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Court : Karnataka

Decided On : Nov-09-2015

Judge : The Honourable Mrs. Justice Rathnakala

Appeal No. : Criminal Petition No. 2682 of 2015 c/w Criminal Petition No. 4768 of 2015

Appellant : Devidas Garg and Another

Respondent : State of Karnataka, represented by the Public Prosecutor, Bangalore and Others

Judgement :

(Prayer: Criminal Petition No. 2682/2015 is filed under Section 482 of Cr.P.C., praying to quash the FIR in Cr. No. 973/2014 registered on 23.12.2014 by the Respondent No. 1 Police and consequently quash all further proceedings pursuant to the Registration of the FIR and pending on the file of IV A.C.M.M., Bangalore.)

1. Since the petitioners of the above cases are arraigned as accused Nos. 2 to 4 in F.I.R. 973/2014 dated 23.12.2014 registered by the HAL Police, in respect of offence punishable under Sections 185, 341, 342, 406, 409, 419, 420, 465, 466, 467, 468, 471, 506 read with Section 120-B of IPC and Sections 79-A, 79-B and 80 of the Karnataka Land Reforms Act, 1961 (˜the Actfor short), on the complaint

of the second respondent and the contention raised in both petitions being similar, both cases heard and disposed of together.

2. The gist of the complaint allegation is, the petitioners though are the residents of Delhi/Uttar Pradesh State, fabricated documents with the connivance of Government Officers as agriculturists purchased land at Devarabeesanahalli for fair consideration violating the provisions of the Act. They sold the land to a fictitious Company floated by them and their family members in the name of M/s. Vikas Telecom Limited. By exercising their political influence, they got these lands acquired by the Government through K.I.A.D.B. They have managed another Company by name Supreme Build Cap Pvt. Ltd. They managed to get the very same lands allotted to the above Company. Without developing the land as per the terms of allotment by K.I.A.D.B., the accused persons and their family persons being Directors of the said Company sold the land to Land Developers, thereby cheated the Government. During the course, they created false documents, R.T.Cs. and passed them off as genuine documents to escape the rigour of Sections 79-A, 79-B and 80 of the Act. They forged the documents purporting to be the records maintained by the public authorities and passed themselves off as agriculturists in the State of Karnataka, though they had no income from non-agricultural sources. They committed forgery to cheat and defraud the State. They have committed breach of trust by dishonestly misappropriating and converting to their own benefit, landed properties which was hitherto vested with the Government under Section 79-A, 79-B and 80 of the Act. They had dishonestly used and disposed of the property thereby violating Rules and Regulation of the K.I.A.D.B. When he bought the above facts to the notice of the petitioners, he was treated rudely and terminated from service without paying arrears of salary. They threatened to eliminate him and his family if he reveals anything about the sequence of events to anybody and not to come out of his house and not to interact with anybody. Their utterances caused enormous pressure on the complainant. He took few days to muster enough courage to lodge the complaint, thereby the petitioners have committed the offence.

3. Now the case is transferred for further investigation to C.I.D.

4. Before moving on to the respective contentions of the parties, it is in fitness of things to align undisputed facts:

The petitioners are the members of the same family. They purchased the lands in different survey numbers of Devarabeesanahalli and Boghanahalli, Varthur Hobli, Bangalore East Taluk, between 1996 and 2003 for valuable consideration. The revenue records stood transferred to their respective names. The Government of Karnataka vide notification dated 10.12.2001 issued under Section 3(1) of the Karnataka Industries Areas Development Act, 1966 (˜the KIAD Actfor short), declared that certain agricultural lands in the villages of Devarabeesanahalli and Kariammana Agrahara, Varthur Hobli, Bangalore South Taluk, as industrial area. On the very same day, a preliminary notification under Section 28(1) of the KIAD Act was also published in the Official Gazette. An extent of 109 acres 28 guntas was proposed to be acquired. M/s. Vikas Telecom Limited submitted its proposal to establish an integrated infrastructure project for IT/hospitality/education/housing infrastructure in various survey numbers of the above said lands, before the High Level Committee headed by the then Chief Minister of Karnataka. The Committee vide Government Order dated 2.7.2001 approved the proposal and directed the KIADB to consider acquisition of 100 acres of land in the villages of Devarabeesanahalli, Kariyammana Agrahara Village. The petitioners herein subsequently became the shareholders of M/s. Vikas Telecom Limited during 2003. The final notification under Section 28(4) of the KIAD Act was issued on 23.10.2003 in respect of 105 acres 28 guntas in Devarabeesanahalli and 25 guntas in Kariyammana Agrahara Village.

