The State of Karnataka, Vs. Jagadeeshwarappa

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Court : Karnataka Dharwad

Decided On : Jan-23-2017

Judge : S.N.Satyanarayana

Appeal No. : CRL.RP 100048/2016

Appellant : The State of Karnataka,

Respondent : Jagadeeshwarappa

Judgement :

R IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH DATED THIS THE23D DAY OF JANUARY 2017 BEFORE THE HONBLE MR. JUSTICE S.N. SATYANARAYANA Crl.RP.No.100048/2016 BETWEEN: THE STATE OF KARNATAKA, LOKAYUKTA POLICE STATION, KOPPAL, BY SPECIAL PUBLIC PROSECUTOR, HIGH COURT OF KARNATAKA, BENCH AT DHARWAD. (BY SRI.MALLIKARJUNSWAMY B.HIREMATH, ADV.) .. PETITIONER AND:

1.

2. JAGADEESHWARAPPA S/O VIRUPAKSHAPPA PATTANAD, AGE:

47. YEARS, OCC: MOTOR VEHICLES INSPECTOR, REGIONAL TRANSPORT OFFICE, KOPPAL, (NOW WORKING AT DAVANAGERE) R/O NO.247, 10TH CROSS, 7TH MAIN, NGEF LAYOUT, NAGABHAVI, BENGALURU-72. SMT.J.P.SUNANDA W/O JAGADEESHWARAPPA, AGED ABOUT40YEARS,

OCC: TUTOR AND HORTICULTURIST, NOW RESIDING AT R/O NO.247, 10TH CROSS, 7TH MAIN, NGEF LAYOUT, NAGABHAVI, BENGALURU-72. (BY SRI.NEELENDRA D.GUNDE, ADV.) RESPONDENTS THIS PETITION IS FILED UNDER SECTION3971) R/W401OF CR.P.C. SEEKNIG TO SET ASIDE THE

ORDER
DATED210.04.2015 PASSED BY THE SESSIONS AND SPECIAL JUDGE AT KOPPAL IN SPL.CASE(PC) No.6/2013 AND CONSEQUENTLY DISMISS THE APPLICATIONS FILED BY RESPONDENTS. THIS PETITION COMING ON FOR ADMISSION THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER
The prosecution in Spl.Case(PC) No.6/2013 on the file of the Sessions and Special Judge, Koppal has come up in this revision petition impugning the order dated 10.04.2013.

2. The brief facts leading to this revision petition are as under: Respondent No.1-Jagadeeshwarappa is a Motor Vehicle Inspector, who was attached to RTO, Koppal and said to be working at Davanagere, while filing this revision petition. Respondent No.2 is his wife. They were applicants in Spl.Case(PC)No.6/2013 on the file of the Sessions and Special Judge, Koppal, where they had filed two separate applications under Section 457 of Cr.P.C. seeking defreezing of three accounts, which stood in their name respectively. The said 3+3=6 accounts in their name were 3 item Nos.7 to 12 in the list of properties, which were sought to be attached at the instance of revision petitioner in the said Spl.Case(PC)No.6/2013. The records would indicate that Lokayukta Police conducted raid on the residence of respondents, wherein in the said raid, they have unearthed 19 items of properties contending that those properties are acquired disproportionate to his known source of income. Out of 19 items, items Nos.7 to 12 are the money deposited in six accounts. The six items which are the bank accounts, three in the name of respondent No.1 and another three in the name of respondent No.2 said to be in Karnataka Bank, ING-Vysya Bank and State Bank of Mysore. In each of the bank, it is stated that both had separate one-one account in all three banks. It is seen that the total amount available in three accounts standing in the name of

respondent No.1 is approximately Rs.11,56,848/-, whereas the amount available in other three accounts standing in the name of respondent No.2 amounts to Rs.17,79,534/-. With reference to these six accounts attachment order was 4 passed on 07.08.2010 and notice of ad-interim order of attachment was served on respondent Nos.1 and 2 on 10.08.2010. It is seen that the said attachment is made by invoking the provisions of Section 4 of the Criminal Law Amendment Ordinance, 1944 (Ordinance 38 of 1944) (hereinafter referred to as the Ordinance for short) and service of notice to them, the parties were required to file their objections. Accordingly, objections were filed to the interim order of attachment passed on the aforesaid six accounts. On the said application, an order was passed by observing that, in the instant case, ad-interim order, which could be passed under Section 5(3) or under Section 1 by receiving objections. Since even before the filing of objections, attachment being passed, the aggrieved parties are at liberty to file their objections, if any, under Section 9 of the Ordinance.

