SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

State of Karnataka vs Nagaraj N

State of Karnataka vs Nagaraj N

SooperKanoon Citation : sooperkanoon.com/1721378

Court : Karnataka

Decided On : Apr-04-2025

Judge : Rajesh Rai K

Appeal No. : CRL.RP/49/2021

Appellant : State of Karnataka

Respondent : Nagaraj N

Judgement :

-1-

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 4TH DAY OF APRIL, 2025 BEFORE THE HON'BLE MR JUSTICE RAJESH RAI K CRIMINAL REVISION PETITION NO. 49 OF 2021 BETWEEN: STATE OF KARNATAKA REP. BY POLICE INSPECTOR ANTI CORRUPTION BUREAU BENGALURU CITY POLICE STATION PETITIONER (BY SRI. B.B. PATIL, SPL.PP) AND: NAGARAJ N ASSISTANT ENGINEER(ELECTRICAL) OFFICE OF THE ASSISTANT ENGINEER I FLOOR, S-7 SUB-DIVISION BESCOM, MARATHHALLI, BENGALURU R/AT NO.402, 4TH FLOOR Digitally signed by

HARIKRISHNA V G. SQUIRE GALAXY APARTMENTLocation:

KARNATAKA RAJARAJESHWARI NAGARA BENGALURU-560 098. RESPONDENT (BY SRI. SATISH.K, ADVOCATE) THIS CRL.RP IS FILED U/S.397 R/W 401 OF CR.P.C PRAYING TO SET ASIDE THE ORDER DATED 05.08.2019 PASSED IN SPL.C.C.NO.175/2018 BY THE XXIII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, SPECIAL JUDGE, BENGALURU URBAN DISTRICT, BENGALURU CITY IN DISCHARGING THE RESPONDENT (PRODUCED AT ANNEXURE- E). -2- THIS PETITION, COMING ON FOR ADMISSION, THIS DAY,

ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE RAJESH RAI K

ORAL ORDER

This revision petition is directed against the discharge

order dated 05.08.2019 in Spl.C.C.No.175/2018 passed by

XXIII Additional City Civil and Sessions Judge, Special Judge, Bengaluru Urban District (CCH-24), Bengaluru City (hereinafter referred to as "the trial Court" for short), whereby the trial Court, acting under Sections 227 and 239 of Cr.P.C., discharged the accused for the offences punishable under Sections 7, 13(1)(d) r/w Section 13(2) of the Prevention of Corruption Act, 1988 (for short 'PC Act').

2. Parties are referred to as per their ranking before the trial Court.

3. The abridged facts of the case are as under:

The Anti-Corruption Bureau, Bengaluru City Police registered a case against the accused in Crime No.5/2017 for the offence punishable under Section 7 of P.C. Act on 16.02.2017 and subsequently, laid the charge sheet against the accused for the offences punishable under Sections 7, 13(1)(d) -3- r/w Section 13(2) of P.C. Act. It is alleged in the complaint and charge sheet that, the accused demanded a

bribe of Rs.2,00,000/- from one Praveen C.L., i.e., the complainant to shift transformer and electrical poll. Before the trial Court, prior to framing of charges, the accused filed discharge application under Sections 227 and 239 of Cr.P.C. before the trial Court. The said application was allowed by the trial Court on the ground that, the according permission/sanction for criminal prosecution of the accused by the Director of KPTCL is not a sanction in the eye of law since the same is not valid sanction. Accordingly, the trial Court discharged the accused for the aforementioned offences. Challenge to the same is lis before this Court.

4. I have heard the learned HCGP for the revision petitioner so also learned counsel for the respondent.

5. The primary contention of the learned counsel for

the revision petitioner/ACB is that the trial Court erred while discharging the accused without delving into the aspect that under Section 19(1)(c) of the P.C. Act, the competent authority to remove the employee, can issue the sanction order for -4- prosecution. According to him, this aspect of the matter is settled by the Co-ordinate Bench of this Court in Crl.R.P.No.946/2019 dated 19.11.2019. He further contended that, the Hon'ble Apex Court also summarized the above position of law in the case of State of Punjab v. Hari Kesh reported in 2025 SCC OnLine SC 49 that, the sanction granted by the competent authority is valid or not would be matter of evidence and unless failure of justice has been occurred by such error or irregularity or invalidity, the sanction

order and subsequent proceedings cannot be quashed/set-

aside. Accordingly, he prays to allow the revision petition.

6. Per contra, the learned counsel for the respondent

submitted that, the trial Court after meticulously examining the sanction order and by placing reliance on the order passed by the Co-ordinate Bench of this Court in Crl.P.No.7157/2016 dated 28.10.2016 and also relying on the order passed by the Hon'ble Apex Court in SLP No.15843/2017, allowed the

application filed by the accused/respondent in a reasoned order

which does not call for any interference at the hands of this Court. Accordingly, he prays to dismiss the revision petition. -5-

7. It could be gathered from records, the KPTCL has

passed a resolution at its Board of Directors meeting held on 27.02.2002 delegating the power to the appointing authority for according permission of the Lokayuktha and other authorities for prosecuting the accused officers in trap and raid cases. As per the said resolution, Sub-Section (f) to rule 14A(1) of the KEB Employees Regulation and as per the said new provision, appointing authority itself is the competent authority to issue the prosecution sanction order against the accused. In the case on hand, the Director of KPTCL (A and HR) issued the sanction order. Since he is one of the Directors of the KPTCL, he shall be construed as appointing authority also. The Co-ordinate Bench of this Court in Crl.R.P.No.946/2019, delving in detail the scope of Section 14(a) and (f) of KPTCL Employees Regulation, 1987 and considering Section 19(1)(c) of P.C. Act observed in paragraphs No.8 to 11 as under:

> "8. Insofar as the said aspect is concerned, the learned counsel for he petitioner has not disputed. It is his specific contention that as per Section 19(1)(c) of the PC Act, the person who can remove the employee is authorized to issue the sanction. For the purpose of brevity, I quote Section 19(1) of the PC Act which reads as under: -6-

19. Previous sanction necessary for

prosecution - (1) No court shall take cognizance of an offence punishable under sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction,-

(a) in the case of a person who is

employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;

(b) in the case of a person who is

employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office.

