IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 21st DAY OF MAY 2013

BEFORE:

THE HON'BLE MR. JUSTICE ANAND BYRAREDDY

WRIT PETITION Nos. 13779-780 OF 2013 (GM-RES)

BETWEEN:

Sri. M.K. Aiyappa,
Aged about 54 years,
Son of Late M.K. Kariyappa,
Residing at No.2707, 2nd Cross,
BDA Layout, New Thippasandra,
Bangalore – 560 075. …PETITIONER

(By Shri. Ashok Haranahalli, Senior Advocate for Shri. M.T. Nanaiah and Shankarappa, Associates, Advocates)

AND:

1. The State of Karnataka,
By Lokayukta Police,
M.S. Building,
Bangalore – 560 001.

2 Sri. Anil Kumar,
Aged about 42 years,
Son of A. Pillappa,
Resident of Madappanahalli Village,
Hesaraghatta Hobli,
Bangalore North Taluk,

Bangalore – 560 075.

3. Sri. Harish,
Aged about 32 years,
Son of Bachappa,
Resident of Madappanahalli Village,
Hesaraghatta Hobli,
Bangalore North Taluk,
Bangalore – 560 075.

4. Sri. Muniveerappa,
Son of Muninagappa,
Aged about 70 years,
Resident of Madappanahalli Village,
Hesaraghatta Hobli,
Bangalore North Taluk,
Bangalore – 560 075. …RESPONDENTS

(By Shri. B.A. Belliappa, Advocate for Respondent No.1)

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These Writ Petitions are filed under Articles 226 and 227 of the Constitution of India read with Section 482 of Code of Criminal Procedure, praying to quash the order dated 20.10.2012 passed by the Special Judge for prevention of corruption Act in PCR No.55/2012 at Annexure-J and quash the FIR in Crime No. 81/2012 entire proceeding vide Annexure-K registered by the first respondent police for the offence under Section 406, 409, 420, 426, 463, 465, 468, 471, 474 read with 120B and 149 of IPC and under Section 8, 13(1)(c), 13(1)(d), 13(1)(e) and Section 13(2) read with Section 12 of PC Act 1988, pending before the court of the XXIIII Additional City Civil and Special Judge for Prevention of Corruption Act at Bangalore City and dismiss the complaint.

These petitions, having been heard and reserved on 26.04.2013 and coming on for Pronouncement of Orders this day, the Court delivered the following:-

ORDER

Heard the learned Senior Advocate, Shri. Ashok Harnahalli, appearing for the counsel for the petitioner and Shri B.A. Belliappa, appearing for respondent no.1.

2. The facts and circumstances in which the present writ petition is filed are as hereunder :

It transpires that a private complaint under Section 200 of the Code of Criminal Procedure, 1973 (Hereinafter referred to as the 'Cr.PC', for brevity) was said to have been filed by Shriyuths Anil Kumar, Harish and Muniyappa, before the Court of XXIII Additional City Civil and Special Judge for Prevention of Corruption Act, at Bangalore, as on 9.10.2012. The complaint named 15 persons as the accused – the petitioner was named as accused no.1, therein.

The complainants claimed to be permanent residents of Maddappanahalli, Hessaraghatta Hobli, Bangalore North Taluk. It was alleged that land bearing Survey no. 62 of Maddappanahalli, measuring about 32 acres and 4 guntas, including 17 guntas of Kharab – was government land and was being utilized as gomal land by the residents of Madappanahalli. It was not under cultivation by any individual, nor could any individual claim exclusive possession of the said land. According to the complainants the land was classified as "banjar" in the revenue records. The fact of the matter was that having regard to the proximity of the land to Bangalore city, the market value of the land was over Rs.1 crore per acre.

It was alleged that one Narasimaiah, son of Dayabylappa, accused no. 3, claimed a right over the property on the basis that it had been granted to his father, but was shown as "Phada" in the revenue records and sought restoration of the land in his favour, in accordance with law.

The petitioner, acting on the basis of a report submitted by the Special Tahshildar, accused no. 2, as to the status of the land, dated 16.6.2012, to the effect that Narasimaiah was in possession of the land and on the basis of documents, which according to the complainants were forged, had passed an order dated 30.6.2012 directing restoration of the land in favour of Narasimaiah, accused no.3.

It was further alleged that several individuals, named as accused no.4 to 7 in the complaint, had made representations to the Tahshildar, Bangalore North Additional taluk, claiming as grantees in possession of the very land referred to hereinabove. This having been brought to the attention of the petitioner, the order dated 30.6.2012 was kept in abeyance, by an order dated 19.7.2012. The petitioner is said to have issued notice of hearing to all concerned claimants and after examination of records, called for from the office of the Tahshildar and the Assistant Commissioner, is said to have passed a detailed order dated 22.9.2012, affirming the order dated 30.6.2012.