In the meanwhile, in respect of Sy.No. 13/6 of Devarabeesanahalli measuring 39 guntas held by Sri Devidas Garg/petitioner of Crl.P.No.2682/2015, the Assistant Commissioner, Bangalore North Taluk passed an order under Section 79-A and 80 of the Act in case No. LRF(BE): 19/2001-02 dated 31.1.2002 by holding that, he has purchased the above referred land in violation of Section 79-A and 80 of the Act and the transaction is null and void. In appeal, the Karnataka Appellate Tribunal in Appeal No. 85/2003 set aside the order of the Assistant Commissioner and remanded the matter back for fresh consideration. After fresh enquiry, the Assistant Commissioner vide order dated 29.9.2003 dropped the proceedings

under the Karnataka Land Reforms Act, 1961 subject to condition that, in the event it is found that the respondent has obtained permission to purchase the land by producing false information on forged document, the enquiry would be reopened. However proceedings concluded thus.

The second respondent/complainant represented Sri. Devidas Garg in the said proceedings as his G.P.A. Holder.

Aggrieved by the acquisition proceedings, the neighbouring land owners approached this Court in W.P. Nos. 49979/2003 and connected matters. Among other things, it was contended that out of 106 acres of land sought to be acquired, 95 acres belonged to the promoters of M/s. Vikas Telecom Limited; in order to circumvent the provisions of the Act, the promoters/land owners have derived the method to get their land acquired through KIADB along with the lands of others. The Writ Petitions were dismissed by learned Single Judge of this Court after contest. The said order was confirmed by the Division Bench in Writ Appeal No. 1535/2004 and by the Apex Court in Appeal (Civil) No. 3540/2006. Consequent upon the approval granted by the High Level Committee, the KIADB issued the allotment letter in favour of M/s. Vikas Telecom Limited initially for an extent of 68 acres 11 guntas on 14.6.2004 subject to payment of consideration fixed by the KIADB. Accordingly, lease-cum-sale agreements were executed under registered deeds in the name of M/s. Vikas Telecom Limited on payment of valuable consideration.

5. Sri. C.V. Nagesh and Sri. B.V. Acharya, learned Senior Counsel appearing for the petitioners in both cases would submit that, the complainant, who was an ex-employee of the petitioners, who represented them as their G.P.A. Holder before the Assistant Commissioner and other Government Authorities, disgruntled by his termination of employment, has made irrational and false allegations against the petitioners in the complaint. Being the Power of Attorney Holder of the petitioners and also authorized signatory of M/s. Vikas Telecom Limited after a long lapse of nearly one decade, he claims to have been annoyed by the wrong doings of the accused persons. His allegation smacks malafides and it is explicit that, the complaint is made only for extortion, harass the petitioners and scuttle the project.

