

(2016) 04 KAR CK 0007

In the Karnataka High Court

Case No : Criminal Revision Petition No. 659 of 2008 with C.R.P. No. 200072 of 2015

State Through Lokayuktha Police, Gulbarga

APPELLANT

Vs

Sadashiva S. Yelagod

RESPONDENT

Date of Decision : 01-04-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 227
Prevention of Corruption Act, 1988 — Section 19, 2(c)

Citation : (2016) 3 AirKarR 824 : (2016) CriLJ 4805 : (2017) 1 Crimes 570 :
(2016) ILRKarnataka 2177 : (2016) 3 KCCR 2303 : (2017) 1 RCRCriminal 346

Hon'ble Judges : K.N. Phaneendra, J.

Bench : Single Bench

Advocate : Sri. S.S. Kumman, SPL. P.P. for Lokayukta, Advocate, in C.R.L. No. 659 of 2008, Sri. Sadashiva S. Yelagod, Party in Person, in C.R.L. No. 200072 of 2015, for the Appellant; Sri. Sadashiva S. Yelagod, Party in Person, C.R.L. No. 659 of 2008, Sri. S.S. Kumm

Final Decision : Dismissed

Judgement

Phaneendra, J.—The petitioner-Sadashiva S. Yelagod (hereafter referred as Accused) as well as the State through the Karnataka Lokayuktha Police (herein after referred as "State" for Short) have called in question the Order dated 15.03.2008 passed by the Principal Sessions Judge at Gulbarga in Spl. Case No. 128/2007, wherein the Learned Sessions judge has rejected the application under Section 227 of Cr. P.C. filed by the accused and ordered to return the charge sheet to the State with liberty for them to file charge sheet against the petitioner after obtaining necessary sanction to prosecute him. However accused was not discharged and proceedings were kept pending.

2. The Accused has filed this CrL. R.P. No.200072/2015 (CrL. P. No. 2579/2008 filed earlier was withdrawn later with liberty to file a Revision Petition vide order Dated 30-11-2015), wherein the State has filed CrL. R.P. No. 659/2008 before this Court.

3. The accused is aggrieved by the order passed by the Learned Principal Sessions Judge by stating that the Trial Court has not properly appreciated the material on record and erroneously held that he is a "Public Servant". It is the main contention of the accused that he was not a public servant at all at any point of time and therefore, the provisions of Prevention of Corruption Act, 1988 (for short, "PC. Act") are not tenable and therefore, on that ground, he prayed for his discharge.

4. The State being aggrieved by the order passed by the Learned Sessions Judge in returning the charge sheet with a direction to obtain sanction and then to prosecute the accused, is before this Court in QLR. P. No. 659/2008. It is contended by Learned SPP that, the sanction was not at all necessary to prosecute the accused because of the reason that his services were already terminated as on the date of taking of cognizance by the Court. In this background, the accused and the State are before this Court, in these petitions.

5. The records disclose that the Crl. P. No.2579/2008 (later withdrawn and fresh petition filed in No. 200072/2015) filed by the accused was disposed of on 30.10.2008. The order discloses that the petitioner was absent and not submitted his arguments and the Court after hearing the respondent, dismissed the petition. In Crl. R.P. No. 659/2008 filed by the State, this Court vide order dated 22.08.2008 held that the question of obtaining sanction to prosecute the accused does not arise for the reason that, as on the date of taking cognizance, the petitioner was not in service and he was terminated from his service, consequently this Court has directed the Trial Court to proceed with the case further in accordance with law.

6. In view of the above said order both the petitions filed by the accused and the State were disposed of. Subsequently, the order passed by this Court on 22.08.2008 was recalled vide order dated 30.01.2009. Again this Court vide order dated 03.03.2009 dismissed the said Crl. R.P. No. 659/2008 holding that there are no grounds to interfere with the order passed by the Trial Court.

7. Being aggrieved by the said order, the parties have approached the Hon'ble Supreme Court in Crl. A.No. 1700, 1701 and 1702/2010. The Hon'ble Apex Court in fact set-aside all the orders passed by this Court and remitted the matter for fresh consideration and disposal and consequently Crl. P. No. 2579/2008 and Crl. R.P. No.659/2008 were restored to the file of this Court.

8. The accused is present in person and argued the matter. Sri. S.S. Kumman representing the State addressed his arguments.

9. Before adverting to the grounds taken-up by the petitioner, it is just and necessary to bear in mind a few facts arising out of the records and also the order passed by the Trial Court in this regard.

