

**Thimmaiah Vs. The State of Karnataka and Another**

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**Court :** Karnataka

**Decided On :** Apr-07-2016

**Judge :** Pradeep D. Waingankar

**Appeal No. :** Writ Petition No. 5963 of 2016 (GM-RES)

**Appellant :** Thimmaiah

**Respondent :** The State of Karnataka and Another

**Judgement :**

(Prayer: This writ petition is filed under Article 226 and 227 of the Constitution of India praying to quash complaint, fir and proceedings in crime No.80/2015 of Lokayuktha Police, Bangalore urban District vide Annex-A Complaint and Annex-B fir the record of which is acceded and pending before the special Judge, Prevention of corruption Act special Court, Multistoried building, Bangalore.)

Pradeep D. Waingankar. J,

1. The petitioner, who is arrayed as accused No.1 in Cr.No.80/2015 of Lokayukta police station, Bangalore Urban Division has filed this petition under Article 226 and 27 of the Constitution of India r/w 482 Cr.P.C. to quash the proceedings initiated against him in Cr.No.80/2015 for the offences punishable under Sections 13(1) (d) r/w 13(2) of Prevention of Corruption Act, 1988 and Sections 409, 468, 471, 420 r/w 120-BIPC.

2. One Smt. Siddamma, the second respondent filed a private complaint dated 24.11.2015 before the Superintendent of Police, Lokayukta, Bangalore City. It is alleged in the complaint that the complainant is the owner of the property bearing Site No.14, Q Block, formed in Sy.Nos.132 and 133 of Katriguppa, Banashankari 3<sup>rd</sup> Stage, Bangalore formed by Bhavani Housing Cooperative Society Limited. The site measures 30 x 40 . Originally, the site was allotted to one K.S. Sowmya @ Soundarya by Bhavani Housing Cooperative Society Limited. A sale deed dated 22.6.1999 was executed by the society in favour of K.S. Soumya. Possession certificated dated 11.7.2001 was issued to K.S. Soumya. K.S. Soumya @ Soundarya died in an Aircrash accident on 17.4.2004. Soumya had agreed to sell the schedule property in favour of the complainant. But due to her sudden death, she could not execute the sale deed. As such, a sale deed dated 24.9.2005 was executed by G.S. Raghu, S/o. Subramanya Iyer to whom Soumya @ Soundarya had married in favour of the complainant in the office of Sub-Registrar, Basavangudi, Bangalore. An affidavit dated 23.9.2005 was also sworn to by K.S. Manjula-the mother of Sowmya. The complainant was in actual possession and enjoyment of the schedule site. The complainant is aged more than 80 years suffering from all kinds of ailments. On number of occasions, she was admitted and treated as inpatient in major hospitals in Bangalore. The son of the complainant Narasimha Murthy visited the schedule property on 15.3.2015. It was still a vacant site. When he again visited the schedule property on 18.8.2015 while returning to his residence on way from his office, he was shocked to see a construction coming on the schedule property. Immediately, he called the complainant-his mother over telephone and informed to her and thereafter approached the jurisdictional police. The Police failed to take any action on the ground that the matter is civil in nature. On further discreet enquiry, the complainant came to know that the petitioner who was working as Joint Registrar of Cooperative Society in collusion with the Secretary of Bhavani Housing Cooperative Society- M.H. Dayanand, one Smt. S. Nagarathna, Smt. Bhagyalaxmi and one Chandrappa set-aside the sale deed executed by the society in favour of Soundarya clandestinely with ulterior motive to knock off the schedule property for extraneous reasons and consideration. Therefore, the complainant filed a complaint against the petitioner Thimmaiah and four others for the aforesaid

offences. The complaint came to be registered in Cr.No.80/2015 of Lokayukta police station, Bangalore Urban District for the offences punishable under Section 13(1) (d) r/w 13(2) of Prevention of Corruption Act and Sections 409, 468, 471, 420 r/w 120-B IPC and FIR has been forwarded to the Special Judge. The investigation is going on. At this stage, the instant writ petition came to be filed by the petitioner, who is arrayed as accused No.1 to quash the proceedings mainly on the ground that the petitioner was working as Joint Registrar of Cooperative Societies and that he was discharging judicial function as a judge while passing the impugned order and therefore cognizance taken without obtaining previous sanction to prosecute is bad in law and as such proceedings initiated against the petitioner are liable to be quashed.

3. Both the Respondents are served and are represented by their Counsel. The first Respondent has filed written submissions. The second Respondent has filed a detailed statement of objection to the main petition contending that the petition is not maintainable either in law or on the facts, that the petition is totally misconceived and the same is liable to be rejected, that the filing of the petition itself amounts to abuse of process of law and further denied each and every allegation made in the petition.