The allegation in the complaint is predominantly in respect of violation of Section 79-A and 80 of the Karnataka Land Reforms Act, 1961. Under Section 125 of the said Act, the offence attracts fine of Rs. 500/- for violation of the provisions under the Land Reforms act, shall be dealt with said Act only and the provisions of IPC cannot be invoked against accused in respect of the said Act. The Assistant Commissioner in the denovo enquiry considered the documents produced and decided to drop the proceedings subject to condition that, at a later date, if it is found out that, any false statement is made, the proceedings will be reopened. Till date, the enquiry is not reopened under the Land Reforms Act. The proceeding before the Assistant Commissioner is a judicial proceeding as per Section 124 of the Act and under Section 138 of the Act, the act prevails on any other enactment. Section 195 of Cr.P.C. prohibits taking of cognizance of offences punishable under Sections 193 to 196, 199, 200, 205, 211 and 228 of IPC alleged to have been committed in or in relation to a proceedings of the Court. The offence under Section 463, 471, 475 and 476 of IPC if alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any court, cognizance cannot be taken except on the complaint in writing of that court by such officer of that court only in respect of the offences supra. Under the circumstances, only the Assistant Commissioner is competent to initiate criminal proceedings after due compliance of the procedure contemplated under Section 340 of Cr.P.C. Hence, the complaint and the FIR is in violation of Section 195/340 of Cr.P.C. and deserves to be quashed. Every land acquired in contravention of Section 79-A of the Act will not automatically vest with the State Government until a declaration to that effect is made by the Deputy Commissioner under Section 79-A(5) of the Act. The lands, which are allotted to M/s. Vikas Telecom Limited, hence are not Government lands and the ownership continued with the petitioners during the intermittent stage also. Since there is no allegation about involvement of any public servant, the offence under Section 409 of IPC is not attracted. Therefore, no material is found in the FIR to maintain investigation under Sections 406, 419 and 420 of IPC. Major portion of the land acquired for the Company belongs to the petitioners and the remaining portion belongs to the neighbouring owners. The cost of the land is duly paid by the Company along with commission of 15% to KIADB. No documentary proof is produced about the allegation of forgery.

Therefore, in view of the bar under Section 195 read with Section 340 of Cr.P.C., registration of FIR in respect of offence under Sections 465, 466, 467, 468 and 471 of IPC is without any basis and the complaint allegations fail to make out a case under Section 195 of IPC, since the properties are not purchased by the petitioners in a sale conducted by the public servant. The FIR lacks the material particulars about the offence of criminal conspiracy under Section 120B of IPC. There is no averment in the complaint in respect of offence punishable under Sections 341 and 342 of IPC. The ingredients of Section 506 of IPC are also not attracted; there is no explanation in the FIR about the delay of 20 years in lodging the complaint. Assuming that proceeding under Sections 79-A and 79-B of the Act is re-opened and criminal proceeding are to be launched, such proceedings ought to have been re-opened within one or two years reckoned from the date of sale transaction or dropping of earlier proceedings. (Reliance is placed on

(1) an unreported judgment of this Court in W.P. No. 78519/2013 (LR) DD 2.8.2014 (Murarilal Agarwal vs- Deputy Commissioner, Bellary District and Others);

(2) an unreported judgment of this Court in W.P.Nos. 30545-546/2006 (KLR-CON) DD 6.7.2012 (Sri R. Sathyanarayana Raju and Another vs- The Assistant Commissioner and Another);

(3) 2008 CRI.L.J. 3655 (CALCUUTA HIGH COURT) (Chhotelal Choudhury and Ors. vs- State of W.B.). The complaint is lodged with an ill motive to harass the petitioners and tarnish their image and the registration of the complaint amounts to abuse of process of law and same is liable to be quashed. The findings of earlier proceedings in respect of same allegation is binding on subsequent criminal proceedings initiated on similar set of facts. (Reliance is placed on

(1) State of Karnataka vs- G. Lakshman reported in ILR 1993 Kar 1430;

(2) Patel Laljibhai Somabhai vs- The State of Gujarat reported in 1971(2) SCC 376;

(3) C.N. Seetharam vs- State of Karnataka reported in ILR 1998 KAR 2053;

(4) Savitri Pandey and Another vs- State of U.P. and Others reported in 2015 AIR SCW 3485 and

(5) Rajib Ranjan and others vs- R. Vijaykumar reported in (2015) 1 SCC 513).