10. The charge sheet papers disclose that the Petitioner was appointed as an Assistant Civil Engineer in Rural Water Supply and Sanitation office at Gulbarga

on a fixed payment of Rs. 12,000/- pm. the appointment order was issued on 21.11.2006. It is alleged by the prosecution that the petitioner while discharging his duty as an Assistant Civil Engineer on contract basis in the said Department in Aland Taluk, has demanded illegal gratification of a sum of Rs. 20,000/- from the complainant by name Syed Mohammed Sirajuddin, who being a contractor has taken contract from Padasalagi Gram Panchayat. It is further alleged that the accused while discharging his duty as a public servant, has demanded the said amount for the purpose of certifying the bills produced by the complainant for a sum of Rs. 2,33,482/-. On the basis of such complaint, a trap was laid by the State, the same was successful and thereafter, a detailed charge sheet has been submitted before the Trial Court.

11. The main contention of the petitioner is that he has been appointed only as a "consultant" and the contract has been entered into by him only for the purpose of the work that has been mentioned in the guidelines of the contract. It is contended that there is no relationship of "Master" and "Servant" between the said Panchayat and himself, he is not a regular employee appointed by the Government or by the Panchayat and it is only on the basis of the contract, he was appointed for the limited period and purpose. Therefore, he argued before the Court that he cannot be termed as "Public Servant" as defined under Section 3 of the P.C. Act or even he does not come under the definition of "Public Servant" under Section 21 of IPC. On that said sole ground, he has approached this Court.

12. In this regard, petitioner has drawn my attention to the Karnataka Transparency in Public Procurements Rules. 2000, (for short "the Rules") and definition given for "Consultancy Services" and he has also relied upon the decisions reported in,-

(i) Shivasharanappa v. The State Through Police Inspector BCI, Lok Ayukta, 2002(1) KCCR 287.

(ii) Dattatraya Narayan Patil v. The State of Maharashtra, (1976) 1 SCC 11.

(iii) Oriental Metal Pressing Works (P.) Ltd. v. Bhaskar Kashinath Thakoor And Another, AIR 1961 SC 573.

(iv) The Govt. of A.P. And Another, v. Hindustan Machine Tools Ltd., AIR 1975 SC 2037.

(v) M/s. Continental Construction Ltd. v. Commissioner of Income-Tax Central-I, AIR 1992 SC 803.

(vi) Commissioner of Gift Tax, Madras v. N.S. Getty Chettiar, AIR 1971 SC 2410.

By relying on these rulings, petitioner has submitted that, the transaction that takes place between Panchayat and himself will not create any binding relationship as that of "Master and Servant" therefore, comes under the definition of Consultant and therefore, he cannot be termed as a "public servant".

13. Per contra, Sri S.S. Kumman, Learned Special Public Prosecutor for Lokayukta argued before this Court that order of the Trial Court in returning the charge sheet is erroneous and further documents produced by the petitioner themselves explain that he is a public servant and some public work has been entrusted to him and while discharging duty as a public servant, he has committed offence under the P.C. Act. Therefore, the order passed by the Trial Court holding that he is a "public servant" and sanction is necessary for prosecuting the accused is not correct and the same is erroneous. The sanction is absolutely not necessary to prosecute the accused because as on the date of taking of cognizance he was no more in service.

14. On perusal of the above rulings and on hearing the parties, it is abundantly clear that duty assigned to a public servant by his Master be it may under any statute or in executive order will assume important character to ascertain whether the said person is a public servant or not.

15. Having heard the above arguments, now the questions that arise for consideration before this Court are:

i. Whether the prosecution has established that the petitioner is a "public servant"?

ii. Whether petitioner continued to be a public servant as on the date of taking of cognizance in order to obtain any sanction order to prosecute him before the Court under the P.C. Act.?

16. In this background, it is just and necessary for Court to look into the definition of "public servant" as defined under the P.C. Act. Section 2(c) of the P.C. Act deals with definition of public servant. There are as many as 12 clauses in the said provision, which describe who is "Public Servant". The said provision (relevant portions) can be gainfully extracted hereunder:

2(c). "public servant" means, -

(i) any person in the service or pay of the Government or remunerated by the Government by fees or commission for the performance of any public duty;

(ii) any person in the service or pay of a local authority;

(iii) to (vi) xxx xxx xxx xxx xxx

(viii) any person who holds an office by virtue of which he is authorised or required to perform any public duty;

(ix) to (xii) xxx xxx xxx xxx xxx

(Emphasis supplied)

17. A meaningful reading and understanding of Sec 2(c)(i)(ii) and 2(c)(viii) of the P.C. Act clarifies the situation that, any person who holds office by virtue of which he is authorised or required to perform any public duty, then also he can

be styled as a "public servant" irrespective of the nature of his appointment. What is required is that some public duties should have been entrusted on that person in order to hold that he was performing a public duty, if that is evident, then he comes under the definition of "public servant" as per the above said provision.

