

B. Vinod Vs. K.S. Eshwarappa and Others

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Court : Karnataka

Decided On : Oct-21-2014

Judge : Anand Byrareddy

Appeal No. : Criminal Revision Petition No.224 of 2014 connected with Criminal Revision Petition Nos.221, 222 & 223 of 2014

Appellant : B. Vinod

Respondent : K.S. Eshwarappa and Others

Judgement :

(Prayer: This Criminal Revision Petition is filed under Section 397 read with Section 401 Code of Criminal Procedure, 1973 , praying to set aside the order dated 20.02.2014 passed at the stage of registration on the unnumbered Private Complaint dated 06.1.2014 by the Principal District and Sessions Judge and the Special Court for Lokayuktha at Shivamogga and to direct the court below to register the complaint and proceed according to the law.

This Criminal Revision Petition is filed under Section 397 read with Section 401 Code of Criminal Procedure, 1973 , praying to set aside the order dated 20.02.2014 dismissing the unnumbered Private Complaint dated 26.12.2013 (Sri Vinod son of Sri. Ommen Baby Vs. B.S. Yeddurappa and others) on the file of the court of the Principal District and Sessions Judge and the Special Court for Lokayuktha at Shivamogga.

This Criminal Revision Petition is filed under Section 397 read with Section 401 Code of Criminal Procedure, 1973 , praying to a) set aside the order dated 20.2.2014 passed at the hearing on "Report Protest Petition" stage on the Private Complaint dated 21.2.2012, bearing PCR No.1/2012, Crime No.3/2012 of Lokayuktha Police, Shivamogga by the Principal District and Sessions Judge and the Special Court for Lokayuktha at Shivamogga and b) to direct the court below to reject the B report dated 5.9.2012 lodged in Cr.No.3/2012 of Lokayuktha Police Station, Shivamogga to register the complaint and proceed according to the law.

This Criminal Revision Petition is filed under Section 397 Code of Criminal Procedure, 1973 , praying to set aside the order dated 20.02.2014 dismissing the unnumbered Private Complaint dated 06.1.2014 by the Principal District and Sessions Judge and the Special Court for Lokayuktha at Shivamogga and to direct the court below to register the complaint and proceed according to the law.)

1. These petitions are heard and disposed of by this common order, as the issues involved are similar.

Crl.R.P.No. 221/2014 This petition is filed on the dismissal of a complaint under Section 200 of the Code of Criminal Procedure, 1973 (Hereinafter referred to as the 'Cr.PC', for brevity), dated 26.12.2013. The complainant is said to be an Advocate practicing at Shimoga. He had named one B.S.Yeddyurappa, as accused no.1, who was said to be the Deputy Chief Minister of Karnataka State, then headed by one H.D. Kumaraswamy during the period February 2006 to October 2007. He was said to be the Chief Minister during the period July 2008 to July 2011. He is said to have continued as a member of the Legislative Assembly, representing Shikaripur Assembly constituency of Shimoga district.

The complaint had named one B.Y. Raghavendra as the son of accused no.1. He was said to be a member of Parliament representing Shimoga since the year 2009.

Accused no.3 to Accused no.7 were named as benamidars of properties acquired by accused no.1 and accused no.2.

It was alleged in the complaint that accused no.1 had misused his official position, actively aided by accused no.2, to amass wealth disproportionate to his known sources of income. They had acquired land in violation of the provisions of the Karnataka Land Reforms Act, 1961 (Hereinafter referred to as the 'KLR Act', for brevity), and that the other accused had aided and abetted the commission of the offences.

It was alleged that as on the date of the complaint, the accused no.1 was neither the Chief Minister or the Deputy Chief Minister. Accused no.2, was also not a public servant at the time the alleged transactions had taken place. Accused no. 1 was however, said to be an MLA at the time of the complaint and hence, the complainant is said to have sought sanction from the Speaker of the Legislative Assembly as per communication dated 10.8.2013, but it is claimed, that there has been no response. It is hence claimed that there was a deemed sanction.