3. The records would disclose that though liberty was given to respondent Nos.1 and 2 to approach the said Court by filing an application under Section 9 of the 5 Ordinance, they choose to file an application under Section 457 of Cr.P.C. seeking defreezing of six accounts. When the said application was taken up for consideration, the revision petitioner-State opposed the same on the ground that, at the first instance, filing of an application under Section 457 of Cr.P.C. seeking defreezing of the accounts, which are freezed pursuant to ad-interim order passed under Section 4 of the Ordinance cannot be considered under Section 457 of Cr.P.C. What was required to be considered is seeking appropriate relief under the provisions of Section 9 of the Ordinance itself and not reverting to the provisions of Cr.P.C., more particularly, when the seizure of properties and attachment of that is under special enactment as provided under Section 5(6) of the Prevention of Corruption of Act, 1988.

4. Therefore, the Court below could not have considered the application filed under Section 457 of Cr.P.C. and committed an error in entertaining the said application and thereafter, passing the order impugned in 6 this proceedings. Hence, the present revision petition is filed seeking recall of the said order with a direction to respondent Nos.1 and 2 to restore the account to the original position,

as it was before the order was passed for defreezing, impugned in this proceedings.

5. In this revision petition, respondent Nos.1 and 2 who are accused Nos.1 and 2 in Spl.Case(PC)No.6/2013 would object the same contending that in the first place, filing of revision petition under Section 397(2) does not arise for the reason that no revision lies against an interim order, as provided under Section 397(2). Secondly, It is contended that the proceedings which were required to be initiated under section 9 of the Ordinance pursuant to an order dated 11.05.2012 passed in FIR(PC)No.215/2009 being under Section 9 of the Ordinance, the said proceedings is similar to one which is now followed by the Court below in conducting an enquiry before ordering for defreezing the account. Though the provision of Section 9 is not invoked in the said petition, it is only Section 457 of 7 Cr.P.C. which is invoked. Both Section 457 of Cr.P.C. and Section 9 of the Ordinance could be urged before the Special Court and wrong quoting of the provisions would not come in the way of the order that is passed by the Court after conducting an enquiry as envisaged under Section 9 of the Ordinance, as is conducted in the present case. To substantiate the same, they relied upon the judgment rendered by Division Bench of this Court in the matter of Neuropsychiatry and Critical Care Hospital Private Limited, Bangalore Vs. The Authorized Officer, Bank of India, Bangalore reported in 2016(3) Kar.L.J.78(DB). Thirdly, it is contended that Section 28 of the P.C.Act, which read with Section 5(3) of the very same Act would indicate that the provisions of P.C.Act is in addition to any other law for the time being in force dealing with similar situation and the same is not in derogation of any other law. Therefore, this provision not being in derogation to the provisions of Cr.P.C. and invoking of the same is just and proper. 8 6. Per contra, the learned counsel appearing for the revision petitioner would submit that, invoking of provisions of Section 397(2) of Cr.P.C. is appropriate inasmuch as the order which is passed by the Court below is under Section 457 of Cr.P.C. When Section 457 of Cr.P.C. has no role to play in a matter where the property seized in a proceedings under P.C.Act, is required to be governed by the provisions of the Ordinance and not that of Cr.P.C. Therefore, when the correctness or otherwise of the said order is challenged in this proceedings, that would give finality to the jurisdiction of the Court. Therefore, it cannot be taken as

an interim order, which is being challenged. What is being challenged is the competence of the Court in invoking the provisions of law, which could not have been invoked under the present set of facts, when it is specifically governed under the provisions of the Ordinance, invoking Section 457 of Cr.P.C. itself is erroneous. Therefore, the said order could be tested and challenged under Section 397(2) of Cr.P.C., which would take that to finality and there would be no further 9 proceedings thereon. The learned counsel also tried to counter the arguments by citing Section 5(3) and Section 28 of P.C.Act. What is being challenged is not the manner in which the proceedings is conducted in Spl.Case(PC)No.6/2013, it is the manner in which the properties seized, which is specifically required to be dealt under the provisions of the Ordinance and is dealt under provisions of Cr.P.C. Therefore, that provision which is under the Ordinance is under the special provision which has to be understood by reading Section 5(6) of P.C.Act and not Section 5(3) r/w Section 28 of the Act. Therefore, trying to draw an analogy relying upon those two sections would take away the special status given to the prosecution under the P.C.Act and also the special provision which has come into force to deal with such similar circumstances, which is in the exclusive domain of the said Ordinance. Therefore, diluting that and then bringing it under the provisions of Section 457 of Cr.P.C. was never the intent of the legislators, while dealing with 10 P.C.Act or under the Cr.P.C. Therefore, such analogy cannot be accepted and cannot be approved.