4. I have heard the learned Counsel for the parties. In addition to the oral submissions, Sri Venkatesh Dalwai, learned SPI P P appearing for the first Respondent has also filed his detailed written submissions.

5. The questions that arise for my consideration are

(i) Whether this court can interfere in the matter at the state of investigation and quash the proceedings as not maintainable by invoking Section 482 of Code of Criminal Procedure (Cr.P.C. for short) and under Articles 226 and 227 of Constitution of India?.

(ii) Whether the Petitioner is a judge as defined under the Judges Protection Act?

6. My answer to both the questions are in negative for the following reasons.

7. The Petitioner has contended that he is a quasi-judicial officer and that he comes under the definition Judge under the Judges Protection Act and that any act done by him while discharging his official duties are protected not only under the Judges Protection Act but also under the provisions of Section 127 of the Karnataka Co-operative Societies Act, 1959. Section 127 of the Act reads as under:

127. Indemnity:- No suit, prosecution or other legal proceedings shall lie against the Registrar or any person subordinate to him or acting on his authority [or the [Director of Co-operative Audit] or any other person subordinate to him acting on his authority] [or against the new committee of the co-operative society or the Administrator or the Special Officer appointed under Section 30 or Section 30-A] in respect of anything in good faith done or purporting to have been done under this Act.

8. The learned counsels for respondents have vehemently argued that none of the acts done by the petitioner is in good faith. On the contrary the act is in bad faith. That the petitioner is actively involved in corrupt practices. The learned counsel for the 2<sup>nd</sup> respondent has referred to an order passed by the petitioner in another matter on a earlier occasion holding that he had no authority under law to cancel allotment of sites made in favour of a member of the Co-operative Society and that it is only the Civil Court which has such an authority and dismissed the petition. He has relied on a copy of the said order produced as Annexure R-2A along with the statement of objection dated 17.02.2016. The said document clearly states that the petitioner was fully and completely aware that he had no power or authority, which are performed by the Civil Court and that he could not set aside or cancel any allotment of site made in favour of a member of the Co-operative Society by the Management of the Society.

9. The complaint revolves around on an order dated 11.04.2014 passed by the Petitioner while discharging his duties as the Additional Registrar of Co-operative Societies canceling allotment of a site bearing No.14, which was made in favour of one Smt. K.S. Soumya contrary to what he had held in a similar situation earlier (Annexure R-2 dated 31.08.2013), which clearly establishes prima facie collusion

with the other accused persons and officially favouring them.

10. While countering the contention of the Petitioner that the Petitioner is a quasi-judicial officer and that he is a judge and that he is protected under Judges Protection Act, the second Respondent has relied on the following decisions:

(i) Bhanwar Lal Naga and another Vs State and others-High Court of Rajasthan (DB) in WP No.770/2016.

(ii) Crl.Misc.283/2008 Kerala High Court.

(iii) Narayan Diwakar Vs CBI 129 (2006) DLT 258.

11. A Division Bench of the Rajasthan High Court Jodhpur in W.P.770/2016 in the matter of Bhanwar Lal Naga and Anr. Vs. State and Others and under similar circumstances had held as under:

In brief, facts of the case are that the Anti Corruption Bureau, Jaipur registered a criminal case against the appellant petitioners as per the First Information Report No.235/2014. To quash the FIR aforesaid, the petitioner preferred a petition for writ with submission that whatever action he has taken that was part of his judicial/quasi judicial authority and, therefore, the petitioners have protection as per Judges Protection Act, 1985. The learned Single Bench after examining the record arrived at the conclusion that a bare perusal of the FIR discloses an act of criminal nature, therefore, no interference is desirable. (under-lining by me).

In appeal, learned counsel submits that the Court below failed to appreciate the issue agitated by the petitioner about the applicability of Judges Protection Act, 1985.

We do not find any merit in the arguments advanced. From perusal of the averments contained in the FIR, it is apparent that as per the investigation agency the appellants petitioners were part of criminal conspiracy while discharging their official duty. In view of this specific allegation, we are of the considered view that the Act of 1985 cannot be made applicable qua the petitioners in the instant matter. Learned Single Judge has not committed any error that may warrant

interference in appellate jurisdiction. (under-lining by me).

12. The Kerala High Court in Crl.Misc.283/2008 has held as under:

Crucial legal question arising for consideration is the following; Whether the Collector defined in Section 3(c) of the Land Acquisition Act, 1894 or the Land Acquisition Officer discharging the functions of the Collector under the said Act is entitled to claim protection under the Judges (Protection) Act, 1985?

