

B.V. Premkumar Vs. State of Karnataka, by Karnataka Lok Ayuktha Police, Tumakuru, Rep. by its Special Public Prosecutor, Office of Karnataka Lok Ayuktha, Bengaluru and Another

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Court : Karnataka

Decided On : Apr-26-2016

Judge : M. Billappa

Appeal No. : Criminal Petition No. 6701 of 2014

Appellant : B.V. Premkumar

Respondent : State of Karnataka, by Karnataka Lok Ayuktha Police, Tumakuru, Rep. by its Special Public Prosecutor, Office of Karnataka Lok Ayuktha, Bengaluru and Another

Judgement :

(Prayer: This criminal petition is filed under section 482 Cr.P.C. praying to quash the order dt.5.8.2014 passed by the learned II Addl. Dist. and S.J., Tumakuru in Spl.C.C. No. 396/2014 (Cr.No.9/2013) thereby taking cognizance against the petitioner and ordering to register a case and issuance of summons, without mentioning the offence u/s.7, 13(l)(d) r/w. sec.13(2) of PC Act, 1988.)

The petitioner has filed this petition praying to quash the order dated 5.8.2014 passed by the learned II Addl. District and Sessions Judge, Tumakuru, in

Spl.C.C.No.396/2014 taking cognizance and directing to register a case and issue summons to the petitioner.

2. Briefly stated the facts are:

On 31.7.2013, the complainant i.e., the second respondent along with one R.Lakshmikanth has approached the Police Inspector Karnataka Lokayuktha Police, Tumakuru, regarding demanding of illegal gratification by the petitioner. On that day, the Inspector of Police has handed over voice recorder to the complainant i.e., the second respondent explaining the manner in which the voice recorder has to be used. The information is recorded in the General diary.

3. On 1.8.2013, the complainant along with one R.Lakshmikanth has approached the petitioner at Midigeshi BESCO office and by using the voice recorder, the complainant has recorded the conversation between him and the petitioner regarding demanding of illegal gratification. The initial demand was Rs.20,000/-. Subsequently, it is reduced to Rs.15,000/- during conversation.

4. On 2.8.2013, the complainant along with Sri.R.Lakshmikanth has gone to the Karnataka Lokayuktha Police, Tumakuru and lodged a written complaint narrating the events. Thereafter, a case in Cr.No.9/2013 of Karnataka Lokayuktha Police Station, Tumakuru, has been registered for the offences punishable under sections 7, 13(l)(d) r/w. 13(2) of the Prevention of Corruption Act, 1988. Thereafter, on the same day, the Investigating Officer has conducted a trap. The trap was successful. Thereafter, charge sheet has been filed for the offences punishable under sections 7, 13(l)(d) r/w. section 13(2) of PC Act, 1988. The Trial Court by its order dated 5.8.2014 has taken cognizance and directed summons to be issued to the petitioner.

5. Aggrieved by that, the petitioner has filed this petition.

6. The learned counsel for the petitioner contended that the impugned order cannot be sustained in law. He also submitted that without registering the case, the Investigating Officer has handed over voice recorder to the complainant which is not correct. It amounts to collection of evidence. Further he submitted that it is

the Investigating Officer who has to conduct preliminary enquiry. In the present case, the I.O. has handed over voice recorder to the complainant to record the conversation which is not permissible in law. He also submitted that the Trial Court without applying its mind has taken cognizance and directed to issue summons to the petitioner. It is not clear for which offence the cognizance is taken.

7. Placing reliance on the decision of the Hon'ble Supreme Court reported in (2014) 2 SCC page 1, the learned counsel for the petitioner submitted that when the first information discloses commission of cognizable offence, it is mandatory to register a case and thereafter proceed to investigate the matter. In the present case, without registering a case, the Investigating Officer has handed over voice recorder to the complainant to record the conversation between the complainant and the accused which is not permissible in law.

8. Further placing reliance on the decision of this Court reported in (2012) 3 KCCR page 1738, the learned counsel for the petitioner submitted that the investigating agency must be impartial and independent. The Investigating Officer should not associate himself and assist the complainant by giving voice recorder to record the conversation with regard to demand of bribe. It amounts to collection of evidence and not a preliminary enquiry. Therefore, the entire proceedings are vitiated in law.

