

H.S. Gotla Vs. State

H.S. Gotla Vs. State

SooperKanoon Citation : sooperkanoon.com/387440

Court : Karnataka

Decided On : Mar-27-2001

Reported in : 2001CriLJ2695

Judge : K. Sreedhar Rao, J.

Acts : [Prevention of Corruption Act, 1988](#) - Sections 13(1), 13(2) and 17; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 8(1)

Appeal No. : Cri. Petn. No. 3495 of 2000

Appellant : H.S. Gotla

Respondent : State

Advocate for Def. : G. Bhawani Singh, Govt. Pleader

Advocate for Pet/Ap. : V.A. Ramasharma, Adv.

Judgement :

ORDER

K. Sreedhar Rao, J.

1. The Criminal Petition filed against the registration of a case in LAC (CR) No. 2 of 1999 on the file of the Karnataka Lokayukta Police Station, Gulabarga against the petitioner herein. The petitioner is working as a Inspector of Excise. The

Deputy Superintendent of Police, Lokayukta has registered the case against the petitioner for offences under Section 13(1)(e) r/w. Section 13(2) of the Prevention of Corruption Act alleging that the assets held by the petitioner is disproportionate to the known source of income. After registration of the FIR against petitioner embarked upon the investigation. At this stage, the legality of the registration of case and conduct of investigation is in challenge.

2. Heard the State Public prosecutor and the Counsel for the petitioner in this regard. The provisions of Section 17 of the Prevention of Corruption Act mandates a previous sanction by the officer not below the rank of the Superintendent of Police for investigation of the offence under Section 13(1)(e) of the Prevention of Corruption Act. For the benefit of easy reference, the provisions of Section 17 are extracted hereunder :

17. Persons authorised to investigate : Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) no police officer below the rank,-

(a) in the case of the Delhi Special Police Establishment, of an Inspector of Police;

(b) in the metropolitan areas of Bombay, Calcutta, Madras and Ahmedabad and in any other metropolitan area notified as such under Sub-section (1) of Section 8 of the Code of Criminal Procedure, 1973 (2 of 1974) of an Assistant Commissioner of Police;

(c) elsewhere, of a Deputy Superintendent of Police or a police officer of equivalent rank,

shall investigate any offence punishable under this Act without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make any arrest therefor without a warrant:

Provided that if a police officer not below the rank of an Inspector of Police is authorised by the State Government in this behalf by general or special order, he may also investigate any such offence without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make arrest therefor without a warrant:

Provided further that an offence referred to in Clause (e) of Sub-section (1) of Section 13 shall not be investigated without the order of a police officer not below the rank of a Superintendent of Police.

3. In the present case, the Deputy Superintendent of Police has registered the case as In-charge Superintendent of Police at the relevant point of time and exercising his power as in-charge Superintendent of Police permitted himself by an order of sanction for investigation into the matter. A substantial question would arise regarding the legality of the conduct of the Deputy Superintendent of Police to investigate into the matter on the basis of the sanction given by himself as In-charge Superintendent of Police. The provisions of Section 17 of the Act are mandatory and the sanction by an Officer not below the rank of Superintendent of Police is a pre-requisite to conduct the investigation. In the instant case, although the Deputy Superintendent of Police was in-charge Superintendent of Police merely being placed as in-charge Superintendent of Police, his rank would not get promoted to the cadre of the Superintendent of Police during the period when he is officiating as in-charge Superintendent of Police. Therefore, Deputy Superintendent of Police is below the rank of Superintendent of Police.

4. Accordingly, the registration of case and continuation of investigation is hereby quashed. However, the State is at liberty to initiate fresh proceedings by following the due procedures of law.