In this Act, Judge means not only every person who is officially designated as Judge, but also every person (a) who is empowered by law to give in any legal proceeding a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive; or

(b) who is one of a body of person which body of persons is empowered by law to give such a judgment as is referred to in Cl.(a).

Sections 3 and 4 of the Judges (Protection) Act, 1985 make it clear that what is provided under the Act is an additional protection afforded to a Judge, apart from that in other statutes. Judicial Officers Protection Act, 1850 was intended to provide greater protection to Magistrates and others acting judicially. Section 1 of the said Act insulated them from suing in civil court for act done or ordered to be done in discharge of judicial duty. By virtue of Section 3 of the Kerala Judicial Officers Protection Act, 1963, the Judicial Officers Protection Act, 1850 along with Acts *pari materia* prevailed in the State of Travancore and Cochin were repealed. This Act also provides protection only in the matter of civil actions.

10. In order to buttress these contentions, reliance is placed on various decisions. *Sankaran Pillai v. Chandran* (1991 (1) KLT 586) was cited to argue that the assessing authority, under the Kerala Building Tax Act, was held to be entitled to the benefits under the Judges (Protection) Act.<sup>1</sup>

11. *Meena Mehra v. Lokayukt Organisation* (2011 LAWS (MPH) 9-8) was cited to contend a proposition that a revenue officer by virtue of his powers under the M.P.Land Revenue Code exercises a quasi-judicial function and therefore holds

the status of a Judge defined under Section 2 of the Judges (Protection) Act, 1985. So also, based on *State of Maharashtra v. Yeshwant Parasharam Sawant* (1976 LAWS (Bom) 11-17), it was contended that an officer functioning as Additional Mamlatdar and Agricultural Lands Tribunal under the Bombay Tenancy and Agricultural Lands Act, 1948 is entitled to the protection in view of the quasi-judicial functions provided in the statute. I am unable to accept these contentions for the reasons stated infra.

Facts in brief in *Surendra Kumar Bhatia v. Kanhaiya Lal and others* ((2009) 12 SCC 184) is that the Special Officer of Rajasthan Housing Board, in collusion with certain office bearers practiced fraud and grabbed valuable lands from the Board and some office bearers fraudulently obtained allotment of pattas. The Supreme Court elaborately considered the scope of the powers of the Collector/Land Acquisition Officer in the light of the provisions under the Land Acquisition Act, 1894 and the Penal Code, 1860. In paragraph 22, the law laid down in lucid terms is the following:

22. The question whether the Collector/Land Acquisition Officer while making an enquiry and award under the Act, acts in a judicial capacity or not, has been considered in a series of judgments. The well-settled principles are:

Any inquiry as to the market value of property and determination of the amount of compensation by the Collector is administrative and not judicial in nature even though the Collector may have the power to summon and enforce the attendance of witnesses and production of documents. In making an award or making a reference or serving a notice, the Collector neither acts in a judicial nor quasi-judicial capacity but purely in an administrative capacity, exercising statutory powers as an agent and representative of the Government/acquiring authority.

(b) The award by a Collector is merely an offer of the amount mentioned as compensation on behalf of the Government/acquiring authority to the person/s interested. It is neither an executable decree, nor binds the owners or person interested in the acquired property.

(c) The Collector does not function as a judicial officer who is required to base his decision only on the material placed in the enquiry in the presence of parties, but functions as a valuer who ascertains the market value on material collected from all sources, personal inspection and his own knowledge and experience.

Therefore, in the light of the binding pronouncements of law on the subject, I find that the contention of the petitioner that he is entitled to get the benefit of Section 3 of the Judges (Protection) Act, 1985 cannot be upheld. Therefore, I find that the petition is devoid of any merit. Hence it is dismissed. All pending interlocutory applications will stand dismissed.

(under-lining by me)

13. In the matter of Narayan Diwakar vs C.B.I, the Delhi High Court (reported in 129 (2006) DLT 258 has held as under:

petitioner cannot be said to be a Judge either within the meaning of Section 19 IPC or Section 2 of the Judges (Protection) Act, 1985 because by no stretch Page 897 it can be said that the functions discharged by the RCS within the meaning of the Act of 1972 were discharged by him in the capacity of a Court or a Judge except that he has been given certain powers of the civil court for summoning and enforcing the attendance of witnesses, requiring the discovery and production of any-document and admitting the proof of facts by affidavits and for issuing commissions for examination of witnesses by Section 94 of the Act.