It was alleged that even before the order dated 22.9.2012 was passed, accused no.3 had executed sale deeds in respect of the entire extent of land aforesaid, in favour of third parties, namely, accused no.8 to 12, as on 11.9.2012.

Pursuant to the said order dated 22.9.2012, a representation is said to have been made by several villagers questioning the claim of Narasimaiah and the veracity of the records on the basis of which he had approached the petitioner. The petitioner has thereafter reconsidered the records and has recorded, in his further order dated 6.10.2012, that the claim of Narasimaiah could not be sustained in the light of other documents that were made available and which would negate his claim and hence has recalled and cancelled the order dated 30.6.2012.

It is in the above background that the private complaint was brought, alleging offences punishable under Sections 406,409,420,426,463,465,468,471,474 read with Section 120B and 149 of the Indian Penal Code, 1890 (Hereinafter referred to as the 'IPC', for brevity) and under Sections 8, 13(1)c, 13(1)d,

13(1)e, 13(2) read with Section 12 of the Prevention of Corruption Act, 1988 (Hereinafter referred to as the 'PC Act', for brevity).

On receipt of the complaint, the Court of the Special Judge, has heard the complainant over two dates of hearing and has by an order dated 20.10.2012, recounted the above sequence of events briefly, and held thus :

> " On going through the complaint, documents and hearing the complainant, I am of the sincere view that the matter requires to be referred for investigation by the Deputy Superintendent of Police, Karnataka Lokayukta, Bangalore Urban, under Section 156 (3) of Cr.P. C. Accordingly, I answer point No.1 in the affirmative.
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> Point No.2: In view of my findings on point No.1 and for the foregoing reasons, I proceed to pass the following :-
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> **ORDER**
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> The complaint is referred to Deputy Superintendent of Police – 3, Karnataka Lokayukta, Bangalore Urban under section 156(3) of Cr.PC for investigation and to report. "

It is at this stage of the proceedings that the petitioner has approached this court.

3. Shri Haranahalli contends that the proceedings initiated against the petitioner are vitiated both on primary issues of law and contends that it would not also stand a *prima facie* test of acceptability, on facts.

As regards the point of law, on which the proceedings are vitiated, the learned Senior Advocate would contend that the petitioner is a public servant, the complaint brought against him without being accompanied by a valid sanction order could not have been entertained by the special court, on allegations of offences punishable under the PC Act. It is contended that the court while exercising power under Section 156(3) of the Cr.PC, would have to apply its mind and the act of referring the matter for investigation under the said provision is not an empty formality. In support of this proposition, reliance is placed on the following authorities:-

a) Jamuna Singh vs. Bhadai Shah, AIR 1964 SC 1541,

b) Gopal Das vs. State of Assam, AIR 1961 SC 986,

c)P.R.Venugopal vs. S.M.Krishna, 2003(6) KLJ 507,

d)Guruduth V vs. M.S.Krishna Bhat, 1999 Crl.LJ 3909,

e)Maksud Saiyed vs. State of Gujarat, (2008)5 SCC 668.

It is contended that even though the power to order investigation under Section 156(3) can be exercised by a Magistrate or the Special Judge at a pre-cognizance stage, yet the requirement of a sanction being obtained by the complainant cannot be dispensed with. It is contended that the requirement of a sanction is a pre-requisite even to present a private complaint in respect of a public servant concerning the alleged offence said to have been committed in the discharge of a public duty.

On facts, it is contended that the acts attributed to the petitioner in having acted in furtherance of illegal designs to transfer government land in favour of private parties are with reference to proceedings that are a matter of record and acts

performed by the petitioner as a quasi-judicial authority and are not surreptitious acts that could be characterized as fraudulent. The legality or otherwise of the acts attributed to the petitioner are capable of being tested otherwise in law and hence to proceed on the basis of allegations, which again proceed on presumptions of falsification of records and other illegalities that would pre-suppose the involvement of innumerable persons and requiring the creation of records, spanning several decades is a glaring circumstance that has been completely overlooked in the petitioner having been proceeded against even in having directed investigation of the complaint, that the learned Senior Advocate would submit, requires the proceedings to be quashed.

4. Per contra, the learned Counsel for the respondent would contend that the present petition is misconceived and would result in an abuse of the process of law in seeking intervention of this court in the face of the circumstance that the law has been set in motion in the usual course and the court having formed an

opinion that the facts alleged would require to be investigated further, having regard to the seriousness of the same, cannot be faulted.