6. Learned State Public Prosecutor for first respondent/State has strong objection to the case of the petitioners. It is his submission that, having regard to the complexity and magnitude nature of the allegation in the complaint, the Government of Karnataka on noticing that investigation had not progressed, directed the CID to investigate the case. The acts alleged have implication on the economy of the State and also on the growing tendency of the fraud being played against the State by using forged documents. At the stage when the CID took over investigation, in view of the stay ordered, investigation could not be proceeded. Sufficient information is collected by the CID about the petitioners concocting false documents for the purpose of supporting their case that aggregate income of all the family members from sources other than agriculture is less than Rs. 2 lakhs. Investigation reveals that the petitioners were not agriculturists at any point of time and the documents produced by them depicting them as agriculturist is a forged document by virtue of which they purchased agricultural lands in Bangalore and various other places.

They have created land bank and frustrated the purpose of welfare legislation. They have floated many Companies or acquired many Companies in which they are the Directors and Shareholders and these Companies have no operating business but only used to regularize the illegal activities of the petitioners like regularizing the title of the petitioners, the title of which itself is defective. When they realized that their properties are put into question or questioned during any proceeding for violation of a given statute, they used their influence or clout to get their properties acquired or transferred to their Company and get it regularized so that even if the properties are to be forfeited by the State, they lose nominally and gain substantially as the property would still vest in them, since they would be the Directors having control over the Company.

7. They are the owners of the Company for the benefit of which the land is acquired, thereby they continue in physical possession and get the title cleared.

Once the title is cleared, they sell the land for huge profit under the guise of selling the Company to the third parties, thereby they make the economy of the State hollow. The investigation conducted so far reveals that, few of the accused named in the FIR have multiple PAN cards. They collectively own several Companies and the said Companies are used to regularize their illegal acts in one or other manner. It is not only at Bangalore they have committed such illegal acts, but also in other States. They have paid huge sums to the farmers while purchasing the land but only notional amount is denoted in the sale deeds, thereby they converted their black money into white, which act amounts to money laundering. Search was conducted at the residence of the accused and number of papers and documents are seized, which was thrown light on the offences committed by them. They are suspected to have violated the provisions of FEMA. They are capable of tampering the evidence. Nowhere in the petition, the petitioners have contended that they have not forged income-tax returns. Their contention that, the income tax returns submitted by them should be treated as a declaration before the Revenue Authorities since it is produced before the Revenue Authorities and they should be absolved of the allegation under the Indian Penal Code and may be prosecuted under Section 125 of the Act, is without merit. The material available against them constitutes distinct offence and the Karnataka Land Reforms Act does not provide for punishment for such illegal acts. Once the land of the petitioners was forfeited to the Government and the second round of litigation led to dropping of the proceedings, probably due to fraudulently created documents during the subsequent proceedings. Investigation is required to be carried out in this regard also. The Apex Court in the matter of Y.S. Jagan Mohan Reddy “vs- CBI reported in (2013) 7 SCC 439 refused even to grant bail to the petitioners considering the enormity of the financial transaction to be investigated, fraudulent transaction affecting the economic system to the detriment of the country. If FIR is quashed at this stage, the accused will not be brought to book for the suspected illegal cognizable offences.

8. Sri. Sajan Poovayya, learned Senior Counsel appearing for second respondent/complainant submits that, being in service of the family of the petitioners and also their GPA Holder for some period, the second respondent knows the events of the factual aspects as to how the proceedings under Sections

79-A and 79-B of the Act came to be dropped. It is realized that, in the said process, the income tax returns have been forged so as to meet the requirement of Section 79-A of the Act. The petitioners induced the Government officials to their benefit for dropping the proceedings. It is too premature for the petitioners to defend themselves that no offence is committed unless the matter is investigated. The documents produced along with the complaint clearly denote illegalities committed by the petitioners as Additional Directors of M/s. Vikas Telecom Limited. The petitioners were not entitled to receive the amount as the owners of the land. The Company had to make the deposit to KIADB for the land granted by KIADB to the Company, even if the lands of the petitioners were not acquired by KIADB. It is a socio-economic offence and the matter requires to be investigated and the petitioners have not make out any case to quash the FIR at this stage itself.

