

Dr Mohankumar M Vs. State Of Karnataka

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Court : Karnataka

Decided On : Dec-20-2024

Judge : H.P.Sandesh

Appeal No. : CRL.RP 118/2024

Appellant : Dr Mohankumar M

Respondent : State Of Karnataka

Judgement :

1 R IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE20H DAY OF DECEMBER, 2024 BEFORE THE HON'BLE MR. JUSTICE H.P. SANDESH CRIMINAL REVISION PETITION NO.118/2024 BETWEEN: DR. MOHANKUMAR M., S/O LATE DR. M.G.RAJU, AGED ABOUT53YEARS, R/AT NO.1, 2ND MAIN ROAD, 3RD STAGE, J.P. NAGAR BENGALURU-560 078. PETITIONER (BY SRI M.T.NANAIAH, SENIOR COUNSEL FOR SRI T.M.VENKATA REDDY, ADVOCATE) AND: STATE OF KARNATAKA, REPRESENTED BY THE [ANTI CORRUPTION BUREAU, BENGALURU CITY POLICE STATION, BENGALURU-560001]. SINCE A.C.B. IS DEFUNCT AND MERGED WITH KARNATAKA LOKAYUKTA, M.S.BUILDING, BENGALURU-560001. REPRESENTED BY SPECIAL PUBLIC PROSECUTOR, KARNATAKA LOKAYUKTA, M.S.BUILDING, BENGALURU - 560 001. RESPONDENT (BY SRI LETHIF B., ADVOCATE) 2 THIS CRIMINAL REVISION PETITION IS FILED UNDER SECTION397R/W401OF CR.P.C PRAYING TO ALLOW THIS CRL.RP

AND SET ASIDE THE

ORDER

DATED 06.12.2023 IN SPL.C.C.NO.656/2021 PASSED BY THE XXIII ADDL. CITY CIVIL AND SESSIONS JUDGE AND SPECIAL JUDGE (P.C. ACT) BANGALURU CCH NO.24) AND DISCHARGE THE PETITIONER FOR THE OFFENCE PUNISHABLE UNDER SECTIONS 131(d), 13(1)(e) R/W 132) OF PREVENTION OF CORRUPTION ACT AND SECTION 109 OF IPC. THIS CRIMINAL REVISION PETITION HAVING BEEN HEARD AND RESERVED FOR

ORDER

ON 04.12.2024, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:
CORAM: HON'BLE MR. JUSTICE H.P.SANDESH CAV

ORDER

Heard the learned counsel for the petitioner and the learned counsel for the respondent.

2. This criminal revision petition is filed challenging the order dated 06.12.2023 passed in Spl.C.C.No.656/2021 rejecting the discharge application filed by the petitioner.

3. The factual matrix of the case of the prosecution against this petitioner who has been arraigned as accused No.4 is that he is the friend of accused No.1 and he committed the offence of abetment in helping accused No.1 to legalize the illegal amount by making payment of Rs.25 lakhs to pursue M.D. (Pediatric) of the daughter of accused No.1 Dr. C.Anisha Roy. It is contended that his father is also a doctor and details are mentioned at page No.73 Volume 24 of the charge sheet. The petitioner has filed an application contending that he had made the payment of Rs.25 lakhs in favour of daughter of accused No.1. The specific allegation against the petitioner is that he has deposited cash amount of Rs.17,50,000/- to his individual account and the account was standing in the name of himself and his wife Smt. Lalitha, UCO Bank, Banashankari Branch. He made the pre-closure of his fixed deposit for Rs.10,07,192/- and credited the same into his personal account and he made cash deposit of Rs.9,95,000/- to his personal

account on 24.02.2012. On 25.02.2012 he got transferred an amount of Rs.8,50,000/- from the SB account of his wife out of her accumulated savings to the personal account of himself and closing balance in his account was Rs.30,56,185/-. The petitioner did not dispute the payment of Rs.25,00,000/- in favour of daughter of accused No.1, but his contention is that the amount paid by him is his personal amount and he can spend, lend it to any person and dispose of it as he desires and it would not attract the offence under Section 109 of IPC nor it amounts to an abetment under the Prevention of Corruption Act. 4

4. The Trial Court having considered the material available on record comes to the conclusion that the petitioner not disputes the fact that he made the payment and comes to the conclusion that sudden deposit of Rs.17,50,000/- by this accused in cash on 21.03.2012 to his account and further deposit of Rs.9,95,000/- in cash on 24.02.2012, in all a huge sum of Rs.27,45,500/- is not bearing any explanation. He also got transferred an amount of Rs.8,05,000/- to his personal account on 25.02.2012 from the account of his wife which is a huge amount and she is a housewife. In the absence of convincing reasons gives rise to serious suspicion and hence not accepted the contention of the petitioner to discharge and rejected the same. Hence, the present criminal revision petition is filed before this Court.

