

**Basavaraj Vs. the State of Karnataka and Others**

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**Court :** Karnataka

**Decided On :** Apr-01-2011

**Judge :** K.N. Keshavanarayana

**Appeal No. :** CRIMINAL PETITION NO.9195 OF 2010

**Appellant :** Basavaraj

**Respondent :** The State of Karnataka and Others

**Advocate for Pet/Ap. :** For the Petitioner: Basavaraj, Advocate. For the Respondents: P.M. Nawaz, Addl. SPP.

**Judgement :**

(This Criminal Petition is filed U/s 482 Cr.P.C. praying to quash the complaint /FIR and further proceedings in CR.No.112/2010 (FIR No.174/1/10- (Police Station at Bhalki Town vs. Basavaraj), pending before the Civil Judge (Sr.Dn.) and J.M.F.C., at Bhalki, in the interest of Justice and equity.)

In this petition filed under Section 482 Cr.P.C., the petitioner, who is a practicing advocate at Bhalki Taluk in Bidar district, has sought for quashing the complaint and the FIR in Crime No.112/2010 of Bhalki Town Police registered on the basis of the complaint lodged by the Deputy Secretary, DPAR, Government of Karnataka, Bangalore.

2) Few facts relevant are as under:-

One Veeranna Sanganna Biradar, resident of Bhatambra Village in Bider District had filed an application for the grant of pension payable to freedom fighters. Enquiry on the said application had been started on 30.4.2010 before the Deputy Secretary to the Government of Karnataka, DPAR, M.S.Building, Bangalore. On account of the failing health of the applicant as he is aged over 100 years, the applicant could not travel all the way from Bidar to Bangalore, therefore, he sent his son Ramesh Biradar along with the petitioner herein, a practicing advocate, to attend the enquiry before the Deputy Secretary at Bangalore. Accordingly, the petitioner and the son of the applicant attended the enquiry before the Deputy Secretary, on 30.4.2010. During the enquiry certain submissions were made by the petitioner as counsel representing the applicant. The Deputy Secretary appears to have recorded the submissions made by the counsel and the son of the applicant in the proceedings sheet. The Under Secretary also was stated to be present during the enquiry.

3) The petitioner herein stated to have refused to sign the proceedings sheet. The refusal on the part of the petitioner herein to sign the proceedings sheet recorded during the enquiry before Deputy Secretary was reported to the Principal Secretary, DPAR, who in turn directed the Under Secretary to lodge a complaint to the jurisdictional police. Accordingly, on 11.05.2010, the Under Secretary, DPAR sent a written complaint to the Superintendent of Police, Bidar District, alleging that the refusal on the part of the petitioner herein to sign the proceedings of the enquiry recorded by the Deputy Secretary on 30.04.2010 amounts to arrogance, therefore, he sought for registration of a criminal case against the petitioner herein to prosecute him. On receipt of the said complaint, the Superintendent of Police forwarded the same to the Police Inspector, Bhalki Town Police Station, for registration of the case and to investigate the matter. Accordingly, the Bhalki police registered the case in Crime No.112/10 for the offence punishable under Section 353 of IPC, submitted the FIR to the jurisdictional Magistrate and took-up investigation. It is at this stage, on coming to know of the registration of the case, the petitioner presented this petition seeking to quash the complaint and FIR. Later on the point of territorial jurisdiction the case was transferred to Vidhana Soudha Police Station, where the case in Crime No.49/10 came to be registered on 12.08.2010. Subsequently the Investigating Officer after completing investigation

on 04.11.2010 filed the charge sheet against the petitioner for the offence punishable under Section 180 of IPC, based on which C.C.No.49148/2010, has been registered.

4) It is the contention of the petitioner that the allegations made in the complaint even if read as a whole and accepted at its face value does not make out any case muchless any criminal offence and that the complaint was filed only with a view to harass this petitioner, who is a practicing advocate in Bhalki Town and to coerce his client to withdraw the application for grant of pension. It is also the contention of the petitioner that the complaint is motivated, actuated with malafides, and it is abuse of the official position.

5) I have heard the learned counsel appearing for the petitioner as well as the learned Additional S.P.P. appearing for the respondent-State.

6) It is the submission of the learned counsel for the petitioner that the offence for which now the charge sheet has been filed is not attracted to the allegations made in the complaint nor the evidence collected during investigation prima facie satisfy the ingredients of the offence punishable under Section 180 of IPC, therefore, the criminal prosecution launched against the petitioner is liable to be quashed.

7) On the other hand, the learned Additional S.P.P. submitted that the materials on record prima facie make-out the offence alleged now in the charge sheet, therefore, there are no grounds to quash the criminal prosecution.