9. Further placing reliance on the decision of this Court reported in ILR 2001 Karnataka page 1607, the learned counsel for the petitioner submitted that the Trial Court having taken cognizance of the offence has not specifically mentioned as to what offence is made out and for which offence the accused needs to be prosecuted. Therefore, the impugned order cannot be sustained in law.

10. As against this, the learned counsel for the first respondent submitted that the impugned order does not call for interference. He also submitted that the information was recorded in the general diary. It did not disclose commission of a cognizable offence. Therefore, the Investigating Officer has provided the voice recorder to the complainant to record the conversation between the complainant and the accused. It is permissible in law. Further he submitted that after the conversation is recorded, a written complaint has been lodged by the complainant on 2.8.2013. Thereafter, a case has been registered in Cr.No.9/2013.

Subsequently, trap has been conducted and it was successful. Thereafter, after investigation, charge sheet has been filed. In the course of investigation, the money is also recovered. In the general diary, the information is recorded. It is available. The second respondent and one Lakshmikanth have informed the Investigating Officer regarding bribe demanded by the petitioner. Therefore, voice recorder has been handed over to the complainant with instructions how to use it. It is permissible in law.

11. Placing reliance on the decision of the Hon'ble Supreme Court reported in (2014) 2 SCC page 1, the learned counsel for the first respondent submitted that the information furnished by the complainant is recorded in the general diary. It does not disclose commission of a cognizable offence. Therefore, voice recorder has been handed over to the complainant to record the conversation between him and the accused. After recording the conversation, a written complaint has been lodged by the complainant. It amounts to preliminary enquiry which is permissible in law. In cases of corruption, when a complaint is lodged, if the allegations do not disclose commission of a cognizable offence, it is permissible for the Investigating Officer to conduct preliminary enquiry and thereafter register a case. In the present case, the information furnished did not disclose commission of a cognizable offence. Therefore, the Investigating Officer has provided voice recorder to the complainant to record the conversation. It is permissible in law. It amounts to a preliminary enquiry and not collection of evidence.

12. Inviting my attention to paras 115, 117, 118, 119 and 120 in LALITA KUMARI vs. GOVERNMENT OF UTTAR PRADESH reported in (2014) 2 SCC page 1, the learned counsel for the first respondent submitted that preliminary enquiry is permissible in corruption cases. Therefore, the impugned order does not call for interference.

13. Further he submitted that the irregularities in investigation cannot be a ground to quash the proceedings at this stage. In support of his submission, he placed reliance on the following decisions:

(2014) 2 SCC page 1

AIR 2003 SC page 2612

AIR 1955 SC page 196

Crl.P.No.3708/2013 u connected cases (D.D. 8.10.2015)

Crl.R.P.No. 187/2014 c/w Crl.R.P. 160/2014 (D.D. 26.6.2014)

Crl.P.No.2018/2013 (D.D. 6.1.2015)

Crl.P.No.2173/2012 (D.D. 7.8.2012)

Crl.P.No.200071/2014 (D.D. 25.2.2015)

14. I have carefully considered the submissions made by the learned counsel for the parties.

15. It is relevant to note, on 31.7.2013, the complainant i.e., second respondent along with R.Laksmikanth has approached the Police Inspector, Karnataka Lokayuktha Police, Tumakuru regarding demanding of illegal gratification by the petitioner. The information furnished by the second respondent is recorded in the general diary to the effect that at about 3 0' clock, Lakshmikanth of Satthigenahalli, Midigeshi and the complainant R.Rajanna of Brahmadevarahalli Kaval came to the police station and informed regarding the bribe and asked for the voice recorder. Voice recorder was given to the complainant. The complainant was also informed as to how to use the voice recorder. Thereafter, on 1.8.2013, the second respondent has approached the petitioner and recorded the conversation. On 2.8.2013, the complainant has come back and lodged a written complaint along with the voice recorder. Thereafter, a case has been registered in Cr.No.9/2013. On the same day, the trap has been conducted and mahazar has been drawn. After investigation charge sheet has been filed for the offences punishable under sections 7, 13(l)(d) r/w. section 13(2) of P.C. Act, 1988. The Trial Court has taken cognizance and directed to issue summons to the petitioner by its order dated 5.8.2014.