5. The main contention of the petitioner is that he is a doctor and accused No.1 approached him for financial assistance for his daughter to pursue M.D. (Pediatric) at M.S. Ramaiah Medical College, Bengaluru and he deposited the amount on 22.03.2012 by way of RTGS. Merely because he extended financial help to the daughter of accused No.1 for higher education, it cannot be said with any stretch of imagination that 5 the petitioner has abetted the offences under Sections 13(1)(d), 13(1)(e) read with 13(2) of Prevention of Corruption Act and Section 109 of IPC and payment is made directly to the institution through their bank account. The learned counsel contend that the said amount is the self earned money of the petitioner and the same is reflected in the bank accounts and income tax returns. The petitioner never received any money from accused No.1 and it will not attract Section 109 of IPC. The petitioner has been falsely implicated in the case and the said amount has been shown by the petitioner in his income tax returns, who is also a doctor by profession. The learned counsel contend that the Trial Court

accepted the reasons given by accused Nos.3 and 5. This petitioner is also placed similarly as that of accused Nos.3 and 5, but the Trial Court committed an error in rejecting the discharge application of the petitioner and hence it requires interference of this Court.

6. The learned counsel in support of his arguments produced the document of agreement of sale dated 03.12.2004 and 22.07.2011, bank statement, income tax returns, statement of fixed deposit and statement showing the source of income. The learned counsel also relied upon the order passed by this Court in W.P.No.4416/2022 dated 31.05.2024, wherein the proceedings initiated against accused No.1 is quashed. The learned counsel contend that when the case filed against accused No.1 is quashed, this petitioner cannot be tried. The learned counsel relied upon the judgment of the Apex Court in the case of V.Y. JOSE AND ANOTHER v. STATE OF GUJARAT AND ANOTHER reported in (2009) 3 SCC78 wherein in paragraph No.20 it is held that the proceedings before the Trial Court cannot survive in view of quashing the charge sheet against the main accused who is a public servant. The petitioner is not a public servant, as such the case against him does not survive as an abettor as the prime accused proceedings are quashed.

7. The learned counsel relied upon the judgment of the Apex Court in the case of GANGULA MOHAN REDDY v. STATE OF ANDHRA PRADESH reported in (2010) 1 SCC750 and brought to the notice of this Court paragraph Nos.10, 17 and 18, wherein the proceedings against the prime accused No.1 stands quashed by the High Court, abetment of the very case gets automatically nullified. 7

8. The learned counsel also relied upon the judgment of the Apex Court in the case of NOORUL HUDA MAQBOOL AHMED v. RAM DEO TYAGI AND OTHERS reported in (2011) 7 SCC95 and brought to the notice of this Court paragraph No.38 regarding three conditions as narrated is not fulfilled as contemplated under Section 107 of IPC, the proceedings against the petitioner does not survive.

9. The learned counsel also relied upon the judgment of the Apex Court in the case of FAGUNA KANTA NATH v. THE STATE OF ASSAM reported in AIR 1959 SC673 and brought to the notice of this Court paragraph No.6, wherein it is held

that when the main accused in the Prevention of Corruption Act is acquitted, conviction against the abettor does not survive.

10. The learned counsel also relied on the judgment of the Apex Court in the case of EX-SEPOY HARADHAN CHAKRABARTY v. UNION OF INDIA AND ANOTHER reported in AIR 1990 SC1210 and brought to the notice of this Court paragraph No.9 wherein the main accused who is a Government servant came to be quashed, case against the others does not survive. 8

11. The learned counsel also relied on W.P.No.16081/2024 dated 03.09.2024, wherein accused No.1 is a Government servant raided by the Enforcement Directorate and charge sheeted for the offences punishable under Sections 13(d), 13(2) of PC Act and accused No.1 preferred the petition under Section 482 of Cr.P.C and the same has been quashed.

12. Referring these judgments the learned counsel would contend that the proceedings cannot be continued against this petitioner.

