

(2018) 07 KAR CK 0020

In the Karnataka High Court

Case No : Criminal Revision Petition No.654 of 2018

**Sri. Theethira N. Appachu @ Titira N.Appachu @APPELLANT@Hash State
of Karnataka**

Date of Decision : 26-07-2018

Acts Referred:

Code of Criminal Procedure, 1973 — Section 227, 239, 397, 401
Karnataka Government (Transaction of Business) Rules, 1977 — Rule 20
Prevention of Corruption Act — Section 7, 10, 11, 13, 15, 19, 19(1)(b), 19(1)(C)

Citation : (2018) 07 KAR CK 0020

Hon'ble Judges : Sreenivas Harish Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

1. The accused in Spl.C.No.266/2016 on the file of LXXVII Addl. City Civil Judge and the Special Court constituted under Prevention of Corruption

Act has preferred this revision petition under Section 397 read with Section 401 Cr.P.C. In the said proceeding, he made an application under Section

227 read with Section 239 Cr.P.C. seeking his discharge. The Special Court, by order dated 04.06.2018 dismissed the said application. Hence this

revision.

2. I have heard the petitioner's counsel and the Special Public Prosecutor for Lokayukta.

3. The Special Court has held that materials collected by the investigation officer show existence of prima facie case for framing charges against the

accused. As regards sanction, it is held that the accused is a Class I officer of the Government of Karnataka and competent authority to accord

sanction is the Government. Since the order shows application of mind, there are no infirmities in the sanction order.

4. Assailing the findings of the Special Court, the learned counsel for petitioner argues that the accused is a Group A Officer of the

Government of Karnataka. The disciplinary authority is the Government. His argument is that the Minister concerned was not competent to accord

sanction. He referred to Rule 20 of Karnataka Government (Transaction of Business) Rules, 1977 (referred to as "Business Rules" for short)

and argued that the matter should have been placed before the Cabinet of the Government, as the matter relating to the accused falls under item no.23

of the First Schedule of the Business Rules. Item no.23 deals with dismissal or removal of; and compulsorily retiring a Government servant. The

competent authority to exercise this power is the Cabinet, and in this case since the matter was not brought before the Cabinet, the sanction order

suffers from lack of competency. Therefore the Special Court should have discharged the accused. In support of his argument, he places reliance on

a judgment of this court in the case of R. Chandrashekar Reddy Vs. State of Karnataka (Criminal Appeal No.2573/2013).

5. Learned Special Public Prosecutor for Lokayukta while supporting the impugned order, submits that there is no illegality in the sanction order. He

refers to Section 19(1)(b) and (c) of the Prevention of Corruption Act and argues that Section 19(1) (b) refers to the authority competent to accord

sanction in respect of State Government servants. Clause (c) pertains to other than Government servants. Since the accused is a State Government

servant belonging to Group A, the competent authority is the State Government. Following the procedure as provided in the Business Rules,

the Energy Minister before whom the file was placed decided to accord sanction on being convinced with existence of prima facie materials to

prosecute the accused. Though the sanction order was signed by the Under Secretary of the Department of Energy, he signed the said order following

the Business Rules and hence there is no infirmity in it. On this point, he places reliance on the decision of this court in the case of Dr. H.C.Sathyam

Vs. the State of Karnataka (Criminal Petition No.899/2017). It is his next point of argument that the order of the Special Court cannot be interfered

with in revision unless the accused shows as to how failure of justice has occasioned. Relying upon judgment of the Supreme Court in State by Police

Inspector Vs. T. Venkatesh Murthy (AIR 2004 SC 5117), the learned Special Public Prosecutor submits that the accused has not pleaded about

failure of justice, and for all these reasons, the petition should be dismissed.