7. In addition to that, the learned counsel for respondent Nos.1 and 2 by way of an alternate stand would state that in the instant case, the prosecution should have filed an appeal under Section 11 challenging the order impugned for the reason that though the said order is under Section 457 of Cr.P.C., for all practical purposes it should be read as under Section 9 of the Ordinance by relying upon the judgment of the Division Bench in the matter of Neuropsychiatry and Critical Care Hospitals case, referred to above.

8. Heard the learned counsel appearing for both the parties. After giving careful consideration, this Court would observe as under: Admittedly, the proceedings in Spl.Case (PC)No.6/2013 is initiated by prosecution pursuant to a raid conducted on the residence of respondent Nos.1 and 2. Respondent No.1 is admittedly a

government official 11 who was working as Motor Vehicle Officer attached to RTO at the relevant point of time. The accusation against him is that he has amassed wealth disproportionate to his known source of income. According to the prosecution, in all 19 items of properties are brought to the notice of the Court at Sl.Nos.1 to 19, in the list of properties which are sought to be attached in a proceedings initiated in FIR(PC)No.215/2009, which was registered as a complaint immediately after the raid. As could be seen, out of 19 properties, 6 properties are the bank accounts in three different banks, where one account each is maintained in the name of respondent Nos.1 and 2 herein, thereby indicating that there are total 6 accounts in which a total sum of Rs.11,56,848/- is standing to the credit of respondent No.1 and Rs.17,79,534 standing to the credit of respondent No.2. When the complaint was filed along with list of properties, the attachment was sought against the said properties. As against an application which was filed in FIR(PC)No.215/2009, when it was still at the stage of complaint, an order was passed under Section 4 of the 12 Ordinance creating attachment over the aforesaid 6 properties. While passing the order of attachment, simultaneously notice was also ordered calling upon respondent Nos.1 and 2 herein who are accused in the said complaint to file their objections, if any. The objections were filed by them as contemplated under Section 5(3)(1) of the Ordinance. The Court below, i.e., the Sessions Court, Koppal, when it was still at the stage of complaint passed an order reserving liberty to respondent Nos.1 and 2 to challenge the order of attachment by invoking the provisions of Section 9 of the Ordinance before the competent Court. Section 9 of the Ordinance reads as under: 9. Administration of attached property: (1) The District Judge may, on the application of any person interested in any property attached under this Ordinance and after giving the agent of the (State Government or as the case may be, the Central Government) an opportunity of being heard, make such orders as the District Judge considers just and reasonable for: providing for (Added by Prevention of Corruption Act, 1988) (a) from such of the attached property as the applicant claims as interest in, such sums as may be reasonably necessary the maintenance of the applicant where criminal proceedings have been instituted against him in any Court for a scheduled offence; 13 (b) safeguarding so far as may be practicable the interests of any business affected by the attachment and in particular, the interest of any partners

in such business (2) Where it appears to the District Judge to be just and convenient he may by order appoint a receiver to manage any property attached under this ordinance in accordance with such instructions as the District Judge may from time to time think fit to give; and where a receiver is so appointed, the provisions of Rules 2, 3, 4 and 5 of Order XL of the First Schedule to the Code of Civil Procedure, 1908 shall be applicable. (9-A. Administration of attached property where Court ordering attachment has ceased to exercise jurisdiction in India: Where any property has been attached under this Ordinance by order of a District Judge made before the 15th day of August, 1947, and such District Judge has after that date ceased to exercise jurisdiction in the territories to which this Ordinance extends; that order of attachment shall be deemed to an order made by the District Judge within the local limits of whose jurisdiction the Court taking cognizance of the scheduled offence is situate and all functions of the District Judge under this Ordinance in regard to the attached property shall be exercised by that District Judge. 9. Now, what is to be seen is who is the competent Court. The District and Sessions Court is the competent Court. However, all the District and Sessions Courts are not competent to deal with the offence punishable under the provisions of P.C.Act. It is only a designated Court, which is the special Court, which can deal with these matters. 14 10. In the instant case, as could be seen, the complaint is filed before the Court of Sessions at Koppal. However, after charge sheet was filed in the year 2013, the matter is committed to special Court, i.e., to the designated Court, which is the Court competent to deal with the offence punishable under the provisions of P.C.Act. Admittedly, the Court before which respondent Nos.1 and 2 would have filed an application seeking relaxation of the attachment is the special Court to which they have approached. However, though the said Court is the competent Court, that Court cannot invoke the provisions of Cr.P.C., so far as creating, raising, modifying or altering the attachment, which is made under the provisions of the Ordinance. Admittedly, in this proceeding, the initial attachment, which is done on 28.07.2010 is under the provisions of the aforesaid Ordinance. As could be seen from the records, the sessions Court while passing the order on the objections filed by respondent Nos.1 and 2 under Section 5 of the P.C.Act has observed that the attachment which is made pursuant to 15 the provisions of the Ordinance can be challenged either seeking recall or