13. Per contra, the learned counsel for the respondent State would contend that the material clearly discloses that the petitioner made the payment of Rs.25 lakhs and also brought to the notice of this Court the documents i.e., statement of account, Income Tax Returns Form and statement of the petitioner, wherein it is clear that amount was deposited suddenly in the account of the petitioner and not disclosed in the income tax returns for having made the payment. The accused statement was also recorded and the income of the petitioner declared in the income tax returns is maximum Rs.8 lakhs per year and there is no explanation on the part of the petitioner for 9 having deposited the amount of Rs.17,50,000/- and Rs.9,95,000/- to his account. The learned counsel contend that even though the proceedings against accused No.1 is quashed, SLP is filed and the same is pending for consideration. The learned counsel contend that even in respect of case of L.C. Nagaraja, which was quashed by this Court in W.P.No.1325/2022, which has been relied upon by the learned counsel for the petitioner, the same has been set aside by the Apex Court and hence there cannot be any discharge.

14. The learned counsel in support of his arguments would vehemently contend that the scope of discharge application is very limited and defence cannot be urged while seeking for discharge and the Court has to take note of the material available on record. The learned counsel also relied upon the order passed by the Apex Court in Cri.Diary No.37568/2023 in a case of appeal filed by the State against L.C.Nagaraj and brought to the notice of this Court paragraph No.6 wherein it is observed that whether the properties mentioned in the source report are secured with legitimate income of the respondent or his wife, is something which is to be considered by the police and the Trial Court while evaluating the 10 evidence. The High Court in our opinion, should not have conducted a mini trial to conclude in favour of the accused when the investigation is still not complete and set aside the order.

15. The learned counsel also brought to the notice of this Court the judgment of the Apex Court in the case of STATE OF TELANGANA v. MANAGIPET ALIAS MANGIPET SARVESHWAR REDDY reported in (2019) 19 SCC87 and brought to the notice of this Court paragraph Nos.32 and 33, wherein discussion was made with regard to the preliminary enquiry is to be conducted and the object of preliminary enquiry and in paragraph No.33 it is held that once the officer recording the FIR is satisfied with such disclosure, he can proceed against the accused even without conducting any enquiry or by any other manner on the basis of the credible information received by him. It cannot be said that the FIR is liable to be quashed for the reason that the preliminary enquiry was not conducted.

16. The learned counsel also relied upon the judgment of the Apex Court in the case of CENTRAL BUREAU OF INVESTIGATION AND ANOTHER v. THOMMANDRU HANNAH VIJAYALAKSHMI AND ANOTHER reported in 11 (2021) 18 SCC135 and brought to the notice of this Court paragraph Nos.25, 26, 54 and 64. In paragraph No.25 discussion was made with regard to an enquiry and with regard to the judgment of Lalitha Kumari case. The learned counsel brought to the notice of this Court paragraph Nos.54 and 64 with regard to the known sources of income within the meaning of Section 13(1)(e) of the PC Act and in paragraph No.64 discussion was made that during the course of investigation about 140 witnesses have been examined and over 500 documents have been

obtained and investigation is stated to be at an advanced stage and is likely to conclude within a period of two to three months.

17. Having heard the learned counsel for the petitioner and the learned counsel for the respondent and also taking note of the grounds urged in the revision petition, the points that arise for the consideration of this Court are: (i) Whether the Trial Court committed an error in dismissing the application filed by the petitioner for discharge and whether it requires interference of this Court?. (ii) What order?. 12

18. Having heard the learned counsel for the respective parties and also on perusal of the material on record, this petitioner is arraigned as accused No.4. It is not in dispute that he is a friend of accused No.1 and the allegation made against the petitioner is that he committed the offence of abetment in helping accused No.1 to legalize the illegal amount by making payment of Rs.25 lakhs to pursue M.D. (Pediatric) of the daughter of accused No.1. The petitioner contended in the petition that his father is also a doctor. He made the payment of Rs.25 lakhs out of his income which has been declared in his income tax returns. He also not disputes that he deposited the amount on 22.03.2012 by way of RTGS. The main contention of the petitioner is that merely because he extended the financial help to the daughter of accused No.1 for higher education, it cannot be said with any stretch of imagination that the petitioner has abetted the offences under Sections 13(1)(d), 13(1)(e) read with 13(2) of Prevention of Corruption Act and Section 109 of IPC. It is also his case that it is his self-earned money and the same is reflected in the bank accounts and income tax returns. The same will not attract Section 109 of IPC. The learned counsel for the petitioner relied upon the judgments of the Apex 13 Court in the case of V.Y. Jose (supra) and in the case of Gangula Mohan Reddy (supra) and contend that when the case was quashed against accused No.1 by the High Court, abetment of the very case gets automatically nullified.

