

State of Karnataka Vs. Marigouda

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Court : Karnataka

Decided On : Aug-25-2004

Reported in : ILR2004KAR4439

Judge : N.K. Jain, C.J., ;V.G. Sabhahit and ;Mohan Shanthanagoudar, JJ.

Acts : Karnataka Co-operative Societies Act, 1959 - Sections 109 and 111; [Indian Penal Code \(IPC\), 1860](#) - Sections 408

Appeal No. : Cri. A. No. 1079/2003

Appellant : State of Karnataka

Respondent : Marigouda

Advocate for Def. : N.P. Vivek Mehta, Adv. for ;Madanmohan M. Kannur, Adv.

Advocate for Pet/Ap. : B.C. Muddappa, Addl. S.P.P.

Judgement :

N.K. Jain, C.J.

1. This matter has come up before us on a reference made by a Division Bench vide order dated 3.8.29:43 PM 11/20/04004. As directed by the Hon'ble Chief Justice on 23.8.2004, the matter has been posted today.

2. It is alleged that some amount was received by the respondent/accused Marigouda, but the same was not credited to the Society and was misappropriated by him. In C.C.No. 625/1986, vide order dated 13.10.1998, the respondent was convicted and sentenced to undergo R.I for one year and to pay a fine of Rs. 2, 000/ in case of default to undergo S.I. for six months. The said order was set aside by the learned II Addl. Sessions Judge, Dharwad, vide order dated 03.03.2003 passed in Cri.A.No. 99/ 1998 for want of sanction. The State has filed this appeal against the said order.

3. When the matter came up before the learned Single Judge, by order dated 06.04.2004, the matter was referred to the Division Bench for considering the question as to whether the sanction under Section 111 of the Karnataka Cooperative Societies Act (for short, the 'Act') is required to prosecute the accused for the offence punishable under Section 408 IPC in view of the conflicting decisions of the two Division Benches of this Court in STATE BY PSI (I & O), Athani Police Station v. Pundalik Annappa Garage 2002(4) KLJ 409, decided on 24.1.2002 and in State Of Mysore v. Mallaiah 1974 (2) KLJ S.N. Item No. 245 page 66, decided on 5.4.1974. The matter was placed before the Division Bench on 03.08.2004. The Division Bench felt that in view of the findings given by the co-ordinate Benches, the matter should be placed before a larger Bench in view of the Full Bench decision of this Court in B. Haleshappa v. State Of Karnataka & Ors. ILR 2002 KAR 4306 and accordingly, the matter is placed before this Full Bench as stated.

4. The learned Addl. State Public Prosecutor submits that once the person has not been prosecuted under Section 109(3) of the Act, getting sanction as required under Section 111(2) of the Act does not arise at all. Therefore, the Division Bench decision in STATE BY PSI (I & O) ATHANI P.S. v. PUNDALIK ANNAPPA GARAGE is not correct. He further submits that this Division Bench has not taken note of the two Single Bench decisions on the point in question and also the earlier Division Bench decision wherein it is clearly held that the sanction is not required for the prosecution of the accused for the offences punishable under the provisions of the Indian Penal Code.

5. On the other hand, learned Counsel for the respondent/ accused submits that from the alleged facts it is clear that sanction is necessary and the decision in PUNDALIK ANNAPPA GARAGE's case (supra) does not require any reconsideration.

6. We have heard the learned Counsel for the parties and perused the material on record.

7. The question that is referred for consideration of this Bench is whether the sanction under Section 111 of the Karnataka Co- operative Societies- Act, 1959, is required to prosecute the accused even for the offence punishable under Section 408 IPC.

8. Section 109 of the Act deals with various offences, which are punishable under the Act and the penalties that shall be imposed on such offences. It will be relevant to refer to the following relevant provisions of the Act -

Section 109(3): A co-operative society or an (office bearer) or member thereof willfully making a false return or furnishing false information, or any person willfully or without any reasonable excuse disobeying any summons, requisition or lawful written order issued under the provisions of this Act or willfully not furnishing any information or handing over any documents or property-required from him by a person or body of persons authorised in this behalf under the provisions of this Act shall be punishable (with imprisonment which may extend to two years but shall not be less than three months and with fine which may extend to three thousand rupees but shall not be less than five hundred rupees).'

'111.Cognizance of Offences:- (1) No Court inferior to that of a Magistrate of the First Class shall try any offence under this Act.

(2) No prosecution shall be instituted under this Act without previous sanction of, -

(a) The Director of Co-operative Audit in respect of matters arising out of audit;

(b) The Registrar in respect of other matters

(3) The sanction under sub-section (2) shall not be given -

- (i) without giving to the person concerned an opportunity to represent his case;
- (ii) if the Director of Co-operative Audit or the Registrar, as the case may be, is satisfied that the person concerned has acted in good faith.

A reading of the above provisions makes it clear that the offences punishable under the Act are mentioned in Section 109 and as per Section 111(2) of the Act sanction to prosecute the accused is required only for the offences committed under the Act mentioned in Section 109 of the Act, and if any offence is committed under any other law, sanction to prosecute the accused is not necessary. In our view, in the given case, obtaining of the sanction under Section 111(2) of the Act is not necessary.

9. It is also seen that there are two decisions rendered by learned Single Judges in *Taluk Industrial Co-operative Society Ltd. v. Patel C.M. Thimmegowda* 1965(1) MLJ Page 98 and in *Gurupad Ramachandra Nandani v. State Of Mysore* 1971(1) MLJ Page 172, and also a Division Bench decision of this Court in *STATE OF MYSORE v. MALLAIAH* (supra) wherein the view that sanction is not required under Section 11(2) of the Act has been taken. The Division Bench of this Court in *PUNDALIK ANNAPPA GARAGE'S* case (supra), without considering the above decisions has held that sanction under Section 111 is required for the prosecution of the accused under Sections 406 and 409 IPC. In our considered view, the decision rendered in *PUNDALIK ANNAPPA GARAGE'S* case (supra) is contrary to the provisions of Section 111(2) of the Act, according to which, sanction is envisaged only in respect of prosecution of the accused for the offences under the Act and would not be applicable to prosecution of the accused for offences under other laws. As already stated, according to Section 111(2) of the Act sanction to prosecute the accused must be obtained only for the offences falling under Section 109 of the Act but it is not applicable where the offences committed are punishable under any other law.

10. In view of the above discussion, we hold that the Division Bench decision in *PUNDALIK ANNAPPA GARAGE'S* case (supra) does not lay down a good law and the same is liable to be overruled. We approve the law laid down by the Division Bench of this Court in *STATE OF MYSORE v. MALLAIAH* (supra) and answer the

point referred to us holding that sanction under Section 111 of the Act is not required for prosecuting the accused for the offence punishable under Section 408 IPC. In view of the above, let the appeal be placed before the learned Single Judge.

11. We appreciate the assistance given by the learned Counsel Sri N.P. Vivek Mehta on the legal point. The learned Single Judge after issuing notice to the workman, will hear and decide the case, in accordance with law.

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