6. After hearing both sides, the first point to be noticed here is that the petitioner/accused does not say that the sanction order suffers from non-

application of mind. What is questioned is competency. According to the accused, the Cabinet of the Government of Karnataka can only accord

sanction. In this case, the entire file was placed before the Departmental Minister who agreed for according sanction, and the Under Secretary of the

department signed the sanction order in accordance with the Business Rules. Whether the sanction thus accorded does not meet requirement of

Section 19 of Prevention of Corruption Act? This is the question. Section 19 of Prevention of Corruption Act reads as follows:

19. Previous sanction necessary for prosecution.

(1) No court shall take cognizance of an offence punishable under sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant,

except with the previous sanction,

(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the

sanction of the Central Government, of that Government;

(b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction

of the State Government, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office.

(2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the

Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have

been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),

(a) no finding, sentence or order passed by a special Judge shall be reversed or altered by a court in appeal, confirmation or revision on the ground of

the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of

justice has in fact been occasioned thereby;

(b) no court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority,

unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;

(c) no court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any

interlocutory order passed in any inquiry, trial, appeal or other proceedings.

(4) In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a

failure of justice the court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the

proceedings. Explanation.â?" For the purposes of this section,â?"

(a) error includes competency of the authority to grant sanction;

(b) a sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or

with the sanction of a specified person or any requirement of a similar natureâ??.

7. Section 19(1) (b) is very important as it concerns with State Government servants. Clause (c) deals with other categories of public servants. Now if

Section 19 (1)(b) is seen, it very specifically states that in case of public servants who are employed by State Government, the competent authority to

accord sanction is the State Government only. So far as rules framed by the Government concerning its business, it cannot be read into the lines of

Section 19 of Prevention of Corruption Act to whittle down the true scope of Section 19 of the Prevention of Corruption Act. While examining the

competency of an authority to accord sanction, especially in the case of a Government servant, it is enough if the sanction conforms to Section 19 (1)

(b) of the Prevention of Corruption Act. Further examination in the light of Business Rules of the government is not necessary. It is an internal

arrangement within the Government to decide whether the sanction should be accorded by the concerned Departmental Minister or the Cabinet of the

Government in accordance with the Business Rules and the prosecution agency has nothing to do with it. If procedure prescribed under the Business

Rules are not followed within the Governmental set up, it is only an irregularity for which the prosecution agency is not responsible. Therefore if the

sanction order does not conform to the Business Rules, the accused cannot take advantage of it. In the case of K. Chandrashekhara Reddy (Supra), as

may be deciphered from facts stated there, the Desk Officer, who had no authority, appears to have given the sanction. Therefore it was held that

such a sanction order was bad. This decision is not helpful to the petitioner. The other decision of this court in Dr.H.C. Sathiyam (Supra) cited by

learned Special Public Prosecutor for Lokayukta discusses more about necessity of obtaining sanction, and it cannot be applied here. But as discussed

by me above, the sanction issued in this case satisfies requirement of Section 19 (1) (b) of Prevention of Corruption Act, and hence it is not bad.

8. Further, the petitioner has not demonstrated as to how there is failure of justice owing to the sanction order in question. His application for discharge

also does not indicate as to how and in what manner failure of justice has occasioned. The learned Special Public Prosecutor for Lokayukta has

referred to judgment of Supreme Court in the case of State by Police Inspector Vs. T. Venkatesh Murthy (supra) where it is observed as below:

“11. The expression ‘failure of justice’ is too pliable or facile an expression, which could be fitted in any situation of a case. The expression

‘failure of justice’ would appear, sometimes, as an etymological chameleon (the simile is borrowed from Lord Diplock in *Town Investments Ltd. vs.*

Department of the Environment 1977(1) All ER 813: 1978 AC 359). The criminal court, particularly the superior court should make a close

examination to ascertain whether there was really a failure of justice or it is only a camouflage.”

9. In the case on hand, apparently there is nothing indicative of failure of justice. Even if there is something which is not stated in the application, the

petitioner can raise that issue during trial. Now there are no reasons to set aside the impugned order. Revision petition is dismissed.