19. On the other hand, the learned counsel for the respondent contend that the order of quashing of proceedings against accused No.1 is challenged before the Apex Court and the same is not yet considered on merits. When such being the case, the principles laid down in the judgments referred supra relied upon by the learned counsel for the petitioner will not come to the aid of the petitioner. The learned counsel also relied upon the judgment of the Apex Court in the case of

Managipet Alias Mangipet Sarveshwar Reddy (supra), wherein discussion was made with regard to preliminary enquiry is to be conducted and the object of preliminary enquiry and in paragraph No.33 it is held that once the officer recording the FIR is satisfied with such disclosure, he can proceed against the accused even without conducting any enquiry or by any other manner on the basis of the credible information received by him. 14

20. The learned counsel also brought to the notice of this Court the judgment passed by the Apex Court in the case of Central Bureau of Investigation (supra) wherein it is discussed with regard to an enquiry and with regard to the judgment of Lalitha Kumari case and with regard to the known sources of income within the meaning of Section 13(1)(e) of the PC Act and in paragraph No.64 discussion was made that during the course of investigation about 140 witnesses have been examined and over 500 documents have been obtained and investigation is stated to be at an advanced stage and is likely to conclude within a period of two to three months.

21. In the case on hand, investigation has already been completed and charge sheet is also filed. The petitioner also approached earlier for quashing of the proceedings and the same was rejected and thereafter he filed an application for discharge and the same was also rejected.

22. The learned counsel for the respondent also relied upon the judgment of the Apex Court in the case of STATE OF RAJASTHAN v. ASHOK KUMAR KASHYAP reported in (2021) 11 SCC191 and brought to the notice of this Court paragraph 15 No.13, wherein discussion was made with regard to the High Court has exceeded in its jurisdiction in exercise of the revisional jurisdiction and has acted beyond the scope of 227/239 of Cr.P.C. While discharging the accused, the High Court has gone into the merits of the case and has considered whether on the basis of the material on record, the accused is likely to be convicted or not. The learned counsel also brought to the notice of this Court paragraph No.14, wherein it is categorically held that at the stage of framing of the charge, it has to be seen whether or not a prima facie case is made out and the defence of the accused is not to be considered. In paragraph No.15, an observation is made that the High

Court was required to consider whether a prima facie case has been made out or not and whether the accused is required to be further tried or not. At the stage of framing of the charge and/or considering the discharge application, the mini trial is not permissible.

23. The learned counsel referring this judgment would contend that the Trial Court has given the reasoning while rejecting the same. The said judgment is very clear with regard to the scope of exercising of the discharge application. 16

24. The learned counsel for the respondent also relied upon the judgment of the Apex Court in the case of STATE OF GUJARAT v. DILIPSINH KISHORSINH RAO reported in 2023 SCC Online SC1294 and brought to the notice of this Court paragraph No.14, wherein discussed with regard to the judgment of the Apex Court in the case of Amit Kapoor v. Ramesh Chandra reported in (2012) 9 SCC460 with regard to the principles laid down to be considered for exercise of jurisdiction under Section 397 particularly in the context of prayer for quashing of charge framed under Section 228 of Cr.P.C. 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. 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. It is also observed that the Revisional Court cannot sit as 17 an appellate Court and start appreciating the evidence by finding out inconsistency in the statement of witnesses and it is not legally permissible. The learned counsel referring this judgment would contend that the scope of revision is very limited.

25. The learned counsel also relied upon the judgment of the Apex Court in the case of STATE OF TAMIL NADU v. N. SURESH RAJAN AND OTHERS reported in (2014) 11 SCC709 wherein discussion was made with regard to scope of Sections 227, 228, 239 and 240 of Cr.P.C. In paragraph No.32.3 it is held that

while passing the order of discharge, the fact that the accused other than the two Ministers have been assessed to income tax and paid income tax cannot be relied upon to discharge the accused persons particularly in view of the allegation made by the prosecution that there was no separate income to amass such huge properties. In paragraph No.32.4, it is held that we are of the opinion that this was not the stage where the Court should have appraised the evidence and discharged the accused as if it was passing an order of acquittal.

26. The learned counsel also relied upon the judgment of the Apex Court in the case of STATE OF TAMIL NADU v. R. 18 SOUNDIRARASU AND OTHERS reported in (2023) 6 SCC768 and brought to the notice of this Court paragraph No.17.4 wherein an observation is made that as no prima facie case could be said to have been made out against the accused persons, they deserve to be discharged from the prosecution in exercise of revisional powers meant for doing substantial justice. In paragraph No.81 it is held that the High Court has acted completely beyond the settled parameters, as discussed above, which govern the power to discharge the accused from the prosecution. The High Court could be said to have donned the role of a Chartered Accountant. The High Court has completely ignored that it was not at the stage of trial or considering an appeal against a verdict in a trial.

27. Having considered the principles laid down in the judgments referred supra, it is very clear that the scope of revision is very limited and only the Court has to consider the material collected by the Investigation Officer, whether the same is sufficient or not.