9. On close reading of Section 19, it indicates

that no Court shall take cognizance of an offence except with the previous sanction that no proceedings can be initiated against the public servant. But as per Section 19(1)(c) of the PC Act in case of any other person of the authority competent to remove him from his office is also competent person to issue a sanction. The trial Court has not kept the said aspect of the law and has wrongly discharged the accused. Even it has been observed by the Honble Apex Court that two aspects have to be considered at the time of considering the discharge application. If the application is that, the sanction which has been issued is invalid on account of non application of mind, then the same can be raised during the course of trial but in the absence of sanction, it

goes to the root of the matter and it has to be held

at an initial stage at the time of taking cognizance. -7- This proposition of law has been held in the case of Central Bureau of Investigation quoted supra at paragraph No.13 that it has been observed as under:

13. Further the issue relating to validity of the sanction for prosecution could have been considered only during

trial since essentially the conclusion

reached by the High Court is with regard to the defective sanction since according to the High Court, the procedure of providing opportunity for explanation was not followed which will result in the sanction being defective. In that regard, the decision in the case of Dinesh Kumar vs. Chairman, Airport Authority of India,

(2012) 1 SCC 532 relied upon by the

learned Additional Solicitor General would be relevant since it is held therein that there is a distinction between the absence of sanction and the alleged invalidity on account of non application of mind. The absence of sanction no doubt can be agitated at the threshold but the invalidity of the sanction is to be raised during the trial. In the instant facts, admittedly there is a sanction though the accused seek to pick holes in the manner the sanction has been granted and to claim that the same is defective which is a matter to be considered in the trial.

10. Even the said aspect has not been properly considered and appreciated by the trial Court. Even in the application or any other material, what is the injustice or prejudice, which is going to cause is

also not been pleaded. When the accused/respondent has been involved in a serious offence like taking bribe for doing his service, then under such circumstances, the Court below ought to have applied its mind and it ought to have

properly appreciated the things. Without looking into the provision of Section 19(1)(c) of the PC Act, it has come to the wrong conclusion and wrongly discharged the accused and even it is mandated by the Honble Apex Court in the case of State of Madhya Pradesh quoted supra at paragraph 10, it has been observed as under:

10. In the instant case there was not

even a whisper or pleading about any failure of justice. The stage when this failure is to be established is yet to be reached since the case is at the stage of framing of charge whether or not failure has in fact been occasioned was to be determined once the trial commenced and evidence was led. In this connection the decisions of this Court in State v. T.Venkatesh Murthy and in Parkash Singh Badal v. State of Punjab need to be noted. That being so the High Courts view quashing the proceedings cannot be sustained and the States appeal deserves to be allowed which we direct.

11. When the accused/respondent has failed

to establish the fact what is the prejudice or injustice which is going to be caused if the said application has not been entertained, in that light also, the order of the trial Court is liable to be set aside. Keeping in view the above said facts and circumstances, I am of the considered opinion that the petitioner - State has made out a case to set aside the impugned order."

8. Further, the Hon'ble Apex Court in the case of Hari Kesh supra, observed in paragraph No.8 as under: "8. In the instant case, it appears that the petition for quashing of Sanction Order was filed by -9-

the respondent after the trial court framed the charge and commenced the trial, rather after the prosecution examined five witnesses. It is pertinent to note that whether the Sanction has been granted by the competent authority or not, would be a matter of evidence. Further, as per the Explanation to sub-section (4), for the purpose of Section 19, error includes competency of the authority to grant Sanction. Therefore, in view of the settled legal position, the High Court should not have quashed the Sanction Order and the consequent proceedings, unless it was satisfied that the failure of justice had occurred by such error or irregularity or invalidity. There is not a whisper in the impugned order

about any failure of justice having occurred on account of the impugned Sanction Order. The High Court also should not have entertained the petition for quashing the Sanction Order when the prosecution had already examined seven witnesses."

9. By applying the principles enumerated in the above

judgments to the fact and circumstances of this case, I find substantial force in the contention raised by the learned counsel for the revision petitioner that, the question of invalidity of sanction is a matter for trial and the same cannot be a ground to discharge the accused since the accused failed to point out any miscarriage of justice or prejudice caused to him. In that view of the matter, I am of the considered view that, interference is required in the impugned order passed by the trial Court. Accordingly, I proceed to pass the following: - 10 -

ORDER

(i) The Criminal Revision Petition is allowed.

(ii) The order passed by the trial Court i.e., XXIII

Additional City Civil and Sessions Judge, Special Judge, Bengaluru Urban District (CCH-24), Bengaluru City is set-aside. The matter is remitted back to the trial Court to proceed in accordance with law. SD/- (RAJESH RAI K) JUDGE HKV List No.: 1 Sl No.: 7

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com