16. It was contended by the learned counsel for the petitioner that without registering the case, the Investigating Officer has provided voice recorder to the

complainant to record the conversation which is not permissible in law. It amounts to collection of evidence. He placed reliance on the decision of this Court reported in (2012) 3 KCCR page 1738. No doubt, in the case cited by the learned counsel for the petitioner this Court has held that the investigating agency must be impartial and independent. It should not associate and assist the complainant. Giving a tape recorder to record conversation with regard to demand of bribe does not constitute preliminary enquiry. It amounts to collection of evidence.

17. Subsequently, the Hon'ble Supreme Court in LALITA KUMARI vs. GOVERNMENT OF UTTAR PRADESH reported in (2014) 2 SCC page 1 has observed as follows at paras 72, 86, 88, 115, 117, 118, 119 and 120 (sub-paras (i) to (vi):

72. It is thus unequivocally dear that registration of FIR is mandatory and also that it is to be recorded in the FIR Book by giving a unique annual number to each FIR to enable strict tracking of each and every registered FIR by the superior police officers as well as by the competent court to which copies of each FIR are required to be sent.

86. Therefore, conducting an investigation into an offence after registration of FIR under Section 154 of the Code is the "procedure established by law" and, thus, is in conformity with Article 21 of the Constitution. Accordingly, the right of the accused under Article 21 of the Constitution is protected if the FIR is registered first and then the investigation is conducted in accordance with the provisions of law.

88. Though there is reference to the terms 'preliminary inquiry' and 'inquiry' under Section 159 and Section 202 and 340 of the Code, that is a judicial exercise undertaken by the Court and not by the Police and is not relevant for the purpose of the present reference.

115. Although, we, in unequivocal terms, hold that Section 154 of the Code postulates the mandatory registration of FIRs on receipt of all cognizable offences, yet, there may be instances where preliminary inquiry may be required owing to the change in genesis and novelty of crimes with the passage of time. One such

instance is in the case of allegations relating to medical negligence on the part of doctors. It will be unfair and inequitable to prosecute a medical professional only on the basis of the allegations in the complaint.

117. In the context of offences relating to corruption, this Court in *P. Sirajuddin* (supra) expressed the need for a preliminary inquiry before proceeding against public servants.

118. Similarly, in *Tapan Kumar Singh* (supra), this Court has validated a preliminary inquiry prior to registering an FIR only on the ground that at the time the first information is received, the same does not disclose a cognizable offence.

119. Therefore, in view of various counter claims regarding registration or non-registration, what is necessary is only that the information given to the police must disclose the commission of a cognizable offence. In such a situation, registration of an FIR is mandatory. However, if no cognizable offence is made out in the information given, then the FIR need not be registered immediately and perhaps the police can conduct a sort of preliminary verification or inquiry for the limited purpose of ascertaining as to whether a cognizable offence has been committed. But, if the information given clearly mentions the commission of a cognizable offence, there is no other option but to register an FIR forthwith. Other considerations are not relevant at the stage of registration of FIR, such as, whether the information is falsely given, whether the information is genuine, whether the information is credible etc. These are the issues that have to be verified during the investigation of the FIR. At the stage of registration of FIR, what is to be seen is merely whether the information given ex facie discloses the commission of a cognizable offence. If, after investigation, the information given is found to be false, there is always an option to prosecute the complainant for filing a false FIR.

Conclusion/Directions:

120. In view of the aforesaid discussion, we hold:

120.1) Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

120.2) If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

120.3) If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in dosing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for dosing the complaint and not proceeding further.