defreezing or any other modified order after charge sheet is filed from the competent Court by invoking the provisions of Section 9 of the Ordinance. Section 5(6) of the P.C. Act reads as under: Section 5(6): A special Jduge, while trying an offence punishable under this Act, shall exercise all the powers and functions exercisable by a District Judge under the Criminal Law Amendment Ordinance Act, 1944 (Ordinance 38 of 1944). 11. Therefore, at the first stage itself, the Court below has clearly indicated that the Court before which the application could be filed and the manner in which the application could be filed. However, it is seen, in the instant case, though the provisions of Section 457 of Cr.P.C. is not applicable to the case on hand, respondent Nos.1 and 2 have wrongly initiated the said proceedings seeking defreezing of their accounts. At this juncture, it is necessary to read Section 457 of Cr.P.C., which reads as under: Section 457. Procedure by police upon seizure of property.- (1) Whenever the seizure of property by any police officer is reported to a Magistrate under the provisions of this Code, and such property is not 16 produced before a Criminal Court during an inquiry or trial, the Magistrate may make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or if such person cannot be ascertained, respecting the custody and production of such property. (2) If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit and if such person is unknown, the Magistrate may detain it and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto, to appear before him and establish his claim within six months from the date of such proclamation. 12. When the provisions of Section 457 of Cr.P.C. as above is read, it clearly indicate that, whenever the seizure of property by any police officer is reported to a Magistrate under the provisions of this Code and such property is not produced before a Criminal Court during an inquiry or trial. In the instant case, seizure of property is not by the police officer, which is by the special police under Lokayukta Act and it is not reported to a Magistrate as envisaged under Section 457 of Cr.P.C. It is reported to the Sessions Court, which has the jurisdiction to look into these matters. Therefore, at the threshold itself, it is clearly seen that this particular provision has no 17 application in the present set of

facts, thereby indicating that the intention of the legislators were not to permit the accused in the proceedings in special case (PC) Act to seek either release of the property or raising of attachment and defreezing the accounts or modification of any order with reference to any of the properties, against which charge is created by invoking the provisions of the Ordinance, which is governed by the P.C.Act, as envisaged under Section 5(6) of the said Act, which is not the domain of the Sessions Court or any other Court or even for the special Courts to consider under Section 457 of Cr.P.C. Therefore, the contention raised in that behalf trying to invoke the provisions of Section 5(3) r/w Section 28 of the P.C.Act does not stand to reason.

13. So far as the alternate argument put forth in contending that the order which is passed by the Court below is a special Court, which is empowered to pass the order under the Ordinance, more particularly, under Section 9 of the Ordinance. Though the provision is 18 wrongly invoked under Section 457 of Cr.P.C., what is to be looked into is the manner in which the Court has exercised its jurisdiction not the nomenclature of the section is the second leg of argument by relying upon the judgment rendered by Division Bench of this Court in the case of Neuropsychiatry and Critical Care Hospitals case referred to above. This Court cannot accept that line of argument for this reason. In the said judgment, what was observed is invoking a wrong provision under the particular Act or a Court or a Statue. It is not wrongful invoking the provision under Cr.P.C., the provision which is required to be invoked under the Ordinance as envisaged under Section 5(6) of the P.C.Act. Such kind of wide analogy cannot be attached to the aforesaid judgment to take that out of the provision to the Ordinance and to bring it out of the special provision of the Ordinance and to invoke the same, more particularly, when it is required to be invoked before the Magistrate in the event of properties are attached and placed before the Magistrate and not in a procedure where the property is attached by the 19 Lokayukta police and placed before the sessions Court pursuant to the provisions of P.C.Act. Therefore, the alternate argument cannot be accepted.

14. In the light of the aforesaid discussion, this Court feel that in the present set of facts and circumstances, what is required to be followed is the Court below in

ensuring that respondent Nos.1 and 2 filing an application under Section 9 of the Ordinance as they were permitted to do under earlier order dated 11.05.2012 in FIR(PC)No.215/2009. While considering the objections to the attachment under Section 4(3) of the Ordinance, the Court below had rightly indicated that the modification of the same can be secured only under Section 9 of the Ordinance and by relying upon the objection already raised under Section 4(3), which was kept open. In that view of the matter, not resorting to the same and resorting to the provisions of Section 457 of Cr.P.C. is erroneous and any order passed thereunder is non-est order. In that view of the matter, the order impugned in this proceedings is 20 required to be set aside and respondent Nos.1 and 2 are directed to ensure that the aforesaid six accounts are restored to the same position when they were subjected to charge under Section 5(3)(1) of the P.C.Act on 28.07.2010. With such observation, this revision petition is allowed. Copy of this order is sent to all the Sessions Judges for information. MBS/- Sd/- JUDGE