9. First ground urged for the petitioners is, the locus standi of the disgruntled ex-employee against his ex-employers. As per the judgment of the Apex Court in State of Haryana and others “vs- Ch. Bhajan Lal and others reported in AIR 1992 SC 604, when it is evident from the complaint itself that the complaint is brought with malafide intention, that itself is sufficient for the Court to quash the complaint and the FIR. Admitting for a while, it is a motivated complaint to wreck his vengeance by the complainant against his ex-employers, Statute does not require any qualification on a complainant lodging a complaint. The basic principles operating in Criminal Jurisprudence is anybody can set the criminal law in motion. The Apex Court in Umesh Kumar “ vs “ State of Andhra Pradesh reported in 2013 AIR SCW 6062 even after noticing that the complaint was in a fictitious name with a forged signature, held that the material warranted some enquiry in respect of the allegations of acquiring huge properties by the accused persons. It was held In case there is some substance in the allegations and material exists to substantiate the complicity of the applicant, the case is to be examined in its full conspectus and the proceedings should not be quashed only on the ground that the same had been initiated with mala fides to wreak vengeance or to achieve an ulterior goal ?.

10. The second stroke of attack is on the question of limitation. Though the Assistant Commissioner had kept open the question of veracity of the documents

furnished and declaration made by the petitioners, so far no occasion has arisen for him to re-open the case. The Act does not contemplate the period of limitation to initiate proceedings under Sections 79-A and 80 of the Act. In the absence of any statutory limitation contemplated by the Act, the reasonable time to initiate proceedings is 1-2 years from the date of the alleged commission of offence as held by various judicial pronouncements. Full Bench of Rajasthan High Court in the matter of Chiman Lal “vs- State of Rajasthan and Others reported in AIR 2000 RAJASTHAN 206 held that, when no period of limitation is provided either under the Act or the Rules, then same has to be exercised within a reasonable time and the reasonable time will depend upon the facts and circumstances of each case. Of course, delay frustrates the cause that too unreasonable delay does not admit to revive a dead cause. There is some explanation for the delay in the complaint itself and gravity of allegation would advice that it is too premature to examine the veracity of such explanation. In the absence of the statute prescribing time limit, the parameter to assess the limitation being dependent upon facts and circumstances of each case, at the early stage of investigation, it is not in the interest of justice to throw out the complaint at the threshold itself. It is the settled proposition of law that fraud vitiates all transactions and the point of limitation would never come whenever fraud is alleged.

11. Third contention is in questioning the authority of the Police to register a case without there being any finding by the concerned Assistant Commissioner. In AIR 1994 SC 1549 in the matter of Mahadev Bapuji Mahajan (dead) and Another “vs- State of Maharashtra, a similar contention was for consideration before the Apex Court and the view of the High Court that no complaint is necessary by the court concerned either under the old Code or under the new Code was affirmed by the Apex Court. The allegation in the said case was, offence of forging documents was committed prior to commencement of proceedings before the Revenue Court.

12. Fourthly, regarding bar under Section 195 (1)(b)(ii) of Cr.P.C. for prosecution in respect of offence of forgery. In AIR 1998 SC 1121 in the matter of Sachida Nand Singh and Another “vs- State of Bihar and Another, it was held that, when the forgery of the document was committed before the document was produced in a court, the bar contained under Section 195 of Cr.P.C. is not applicable. In AIR

2005 SC 2119 in the matter of Iqbal Singh Marwah and Another “vs- Meenakshi Marwah and Another, the Apex Court held that, with regard to prosecution relating to documents given in evidence, to attract Section 195(1)(b)(ii) of Cr.P.C., the offences enumerated in Section must be committed during time when the document was in custodia legis.