The complaints having been dismissed for want of sanction under Section 19(1) of the Prevention of Corruption Act, 1988 (Hereinafter referred to as the 'PC Act', for brevity) and Section 197 of the Cr.PC, the present petition is filed. CrI.R.P.No. 222/2014 This is another petition filed by the same petitioner as in the first of these petitions. The petitioner is said to have filed yet another complaint against the self same B.S.Yeddyurappa, named as accused no.1, along with his married daughter, S.Y. Arunadevi, one Dyaberi M. B., who was said to be the Commissioner, Karnataka Housing Board, Bangalore and one S.L. Haleshappa, who was said to have been an Assistant Executive Engineer, Karnataka Housing Board, Shimoga. There were others named as Accused no.5 to Accused no.8, who were all alleged to be benamidars, holding property for and on behalf of accused no. 1 and 2.

It was alleged that the said accused no.1, during his tenure as the Deputy Chief Minister of Karnataka State, is said to have misused his official position and with the active assistance of the other accused, had obtained allotment of house sites purportedly in the names of Accused no.5 to 8, but for the actual benefit of himself and accused no.2. It was hence alleged that as a public servant, he had committed offences punishable under Sections 13(1) and 13(1)(d) of the PC Act, apart from offences punishable under Section 120-B and Section 420 of the Indian

Penal Code, 1860 (Hereinafter referred to as the 'IPC', for brevity).

The complaint having been referred to the Lokayuktha Police, Shimoga for investigation by the court below, the police having filed a 'B' Final Report, the court below had however, raised a question as to the maintainability of the complaint and held that the same was not maintainable for want of sanction and ignored the 'B' Report. It is that order which is under challenge in this petition.

Crl.R.P.No. 223/2014 This petition is filed on the dismissal of a complaint filed by the very same petitioner as in the first two of these petitions. In the complaint, he had named one Nagaraj Hampole, who was said to be the then Secretary, Department of Forests, Government of Karnataka, as accused no.1 and one Meera C. Saxena, the then Principal Secretary, Forest, Environment and Ecology, Government of Karnataka. They are said to have retired from service as on the date of the complaint. Accused no.2 is however, presently a member of the Karnataka State Human Rights Commission. It was alleged against the accused that they had misused their official position and had committed acts in violation of the Karnataka Land Grant Rules, 1969 (Hereinafter referred to as the 'KLG Rules', for brevity), as well as the Forest Conservation Act, 1980 (Hereinafter referred to as the 'FC Act', for brevity), and had acted contrary to public interest and had committed criminal breach of trust and caused loss to the public exchequer. It was thus alleged that they had committed offences punishable under Section 13 and Section 13(1)(d) and (e) of the PC Act and under Sections 120(B), 409, 420 and 426 of the IPC.

The court below having rejected the complaint as not maintainable for want of sanction under Section 197 Cr.PC, the present petition is filed.

Crl.R.P.No.224/2014 The very petitioner had also filed a complaint naming as the accused no.1, one K.S.Eshwarappa, a former Minister for Water Resources in the BJP- JDS coalition government, in the State of Karnataka, during the period February 2006 to October 2007 and a former Minister for Energy during the period July, 2008 to January 2010. And the complaint had named one K.E.Kanthesh and one R.Shalini, said to be the son and daughter-in-law, respectively, of accused no.1.

It was alleged that accused no.1 had misused his official position and had indulged in nepotism and had acquired wealth disproportionate to his known sources of income. And that accused nos.2 and 3 had aided and abetted him in doing so. Hence, as a public servant, accused no.1 had committed an offence under Section 13(1)(d) and (e) of the PC Act. It was also alleged that he had committed offences punishable under Sections 420 and Section 120-B of the IPC. It was claimed that there was a sanction deemed to have been granted, by virtue of the competent authority not having responded to the application of the petitioner in that regard, with expedition.

The Trial Court has, however, dismissed the complaint as not being maintainable for want of sanction under Section 197 of the Cr.PC. It is that which is under challenge.

