

Sri Sudarshan Vs. State Of Karnataka

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Court : Karnataka

Decided On : Aug-11-2020

Judge : K.S.Mudagal

Appeal No. : CRL.P 3480/2019

Appellant : Sri Sudarshan

Respondent : State Of Karnataka

Advocate for Pet/Ap. : Sri. H.M.Muralidhar

Judgement :

Crl.P.No.3480/2019 1 IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE11H DAY OF AUGUST 2020 BEFORE R THE HONBLE MRS. JUSTICE K.S.MUDAGAL CRIMINAL PETITION No.3480/2019 BETWEEN: SRI SUDARSHAN S/O P.G.SRINATH AGED ABOUT50YEARS DEPUTY SUPERINTENDENT OF POLICE INTERNAL SECURITY DIVISION SHIVAMOGGA (UNDER SUSPENSION) R/AT NO.57, 2ND CROSS4H BLOCK, BANASHANKARI3D STAGE BENGALURU - 560 085 PETITIONER (BY SRI H.M.MURALIDHAR, ADVOCATE) AND:

1. STATE OF KARNATAKA ANTI CORRUPTION BUREAU (ACB) POLICE SHIVAMOGGA DISTRICT SHIVAMOGGA - 577 201 2. MR.FIROZE S/O BHASHA AGED ABOUT45YEARS RESIDING NEAR MECCA MASJID CHENNAGIRI, CHENNAGIRI TALUK DAVANAGERE - 577 213 RESPONDENTS

(BY SRI P.N.MANMOHAN, SPL.P.P. FOR R1; R2 SERVED AND UNREPRESENTED) CrI.P.No.3480/2019 2 THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C. PRAYING TO QUASH THE FIR AND THE PROCEEDING PENDING BEFORE THE DISTRICT AND SESSIONS JUDGE AND SPECIAL JUDGE AT SHIVAMOGGA SPL(PC) IN CRIME NO.1/2019 IN SO FAR AS THE PETITIONER IS CONCERNED ETC. THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR

ORDER

S ON 30th JULY 2020 COMING ON FOR PRONOUNCEMENT OF

ORDER

THIS DAY, THE COURT THROUGH VIDEO CONFERENCE MADE THE FOLLOWING:

ORDER

Whether the proceedings in Crime No.1/2019 of Anti Corruption Bureau Police Station, Shimoga against the petitioner amount to abuse of process of Court and lead to failure of justice is the question involved in this case ?.

2. During 2018 and 2019 petitioner was serving as Deputy Superintendent of Police, Shimoga District. Respondent Police registered FIR as Crime No.1/2019 against one Yellappa - the Police Constable of Shimoga Rural Police Station for the offence punishable under Section 7(a) of the Prevention of Corruption Act, 1988 (PC Act for short) on the basis of complaint of one Firoze, S/o Basha. CrI.P.No.3480/2019 3 3. The gist of the said complaint is as follows: (i) The complainant's friend induced him saying that he is in sand business and the complainant can also mine, transport and sell the sand with some adjustments with the Police. Saying so complainant's friend furnished the phone number of police constable Yellappa. On 28.12.2018 when complainant contacted Yellappa over phone, Yellappa asked him to meet on 29.12.2018. (ii) On the complainant meeting Yellappa, he represented that legally it is not permissible to mine and transport the sand, that can only be done on corrupt adjustment with the Police Officers i.e., Deputy Superintendent of Police (Dy SP for short), Circle Police

Inspector, Crime Police Sub-Inspector and Special Branch Police etc. Accordingly, he tried to contact Dy SP and was asked to come and meet on the following day. Complainant paid Rs.3,000/- to Yellappa. CrI.P.No.3480/2019 4 (iii) On 30.12.2018 at 7.45 p.m. he met Dy SP with Yellappa. Dy SP enquired him about how many vehicles he has and asked him to get the vehicle numbers noted and sent out. After coming out Yellappa noted the bribe to be paid in a small book and handed over the same to the complainant. Yellappa received Rs.10,000/- from the complainant and asked him to get the balance amount at the earliest. The complainant spoke to PSI also over phone. Thereafter the complainant received repeated phone calls to come and pay the money. (iv) On 03.01.2019 Yellappa demanded to come and pay money near Cheloor cross. On the same day at 1.25 p.m. he has paid Rs.10,000/- to OP Police and they are demanding further Rs.50,000/- which he is not willing to pay. Therefore, he seeks action against Yellappa.