13. Fifthly, the power of Investigating Officer to re-examine the orders passed by the Assistant Commissioner, who is a quasi judicial authority in the proceedings initiated under Sections 79-A and 79-B of the Act and which is dropped by him long back. It is to be noted that, for the first time, the allegations of forgery, concoction of documents, false declaration and criminal intimidation are brought forth. There was no scope for the Assistant Commissioner to consider the veracity of the declaration and the documents produced before him. The finding of Assistant Commissioner has no bearing for the investigation of allegations.

14. The State has submitted that now the investigation is with the C.I.D., search is conducted at the residence of two of the accused persons and they have unearthed certain incriminating material during search and seized credible documents. In (1982) 1 SCC 561 in the matter of State of West Bengal and Others “vs- Swapan Kumar Guha and Others despite quashing the FIR in respect of Prize Chits and Money Circulation Schemes (Banning) Act, 1978, the Apex Court having taken note of heavy cash amount, documents and other materials seized during the search and seizure, ordered the concerned Police to retain the said articles for two months so as to enable the concerned authorities to institute an enquiry into the affairs of the firm.

15. In State of Maharashtra and Others “vs- Arun Gulab Gawali and Others reported in (2010) 9 SCC 701 it was observed that, the Court under its inherent powers can neither intervene at an uncalled for stage nor can it soft-pedal the course of justice at crucial stage of investigation/proceedings. In (2013) 10 SCC 581 in the matter of Vinod Raghuvanshi “vs- Ajay Arora and Others, the accountability, vigilance and prevention of corruption overweighed for the consideration of the Apex Court wherein quashing under Section 482 of Cr.P.C. was sought. It was observed that, it is a settled legal proposition that while

considering the case for quashing of the criminal proceedings, the Court should not kill a stillborn child and appropriate prosecution should not be stifled unless there are compelling circumstances to do so.

16. Of course, finding of writ proceedings as regards the acquisition of the land is always binding on the concerned parties and there is no escape. But here is the case where the complainant herein was not a party in the earlier proceedings and the allegations now made against the petitioners were never under judicial scrutiny. It is not the stage to dissect the penal provisions filament by filament to match with the alleged commission/omission by the petitioners. When a responsible statement is placed on record by the State to the effect that petitioners are not agriculturists, they had used more than one PAN card and have committed similar offences to purchase lands in other States also, the gravity of the allegation will not permit the judicious consciousness to gag the mouth of justice. Interestingly none of the documents annexed to the complaint are disputed by the petitioners. Technical grounds are advanced to negate the contemplated investigation and consequential actions. At this stage, it is not the endeavour to foresee the result of the probe. It is not in the interest of the public policy of the nation to snub the demand for investigation on the offences complained off.

17. Jurisdiction of this Court under Section 482 of the Code of Criminal Procedure is sought to be invoked to quash the complaint and the FIR. It is the history that Section 482 was added by the Code of Criminal Procedure (Amendment) Act 1923, as the High Court's then, were unable to render complete justice even if in a given case illegality was palpable and apparent. The boon flowing from Section 482 of the Code enables the High Court to pass any order (1) to give effect to any order (2) to prevent abuse of process of court and (3) to secure the ends of justice. It is true that under the umbrella of Section 482, FIR, charge sheet or any other order of the lower courts amounting to abuse of process of law are quashed. But reverse is the situation here. Abuse of process of a quasi judicial authority is alleged. This allegation is of vast ramification. Dehors the legal contention advanced on behalf of the petitioners, it is desirous in the larger interest of public policy that investigation shall continue.

Both the petitions are dismissed. Liberty is reserved to the petitioners to avail all the contentions advanced before this Court if need arises at a later stage.

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