2. It is contended by the learned counsel for the petitioner that in respect of all the complaints, the court below has consistently proceeded to summarily dismiss the complaints, only on the ground that if the alleged offences had been committed at a point of time when the respective accused were holding public office, it was imperative that a sanction under Section 197 of the Cr.PC accompanied the complaints and has held that the complaints were hence not maintainable.

The learned counsel contends that the following settled principles, which are applicable to the circumstance of the cases on hand, has been overlooked by the court below : a. That there are three mandatory requirements under Section 197(1) of the Cr.PC namely,:

i) that the accused is a public servant,

ii) that the public servant can be removed from the post by or with the sanction either of the Central or the State Government, as the case may be (iii) the act or acts, giving rise to the alleged offence had been committed by the public servant in the actual or purported discharge of his official duties.

b. That it can be no part of the duty of a public servant or acting in the discharge of his official duties to commit any of the offences punishable under the provisions of

the IPC, or such other law and the official status of the public servant can, at best, only provide an opportunity for commission of the offences. Hence, the question of a sanction under Section 197 of the Cr.PC would not arise as a matter of course, but would only remain a question that may have to be determined at different stages, if at all, depending on the facts and circumstances of each case. The necessity for such sanction may reveal itself in the course of the progress of the case.

c. The fact that the accused continues to hold a public office, but one other than the office which is said to have been misused would not ipso facto require any sanction for prosecution.

The learned counsel for the petitioner has placed reliance on the following authorities in support of the petitions. It is particularly urged that the court below has significantly chosen to ignore the contents of the complaint and has proceeded only on the limited premise that the accused concerned were public servants at the point of time of commission of the alleged offences and hence, even if the said accused did not continue in office as on the date of the court taking cognizance of the complaint, since the protection under Section 197 Cr.PC, extends even to a person, who was a public servant - the complaint was held not maintainable without a sanction for prosecution. The learned counsel would emphasize that it was necessary for the court below to have firstly examined the complaint and other material available before it to satisfy itself, that the acts complained of could have been performed by the accused in the course of their official duties and it is only thereafter that the court could have held that a prior sanction was or was not necessary.

The learned counsel would therefore seek that the impugned orders be set aside and appropriate orders be passed in accordance with law.

3. The learned counsel for the respondents, on the other hand, would each seek to justify the orders impugned. A large number of authorities are cited to sustain the impugned orders. It is contended on behalf of those of the respondents - accused, who continue to hold public offices, though in another capacity - other than the office which is alleged to have been misused, that the mandatory requirement of a

sanction contemplated under Section 19 of the PC Act, would also be attracted in respect of the alleged offences punishable under the provisions of the PC Act is concerned, apart from the fact that Section 197 Cr.PC contemplates a sanction for prosecution of even an erstwhile public servant.

4. Having heard the learned counsel for the parties and from a plain perusal of the impugned orders, it is evident that the court below has focused its attention only on the issue, whether a prior sanction is required under Section 197(1) of the Cr.PC in respect of prosecution for the offences alleged, which are said to have been committed by a public servant, when he held a public office. And placing reliance on a decision of this court in the case of H.D. Kumaraswamy v. M.Vinod Kumar, Cri.P.No.4707/2011, dated 21.10.2011 and of the apex court in the case of Anil Kumar v. M.K. Aiyappa, 2013(6) Kar.LJ 1, the court has held that though prior sanction under the PC Act may not be necessary in respect of an accused, who has ceased to hold a public office, under Section 197(1) Cr PC , however, such sanction is necessary even after the accused has ceased to hold a public office. There is no indication that the court had felt it necessary to examine the allegations in the complaint, while subjecting the same to a prima facie test, to consider whether a prior sanction was evidently to be obtained or whether it could also be said that the question could not be decided effectively, without providing an opportunity to the defence to establish that what he did was in discharge of official duty.