8) As noticed supra, though initially the case was registered for the offence punishable under Section 353 of IPC, now the charge sheet has been filed for the offence under Section 180 of IPC. The basis for setting criminal law on motion was the refusal on the part of the petitioner herein, a practicing advocate, to sign the proceedings of the enquiry recorded by the Deputy Secretary on 30.04.2010. The question is as to whether the refusal on the part of the petitioner herein to sign the proceedings of the enquiry conducted by the Deputy Secretary to the Government would constitute any offence either punishable under Section 353 or under Section 180 of IPC. Now it is well-settled law that if the allegations made in the complaint and the evidence collected during investigation and produced before the Court

along with the charge sheet does not prima facie make out any offence, it is a case for quashing the entire prosecution as continuance of such prosecution would amount to abuse of process of the Court and unnecessary harassment to the person accused of such offence.

9) Reading of the allegations made in the complaint, a copy of which is produced along with the petition, does not indicate whether the Deputy Secretary or the Under Secretary before whom the enquiry was held on 30.04.2010 required the petitioner to sign the proceedings sheet. No doubt, there is no dispute that certain enquiry on the application filed by Sri.Veerasingappa Biradar S/o. Bhimanna Biradar, for grant of Freedom Fighters' pension was held before the Deputy Secretary and the Under Secretary to the Government (DPAR) on 30.04.2010 and the said enquiry was attended by Ramesh Biradar, son of the applicant and the petitioner herein representing as counsel for the applicant. There also appears to be no serious dispute that during the enquiry certain submissions were made by the petitioner herein on behalf of his client, the Applicant and the Deputy Secretary before whom the enquiry was being held recorded the submissions. Assuming for the purpose of the argument that the Deputy Secretary and/or Under Secretary called upon the petitioner to sign the proceedings recorded and that the petitioner herein refusal to sign the same, the question would be, whether such an act on the part of the petitioner attract any of the criminal offence punishable either under Section 353 or 180 of IPC.

10) Section 353 of IPC reads as under:

353. Assault or criminal force to deter public servant from discharge of his duty,-  
Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything does or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”

11) A plain reading of this section indicates that, to attract the offence under this section, there should have been an assault or use of criminal force on any public

servant in the execution of his duty as a public servant or with an intention to prevent or deter such public servant from discharging his duty, the accused should have committed any act. In the case on hand, even if the allegations made in the complaint are accepted at its face value without being controverted, would not make out that the petitioner herein did any act which prevented or deterred either the Deputy Secretary or the Under Secretary to the Government from discharging their duty. Therefore, registration of the case for the offence punishable under Section 353 of IPC., itself was without any basis.

12) Section 180 of IPC reads as under.

180. Refusing to sign statement,- Whoever refuses to sign any statement made by him, when required to sign that statement by a public servant legally competent to require that he shall sign that statement, shall be punished with simple imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

From the reading of this section, it is manifest that the essential ingredients to constitute the offence under this Section are:-

- i) The accused made a statement before a public servant.
- ii) The accused was required by public servant to sign such statement.
- iii) Public servant was legally empowered or competent to require the accused to sign that statement, and
- iv) That the accused refused to sign statement.

13) In the case on hand, the petitioner was participating in the enquiry not as a party but as a counsel for the applicant. In that capacity he made certain submissions before the authority, who was holding enquiry. Even if such submissions made by the counsel were recorded by the officer holding enquiry, it cannot be construed as statement made by the petitioner before a public servant. Even if it is assumed that the submissions of the petitioner recorded by the Deputy Secretary was accepted as statement made by him, it has to be prima facie

established that the petitioner was required by the public servant to sign such statement and the public servant was legally competent to require the accused to sign such statement. As noticed supra, the contents of the complaint nor the statements of any of the witnesses does not prima facie indicate that either the Deputy Secretary or the Under Secretary required the petitioner herein to sign the proceedings sheet. There is no law which compels the petitioner to sign the proceedings recorded by the Deputy Secretary. Therefore, there is nothing on record to show that the Deputy Secretary or Under Secretary were legally empowered or competent to require the petitioner to sign the statement. Therefore, the ingredients to constitute offence under Section 180 of IPC are not, prima facie made out. It is highly dangerous to hold that every refusal on the part of a counsel appearing for a party, to subscribe his signature to the proceeding sheet in which the public servant has recorded the submissions of such counsel, is an offence under Section 180 of IPC. To attract the offence under Section 180 of IPC, the person accused of such offence should be under a legal obligation or compulsion to sign the statement or submissions. If there is no legal obligation or compulsion, refusal on his part to sign such statement or submissions cannot be brought under Section 180 of IPC. In this view of the matter, I am of the considered view that the materials available on record, even if they are accepted at its face value without being controverted, they do not make out any case either for the offence under Section 353 or Section 180 of IPC. The prosecution launched against the petitioner cannot be allowed to continue and if this prosecution is allowed to continue it would amount to abuse of the process of the Court and also unnecessary harassment to the petitioner, who will be compelled to face the trial before the Court of law. In this view of the matter, the petition deserves to be allowed.

14) Accordingly, the petition is allowed. The complaint as well as the FIR registered in Crime No.112/10 of the Bhalki Town Police Station and in Crime No.49/2010 of Vidhana Soudha Police Station, as well as the criminal prosecution launched pursuant to investigation in the aforesaid cases culminating in the charge sheet in C.C. No.49148/10 on the file of the ACMM, Bangalore are hereby quashed.