120.4) The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

120.5) The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

120.6) As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

a) Matrimonial disputes/ family disputes

b) Commercial offences

c) Medical negligence cases

d) Corruption cases

e) Cases where there is abnormal delay/latches in initiating criminal prosecution, for example, over j months delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry. "

It is clear from the above decision of the Hon'ble Supreme Court that registration of FIR is mandatory when the information discloses commission of a cognizable offence. But, if the information does not disclose commission of cognizable offence, in certain cases, like matrimonial disputes/family disputes, commercial offences, medical negligence cases, corruption cases or cases of abnormal delay/latches, it is permissible to conduct preliminary enquiry.

18. In the present case, the information furnished shows that the second respondent and one Lakshmikant have gone to the Lokayuktha Police, Tumakuru, and informed about the bribe. No other details are furnished. Therefore, the Investigating Officer has provided voice recorder to the complainant to record the conversation. Therefore, in the present case, providing of voice recorder to record the conversation does not amount to collection of evidence. It is only a preliminary enquiry which is permissible in law.

19. In this connection, it is relevant to refer to some of the decisions of this Court.

20. In CrI.P.No.3708/2013 and connected cases, disposed of on 8.10.2015, this Court has observed as follows at paras 18 and 19.

"18. Therefore, in the result this Court feel that the judgments relied upon by the learned counsel for the petitioners in L.Shankaramurthy and Ramesh Desai as against the judgments relied upon by the learned Spl.PP in, Bhagwant Kishore Joshi, Narmada Bachao Andolan and Yusufalli Esmail Nagree, it is clearly seen that the judgments relied upon by the counsel for petitioners have no nexus to the fact under consideration in these proceedings. The finding rendered in those judgments are totally under different circumstances, whereas in the four cases which are relied upon by the learned Spl.PP, they are directly on the point with reference to gathering of information by the complainant before registering the complaint with police and any assistance provided to the accused is rightly considered as preliminary enquiry and not an investigation. Infact, in Lalita Kumari's case which is relied upon by both counsel with reference to paragraph

111 of the judgment, the contention of learned Spl.PP in relying upon clause (vi) (d) as relevant to the case on hand as against clause (i) to (iii) appears to be just and proper in the facts and circumstances of the case on hand.

19. In the light of aforesaid discussions, it is seen that the conduct of investigation officer in handing over voice recorder to first informant to record conversations that took place between accused and first informant/his representative is justifiable. The aforesaid act of Investigating Officer cannot be construed as investigation by any stretch of imagination. On going through the ratio laid down by the Apex Court in the aforesaid matters relied upon by the learned Spl.SPP, as rightly contended by him the same can be construed as preliminary enquiry. In the light of aforesaid discussion, this Court is of the opinion that providing of voice recorder to the complainant before registering the complainant does not amount to investigation as contemplated under Section 154 of Cr.P.C. At best it can be termed as preliminary enquiry before registering the compliant to make sure that a false complaint is filed against public officer to harass them unnecessarily with ulterior motive. Infact the said practice is more in the nature of protecting the interest of accused than in supporting the complainant in gathering incriminating material and information as and by way of investigation. Accordingly, all the four criminal petitions are dismissed."

21. In CrI.R.P.No.2173/2012, disposed of on 7.8.2012, this Court has observed as follows at paras 4 and 5:

"4. By way of reply, the learned counsel for the petitioner would submit that there is a decided case of this Court in the case of Sri Ramesh Desai and Another vs. The State of Karnataka by Raichur Lokayukta P.S. (2012 (3) KCCR 1738), wherein it has been held that a biased investigation would be a ground for discharge and for quashing of the proceedings.

In the instant case, the learned counsel would point out that there is an added circumstance of the Investigation Officer having sent a Tape-recorder along with the complaint, which is impermissible in law, as held by this Court in the above decision and therefore, is an added ground for quashing the proceedings.

5. While it may be that this Court has taken a view in the above decided case that the circumstance pointed out therein was a ground for quashing the proceedings, it cannot be treated as a precedent laying down the law to be applied in every given case where there may be a variance in the facts. It would be a dangerous precedent to be followed and therefore, since the trial is yet to commence in these proceedings, it is appropriate that the petitioner should contest the matter and test the evidence of the prosecution at the trial, including the discrepancy insofar as the phenolphthalein test is concerned. Accordingly, the petition is rejected."