15. This Court on a consideration of the matter and more particularly having regard to the provisions of the Delhi Co-operative Societies Act, 1972 and Judges (Protection) Act, 1985, is of the considered opinion that the petitioner while exercising and discharging functions of the Act and more particularly the powers under Section 63(3) of the Act, cannot be deemed to be a Judge within the meaning of Section 2 of the Judges (Protection) Act, 1985 and, consequently, he cannot claim any protection against prosecution or other legal proceedings. So far as the immunity available to the Registrar and other officers against prosecution etc, under Section 95 of the Act is concerned, suffice it would be to observe that the use of the expression good faith in the said section clearly brings out the mind



of the Legislature that the protection granted to the Registrar and other officers for any acts done by them in the discharge of their official duties is not absolute and is circumscribed by the essential condition that the action had been taken and power had been exercised by such officers in good faith. Converse of good faith is bad faith or mala fide and, therefore, if a question arises as to whether the action taken by the Registrar Cooperative Societies or any other officer was in bad faith, the immunity envisaged by Section 95 of the Act will not be available and the question can be gone into by any competent authority including any statutory investigating agency(s) like CBI. In the opinion of this Court, the petitioner cannot be allowed to take refuge under the said provisions and to scuttle the investigation into the cases having large ramifications in the society.

16. Having regard to the entirety of the facts and circumstances and the material brought on record, this Court has no hesitation in holding that the present petition for quashing of the FIRs registered against the petitioner on the above purported grounds is wholly misconceived and is liable to be dismissed, more particularly so when the investigation is still in progress in a large number of cases.

14. I am completely inclined to concur with the above judgments and hold that the Petitioner is not a judge as defined under Judges Protection Act, 1985.

15. The contention of the Petitioner that he has passed the impugned order in good faith cannot be accepted in view of the fact that he had, on an earlier and similar occasion passed an order diametrically opposed to the impugned order. Hence it is argued by the learned counsel for the Respondents that what is done by the Petitioner is not in good faith and converse of the same is bad faith. The learned counsel for the 2<sup>nd</sup> Respondent has vehemently argued that the immunity provided in a statute does not apply to the acts committed by the accused in bad faith. He has relied on the decision rendered in Narayan Diwakar s case which reads as under:

So far as the immunity available to the Registrar and other officers against prosecution etc. under Section 95 of the Act is concerned, suffice it would be to observe that the use of the expression good faith in the said section clearly brings out the mind of the Legislature that the protection granted to the Registrar and

other officers for any acts done by them in the discharge of their official duties is not absolute and is circumscribed by the essential condition that the action had been taken and power had been exercised by such officers in good faith. Converse of good faith is bad faith or mala fide and, therefore, if a question arises as to whether the action taken by the Registrar Cooperative Societies or any other officer was in bad faith, the immunity envisaged by Section 95 of the Act will not be available and the question can be gone into by any competent authority including any statutory investigating agency(s) like CBI. In the opinion of this Court, the petitioner cannot be allowed to take refuge under the said provisions and to scuttle the investigation into the cases having large ramifications in the society.

16. While completely agreeing with the decision rendered in Narayan Diwakar's case, I am inclined to hold that whatever action is done by the Petitioner cannot be termed as having been done in good faith at this juncture. It is for the investigating agency to decide whether acts done by the Petitioner while passing the impugned order are in good faith or bad faith. This Court, therefore, exercising powers under Section 482 of Cr.P.C. or under 226 and 227 of the Constitution cannot interfere with the investigation of the case. It is only the final report of the investigating agency, which can reveal whether the acts of the Petitioner are in good faith or otherwise.

17. The learned SPP Sri Venkatesh Dalwai appearing for the first Respondent contends that Section 28 of the Prevention of Corruption Act, 1988 has an overriding effect and that the same is in addition to any other law. Section 28 of the Prevention of Corruption Act 1988 reads as under:

28. Act to be in addition to any other law:-The provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being in force, and nothing contained herein shall exempt any public servant from any proceedings which might, apart from this Act, be instituted against him.

18. I fully agree with the submissions made by Sri Venkatesh Dalwai on behalf of the Lokayukta Police that the provisions of the PC Act are in addition to any other law and the Petitioner cannot claim any protection under any other provisions of law as Section 28 of the Prevention of Corruption Act 1988, which is central

legislation subsequent to Judges Protection Act 1985 has an over-riding effect on all other provisions of the Act and is an addition measure to any other law and not in derogation of the law.

