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R. Ninge Gowda Vs. A.N. Gopal

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Court : Karnataka

Decided On : Aug-10-1998

Reported in : 1999CriLJ884; 1999(2)KarLJ104

Judge : B.K. Sangalad, J.

Acts : Karnataka Police Act, 1963 - Sections 170(1) and 200; Indian Penal Code (IPC), 1860 - Sections 201, 302, 323, 341, 342, 343, 345 and 504; Code of Criminal Procedure (CrPC) , 1973 - Sections 197

Appeal No. : Criminal Petition No. 1558 of 1991

Appellant : R. Ninge Gowda

Respondent : A.N. Gopal

Advocate for Def. : Sri Anand for Sri Mohan Shantangoudar, Adv.

Advocate for Pet/Ap. : Sri G.L. Viswanath, Adv.

Judgement :
ORDER

1. This petition is filed against the orders dated 11-4-1991 and 26-9-1991 holding that the sanction is not necessary and for issuing summonsagainst the petitioner.

2. The facts in nutshell are as follows:

One Smt. Banumathi, second wife of the second respondent died in unnatural circumstance on 27-8-1989. In September 1989, a complaint was registered by the brother of the deceased Sudhakar in Crime No. 182 of 1989 by the Kolar Police Station for the offence punishable under Sections 302 and 201 of the IPC. The petitioner was the Investigating Officer. On 6-11-1989, the respondent got the anticipatory bail from the Additional Sessions Judge, Kolar in C. Misc. No. 160 of 1989. In the meanwhile a claim petition was filed by the respondent with the insurance company seeking insured amount on the policy of the deceased. On5-4-1990 the respondent alleged in the complaint that he is summoned by the petitioner to produce document relating to claim of insurance amount in respect of the deceased-Banumathi. Since the petitioner was not present, the respondent was asked to come on the following day. On6-4-1980, the respondent was brought for questioning in Crime No. 182 of 1989. As he tried to run away, he was caught and was put in the lock-up and later on released on bail on the same day. The charge-sheet was filed in Crime No. 182 of 1989 before the Sessions Judge, against the respondent for offence punishable under Sections 302 and 201 of the IPC. After the respondent was released on bail, he informed the editors of Honnudi and Kolaravani newspapers and gave concocted and fabricated version about the alleged incident of 6-4-1990. The said newspapers widely gave publicity and it is alleged that the same harmed the reputation of the petitioner. Hence, on 9-4-1990, the petitioner filed a complaint before the Principal Chief Judicial Magistrate in CC No. 580 of 1990 for defamation against the respondent and Prabhakar, Editor of Honnudi under Section 500 of the IPC. The petitioner on 16-4-1990 filed another complaint in CC No. 609 of 1990 against the respondent and B.V. Narasimha Murthy, Editor of Kolaravani under Section 500 of the IPC. In both the cases, the summons were issued to the accused persons. On 21-9-1990 the respondent filed the complaint in Cr. No. 37 of 1990 against the petitioner for offence punishable under Sections 341, 342, 345, 323 and 504 of the IPC after lapse of nearly six months. The allegations in the complaint was that he visited the police station on 6th April, 1990 as directed. The petitioner demanded the illegal gratification of Rs. 10,000/- to delete his name. It is further alleged that the petitioner used abusive language against him and confined him in lock-up till 6 p.m. and later released on bail at 6 p.m. on the same day. On 11-4-1991 the learned Magistrate took the

cognizance of Cr. 37 of 1990 for the offences under Sections 323, 341 to 343 and 504of the IPC and held that no sanction under Section 197 of the Criminal Procedure Code is necessary. Hence the impugned orders came to be passed.

3. Mr. Viswanath, learned Counsel for the petitioner submits that taking cognizance, issuing summons and also holding that sanction was not necessary is also illegal. On the other hand, Mr. Anand Navalgimath, learned Counsel for respondent submits that the learned Magistrate was justified in taking cognizance and issuing the summons and also holding that sanction was not necessary. Both the Advocates relied upon various judgments.

3-A. Mr. Viswanath, learned Counsel for the petitioner has relied upon the decisions in the case of State of Mysore v Manikyam and Another, in the case of N. Huchmasthi Gowda and Others v Jammada Aiyappa and Others, in the case of B. Ramesh v K. Shankar and Others, in the case of K.S. Prabhakar v M/s. Bhadra Sahakari Sakkare Kharkhane Niyamit, Doddabathi, Davangere, in the case of Premjit Maohananda v Mohanpani Karua and Section 170 of the Karnataka Police Act. On the other hand, Mr. Anand Navalgimath, learned Counsel for the respondent has relied upon the decisions in the case of R. Balakrishna Pillai v State of Kerala and Another and in the case of H. Shivappa v Puttaswamy.