The points that arise for consideration in the above background are :

- a. Whether sanction under Section 197(1) Cr.PC would be required as a matter of course, in every case, in which a complaint is sought to be filed against a person, who is or was a public servant, in respect of acts committed by him, which may constitute offences punishable in criminal law, for a criminal court to take cognizance ?
- b. Whether a prior sanction would be required to prosecute a person under the provisions of the PC Act, if he holds a public office as on the date of the complaint , though not the office which he is alleged to have misused, but such other office he has subsequently assumed, as in the present petitions on hand.?

c. Whether the acts complained of if shown, prima facie, to have no direct nexus or relation with the discharge of duties by the concerned public servant - and if sought to be justified by the accused, is it the sanctioning authority or the court, which should address the same, in order to determine whether a prior sanction is or is not warranted.?

Insofar as the first point (a), is concerned, it can certainly be said in a situation where it was no duty of a public servant to commit a criminal act, which is indeed the act complained of, the want of sanction under Section 197(1) Cr.PC was no bar to the prosecution (See: Harihar Prasad v. State of Bihar, (1972) 3 SCC

89). The question whether the acts complained of had a direct nexus or relation with the discharge of official duties by the concerned public servant would depend on the facts of each case. Further, a three judge bench of the Apex court has held in the case of S.B. Saha v. M.S. Kochar, (1979) 4 SCC 177 - that the language employed in Section 197(1) Cr.PC, to the effect that - any offence alleged to have been committed by the accused while acting or purporting to act in the discharge of his official duty - is capable of both, a narrow and a wide interpretation. It was held that if construed too narrowly, the section would be rendered altogether sterile, for it was no part of an official duty to commit an offence and never could be. At the same time, if they were too widely construed, they would take under their umbrella every act constituting an offence committed in the course of the same transaction, in which the official duty is performed or is purported to be performed. The right approach, it was pointed out, was to see that the meaning of the expression lies between these two extremes. While on the one hand, it is not every offence committed by a public servant while engaged in the performance of his official duty, which is entitled to protection. Only an act constituting an offence directly or reasonably connected with his official duty would require sanction for prosecution. In other words, it is the quality of the act that is important and if it falls within the scope of the afore mentioned language, the protection of Section 197 of the Cr.PC will have to be extended to the concerned public servant.

Hence, it can be said that every case against a public servant, alleging an offence punishable under the provisions of the PC Act, can be presented only on obtaining

a prior sanction under Section 19 of the said Act, but a sanction under Section 197(1) of the Cr.PC is not required to be obtained as a matter of course to initiate other criminal proceedings against a public servant, unless it is so expressly provided under any statute.

As regards the second point (b) for consideration, is concerned, the same has been answered by the apex court in the case of R.S. Nayak v. A.R. Antulay, (1984) 2 SCC 183, in having expressed its opinion while considering a situation where a public servant holds two offices and he is accused of having abused one from which he no longer held, but continued as a public servant on the date of the complaint, having occupied the same subsequently- but of which, there is no allegation of abuse - Is a sanction of the authority competent to remove him from the subsequent office necessary? This has been answered by the apex court, while also considering the contention that if the harassment of the public servant by a frivolous prosecution and criminal waste of his time in law courts, keeping him away from discharging public duty were the objects underlying the requirement of obtaining sanction, the same would be defeated, if the sanction of the latter authority was not necessary- the apex court held thus :

"The submission does not commend to us. We fail to see how the competent authority entitled to remove the public servant from an office which is neither alleged to have been used or abused would be able to decide whether the prosecution is frivolous or tendentious. An illustration was posed to the learned counsel that a Minister who is indisputably a public servant greased his palms by abusing his office as Minister, and then ceased to hold the office before the court was called upon to take cognizance of the offence against him and therefore, sanction as contemplated by Section 6 would not be necessary; but if after committing the offence and before the date of taking of cognizance of the offence, he was elected as a Municipal President in which capacity he was a public servant under the relevant Municipal law, and was holding that office on the date on which court proceeded to take cognizance of the offence committed by him as a Minister, would a sanction be necessary and that too of that authority competent to remove him from the office of the Municipal President. The answer was in affirmative. But the very illustration would show that such cannot be the law. Such an