19. The Petitioner's contention that sanction as contemplated under Section 197 was to be obtained is vehemently opposed by the learned SPP Sri Venkatesh Dalwai on the ground that the question of sanction does not arise at this stage and that the court has not taken any cognizance at all. He has further contended that registration of the FIR is not an account of any private complaint taken cognizance by the court and that the complaint is directly filed before the Lokayukta police. He has further argued that the question of cognizance is pre-mature and that the same has to be considered, if necessary, only at the time of the final report. It is his further contention that since the Petitioner, having retired from the service, the question of sanction does not arise at all. While I hold that there is sufficient weight in the submissions made by the learned SPP for the first Respondent, I am unable to accept the contention raised by the Petitioner that sanction is required even at the preliminary investigation stage. The learned SPP, while relying on a decision in case of *State of Madhya Pradesh and Ors vs Shri Ram Singh* reported in AIR 2000 SC 870, wherein it is held as under;

The court is entitled to ascertain the intention of the Legislature to remove the ambiguity by construing the provision of the Statute as a whole keeping in view what was the mischief when the Statute was enacted and to remove which the Legislature enacted the Statute. The rule of construction is so universally accepted that it need not be supported by precedents. Adopting this rule of construction, whenever a question of construction arises upon ambiguity or where two views are possible of a provision, it would be the duty of the Court to adopt that construction which would advance the object underlying the Act, namely, to make effective provision for the prevention of bribery and corruption and at any rate not defeat it.

Procedural delays and technicalities of law should not be permitted to defeat the object sought to be achieved by the Act. The overall public interest and the social object is required to be kept in mind while interpreting various provisions of the Act and decided cases under it.

It was argued that any wrong interpretation of the provisions of the Prevention of Corruption Act will put an embargo on the operation of the statute and will further defeat the aim and object and purpose of the statute.

20. It is further argued by the learned SPP for the first Respondent that if any orders are passed quashing the proceedings at the initial stages of enquiry itself, the truth will never come out and that it will send a wrong signal to the society. In case of *Amit Kapoor vs Ramesh Chander and Anr* on 13 September 2012, the Hon ble Apex Court has laid down following guidelines for examinations of petitions either filed under Article 226 of Indian Constitution or under Section 482 of Cr PC which are extracted as under:

1) Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

2) The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

3) The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

4) Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loathe to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.

5) Where there is an express legal bar enacted in any of the provisions of the Code or any specific law in force to the very initiation or institution and continuance of such criminal proceedings, such a bar is intended to provide specific protection to an accused.

6) The Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender.

7) The process of the Court cannot be permitted to be used for an oblique or ultimate/ulterior purpose.

8) Where the allegations made and as they appeared from the record and documents annexed therewith to predominantly give rise and constitute a civil wrong with no element of criminality and does not satisfy the basic ingredients of a criminal offence, the Court may be justified in quashing the charge. Even in such cases, the Court would not embark upon the critical analysis of the evidence.

9) Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction, the Court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

10) It is neither necessary nor is the court called upon to hold a full-fledged enquiry or to appreciate evidence collected by the investigating agencies to find out whether it is a case of acquittal or conviction.

11) Where allegations give rise to a civil claim and also amount to an offence, merely because a civil claim is maintainable, does not mean that a criminal complaint cannot be maintained.

12) In exercise of its jurisdiction under Section 228 and/or under Section 482, the Court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was possibility of his acquittal. The Court has to consider the record and documents annexed with

by the prosecution.

13) Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed *prima facie*.

14) Where the charge-sheet, report under Section 173(2) of the Code, suffers from fundamental legal defects, the Court may be well within its jurisdiction to frame a charge.

15) Coupled with any or all of the above, where the Court finds that it would amount to abuse of process of the Code or that interest of justice favours, otherwise it may quash the charge. The power is to be exercised *ex debito justitiae*, i.e. to do real and substantial justice for administration of which alone, the courts exist.

21. The above guidelines of the Apex Court is examined with allegations made in the complaint by the 2<sup>nd</sup> respondent, it cannot be said that complaint is either frivolous or without any basis. The uncontroverted allegation made therein *prima facie* attracts the offences alleged against petitioner herein. In my opinion, it is premature to examine the claims of the petitioner as the investigation is under progress and facts are hazy, hence this is not a fit case to interfere at the threshold of registration of the case against the petitioner. Without expressing any opinion on the merits of the complaint or otherwise, I hold that the writ petition is devoid of merit.

Accordingly, the Writ Petition is dismissed. No costs. In view of disposal of the main matter, I.A.1/16 for direction does not survive for consideration. Accordingly, it is disposed of.

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