28. The learned counsel for the petitioner relied upon the judgment of the Apex Court in the case of DHARIWAL¹⁹ TOBACCO PRODUCTS LIMITED AND OTHERS v. STATE OF MAHARASHTRA AND ANOTHER reported in (2009) 2 SCC370 with regard to the scope of Section 482 of Cr.P.C. and also observation is made that only because a revision petition is maintainable, the same by itself, in our considered opinion, would not constitute a bar for entertaining an application under Section 482 of Cr.P.C. Even where a revision application is barred, as for example the remedy by way of Section 115 of the Code of Civil Procedure, 1908

this Court has held that the remedies under Articles 226/227 of the Constitution of India would be available. There is no dispute with regard to the scope is concerned, but here is a revision petition filed against the rejection of the discharge application and the principles laid down in the judgment need not necessarily be applied to the case on hand.

29. This Court has already pointed out that the scope of revision is very limited against the discharge application and the Court has to consider only the material on record. In the case on hand, no doubt, the revision petitioner also not disputes that he made payment of Rs.25 lakhs in favour of daughter of accused No.1 for getting admission to the M.D. (Pediatric) and 20 also material is collected by the Investigating Officer that cash amount of Rs.17,50,000/- was deposited to his individual account. The contention of the petitioner is that it was his self- earned money, but prima facie cash was deposited in his account and he made the pre-closure of his fixed deposit of Rs.10,07,192/- and credited the same into his personal account and he made cash deposit of Rs.9,95,000/- to his personal account on 24.02.2012 and he got transferred an amount of Rs.8,05,000/- from the SB account of his wife out of her accumulated savings to his personal account. The Trial Court taken note of that she is a house wife. Apart from that, it is the contention of the learned counsel for the petitioner that the same is his self-earned money and the same is disclosed in the income tax returns. The income tax returns does not disclose the same and all these contentions which have been raised is nothing but a defence and the same cannot be considered while considering the discharge application. The judgments which have been referred supra is clear that the Court cannot conduct a mini trial and defence cannot be considered in a discharge application and the Court has to only look into the material collected by the Investigating Officer whether sufficient material 21 are there or not. Admittedly, the amount was transferred and before transferring the amount of Rs.25 lakhs, an amount of Rs.17,50,000/- and Rs.9,95,000/- cash was deposited to his account and the same is also collected by the Investigating Officer during the course of investigation and the same also cannot be considered as a defence, which is not permissible.

30. It is important to note that the main contention of the learned counsel for the petitioner is that accused Nos.3 and 5 have been discharged. While discharging the other accused, the Trial Court has given the reasoning that accused No.3 has admitted the payment of Rs.50 lakhs interest free education loan to the daughter of accused No.1. The Trial Court also taken note of the fact that an application was given on 02.01.2012 before the Committee members of the M.S. Ramaiah Education Society for interest free loan for the purpose of pursuing her post graduation and considering her education qualification and merit, the Committee has unanimously taken a decision to sanction loan towards her admission. Accused No.3 makes clear that this amount is repayable after completion of her course and getting employment and issued cheque and the same is drawn on 22 Karnataka Bank in favour of M.S. Ramaiah Medical College in his official capacity as the President of the Society in furtherance of the Committee decision and hence discharged him.

31. In respect of accused No.5, the Trial Court has given the reasons and taken note of the material on record wherein the documents are also taken note which indicates solid balance of more than Rs.2 Crores in the month of March 2012 at the account of the Company and the amount also made from the account of the Company. But in the case on hand, it has to be noted that cash payment was made to the tune of Rs.17,50,000/- on 21.03.2012 and further deposit of Rs.9,95,000/- in cash on 24.02.2012, in all Rs.27,45,500/-. No explanation was given for having deposited the cash and hence the very contention of the learned counsel for the petitioner that accused Nos.3 and 5 have been discharged, but not discharged this petitioner cannot be accepted and the very source of amount is just before payment of Rs.25 lakhs in favour of daughter of accused No.1 i.e., cash amount of Rs.17,50,000/- as well as Rs.9,95,000/- was deposited. When such reasoning is given by the Trial Court and the same is considered on merits, 23 hence I do not find any error committed by the Trial Court in rejecting the application having taken note of the material on record. The yardstick applied to accused Nos.3 and 5 will not come to the aid of the petitioner and hence I do not find any ground to allow the revision petition and set aside the order.

32. In view of the discussions made above, I pass the following:

ORDER

The criminal revision petition is dismissed. Sd/- (H.P. SANDESH) JUDGE MD

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