interpretation of Section 6 would render it as a shield to an unscrupulous public servant. Someone interested in protecting may shift him from one office of public servant to another and thereby defeat the process of law. One can legitimately envisage a situation wherein a person may hold a dozen different offices, each one clothing him with the status of a public servant under Section 21 IPC and even if he has abused only one office for which either there is a valid sanction to prosecute him or he has ceased to hold that office by the time court was called upon to take cognizance, yet on this assumption, sanction of 11 different competent authorities each of which was entitled to remove him from 11 different public offices would be necessary before the court can take cognizance of the offence committed by such public servant, while abusing one office which he may have ceased to hold. Such an interpretation is contrary to all canons of construction and leads to an absurd and product which of necessity must be avoided. Legislation must at all costs be interpreted in such a way that it would not operate as a rogue's charter. (See W.Davis and Sons Ltd. v. Atkins, (1977)3 All ER 40)"

This has been followed in a more recent judgment of the apex court in Ajoy Acharya vs. State Bureau of Investigation against Economic Offence, Criminal Appeal No.1455/2013 dated 17.9.2013, wherein it is reiterated thus:

".....Firstly, whether sanction before prosecution is required from each of the competent authorities entitled to remove an accused from the offices held by him, in situations wherein the accused holds a plurality of offices. The second determination was in respect of the requirement of sanction, in situations where the accused no longer holds the office, which he is alleged to have abused/misused, for committing the offence (s) for which he is being blamed. In answer to the first query, it has unambiguously been concluded, that if an accused holds a plurality of offices, each one of which makes him a public servant, sanction is essential only at the hands of the competent authority (entitled to remove him from service) of the office which he had allegedly misused. This leads to the clear inference, that other public offices held by the accused wherein an accused holds a plurality of offices, are irrelevant for purposes of obtaining sanction prior to prosecution. On the second issue it was concluded, that sanction was essential

only if, at the time of taking cognizance, the accused was still holding the public office which he had allegedly abused."

Hence, it may be said that even if the respondents have come to occupy public offices presently, it would not require the petitioner to obtain any prior sanction for prosecution of offences punishable under the provisions of the PC Act, in respect of the allegations pertaining to misuse of an earlier office held by the particular respondents.

As regards the third point (c), framed for consideration, is concerned, if the complainant is able to satisfy the court that the acts giving rise to the alleged offences had been committed by the accused in the purported discharge of official duties and if it could be demonstrated, on the face of it, that it could be no part of the duty of a public servant or acting in the discharge of his official duties to commit any of such offences and the official status of the public servant has at best, only provided an opportunity for commission of the offences, the question of any sanction being required for prosecution of such a public servant, under Section 197 of the Cr.PC, would not arise.

It has been suggested by the counsel for the respondents that the question as to whether the act complained of is done in performance of duty, is to be determined by the competent authority and not by the court. The Legislature has conferred "absolute power" on the statutory authority to accord sanction or withhold the same and the court has no role in this subject. In such a situation, the court would not proceed without sanction of the competent statutory authority. This proposition is drawn from the observations of the Supreme court in the case of General Officer Commanding, Rashtriya Rifles v. CBI, (2012)6 SCC 228. This, however, is with reference to the peculiar statutory provision that was relevant to that case and cannot be pressed into service with reference to Section 197 Cr PC. It may be noticed that the context in which such a proposition is laid down is in the context of the provisions of The Armed Forces (Special Powers) Act, 1990. This becomes clear from a reading of the following passages of the said judgment:

"81. To understand the complicity of the issue involved herein, it will be useful to compare the relevant provisions of different statutes requiring previous sanction.

