secretary to

Government, Home (Prohibition & Excise) Department, Chennai & others (quoted supra).

23. Accused-petitioners herein were working in NICE as Director, Managing Director, Deputy General Manager, with high reputation. If they have

been apprehended and detained though they were not liable to be arrested, then under such circumstances, I am of the considered opinion that they

are to be compensated in terms of money. Though the amount which is going to be awarded by this Court as compensation is not going to get back the

liberty which they have lost, during the said tenure, however, reasonable compensation is to be awarded in this behalf. In that light, if the Chief

Secretary, Government of Karnataka is directed to pay Rs.1,00,000/- to each of the petitioners herein as compensation for their wrongful detention

and confinement and thereafter the said amount is to be recovered from the concerned erring officers/officials, it would meet the ends of justice.

Accordingly, petitions are allowed. The FIR dated 18.4.2013 and all further proceedings in Crime No.76/2013 registered by BMTF Police Station in so

far as petitioners herein are concerned, stand quashed.

The Chief Secretary, Government of Karnataka is directed to pay Rs.1,00,000/- (Rupees one lakh only) to each of the petitioners herein as

compensation for their wrongful detention and confinement within a period of two months from the date of receipt of a copy of this order and

thereafter the said amount shall be recovered from the concerned erring officers/officials.