

(2004) 01 KAR CK 0050
In the Karnataka High Court
Case No : Criminal Appeal No. 985 of 2003

State of Karnataka

APPELLANT

Vs

Gangayya Veerayya Gadigeppanavar

RESPONDENT

Date of Decision : 12-01-2004

Acts Referred:

Co-operative Societies Act, 1957 — Section 111

Citation : (2004) CriLJ 2271 : (2004) 3 KarLJ 448 : (2004) 2 KCCR 1062

Hon'ble Judges : M.F. Saldanha, J;K. Ramanna, J

Bench : Division Bench

Advocate : H.V. Ramesh, High Court Government Pleader, for the Appellant;

Final Decision : Dismissed

Judgement

1. Though this criminal appeal has been listed for orders on the ground that there is an office objection since it relates only to the filing of the certified copy, we have waived the objection and we have heard the learned Government Pleader on merits.

2. This case involves a clear point of law because, the accused at the relevant time was the Secretary of a Co-operative Society and even though the Trial Court convicted him for criminal breach of trust and falsification of accounts, the appeal Court set aside the conviction on the ground that the requisite sanction u/s 111 of the Co-operative Societies Act had not been obtained. While doing so, the appeal Court has relied on a recent Division Bench decision of this Court in case of State Vs. Pundalik Annappa Garage, , wherein the Division Bench of this Court has very clearly held that Section 111 mandates the grant of sanction for prosecution under the Co-operative Societies Act and that if this mandatory pre-condition is breached, that the prosecution is vitiated.

3. The submission canvassed by the learned Government Pleader is that the auditor had found certain lapses on the part of the accused which were reported and that pursuant to this, the "Registrar had directed a prosecution. His

submission is that this action must be construed as sanction irrespective of whether the specific formal terms were used or not and that there is substantial compliance of Section 111. Normally, we might have considered this argument but it is not possible to do so because, Section 111 mandates that before sanction is accorded, the accused must be given an opportunity of being confronted with the charges against him and of tendering an explanation. If the authority is satisfied that the accused has acted in good faith, that the sanction shall not be granted. There is a reason why this procedure has got to be followed because this Court has come across situations in which auditors have recklessly given findings against office-bearers and employees and after a lengthy trial, the Court has found that those findings were unjustified. Since the consequences of a prosecution are extremely serious, the law mandates that a proper enquiry, following the rules of natural justice be held prior to the grant of sanction and in our considered view, this is a mandatory safety provision from the point of view of the accused; but it is of equal importance to the department and the Society in order to avoid unnecessary legal proceedings. There can be no second opinion about the fact that if this mandatory pre-condition is not followed that the prosecution will be vitiated and to this extent, the appeal Court was justified in setting aside the conviction.

4. On a point of law, the decision of the appeal Court is perfectly justified, no ground for interference with that order is tenable. The appeal fails on merits and stands dismissed.

5. In view of the reasons set out in I.A. I, the delay is condoned and I.A.I is allowed.

6. The learned Government Pleader submits that if the conviction has been set aside purely on a technical ground namely, for non-compliance of procedure and particularly since the record seems to otherwise justify the conviction, that this is a fit case in which the prosecution be permitted to apply for sanction and to re-institute the proceedings.

7. In the decision reported supra, the Division Bench had refused such permission the reason being that the offences are very old. Even in this case, they pertain to the years 1986-88 and in our considered view, after a lapse of 16 years, it would be undesirable to grant the permission in question. The accused is entitled to the constitutional guarantee, which ensures the right of a speedy trial. In the present instance, the accused has faced the protracted litigation which concluded only in January 2003 and we are of the view that this alone is sufficient chastisement having regard to the facts and circumstances of the case and consequently, we decline to grant the permission that is asked for.

8. With these directions, the appeal which fails to stand dismissed on merits.