In this background, now the Court has to see the materials produced before the Court to find-out whether there was any public duty entrusted to the accused and for all practical purposes, he was treated as "public servant" by the panchayat.

18. The agreement between the accused and Director of the Karnataka Rural Water Supply and Sanitation Agency (for short "KRWSSA") is produced before this Court by petitioner himself. The said agreement discloses that on 28.07.2005 the Director of KRWSSA and the petitioner have entered into a consultancy services agreement. Clause No. 6 of the said document clearly discloses that the petitioner is entitled for consultancy fee of Rs. 11,000/-, House Rent Allowance of Rs. 1,100/- and conveyance allowance of Rs. 1,100/- Totally, he is entitled for remuneration of Rs. 13,200/-. Clause No. 11 of the said agreement discloses that accused will have to carry out the assignment in accordance with the highest standard of professional and ethical competence and integrity, having due regards to the nature and purpose of the assignment, and will conduct himself in a manner consistent with the agreement.

19. The above clauses in the agreement clearly indicate that there was some assignment of work and while executing the assigned work, the petitioner must be very loyal to the institution and he has to maintain highest ethical standard and integrity. Therefore, the Court has to see, as to what exactly the nature of assignment of work that was entrusted to the petitioner and whether in executing the said assignment he could have committed any offence. The petitioner himself has produced before the Court the terms of reference under Jala Nirmal Project. At item No. 6 of the said document, the tasks/responsibilities of the consultant are broadly enumerated. The eighth dotted point of item No. 6 of Clause "C" clearly discloses the work that has been assigned to the accused which reads as under:

C. Outline of the Tasks/Responsibilities of the Consultant.

6. The tasks/responsibilities of the consultant are broadly enumerated as under.

"Technical monitoring the contract of SAs and to conduct the Quality check and duality surveillance of works implemented by GPs and contractors along with random surprise visit for qualitative monitoring."

(emphasis supplied)

The above assignment of work clearly discloses that accused not only should monitor the contract entered into by Gram Panchayath with Contractors but he has to conduct quality check and quality surveillance of works implemented by

GPs and contractors. That means he must have surveillance over the work done by the contractors. Therefore the arguments of the accused that he could not have any control or contract with the Contractors cannot be accepted.

20. There is no dispute that the accused was working as on the date of the incident and executing the work assigned to him. He has worked as Assistant Technical Consultant. The above assignment of work clearly discloses that the petitioner has been entrusted with public work. This analogy can be very well illustrated in the following,-

"Suppose if the department has appointed a regular Assistant Civil Engineer and entrusted this work, if the said person committed any offence under the Act whether he would have been liable for prosecution or not."

The answer must be in the affirmative that if any public servant who is appointed to do some public work commits any wrong or offence while discharging his duty as a public servant he will become liable to be punished under the Act. Therefore, the work that ought to have been entrusted to the regular employee has been entrusted to the accused by way of contract, in my opinion, though nomenclature was that of a consultant, but in view of the assignment of public work to the accused, it stands on different footing as that of discharging a public duty. Because the accused is entrusted with the work of supervising the work of a contractor and to check the quality of work and he will have surveillance over the contractors" work that means he will have control over the contractors and he can give his opinion with regard to the quality of the work done by the contractor. Therefore, in my opinion, the arguments of petitioner that he was never entrusted with any public work and he is only a consultant and there is no work entrusted to him under which he can come in contact with any contractor is not acceptable. The definition of "public servant" as noted above in Section 2(c) (viii) of the P.C. Act also supports the case of the prosecution which says, any person who holds an office by virtue of which he is authorised or required to perform any public duty is a public servant. That means he need not be a person appointed as Government servant by the Government or a permanent employee. If the Court holds that some public duty has been entrusted to the accused then he is also liable for prosecution under the P.C. Act.

21. Similar question arose for consideration before this Court in the case of N. Ereshi v. State of Karnataka, ILR (KAR)-2012-0-1552. wherein the Court has decided as to whether a licensed surveyor appointed under Section 18A of the Karnataka Land Revenue Act, 1964, can be said to be a public servant as defined under Section 2 of the Prevention of Corruption Act, 1988. In the said case also Licensed Surveyors were appointed by the revenue authorities on contract basis providing remuneration to them for the purpose of surveying the lands. During the course of their service on appointment, they were caught red-handed while accepting bribe. The accused persons in those cases also taken up the contention that they were only discharging their duties on contract basis and they were not paid with salary by the Government and therefore, they do not come under the

purview of public servant as per the P.C. Act. High Court in detail has considered the above said aspects and held that though it appears to be contract between the parties, but the relationship as that of "Master and Servant" cannot be completely ignored. After interpreting Section 2(c) (viii) of the Act, the Court has observed that if a person enters into a contract with the Government or Governmental Departments for the purpose of doing public duty, while discharging the public duty if he commits any offence, he can be prosecuted holding that he is also a "public servant" as per Section 2(c) (viii) of the Act. However it depends upon the nature of the work entrusted to him.