22. In CrI.P.No.2018/2013, disposed of on 6.1.2015, this Court has observed as follows at paras 8, 9, 10 and 11.

"8. In the decision reported in AIR 1968 SC 147(1) (In the case of Yusufalli Esmail Nagree Vs. the State of Maharashtra), the Supreme Court has held:-

'9. Counsel claimed protection under Art.20(3) of the Constitution against the use of the statements made by the appellant on August 2, 1960. He argued that by the active deception of the police, the appellant was compelled to be a witness against himself. Had the appellant known that the police had arranged a trap, he would not have talked as he did. Compulsion may take many forms. A person accused of an offence may be subject to physical or mental torture. He may be starved or beaten and a confession may be extorted from him. By deceitful means he may be induced to believe that his son is being tortured in an adjoining room and by such inducement he may be compelled to make an incriminating statement. But we cannot say that in this case the appellant was compelled to be a witness against himself. He was free to talk or not to talk. His conversation with Shaikh was voluntary. There was no element of duress, coercion or compulsion. His statements were not extracted from him in an oppressive manner or by force or against his wishes. He cannot claim the protection of Art. 20(3). The fact that the tape recording was done without his knowledge is not of itself an objection to its admissibility in evidence. In saying so, the Court does not lend its approval to the police practice of tapping telephone wires and setting UP hidden microphones for the purpose of tape recording.'

In the case on hand, the Investigating Officer had handed over voice recorder to first informant to record conversations that took place between accused No.1 and first informant/his representative. The Investigating Officer has held a preliminary enquiry.

9. C.H. Jadhav, learned Senior Counsel for petitioner has relied on decision of the Supreme Court, reported in 2012 (3) KCCR 1738 (in the case of Sri Ramesh Desai and another Vs. The State of Karnataka by Raichur Lokayuktha P.S.).

10. This decision was rendered before the decision of the Constitution Bench of the Supreme Court, reported in 2013 AIR SCW 6386 (in the case of Smt.Lalitha Kumari Vs. Government of U.P. and others) was rendered. Therefore, we have to follow the Constitution Bench decision of the Supreme court, reported in 2013 AIR SCW 6386 (in the case of Smt.Lalitha Kumari Vs. Government of U.P. and others).

11. In view of the above discussion, I do not find any grounds to quash the proceedings. The petition is dismissed."

23. In CrI.R.P.No. 187/2014 c/w. CrI.R.P.No. 160/2014, disposed of on 26.6.2014, this Court has observed as follows at paras 10 and 11.

"10. Even assuming for the time being that the system of tape recorder was put in the mobile of the complainant prior to its registration, if a complaint is filed along with such recorded conversation, that would be part of the FIR. Therefore, that does not come in the way of prosecution and on this ground, registration of FIR cannot be illegal.

11. When the Apex Court permits the police for holding a preliminary enquiry before the registration of the FIR in respect of the cognizable offence, there is a valid refusal on the part of the Lokayuktha police in registering the complaint and as the Apex Court has held that it is the mandatory duty of the police to register the FIR, the same is having been done by the police, there are no grounds to quash the registration of FIR. That does not mean that if there is entrustment of the tape recorder or system of tape recorder was put in the mobile of the complainant that itself is not a ground to reject the FIR."

24. It is clear from the above decisions that providing of voice recorder for the purpose of recording conversation before registering the case amounts to preliminary enquiry and permissible in law. Therefore, the contention of the learned counsel for the petitioner that providing of voice recorder to record the conversation before registering the case amounts to collection of evidence and not permissible in law is rejected.

25. In AIR 1955 SC page 196(1), the Hon'ble Supreme Court has held, where cognizance of the case has been taken and case has proceeded to termination, the invalidity of the precedent investigation does not vitiate the result, unless miscarriage of justice has been caused.

26. In the present case, after investigation charge sheet has been filed. The irregularities or defects, if any, in the investigation can be considered at the trial. Therefore, I do not find any valid reason to quash the proceedings or set aside the impugned order. Therefore, there is no merit in this criminal petition.

Accordingly, the criminal petition is dismissed.

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