(Table)

Thus, it is evident from the aforesaid comparative chart that under the provisions of Cr PC and the Prevention of Corruption Act, it is the court which is restrained to take cognizance without previous sanction of the competent authority. Under the 1990 Act, the investigating agency/complainant/person aggrieved is restrained to institute the criminal proceedings; suit or other legal proceedings. Thus, there is a marked distinction in the statutory provisions under the 1990 Act, which are of much wider magnitude and are required to be enforced strictly.

82. Thus, in view of the above, the law on the issue of sanction can be summarised to the effect that the question of sanction is of paramount importance for protecting a public servant who has acted in good faith while performing his duty. In order that the public servant may not be unnecessarily harassed on a complaint of an unscrupulous person, it is obligatory on the part of the executive authority to protect him. However, there must be a discernible connection between the act complained of and the powers and duties of the public servant. The act complained of may fall within the description of the action purported to have been done in performing the official duty. Therefore, if the alleged act or omission of the public servant can be shown to have a reasonable connection, interrelationship or is inseparably connected with discharge of his duty, he becomes entitled for protection of sanction.

83. If the law requires sanction, and the court proceeds against a public servant without sanction, the public servant has a right to raise the issue of jurisdiction as the entire action may be rendered void ab initio for want of sanction. Sanction can be obtained even during the course of trial depending upon the facts of an individual case and particularly at what stage of proceedings, requirement of sanction has surfaced. The question as to whether the act complained of, is done in performance of duty or in purported performance of duty, is to be determined by the competent authority and not by the court. The legislature has conferred "absolute power" on the statutory authority to accord sanction or withhold the same and the court has no role in this subject. In such a situation the court would not proceed without sanction of the competent statutory authority."

It is thus evident that the same is not relevant in so far as Section 197 Cr.PC, is concerned.

On the other hand, in a recent judgment of the apex court in the case of Chandan Kumar Basu VS. State of Bihar, 2014 STPL (Web) 454 SC, in identical circumstances, has held that sanction under Section 197 Cr.PC is not necessary to be obtained before filing a complaint and has referred to the following decisions of the apex court to support that proposition :

- Matajog Dobey vs. H.C.Bhari, AIR 1956 SC 44 The relevant paragraph reads thus:

"The question may arise at any stage of the proceedings. The complaint may not disclose that the act constituting the offence was done or purported to be done in the discharge of official duty; but facts subsequently coming to light on a police or judicial inquiry or even in the course of the prosecution evidence at the trial, may establish the necessity for sanction. Whether sanction is necessary or not may have to be determined from stage to stage. The necessity may reveal itself in the course of the progress of the case."

- P.K.Pradhan vs. State of Sikkim, (2001) 6 SCC 704 (para 15) It is held by the apex court thus:

"It is well settled that question of sanction under Section 197 of the Code can be raised any time after the cognizance or framing of charge or even at the time of conclusion of trial and after conviction as well. But there may be certain cases where it may not be possible to decide the question effectively without giving opportunity to the defence to establish that what he did was in discharge of official duty. In order to come to the conclusion whether claim of the accused, that the act that he did was in course of the performance of his duty was reasonable one and neither pretended nor fanciful, can be examined during the course of trial by giving opportunity to the defence to establish it. In such an eventuality, the question of sanction should be left open to be decided in the main judgment which may be delivered upon conclusion of the trial."

- Prakash Singh Badal and another vs. State of Punjab and others,(2007) 1 SCC 1
"the question relating to the need of sanction under Section 197 of the Code is not necessarily to be considered as soon as the complaint is lodged and on the allegations contained therein. This question may arise at any stage of the proceeding. The question whether sanction is necessary or not may have to be determined from stage to stage. ..." Therefore, there is no doubt that it is the trial court which would also determine a question, if it should arise, as to whether sanction is required to proceed with the prosecution.

Hence, the court below was not justified in holding that by virtue of the alleged acts were admittedly said to have been committed by the accused while functioning as public servants, and ipso facto required that the petitioner obtain prior sanction under Section 197(1) Cr.PC, to prosecute the complaint.

The impugned orders are set aside and the matters are restored to file before the court below to be dealt with in accordance with law.

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