4. In nutshell, all these decisions state that the facts and circumstances of each case will have bearing whether the sanction is necessary or not. The crux of the decisions is that the act alleged should be seen whether it was done in the discharge of the official duties or whether there was no nexus at all between the act alleged to have been committed and the duties to be performed. The Hon'ble Supreme Court has observed in the case of Balakrishna Pillai, supra, that 'At the same time, if they were too widely construed, they will take under their umbrella every act constituting an offence committed in the course of the same transaction in which the official duty is performed or is purported to be performed. The right approach, it was pointed out was to see that the meaning of this expression lies between these two extremes. While on the hand, it is not every offence committed by a public servant while engaged in performance of his official duty, which is entitled to the protection, only an ,act constituting an offence directly or reasonably

connected with his official duty will require sanction for prosecution. To put it briefly, it is the quality of the act that is important and if it falls within the scope of the aforequoted words, the protection of Section 197 will have to be extended to the concerned public servant.

5. In view of this decision and rival submission, it is to be seen whether the orders of the Magistrate are to be set aside or not.

6. It is an admitted fact that when the petitioner was Investigating Officer at the relevant point of time; there was complaint in respect of the deceased-S. Banumati. It is also an admitted fact that the respondent was an accused facing the allegations under Sections 302 and 201 of the IPC.

7. The allegations against the petitioner is that the respondent was called to the police station and was put in the lock-up till 6 p.m. on that day and subsequently he was released on bail. The whole contention ofthe respondent is that he had obtained the anticipatory bail. If that was the case he should have immediately produced the same, otherwise the very purpose of obtaining the anticipatory bail would be defeated. The purpose of issuing anticipatory bail is to keep the persons out of the clutches of the police for harassment or for any other unlawful gains. Merely he was put up in the lock-up does not mean that the petitioner immediately resorted to commit the illegal acts. He was making an enquiry and he was investigating the case and already this respondent has made an application to claim insurance and in that direction, he was to produce certain documents. When such are the sequences and circumstances of the case, it cannot be lightly stated that the respondent was called to the police station for illegal gains. After lapse of 6 months, the respondent makes an allegation that the petitioner demanded a sum of Rs. 10,000/- or so in order to give him the benefit in the case. The investigation was going on. In the meanwhile certain developments have also taken place. Immediately the respondent has gone to the press and informed the same. If really the petitioner had demanded the money, instead of going to the press, the respondent should have approached the higher authorities and appraised of the fact. If this was materialised, he should have given complaint before the Magistrate. There is no reason why he should wait for six months. The fact that he

has waited for six months, would indicate that it is counterblast as the petitioner has already filed two cases against the respondent and editors of two newspapers and summons were issued. Now it is to be seen whether the act alleged could have been done while discharging the official duties. At the cost of the re-petition, it has to be stated that this respondent was summoned to the police station only for the purpose of investigation in connection with the complaint filed in respect of S. Banumathi. This sequence shows that the petitioner has legitimately called the respondent to the police station for the purpose of investigation. In other words, it goes to show that he was discharging his official duties as I.O. The Hon'ble Supreme Court makes it clear in case of Balakrishna Pillai, supra, that protection has to be extended if the Police Officer acted in the course of discharging his official duties. If for everything the Police Officer is hauled up, then it is very difficult for him to go ahead with the investigation. He has to answer for his omission and commissions. As rightly stated every case depends upon the facts and circumstances. Unless it is explicitly shown that he went out of the way to do such act, which was not called for then he has committed the act while not discharging the official duties. When such material is not available, naturally there is nothing wrong to infer that he did the act while discharging the official duties. The another point in favour of the petitioner is Section 170 of the Police Act. Section 170 of the Police Act states that 'In any case of alleged offence by the Commissioner, a Magistrate, Police Officer or Reserve Police Officer or other person, or of a wrong alleged to have been done by such Commissioner, Magistrate Police Officer or Reserve Police Officer or other person by any act done under colour or in excess of any such duty or authority as aforesaid, or wherein it shall appear to the Court that the offence or wrong if commit-ted or done was of the character aforesaid the prosecution or suit shall not be entertained except with the previous sanction of the Government'.

8. In the present case, the facts are in favour of the petitioner. Mr, Anand Navalgimath, learned Counsel for the respondent strongly relied upon the decision in the case of H. Shivappa, supra, and stated that the petitioner first has to appear before the Magistrate and take up the contentions now that is raised by him. No doubt in this decision it is observed like this. But, if the result is not going to be altered, then it is futile exercise before the Magistrate and to take up the same

contention wastes some more time. Once it is presumed that the act itself is quite contrary, then it is of no use. All these decisions eloquently speak regarding the actions to be taken in the circumstances of each case. Hence the following order.

In the result, the petition is allowed. The impugned order dated 11-4-1991 and 26-9-1991 are quashed.

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