4. On the basis of such complaint, respondent Police said to have conducted trap and arrested Yellappa while receiving the illegal gratification. The bait money CrI.P.No.3480/2019 5 and other incriminating materials were allegedly seized under the mahazar. According to the prosecution, during the investigation the Call Detail Records and the other materials unfolded the complicity of the petitioner in the crime. Therefore, the Investigating Officer issued notices vide Annexures-R1 to R4 under Section 160 of Cr.P.C. summoning the petitioner to cooperate for the investigation. Lastly on 07.02.2019 the petitioner appeared before the Investigating Officer.

5. The Investigating Officer found that the voice samples of the petitioner were required for the purpose of comparing them with the voice in the phone conversation recordings allegedly held between the complainant and the petitioner. According to the prosecution, the petitioner consenting for recording his voice samples vide consent letter Annexure-R.5 gave his voice samples. On recording such voice samples, the Investigating Officer gave the requisition to the jurisdictional Court on 07.02.2019 to include the petitioner and one B.H.Bharathi Women Police Sub-Inspector in the case as co-accused and submitted the PF. CrI.P.No.3480/2019 6 6. The petitioner challenges the said proceedings in this

petition on the following grounds: i) The collection of voice samples is barred by Article 20(3) of the Constitution of India; ii) Absolutely there is no material to proceed against the petitioner. Therefore proceeding against him amounts to abuse of the process of the Court. iii) The Investigating Officer has proceeded against the petitioner without prior permission of the Court.

7. Reiterating the aforesaid grounds Sri H.M.Muralidhar, learned Counsel for the petitioner submits that since collection of voice samples of the petitioner is contrary to Article 20(3) of the Constitution, the proceedings against the petitioner amounts to abuse of the process of the Court and failure of ends of justice. He further submits that in the complaint absolutely there are no allegations against the petitioner, therefore further investigation against him amounts to abuse of the process of the Court. He contends that the Investigating Officer has proceeded against the petitioner without prior CrI.P.No.3480/2019 7 permission of the Court. In support of his contentions, he relies upon the following judgments: (i) State of Haryana v. Bhajan Lal¹ (ii) Ritesh Sinha v. State of U.P.²

8. Sri P.N.Manmohan, learned Special Public Prosecutor for respondent No.1 opposes the petition on the ground that absolutely there is no merit in the contentions raised by the petitioner. He submits that the complaint itself divulges the name of the petitioner as one of the participants in the crime, therefore, it cannot be said that absolutely there is no material. Sri P.N.Manmohan further submits that the law is well settled by the judgment of the Constitutional Bench of the Supreme Court that collection of voice samples, finger prints, DNA by the Investigating Officer does not violate Article 20(3) of the Constitution, as such samples are taken only for the purpose of co-relating them with the other evidence collected regarding the complicity of the accused. He submits that since the offence is cognizable [1]. 1992 Supp (1) SCC335[2]. (2019) 8 SCC1CrI.P.No.3480/2019 8 one, permission of the Magistrate is not required to register the FIR and conduct the investigation. In support of his contentions, he relies upon the following judgments: (i) Rajiv Thapar v. Madan Lal Kapoor³ (ii) Selvi v. State of Karnataka⁴ (iii) State of Bombay vs. Kathi Kalu Oghad⁵ Reg. Invocation of power under Section 482 of Cr.P.C.:

9. This Court can exercise power under Section 482 of Cr.P.C. to quash the proceedings, only if it is satisfied that there is abuse of the process of the Court or such quashing is necessary to secure the ends of justice. What amounts to abuse of the process of the Court is expounded by the Honble Supreme Court in Bhajan Lals case and Rajiv Thapars case referred to supra setting out various illustrations.

10. In para 102 of the judgment in Bhajan Lals case referred to supra, the Honble Supreme Court identified seven categories of cases where power under Section 482 3 (2013) 3 SCC3304 (2010) 7 SCC263Crl.P.No.3480/2019 9 of Cr.P.C. can be exercised to prevent the abuse of the process of the Court or to secure the ends of justice. The portion of para 102 of the said judgment relevant for the purpose of this case reads as follows: 102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under section 482 of the code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised. (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused. Crl.P.No.3480/2019 10 (2) XXXX (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused. (4) XXXX (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused. (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings

and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party. (7) XXXX11

The note of caution was that illustrations quoted therein were not exhaustive and the Court has to decide based on the facts and circumstances of each case. Crl.P.No.3480/2019 11 Referring to Bhajan Lals case and several other earlier judgments in Rajiv Thapars case referred to supra, the Honble Supreme Court held that the following tests shall be applied by the High Court to determine the veracity of a prayer for quashing of the proceedings raised by the accused by invoking the power vested in the High Court under Section 482 of Cr.P.C. 28. The High Court, in exercise of its jurisdiction under Section 482 of the Cr.P.C., must make a just and rightful choice. This is not a stage of evaluating the truthfulness or otherwise of allegations levelled by the prosecution/complainant against the accused. Likewise, it is not a stage for determining how weighty the defences raised on behalf of the accused is. Even if the accused is successful in showing some suspicion or doubt, in the allegations levelled by the prosecution/complainant, it would be impermissible to discharge the accused before trial. This is so, because it would result in giving finality to the accusations levelled by the prosecution/complainant, without allowing the prosecution or the complainant to adduce evidence to substantiate the same. The converse is, however, not true, because even if trial is proceeded with, the accused is not subjected to any irreparable consequences. The accused would still be in a position to succeed, by establishing his defences by producing evidence in accordance with law. There is an endless list of judgments rendered by this Court declaring the legal position, that in a case where the Crl.P.No.3480/2019 12 prosecution/complainant has levelled allegations bringing out all ingredients of the charge(s) levelled, and have placed material before the Court, prima facie evidencing the truthfulness of the allegations levelled, trial must be held.

29. The issue being examined in the instant case is the jurisdiction of the High Court under Section 482 Cr.P.C., if it chooses to quash the initiation of the prosecution against an accused at the stage of issuing process, or at the stage of committal, or even at the stage of framing of charges. These are all stages before the commencement of the actual trial. The same parameters would naturally be available for later stages as well. The power vested in the High Court under

Section 482 Cr.P.C., at the stages referred to hereinabove, would have far-reaching consequences inasmuch as it would negate the prosecutions/complainants case without allowing the prosecution/complainant to lead evidence. Such a determination must always be rendered with caution, care and circumspection. To invoke its inherent jurisdiction under Section 482 of the Cr.P.C. the High Court has to be fully satisfied, that the material produced by the accused is such that would lead to the conclusion that his/their defence is based on sound, reasonable, and indubitable facts; the material produced is such as would rule out and displace the assertions contained in the CrI.P.No.3480/2019 13 charges levelled against the accused; and the material produced is such as would clearly reject and overrule the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. It should be sufficient to rule out, reject and discard the accusations levelled by the prosecution/complainant, without the necessity of recording any evidence. For this the material relied upon by the defence should not have been refuted, or alternatively, cannot be justifiably refuted, being material of sterling and impeccable quality. The material relied upon by the accused should be such as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 Cr.P.C. to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice. (Emphasis supplied)

12. Out of the guidelines laid down in the aforesaid judgment, the petitioner tries to bring his case in illustration Nos.1,2 5 and 6 of para 102 of Bhajan Lals case and Article 20(3) of the Constitution. CrI.P.No.3480/2019 14 13. Therefore, the Court has to examine, i) Whether the prosecution against the petitioner is hit by Article 20(3) of the Constitution ?. ii) Whether permission of the Magistrate/Court was required to take the voice samples ?. and iii) Whether absolutely there was no material to proceed against the petitioner by the Investigating Officer?. Reg. Article 20(3) of the Constitution:

14. The petitioner contends that recording of the voice samples in the investigation is violative of his fundamental right under Article 20(3) of the Constitution and in the light of such express legal bar the collection of voice samples of the petitioner by the Investigating Officer vitiates entire case against him. Therefore, it was

urged that proceeding against petitioner requires to be quashed.

15. The collection of voice samples of the accused is similar to collection of handwritings, finger prints, DNA, thumb impressions etc. While dealing with issue whether collection of such samples amounts to accused being witness against himself as contemplated under Article CrI.P.No.3480/2019 15 20(3) of the Constitution, the Bench consisting of 11 Judges of the Honble Supreme Court in Kathi Kalu Oghads case referred to supra in paras 10 & 11 of the judgment held as follows:

"10. To be a witness" may be equivalent to "furnishing evidence" in the sense of making oral or written statements, but not in the larger sense of the expression so as to include giving of thumb impression or impression of palm or foot or fingers or specimen writing or exposing a part of the body by an accused person for purpose of identification. . The taking of impressions or parts of the body of an accused person very often becomes necessary to help the investigation of a crime. It is as much necessary to protect an accused person against being compelled to incriminate himself, as to arm the agents of law and the law courts with legitimate powers to bring offenders to justice. 11. The matter maybe looked at from another point of view. The giving of finger impression or of specimen signature or of handwriting, strictly speaking, is not "to be a witness". "To be a witness" means imparting knowledge in respect of relevant fact, by means of oral statements or statements in writing, by a person who has personal knowledge of the facts to be communicated to a court or to a person holding an enquiry or investigation It is well-established that clause (3) of Article 20 is directed against self- incrimination by an accused person. Self- incrimination must mean conveying information based upon the personal knowledge of the person giving the CrI.P.No.3480/2019 16 information and cannot include merely the mechanical process of producing documents in court which may throw a light on any of the points in controversy, but which do not contain any statement of the accused based on his personal knowledge. For example, the accused person may be in possession of a document which is in his writing or which contains his signature or his thumb impression. The production of such a document, with a view to comparison of the writing or the signature or the impression, is not the statement of an accused