It is pointed out by the learned Counsel that from the sequence of events, as demonstrated and on examination of the material on record, it is found from the record that the petition under Section 136(3) of the Karnataka Land Revenue Act, 1961 (Hereinafter referred to as the 'KLR Act', for brevity) was originally filed in the year 2009 as on 13.11.2009 by accused no.3. A report had been made on 28.5.2011 placing on record that the land was treated as 'banjar' in the revenue records and is not found to be in the possession of any one and hence the same could not be considered for restoration in favour of accused no.3. No further steps were taken thereafter either by the concerned authority or accused no.3.

However, the following events have taken place with such expedition that the mischief on the part of the petitioner and his subordinates is rendered extremely suspicious. This is further

compounded by the fact that a clutch of sale transactions have taken place even before the ink was dry on the order passed by the petitioner conferring the land on accused no.3 and the fact that the purchasers are related to a sitting MLA, accused no.15, who in turn, is said to be the patron of the petitioner herein and allegedly had engineered his posting as the Deputy Commissioner in the concerned jurisdiction, which proved convenient for the entire scheme being taken to its logical conclusion – in the face of several rival claimants. The seeming conduct of the petitioner in having passed a series of orders given the rival claims being made and the further objection by the complainants as to the very legality of the claim of accused no.3 – having prompted and compelled the petitioner to have ultimately cancelled the order made in favour of accused no.3, apparently realizing the futility of any concealment of the illegality perpetrated – would unerringly lead to a presumption of guilt on the part of the petitioner. Especially as it is alleged that the order of cancellation shown to have been made prior to the date of the complaint was actually

back dated to cover-up the misdeeds of the petitioner and are concocted by the petitioner.

The learned Counsel would therefore contend that it is by way of abundant caution that the court below has thought it fit to refer the matter for further investigation -- without taking cognizance of the complaint or issuing process to the accused – having regard to the allegations being made against a public servant and in respect of acts performed by him in the discharge of his duties. The court below was acting well within its powers in having passed the impugned order.

Insofar as the primary legal issue raised as to the requirement of a sanction order even in respect of proceedings at the pre-cognizance stage – in respect of proceedings against a public servant – alleging offences punishable under the PC Act is concerned, it is contended as follows:-

That cognizance is taken of the offence and not of the offender. That one should not confuse taking of cognizance with issuance of process. The issuance of process is at a later stage when after considering the material placed before it the court decides to proceed against the offenders against whom a prima facie case is made out. It is contended that the court below has directed the carrying out of investigation by the competent officer and to submit his report. An investigation in terms of Section 156 (3) Cr.P. C. cannot be equated with an enquiry . The stage of the proceedings being at the pre-cognizance stage, the question of the complaint being accompanied by a sanction order is not contemplated in law. In this regard the learned counsel draws attention to Section 19 of the PC Act as well as Section 197 of the Cr. P.C, to emphasize that the issue of sanction order will arise only at the stage of taking cognizance and not earlier.

5. By way of reply, Shri Harnahalli would point out that the question whether sanction for prosecution of a public servant

charged with an offence under the PC Act arises only at the stage of taking cognizance and not before that, is no longer *res integra* in the light of the three judge bench decision of the apex court in the case of *State of UP v. Paras Nath Singh (2009) 6 SCC 372,* wherein, construing the requirement of sanction, it was held that without sanction the very cognizance is barred. That is, the complaint cannot be taken notice of. A court is precluded from entertaining a complaint or taking notice of it or exercising jurisdiction if it is in respect of a public servant who is accused of an offence alleged to have been committed during the discharge of his official duty.

6. In the light of the rival contentions and the facts and circumstances as recorded by the court below, it is not in dispute that the petitioner is a public servant and in active service. The allegations against the petitioner are in respect of official acts performed by him in the course of discharge of his duties, which however, are alleged to be blatantly illegal and made with an

intention to cause illegal gain to the named accused and apparently to the petitioner himself to the detriment of the State. It is evident from the content of the Order passed by the court below – that it has made itself aware of the sum and substance of the allegations and the alleged role of the petitioner. No doubt the court has refrained from expressing any prima facie opinion as to the complicity or otherwise of the petitioner in the acts on the part of the petitioner constituting offences punishable under the various provisions of the penal laws invoked. However, a primary question arises for consideration by this court, namely, whether the order passed by the court below referring the matter for investigation under Section 156(3) of the Cr.P.C can be sustained.

It is the settled law that a court while exercising power under Section 156(3) Cr. P.C. has to apply its mind and the act of referring the matter for investigation under the said provision is not an empty formality. The court is expected to have applied its mind as to whether the allegations in the complaint are sufficient to make such an order for investigation under Section 156 (3) Cr.