22. Looking from the above angle, considering the nature of the work entrusted to the petitioner and the agreement entered into between the parties, it cannot be said that he is only a consultant as narrated in Rule 2(e) of the Transparency Rules. The said provision says that,-

"2(e). "Consultancy Services" includes activities such as policy Advises, Institutional Reforms, Management, Engineering Service, Construction Supervision, Financial Services, Investment and Merchant Banking Services, Social and Environmental Studies, Identification, Preparation and implementation of projects to complement Government of Karnataka capabilities."

Rule 2(f) of the Rules deals with definition of "Consultants" which reads as under:

"2(f). "Consultants" means individuals, firms or organisations engaged for providing consultancy services in accordance with Chapter VI-A."

Rule 2(g) deals with the definition of "Client" which reads as under:

"2(g). "Client" means the procurement entity engaging the consultants."

Rest of the provisions is not necessary to be quoted here.

23. Even accepting the definition of "Consultancy Services", "Consultants" and "Client" as narrated above, but this should not be read in isolation of the definition given under the Prevention of Corruption Act. The Rules only disclose that under the above provisions what are the duties of the "Consultancy Services" or "Consultants". Whether those duties are referable to public duties is not at all discussed or provided under the said Rules. Therefore, I have to fall back to the definition of public servant as defined under the P.C. Act. Therefore specifically considering the work entrusted to the petitioner under the contract as detailed supra, while executing the said work, he acted as a public servant and executed the public duty which determined that the petitioner was a public servant. In my opinion, as per Section 2(c) (viii) of the P.C. Act use of the words "any person" means, he may not be a "Government servant" or a person who is attached to any of the department, but if a person enters into the public duty and discharges the duty as that of a public servant under any nomenclature, he is caught under the said provision. Under the above circumstances, I absolutely find no mistake committed by the Learned Sessions Judge in holding that the petitioner was a public servant and he can be prosecuted.

24. The other limb of the impugned order of the Learned Sessions Judge under challenge is, he has returned the charge sheet on the ground that sanction has not been obtained from the competent authority to prosecute the accused. The charge sheet discloses that accused was only prosecuted for the offence punishable under Section 13(1) (d) r/w Section 13(2) of the Act. No other IPC provisions have been invoked. Therefore, Section 19 of the P.C. Act contemplates that previous sanction has to be obtained to prosecute a public servant. Therefore, it goes without saying that as on the date of the commission of offence and as on the date of taking of cognizance by the Court, if the said person was continued to be a public servant then only the question of taking sanction arises. In this particular case, admittedly, petitioner has been terminated vide order dated 23.11.2006 and charge sheet was filed in the month of August 2007 and the cognizance was taken by the Court after termination of the petitioner. Therefore, when the accused was not a public servant as on the date of taking of cognizance, there is no necessity for obtaining any sanction order.

25. Of-course, petitioner has produced certified copies of some documents i.e., orders in W.P.No. 82058/2009 and other writ petitions, ultimately, after filing of those writ petitions as observed by this Court, petitioner-has also filed original suit before City Civil Court, Bengaluru, for his remedies, wherein he has challenged his termination order and his entitlement with regard to remuneration etc. In these proceedings he himself has admitted that he was terminated from said services on 23.11.2006. There is no necessity" for this Court to delve upon those writ petitions and orders thereon because those proceedings are initiated by the petitioner challenging the termination order which in no way has any significance so far as these petitions are concerned.

26. Looking to the above circumstances, I have absolutely no difference of opinion from that of the Learned Sessions Judge, Kalaburgi and I also hold that the prosecution has established sufficiently that the accused has been entrusted with the work of public duty and while discharging his duty as a public servant it is alleged that he has demanded bribe. As no sanction order is necessary, the Trial Court can proceed with the case in accordance with law.

27. With these observations, I proceed to pass the following:

ORDER

1. Petition filed by Sri Sadashiva S. Yelagod in Criminal Revision Petition No. 200072/2015 is hereby dismissed. On the other hand, petition filed by the State in Criminal Revision Petition No. 659/2008 is hereby allowed holding that there is no necessity of obtaining sanction to prosecute the accused. Consequently, the Trial Court is hereby directed to proceed with the Special Case No. 128/2007 in accordance with law.

2. It is made clear that the Trial Court should not be persuaded by any of the observations made by this Court touching the merits of the case and the Learned

Special Judge should apply his judicious mind independently to the facts and circumstances of the case and has to decide the matter on merits, without being influenced by this order.