person, which can be said to be of the nature of a personal testimony. When an accused person is called upon by the Court or any other authority holding an investigation to give his finger impression or signature or a specimen of his handwriting, he is not giving any testimony of the nature of a 'personal testimony'. The giving of a "personal testimony" must depend upon his volition. He can make any kind of statement or may refuse to make any statement. But his finger impressions or his handwriting, in spite of efforts at concealing the true nature of it by dissimulation cannot, change their intrinsic character. Thus, the giving of finger impressions or of specimen writing or of signatures by an accused person, though it may amount to furnishing evidence in the larger sense, is not included within the expression to be a witness. (Emphasis supplied) 16. Relying on the said judgment in Selvis case referred to supra again on reference with regard to narcoanalysis test, etc, the Honble Supreme Court in Paragraphs 153 and 173 held as follows: I-B. Whether the results derived from the impugned techniques amount to testimonial Crl.P.No.3480/2019 17 compulsion thereby attracting the bar of Article 20(3)?.

153. Since the majority decision in Kathi Kalu Oghad (supra.) is the controlling precedent, it will be useful to restate the two main premises for understanding the scope of testimonial compulsion. The first is that ordinarily it is the oral or written statements which convey the personal knowledge of a person in respect of relevant facts that amount to personal testimony thereby coming within the prohibition contemplated by Article 20(3). In most cases, such personal testimony can be readily distinguished from material evidence such as bodily substances and other physical objects. The second premise is that in some cases, oral or written statements can be relied upon but only for the purpose of identification or comparison with facts and materials that are already in the possession of the investigators. The bar of Article 20(3) can be invoked when the statements are likely to lead to incrimination by themselves or furnish a link in the chain of evidence needed to do so. We must emphasize that a situation where a testimonial response is used for comparison with facts already known to investigators is inherently different from a situation where a testimonial response helps the investigators to subsequently discover fresh facts or materials that could be relevant to the ongoing investigation.

173. However, it must be borne in mind that even though the impugned techniques have not been expressly enumerated in the Cr PC, there is no statutory prohibition against them either. It is a clear case of silence in the law. Furthermore, in circumstances where an individual consents to undergo these tests, there is no dilution of Article 20(3). In the past, the meaning and scope of the term investigation has been held to include measures that had not been enumerated in statutory provisions. For example, prior to the enactment of an express provision for medical examination in the Cr PC, it was observed in *Mahipal Maderna v. State of Rajasthan*, 1971 CrL J 1405(Raj), that an order requiring the production of a CrL.P.No.3480/2019 18 hair sample comes within the ordinary understanding of investigation. (Emphasis supplied) 17. In *Ritesh Sinhas* judgment relied upon by the learned Counsel for the petitioner himself, while considering whether collection of voice sample violates the fundamental right under Article 20(3) of the Constitution, negating the said contention in para 26 and 27 it was held as follows: 26. Would a judicial order compelling a person to give a sample of his voice violate the fundamental right to privacy under Article 20(3) of the Constitution, is the next question. The issue is interesting and debatable but not having been argued before us it will suffice to note that in view of the opinion rendered by this Court in *Modern Dental College and Research Centre and others vs. State of Madhya Pradesh and others*¹¹, *Gobind vs. State of Madhya Pradesh and another*¹² and the Nine Judges Bench of this Court in *K.S. Puttaswamy and another vs. Union of India and others*¹³ the fundamental right to privacy cannot be construed as absolute and but must bow down to compelling public interest. We refrain from any further discussion and consider it appropriate not to record any further observation on an issue not specifically raised before us. (2016) 7 SCC353(1975) 2 SCC148(2017) 10 SCC127. In the light of the above discussions, we unhesitatingly take the view that until explicit provisions are engrafted in the Code of Criminal Procedure by Parliament, a Judicial Magistrate must be conceded the power to order a person to give a sample of his voice for the purpose of investigation of a crime. Such power has to be conferred on a Magistrate by a process of judicial interpretation and in exercise of CrL.P.No.3480/2019 19 jurisdiction vested in this Court under Article 142 of the Constitution of India. We order accordingly and consequently dispose the appeals

in terms of the above. (Emphasis supplied) 18. Annexure-R5 produced by learned Counsel for respondent No.1 purports to be the consent letter of the petitioner to the Investigating Officer conceding for collection of his voice samples. Therefore, prima-facie the requirement of collecting samples with consent of the accused as contemplated in Selvis case is also complied.

