

Narayanaswamy Vs. Bole Gowda

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Court : Karnataka

Decided On : Jun-03-1997

Reported in : 1998(4)KarLJ259

Judge : M.P. Chinnappa, J.

Acts : [Karnataka Police Act, 1963](#) - Sections 70 and 170(1); [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 163 and 200; Madras Police Act - Sections 53; [Indian Penal Code \(IPC\), 1860](#) - Sections 201

Appeal No. : Criminal Petition No. 1365 of 1996

Appellant : Narayanaswamy

Respondent : Bole Gowda

Advocate for Def. : Sri G.V. Ramaiah and ;Sri G.R. Anantharam, Advs.

Advocate for Pet/Ap. : M/s. Shetty and Hegde Associates, Advs.

Judgement :

ORDER

1. This petition is filed under Section 482, Cr. P.C. questioning the order passed by the learned Sessions Judge, Mysore, in CrI. R.P. No. 33 of 1993, dated 24-4-1995 dismissing the revision petition and confirming the order dated 3-10-1992 passed in C.C. No. 860 of 1992 on the file of the Munsiff and JMFC,

Chamarajanagar, directing to issue process to the petitioner herein.

2. The brief facts of the case are: On 27-4-1991 the respondent filed a complaint under Section 200, Cr. P.C. against the petitioner alleging that on 4-3-1991 at about 3 p.m. when the respondent was sitting in the house, the petitioner who is a Sub-Inspector of Police came in his van and questioned him as to whether he was Bole Gowda. On being confirmed, the petitioner assaulted the respondent with his hand, dragged him to the house and assaulted him and booted him and compelled him to show the money said to have been collected by him. It is also alleged that the petitioner abused the complainant's wife in vulgar language and assaulted her on private part, etc. Not being satisfied with it, the petitioner dragged the respondent to his van with the help of his staff and he was confined in the lock-up on that day. It is further the case of the respondent that on 5-3-1991 at about 10.30 p.m. he was taken to a dark room behind the police station where his clothes were removed including his underwear and he was made naked and third degree methods were adopted against this respondent. He became unconscious as he could not bear the physical torture meted out to him, and he was detained in that room. On 6-3-1991 Dunde Gowda s/o Masane Gowda of Mallyanapura village went to the police station enquiring about the respondent. As no interview was given, other persons also came to the police station demanding to send the complainant to the hospital for treatment. Despite all this, the respondent was not allowed to go out of the police station, nor was he given treatment and ultimately, having realised the condition of the respondent and being afraid of complications, he was sent to the hospital. He was in the hospital for a period of 12 days and he was discharged from the hospital on 30-5-1991. Thereafter, he lodged a complaint. The learned Magistrate after taking cognizance of the offence recorded the sworn statement and directed to issue process to him. The said order is questioned before the learned Sessions Judge, who after considering the materials dismissed the criminal petition. As against that order, the petitioner approached this Court.

3. Heard the learned Counsel on both sides.

4. The learned Counsel for the petitioner has vehemently argued that the petitioner was working as Sub-Inspector of Police and while discharging his duties, he has arrested the accused/respondent. Therefore, sanction was absolutely necessary to prosecute him. He also further submitted that there is a direct nexus between the position and the action taken by him. Hence, the Magistrate ought to have rejected the complaint.

5. Per contra, the learned Counsel for the respondent submitted that no sanction is necessary to prosecute the Police Officer who has committed illegal acts. In support of his argument, he also placed reliance on a decision rendered by the Hon'ble Supreme Court in *State of Andhra Pradesh v N. Venugopal and Others*, wherein it is held:

'It is clear that unless the act complained of appears to have been done or intended to be done 'under' the provisions of the Police Act or of the other laws conferring powers on the police, the protection of Section 53 will not be available'.

In that case also their Lordships have considered the scope of Section 53 of the Madras Police Act (which is *pari materia* same to Section 70 of the Karnataka Police Act). It is further held that it becomes the task of the Court, whenever any question whether this section applies or not arises to bestow particular care on its decision. In doing so, it has to ascertain first what act is complained of and then to examine if there is any provision of the Police Act or other law conferring powers on the police under which it may be said to have been done or intended to be done. The Court has to remember in this connection that an act is not 'under' a provision of law merely because the point of time at which it is done coincides with the point of time when some act is done in the exercise of the powers granted by the provision or in performance of the duty imposed by it. To be able to say that an act is done 'under' a provision of law, one must discover the existence of a reasonable relationship between the provisions and the act. In the absence of such a relation the act cannot be said to be done 'under the particular provision of law'.

6. In this case, according to the allegations made, the Police Officer exceeded his powers and he has assaulted the respondent and dragged him to the police

station. He confined him to 3-4 days where he also tortured him. This barbaric act of the police, cannot be treated as 'under' the provisions of the Police Act. Following this decision, their Lordships have held in a decision in State of Maharashtra v Atma Ram and Others, wherein it is held:

'In order to seek protection conferred by Section 161(1), Bombay Police Act, there must be a reasonable connection or nexus between the alleged act of assault and confinement and the duty or authority imposed upon the officer under the Bombay Police Act or any other enactment conferring powers on the police under the colour of which the act may be said to have been done. Unless there is a reasonable connection between the act complained of and the powers and duties of the office, it cannot be said that the act was done under the colour of the office'.

In State of Maharashtra v Narhar Rao , their Lordships of the Supreme Court held:

'Act done under colour of office' -- Test -- Reasonable connection between the act and power and duties of office must exist before the Act is said to be done under colour of office --Acceptance of bribe for weakening prosecution is not an act done under colour of office'.

So from these decisions it is abundantly clear that the act as alleged by the respondent in the complaint is not attracted under Section 170 of the Police Act.

7. Further, the learned Counsel for the petitioner has drawn my attention to a decision rendered by this Court in Crl. P. No. 458 of 1992 and connected petitions dated 18-4-1994 wherein this Court has held that in view of the stand taken by the 1st respondent that sanction is necessary for prosecuting the petitioner, the prosecution against the petitioner will have to be quashed for an offence under Section 201, IPC. Therefore, it is not held that sanction is necessary in all the cases. But the respondent himself has sought for sanction to prosecute the complainant. Therefore, that petition was allowed quashing the entire proceedings. However, he has drawn my attention to a decision rendered by this Court in B. Ramesh v K. Shankar and Others, wherein this Court has held:

'If a Police Officer is prosecuted for an offence under Section 323, IPC. and if it comes on record that, that officer at that time was attempting to arrest the complainant, the prosecution has to fail unless it is filed within the stipulated time. Such an act done by a Police Officer is said to have been done under a colour of an office or in excess of his duty or at least it was of the character aforesaid'.

Therefore, each case will have to be taken into consideration on the facts existing therein. In view of the decision rendered by the Supreme Court on facts which are akin to the facts of this case, I hold that the argument of the learned Counsel for the petitioner is liable to be rejected.

8. It is not out of place to mention here that this petition is in the form of a second revision petition which is also unsustainable. For the foregoing reasons, this petition is dismissed.

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