

D K Shivakumar, Vs. State Of Karnataka

D K Shivakumar, Vs. State Of Karnataka

SooperKanoon Citation : sooperkanoon.com/1234684

Court : Karnataka

Decided On : Jul-07-2023

Judge : M.Nagaprasanna

Appeal No. : CRL.P 3432/2023

Appellant : D K Shivakumar,

Respondent : State Of Karnataka

Judgement :

- 1 - NC:

2023. KHC:23468 CRL.P No.3432 of 2023 IN THE HIGH COURT OF KARNATAKA AT BENGALURU R DATED THIS THE7H DAY OF JULY, 2023 BEFORE THE HON'BLE MR JUSTICE M.NAGAPRASANNA CRIMINAL PETITION No.3432 OF 2023 BETWEEN: D.K. SHIVAKUMAR, S/O D.K. KEMPEGOWDA, AGED ABOUT59YEARS, K.P.C.C PRESIDENT, BENGALURU CITY. PETITIONER (BY SRI. ARNAV A. BAGALWADI, ADVOCATE) AND:

1. STATE OF KARNATAKA, THROUGH H.GATE P S, REPRESENTED BY SPP OFFICE, HIGH COURT OF KARNATAKA, BENGALURU - 560 001.

2. THIMMARAYAPPA C., FATHER NAME NOT KNOWN, AGE NOT KNOWN, POLICE SUB-INSPECTOR, H.GATE P.S, KARNATAKA - 5. RESPONDENTS (BY SRI. MAHESH SHETTY, HCGP FOR R-1 AND R-2) - 2 - NC:

2023. KHC:23468 CRL.P No.3432 of 2023 THIS CRL.P IS FILED UNDER SECTION 482 OF CR.P.C PRAYING TO QUASH THE PRIVATE COMPLAINT IN PCR NO.1453/2021 DATED 23.01.2021 THE

ORDER

OF COGNIZANCE DATED 25.01.2021 IN PCR NO.1453/2021 AND ALL FURTHER PROCEEDINGS IN C.C.NO.3169/2022 PRODUCED AS ANNEXURE A AND B AND C PENDING ON THE FILE OF THE 42d ACMM BENGALURU FOR THE OFFENCE P/U/S.188 OF IPC SEC.31 R/W SEC.103 OF KARNATAKA POLICE ACT. THIS PETITION, COMING ON FOR ADMISSION, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The petitioner is before this Court calling in question an order dated 25.01.2021 by which the concerned Court takes cognizance of the offences pursuant to PCR.No.1453/2021 and registers a C.C.No.3169/2022 for offences punishable under Section 51(b) of the Disaster Management Act, 2005 ('Act' for short) and Section 188 of the Indian Penal Code, 1860 ('IPC' for short).

2. Heard Sri. Arnav A. Bagalwadi, learned counsel appearing for the petitioner and Sri. Mahesh Shetty, learned HCGP appearing for respondents No.1 and 2. * Page No.2 is re-typed and replaced vide Chamber order dated 19.07.2023 - 3 - NC:

2023. KHC:23468 CRL.P No.3432 of 2023 3. The brief facts that leads the petitioner to this Court in the subject petition as borne out from the pleadings are as follows: The petitioner along with others are said to have taken out a protest with about 350 people against the BBMP regarding increase of property tax. The allegation is, it was taken, despite the guidelines of Covid-19 existing at that point in time. The crime comes to be registered on 04.01.2022 on the said allegation. The learned Magistrate by his order dated 25.01.2022, takes cognizance of the offence and registers a C.C.No.25317/2022 and issue summons to the accused. The petitioner is accused No.1. The taking of cognizance is what drives the petitioner to this Court in the subject petition.

4. The learned counsel appearing for the petitioner would contend that there has been violation of Section 60 of the Act, inasmuch as no notice as is required under Section 60(2) has been issued to the petitioner, prior to taking of the cognizance of the offence under Section 51(b) of the Act. He would submit that Section 188 of the IPC is an offshoot of - 4 - NC:

2023. KHC:23468 CRL.P No.3432 of 2023 Section 51 of the Act and therefore, proceedings should be quashed.

5. The learned High Court Government Pleader on the other hand would seek to refute the submissions to contend that the charge sheet has already been filed and therefore, the further proceedings must be permitted to be continued, as the petitioners are guilty of violating the Act.

6. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material available on record.

7. The afore-narrated facts are not in dispute. The issue lies in a narrow compass, as to whether the learned Magistrate could have taken cognizance of the offence under Section 51(b) of the Act. To consider the said issue, it is germane to notice certain provisions of the Act. Section 51 of the Act deals with punishment for obstruction and reads as follows:

"51. Punishment for obstruction, etc.-(1) Whoever, without reasonable cause- -(1) Whoever, without reasonable cause-" - 5 - NC:

2023. KHC:23468 CRL.P No.3432 of 2023 (a) obstructs any officer or employee of the Central Government or the State Government, or a person authorised by the National Authority or State Authority or District Authority in the discharge of his functions under this Act; or (b) refuses to comply with any direction given by or on behalf of the Central Government or the State Government or the National Executive Committee or the State Executive Committee or the District Authority under this Act, shall on conviction be punishable with imprisonment for a term which may extend to one year or with fine, or with both, and if such obstruction or refusal to comply with directions results in loss of lives or imminent danger thereof,

shall on conviction be punishable with imprisonment for a term which may extend to two years. notes on clauses Clauses 51 to 58 (Secs. 51 to