19. In the light of the judgment in Selvis case, Kathi Kalu Oghads case and Ritesh Sinhas referred to supra, there is no merit in the contention that collection of voice samples for the purpose of comparing that with voice in phone conversation records amounts to self incrimination and violative of Article 20(3) of the Constitution. Reg. Permission of the Magistrate to collect voice samples and proceed against the accused:

20. It was contended that the Investigating Officer has collected voice samples without prior permission of the Court, therefore, the proceedings amount to abuse of the CrI.P.No.3480/2019 20 process of the Court. It was further contended that on collecting voice samples, the Investigating Officer submitted requisition before the Magistrate on 07.02.2019 to arraign the petitioner as accused and the Magistrate has not passed any order on such application and in the absence of such orders the Investigating Officer proceeding against the petitioner amounts to abuse of process of the Court.

21. The first information report is registered for the offence punishable under Section 7(a) of the PC Act which is punishable with imprisonment upto seven years. That is covered under Entry II of Second Table in Schedule I to Cr.P.C. relating to the Classification of offences under other laws as cognizable offences. There is no dispute about that. Section 156 of Cr.P.C. authorizes the Investigating Officer to investigate in cognizable offences without the order of the Magistrate. Therefore, there is no merit in the contention that prior permission of the Magistrate was required for collection of voice samples or prior permission of the Magistrate was required to arraign the petitioner as accused in the case. CrI.P.No.3480/2019 21 22. Similarly Section 154 of Cr.P.C. authorizes the police officer in charge of the police station to register the first information report in cognizable offences without prior permission of the Magistrate. Only in non-

cognizable cases, Sections 155(1) and (2) require the Investigating Officer to refer the informant to the Magistrate and bar him from proceeding with investigation without prior permission of the Magistrate but not in cognizable offences. Further, the petitioner himself in para 6 of the petition admits that the Sessions Judge has accorded permission. Even otherwise, since the offence was cognizable one, as discussed above, permission of the Magistrate for registering the FIR against the petitioner or conducting of the investigation was not required. Therefore, the said ground of the petition fails. WHETHER ABSOLUTELY THERE WAS NO MATERIAL TO PROCEED AGAINST THE PETITIONER.

23. It was contended that initially the complaint was filed only against Yellappa and absolutely there was no material to proceed against the petitioner. Per contra, on behalf of respondent No.1, it was contended that CrI.P.No.3480/2019 22 complaint implicates the petitioner also, during investigation call detail records were collected containing conversations between the petitioner and the complainant and they were matching with the voice samples of the petitioner. It was further contended that since there was material against the petitioner, the charge sheet against the petitioner is ready for submission.

24. For quashing of the proceedings for want of material against the accused, even as per the judgment in Bhajan Lals case relied upon by the learned Counsel for the petitioner himself, condition is that the allegations made in the complaint on their face value should not disclose any prima-facie offence against the petitioner.

25. This petition was filed soon after voice sample of the petitioner was taken. Investigation was still in progress. In the complaint, the complainant states that Yellappa constable accepted bribe stating that the complainant has to make adjustments with the Deputy Superintendent of Police, Circle Inspector of Police, Police Sub-Inspector and Assistant CrI.P.No.3480/2019 23 Sub-Inspector of Police. It further states that as directed by Yellappa, the complainant spoke to Deputy Superintendent of Police on phone on 30.12.2018. It is further stated in the complaint that the Deputy Superintendent of Police enquired as to how many vehicles complainant has and got noted the vehicle numbers and amount to be paid in the small book. Complainant allegedly went on paying the money. The

copy of the remand application produced by the petitioner at Annexure-C states that note book entries and the call detail records indicate that the petitioner and the police Sub-Inspector were involved in the case.

26. Petitioner has not placed any material as contemplated in Rajiv Thapars case referred to supra to dispel or demolish the case of the prosecution. Now it is settled law that the power under Section 482 of Cr.P.C. to quash the proceedings should be sparingly used that too at the stage of investigation. The case on hand does not meet the tests suggested in Rajiv Thapars case or Bhajan Lals case referred to supra. Absolutely no grounds are made out to exercise the inherent power under Section CrI.P.No.3480/2019 24 482 Cr.P.C. to quash the proceedings. Therefore, the petition is dismissed. Sd/- JUDGE akc/KSR

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