

(2012) 03 KAR CK 0174

In the Karnataka High Court

Case No : Criminal Revision Petition No. 1222 of 2011.

T.S. Sathyananda

APPELLANT

Vs

Smt. Vidya Nagendra and Others

RESPONDENT

Date of Decision : 21-03-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200
Penal Code, 1860 (IPC) — Section 120 B, 405, 406, 420, 465
Prevention of Corruption Act, 1988 — Section 13 (1) (d), 13 (1) (e)

Citation : (2012) 4 KarLJ 343

Hon'ble Judges : V. Jagannathan, J

Bench : Single Bench

Advocate : C.H. Jadhav, for the Appellant; Sriyuths A.H. Bhagavan, R.S. Ravi and M. Chidananda for Prabhulinga K. Navadgi, for the Respondent

Final Decision : Allowed

Judgement

V. Jagannathan, J.—This criminal revision petition is by the complainant in a private complaint. He is aggrieved by the Trial Court dismissing his complaint. The brief facts are, the petitioner filed a private complaint u/s 200 of the Criminal Procedure Code, 1973 alleging the commission of the offences by the respondents herein under Sections 405, 406, 420, 465 and 468 of the Indian Penal Code, 1860 and u/s 13(1)(d) and 13(1)(e) of the Prevention of Corruption Act, 1988 (for short, hereinafter referred to as "the Act") read with Section 120B of the IPC. The allegation made in the complaint was that an area measuring 230 acres 11 guntas was handed over to the MUDA for developing into sites and the sites were formed numbering 2714 in all and that the respondents without following the Rules, made the allotments in favour of certain persons and the first accused also got a site allotted to her and therefore, the accused persons committed the aforementioned offences- On the strength of the complaint averments, the petitioner sought for cognizance being taken against the respondents and to proceed against them in accordance with law.

2. Learned Trial Judge considered the complaint and dismissed it mainly on the ground that in respect of the allegations made in the complaint concerning allotment of sites by flouting the Rules and favouring the persons interested, the Government had already initiated steps to look into the irregularities in the allotment of sites and therefore, the Trial Court was of the view that it was not advisable for the Court to initiate the parallel proceedings. The Trial Court also mentioned about the law laid down by the Apex Court in Vineet Narain and Others Vs. Union of India (UOI) and Another, The ultimate dismissal of the complaint on the aforesaid reasons has given rise to this petition by the complainant.

3. Learned Counsel, Sri C.H. Jadhav, for the petitioner submitted that merely because certain steps have been taken by the Government, that cannot be a ground to reject the complaint and the Trial Court has not even gone into the complaint allegations and as such the impugned order be set aside. As the Court below did not go into the complaint allegations in detail, the order of the Court below therefore cannot be sustained in law. Hence, learned Counsel sought for the impugned order being set aside and a direction to the Trial Court to proceed in accordance with law.

4. Sri A.H. Bhagavan, learned Counsel for the first respondent submitted that though the accused have no right of say before they are called upon to appear before the Trial Court, the order of the Trial Court in dismissing the complaint requires no interference because the Court did not go into the aspect of the requirement of sanction, inasmuch as no cognizance could be taken against a public servant without previous sanction. This aspect though was not considered by the Trial Court, the ultimate order of dismissal of complaint therefore requires no interference.

5. Further submission made by the learned Counsel, Sri A.H. Bhagavan, is that the persons to whom sites were allotted have given back the sites even before the complaint was lodged and therefore, the complaint allegations does not survive for consideration.

6. Learned Counsel, Sri R.S. Ravi, for respondents 2 to 4 also made similar submission.

7. Learned Counsel, Sri Chidananda, for respondents 5 to 7 also submitted on similar lines. He also mentioned that no sites were allotted to respondents 6 and 7.

8. Having thus heard both sides, the reason which lead to the complaint being dismissed cannot be sustained in law because the Trial Court did not look into the complaint allegations carefully to ascertain as to whether the complainant has made out the necessary ingredients of the offences alleged by him. On the other hand, the entire reasoning of the Trial Court is focussed on certain steps being taken by the Government in respect of the irregularities in the allotment of sites. Merely because proceedings are initiated by the Government, it itself cannot be a

ground not to consider the complaint allegations and as such the order of the Court below has to be set aside for this reason alone. At the same time, in view of the submission put forward by learned Counsel, Sri A.H. Bhagavan, the Trial Court also will have to consider the validity or otherwise of the complaint in the light of the requirement of sanction, as according to the respondents' Counsel, some of the respondents are public servants and therefore, sanction to prosecute them is a pre-requisite, the Trial Court therefore will have to consider all these aspects of the matter and proceed in accordance with law. For the aforesaid reasons, the petition is allowed and the impugned order of the Court below is set aside. The matter stands remitted to the Trial Court for consideration afresh, in accordance with law, at the earliest. It is made clear that the aforesaid observations will not affect the case of either of the parties.