58) seeks to lay down what will constitute an offence in terms of obstruction of the functions under the Act, false claim for relief, misappropriation of relief material or funds, issuance of false warning, failure of an officer to perform the duty imposed on him under the Act without due permission or lawful excuse, or his connivance at contravention of the provisions of the Act. The clauses also provide for penalties for these offences. (Emphasis supplied) Section 51(b) of the Act directs that whoever would refuse to comply with any direction given by or on behalf of the Government, as the case would be, become an offence under the Act.-. 6 - NC:

2023. KHC:23468 CRL.P No.3432 of 2023 8. Section 60 of the Act deals with cognizance for the offences and reads as follows:

"60. Cognizance of offences.-No court shall take cognizance of an offence under this Act except on a complaint made by- (a) the National Authority, the State Authority, the Central Government, the State Government, the District Authority or any other authority or officer authorised in this behalf by that Authority or Government, as the case may be; or (b) any person who has given notice of not less than thirty days in the manner prescribed, of the alleged offence and his intention to make a complaint to the National Authority, the State Authority, the Central Government, the State Government, the District Authority or any other authority or officer authorised as aforesaid."

(Emphasis supplied) Section 60(b) mandates that, if cognizance is to be taken for an offence punishable under Section 51 of the Act, a person who is arrayed as accused should have been given a notice not less than 30 days in the manner prescribed.

9. The prescription is in terms of the Rules. Rules, i.e. the Disaster Management (notice of alleged offence) Rules, 2007. Rule 3 of the said Rules, reads as follows:

"3. Notice of alleged offence and intention to make a complaint .-A notice under clause (b) of section - 7 - NC:

2023. KHC:23468 CRL.P No.3432 of 2023 60 of the Act by a person, of the alleged offence and his intention to make a complaint shall be delivered to, or left at, the office of one of the following- (a) in the case of the Central Government, except where the complaint relates to a railway, the Secretary incharge of the concerned Ministry or the Department in that Government; (b) in the case of the Central Government where the complaint relates to a railway, the General Manager of that railway; (c) in the case of State Government, the Secretary incharge of the concerned Department in that Government; (d) in the case of the National Authority, the Secretary or, if there is no Secretary, the Additional Secretary, of the National Authority; (e) in the case of a State Authority, the Chief Executive Officer of the State Authority; (f) in the case of a District Authority, the Chief Executive Officer of the State Authority."

(Emphasis supplied) The Rule mandates that a notice under Section 60(b) of the Act by any person should be issued on/of his intention to make a complaint, and that shall be delivered to the person against whom complaint is said to be made. The manner of issuance and delivery are narrated from (a) to (f). Therefore, there is prescription under the Rules as to the action to be taken under Section 60(b) of the Act.-. 8 - NC:

2023. KHC:23468 CRL.P No.3432 of 2023 10. On the bedrock of the aforesaid mandate under the Act and the Rules, the case at hand requires to be noticed. The incident takes place on 04.01.2021, around 10.30 a.m. and the crime is registered on 04.01.2021 for the offence punishable under Section 51(b) of the Act and Section 188 of the IPC. The learned Magistrate takes cognizance of the offence on 25.01.2022. The order of the learned Magistrate taking cognizance reads as follows:

"Perused the compliant. Complainant is a Public Servant. Hence, recording of Sworn Statement is dispensed with as contemplated u/s.200 of Cr.P.C. cognizance is taken for the offence punishable u/s.51(b) of NDA Act. I have perused the documents produced by the complainant and considered the allegation made in the complaint. The allegation are supported by documents and if allegations are not denied the same will lead to the conviction of the accused.

There are sufficient materials to issue process against the accused. Accordingly, I proceed to pass the following order:

ORDER

1 Register the case as CC2 Issue summons against accused no.1 to 9 for the offence punishable u/s. 51(b) of NDA Act.

3. Call on:

26. 02.2021."

(Emphasis added)

- 9 - NC:

2023. KHC:23468 CRL.P No.3432 of 2023 The learned Magistrate prior to taking cognizance ought to have noticed the rigor of Section 60(b) as to whether a notice has been issued to the accused in terms of Rule 3 of the said Rules (supra). Ostensibly, the mandate under the Act or the Rules is not followed by the complainant and it is not even noticed by the learned Magistrate prior to the taking of cognizance. It is therefore, contrary to law.

11. In the light of it being contrary to law, is resultantly rendered unsustainable. The unsustainability of it, would lead to its obliteration.

12. For the aforesaid reasons, following

ORDER

I. Criminal petition is allowed. II. The order dated 25.01.2021 passed in C.C.No.3169/2022 on the file of the 42nd Additional Chief Metropolitan Magistrate, Bengaluru stands quashed qua the petitioner. Sd/- JUDGE * Page No.9 is re-typed and replaced vide Chamber order dated 19.07.2023 JY/List No.:

1. SI No.:

22. CT:SNN