

(2015) 06 KAR CK 0159

In the Karnataka High Court

Case No : Criminal Petition No. 200248 of 2015

Tulasiram and Others

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 02-06-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 200
Penal Code, 1860 (IPC) — Section 34
Prevention of Corruption Act, 1988 — Section 13(1)(c), 19(1)

Citation : (2016) 1 AKR 391

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

Bench : Single Bench

**Advocate : Anuradha M. Desai, for the Appellant; S.S. Kumman, Spl. P.P.,
Advocates for the Respondent**

Final Decision : Allowed

Judgement

K.N. Phaneendra, J.—The petitioners have approached this Court seeking quashing of the proceedings in Private Complaint No. 1/2015 [FR No. 1/2015] (PCR)] on the file of the Special Judge, Lokayukta Court at Bidar and consequent reference of the complaint to the jurisdictional Lokayukta Police for investigation under Section 156(3) of Cr.P.C.

2. After issuance of notice to the respondents, Respondent No. 1 was represented by Sri. S.S. Kumman, learned Spl. P.P. and Respondent No. 2 was represented by the learned counsel Sri. Hanumanthraya Sindol.

3. I have heard the arguments of Smt. Anuradha Desai, the learned counsel appearing for the petitioners, who are arraigned as Accused Nos. 1 to 3 in PCR 1/2015 on the file of the Special Judge, Lokayukta Court, Bidar.

4. I have heard Sri. S.S. Kumman, learned Spl. P.P. appearing for Respondent No. 1. However, Respondent No. 2 and his counsel remained absent.

5. The factual matrix which emanate from the records are that, Respondent No.

2 has filed a private complaint against the petitioners for the offence punishable under Section 13(1)(c) of the Prevention of Corruption Act, 1988 (for short, "P.C. Act") r/w. 34 of IPC. The contents of the complaint disclose that the complainant is the owner of land bearing Survey No. 470/1, 470/2, 470/3, 470/5 of Humnabad totally measuring 1 acre 26 guntas. It is the case of the complainant that, after purchasing of the said lands, there was bifurcation of the said land for phodi work. Respondent No. 2 has made an application to the Tahsildar, Humnabad for measurement and fixing of the boundaries of the said land vide application dated 22.08.2012. The accused persons who are in the helm of affairs in conducting the land survey and also fixing the boundaries have not done the said act and no action has been taken on the application for the reasons best known to them and this amounts to a criminal misconduct on the part of the petitioners. Therefore, he made an application dated 03.02.2015 to the Government praying to take action against the petitioners and since no action was taken against the petitioners, the complainant filed a private complaint under Section 200 of Cr.P.C. before the Special Judge, Lokayuktha Court, Bidar, on 18.02.2015 and in turn, the complaint was referred to the police for investigation and report under Section 156(3) of Cr.P.C.

6. There is no need for this Court to go into the merits of the case with regard to the factual aspects, as, on the technical grounds itself this petition can be disposed of.

7. It is the well-recognized principle laid down by the Hon'ble Supreme Court in Anil Kumar and Others Vs. M.K. Aiyappa and Another, (2013) 6 ABR 895 : (2013) 10 AD 386 : (2014) CriLJ 1 : (2013) 13 JT 127 : (2013) 4 RCR(Criminal) 586 : (2013) 12 SCALE 283 : (2013) 10 SCC 705 that even for reference of the case to the police for investigation under Section 156(3) of Cr.P.C. for any of the offences punishable under the PC Act, sanction as contemplated under Section 19(1) of PC Act is necessary. The Court held that the investigation under Section 156(3) Cr.P.C. cannot be pressed into service to order for investigation without previous sanction under Section 19(1) of the PC. Act. This Court also followed the said principle in Criminal Petition No. 2442/2014 and connected matters vide order dated 28.10.2014. This Court also while disposing of the said petitions has relied upon a decision of the Apex Court reported in Dr. Subramanian Swamy Vs. Dr. Manmohan Singh and Another, AIR 2012 SC 1185 : (2012) CriLJ 1519 : (2012) 2 JT 203 : (2012) 1 RCR(Criminal) 720 : (2012) 2 SCALE 12 : (2012) 3 SCC 64 : (2012) AIRSCW 1249 : (2012) 1 Supreme 577 . After relying upon the said decision, this Court has observed that the Government is duty-bound to issue an endorsement on any application filed seeking permission to prosecute a public servant, and whether the Government intends to grant sanction or not, has to be communicated to the particular party. This Court also directed the Chief Secretary to the Government to constitute a Committee headed by himself, comprising of one Additional Chief Secretary of his choice and also Principal Secretary to Law, Justice and Human Rights and Principal Secretary to DPAR to take account of pendency of the cases wherein request seeking sanction to

prosecute the public servants all over the State have been made and it shall see that all those requests are disposed of in accordance with law as per the directions of the Supreme Court in Dr. Subramanian Swamy's case. In Dr. Subramanian Swamy's case. The Hon'ble Supreme Court has categorically observed that any application filed seeking permission to prosecute the public servants shall be disposed of within three months from the date of receipt of such application and if any advise is required from the Advocate General, one more month's time can also be extended, but not more than that. But in this particular case, there is no material placed as to what exactly the request made by the complainant. However, the application was filed to the Government on 03.02.2015, but the complaint was filed on 18.02.2015 even before the lapse of the said three months. Therefore, the learned Special judge could not have entertained the complaint either for taking cognizance or for referring the matter to the Lokayuktha Police for enquiry.

8. Sri. S.S. Kumman, learned Spl. P.P. appearing for Respondent No. 1 has also submitted that no sanction is required at the pre-cognizance stage for referring the matter to the police for investigation. This Court in Crl. P. No. 200316/2014 between Yellappa v. State of Karnataka, disposed of on 18.02.2015, relying upon the decision in Anil Kumar v. M.K. Ayyappa (supra) has reiterated that, "the object is that if a private complaint is filed either for referring the matter to the police for investigation or for the purpose of taking cognizance, the learned Magistrate has to go through the contents of the complaint and he should come to the conclusion that either he can refer the matter to the police for investigation or he himself can take cognizance for the offence. When the learned Magistrate can take cognizance directly on the basis of the private complaint, it requires a valid sanction so as to refer the matter to the police for investigation or to take cognizance by himself. In this particular case, after going through the contents of the complaint, the Magistrate has to satisfy himself that it is a fit case either to take cognizance or to refer the matter to the police for investigation. In either of the cases, a sanction under Section 19(1) of the PC Act is an absolute legal requirement as per the decision in Ayyappa's case, cited supra.

9. In view of the above findings, the complaint is devoid of legal requirement. Therefore, the entire proceedings is vitiated by serious procedural irregularity, which is incurable in nature. Hence, the proceedings required to be quashed. However, the complainant is at liberty to approach the competent authority for his remedies and after fulfilling the legal requirement, he can move the Court with fresh complaint, if advised.

10. In view of the above observations, the following order is passed:--

ORDER

The petition is allowed. Consequently, the entire proceedings in private complaint No. 1/2015 (FR No. 1/2015) on the file of the Principal District and Sessions

Judge and Special Judge, Lokayuktha Court, Bidar and consequent reference of the said complaint under Section 156(3) of Cr.P.C. and consequent registration of the case by Lokayuktha Police, are hereby quashed.