P.C. *(See: Jamuna Singh v. Bhadai Shah, AIR 1964 SC 1541, Gopal Das v. State of Assam AIR 1961 SC 986, Maksud Saiyed v. State of Gujurat (2008) 5 SCC 668).*

Secondly, though the power to order investigation under Section 156(3) Cr.P.C. is exercised by a court at a pre-cognizance stage, yet the requirement of sanction is a prerequisite even for a presenting a private complaint under Section 200 Cr. P .C., in respect of a public servant who is alleged to have committed an offence in discharge of a public duty. This is evident from the dictum of the apex court in the case of *Subramaniam Swamy v. Manmohan Singh (2012) 3 SCC 64*, wherein, while considering the contention as regards the stage at which a sanction to prosecute would become relevant, it was held thus :

> *``"34. The argument of the learned Attorney General that the question of granting sanction for prosecution of a public servant charged with an offence under the 1988 Act arises only at the stage of taking cognizance and not before that is neither supported by the plain language of*

the section nor the judicial precedents relied upon by him. Though, the term 'cognizance' has not been defined either in the 1988 Act or the Cr.P.C, the same has acquired a definite meaning and connotation from various judicial precedents. In legal parlance cognizance is "taking judicial notice by the court of law, possessing jurisdiction, on a cause or matter presented before it so as to decide whether there is any basis for initiating proceedings and determination of the cause or matter judicially".

64. I also entirely agree with the conclusion of learned brother Singhvi, J., that the argument of the learned Attorney General that question for granting sanction for prosecution of a public servant charged with offences under the 1988 Act arises only at the stage of cognizance is also not acceptable. In formulating this submission, the learned Attorney General substantially advanced two contentions. The first contention is that an order granting sanction is not required to be filed along with a complaint in connection with a prosecution under Section 19 of the P.C.Act. The aforesaid submission is contrary to the settled law laid down by this Court in various judgments. (emphasis supplied).

64.1. Recently a unanimous three-judge Bench decision of this court in the case of State of Uttar Pradesh vs. Paras Nath Singh, (2009)6 SCC 372,

speaking through Justice Pasayat and construing the requirement of sanction, held that without sanction:

"6. … '10.… The very cognizance is barred. That is, the complaint cannot be taken notice of. According to Black's Law Dictionary the word 'cognizance' means 'jurisdiction' or the exercise of jurisdiction' or power to try and determine causes'. In common parlance, it means taking notice of. A court, therefore, is precluded from entertaining a complaint or taking notice of it or exercising jurisdiction if it is in respect of a public servant who is accused of an offence alleged to have been committed during discharge of his official duty."

64.2. The other contention of the learned Attorney General is that in taking cognizance under the P.C.Act the court is guided by the provisions under Section 190 of the Code and in support of that contention the learned Attorney General relied on several judgments."

The apex court has also highlighted the object of the requirement of such sanction, thus :

"72. The right of private citizen to file a complaint against a corrupt public servant must be equated with his right to access the Court in order to set the criminal law in motion against a corrupt public official. This right of access, a Constitutional right should not be burdened with unreasonable fetters. When

a private citizen approaches a court of law against a corrupt public servant who is highly placed, what is at stake is not only a vindication of personal grievance of that citizen but also the question of bringing orderliness in society and maintaining equal balance in the rule of law.

73. It was pointed out by the Constitution Bench of this Court in Sheonandan Paswan vs. State of Bihar and Others (1987)1 SCC 288 at 315:

"14. .. It is now settled law that a criminal proceeding is not a proceeding for vindication of a private grievance but it is a proceeding initiated for the purpose of punishment to the offender in the interst of the society. It is for maintaining stability and orderliness in the society that certain acts are constituted offences and the right is given to any citizen to set the machinery of the criminal law in motion for the purpose of bringing the offender to book. It is for this reason that in A.R.Antulay vs. R.S.Nayak this court pointed out that (SCC P.509, para 6),

"6.... Punishment of the offender in the interest of the society being one of the objects behind penal statutes enacted for larger good of the society, right to initiate proceedings cannot be whittled down, circumscribed or fettered by putting it into a strait jacket formula of locus standi...."

Therefore the law is settled that the requirement of a sanction order cannot be dispensed with even in respect of a private complaint filed by a person against a public servant, alleging offences punishable under the PC Act, said to have been committed while discharging duties as a public servant.

Hence in view of the position of law , as spelt out by the apex court, the court below could not have even taken notice of the private complaint unless the same was accompanied by a sanction order, irrespective of whether the court below was acting at the pre-cognizance stage or the post- cognizance stage, if the complaint pertains to a public servant who is alleged to have committed offences in the discharge of official duties.

Therefore, it is unnecessary to address the case on disputed facts – which even the court below has not addressed. But as the private complaint was not accompanied by a sanction order by the competent authority, the order of the Special judge, impugned in this petition will have to be held as being without jurisdiction.

Hence the following order :

The writ petition is allowed.

The Order passed by the Special Judge for Prevention of Corruption Act dated 20.10.2012 as at Annexure –J as well as the complaint stand quashed.

No order as to costs.

Sd/-
JUDGE

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