

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

THE HON'BLE MR. JUSTICE H.P. SANDESH

CRIMINAL PETITION NO.468/2021

Dated:24-03-2021

SRI N.KRISHNAPPA and Another vs.

ANTI-CORRUPTION BUREAU and Another

**ORDER**

This petition is filed under Section 482 of Cr.P.C. praying this Court to quash the complaint dated 21.04.2017 pending on the file of IX Additional District and Sessions Judge and Special Judge, Bengaluru Rural District, Bengaluru; FIR in Crime No.6/2017 dated 02.06.2017 registered by the respondent-ACB, Bengaluru Rural District, for the offence punishable under Sections 13(1)(c) read with Section 13(2) of Prevention of Corruption Act, 1988 (for short 'the PC Act'); also the order of taking cognizance dated 19.01.2019 for the above offence; and charge sheet in Spl.C.No.9/2019 for the above offence and to consequently, quash all further proceedings thereto.

2. The factual matrix of the case is that respondent No.2 had lodged the complaint before respondent No.1-Police making the allegation that based on the application dated 02.01.2016 submitted by M/s Fortius Land Developers L.L.P., the Vishwanathapura Gram Panchayat, Devanahalli Taluk, in its meeting on 08.01.2016 and 11.03.2016 had decided to write a

letter to Panchayat Development Officer and to seek permission and thereafter, to take necessary steps. It is also alleged that under the Karnataka Gram Swaraj and Panchayat Raj Act, 1993 and Karnataka Panchayat Raj (Acquisition of Moveable and Immoveable properties by Gram Panchayat) Rules, 1996 permission has to be sought from the Taluk Panchayat. It is also alleged in the complaint that an endorsement has been given by the Executive Officer stating that no such proposal was placed before the Taluk Panchayath, Devanahalli. It is further alleged that accused No.1 by abusing his office has taken the decision to allot the CA sites No.1 and 2 formed in Sy.No.64 and Sy.No.12 situated at Bommanavara Village and Badraramanahalli Village within the limits of Devanahalli Taluk as such the State Government vide its order dated 21.04.2017 directed the respondent - Police to register FIR for the above offences.

3. In pursuant to the direction, the police have registered the case, investigated the matter and filed the charge sheet and jurisdictional Trial Court taken the cognizance for the offences and issued the summons to the petitioners and the said case was registered as Spl.C.No.9/2019. Petitioner No.1 has been arraigned as accused No.2 and petitioner No.2 has been arraigned as accused No.3 in the charge sheet.

4. It is the contention of the petitioners herein that in pursuance of the requisition given by M/s. Fortius Land

Developers L.L.P. for a lease for the purpose of club house, that on 04.01.2016, Special meeting was called and convened on 08.01.2016. The members, who had participated in the Panchayat took the decision unanimously to take necessary approval from Taluk Panchayat before proceeding further in the matter. It is also contended that notice was issued on 03.03.2016 regarding convening of the General Meeting on 11.03.2016 and in the said meeting, it was decided to take further steps in relation to allotment of Civic Amenity Sites only after taking the approval of the Taluk Panchayat. In the light of the resolution dated 11.03.2016, the Panchayat Development Officer by the communication dated 25.05.2016 sought approval of the Taluk Panchayath. The notice of the Special meeting dated 25.05.2016 was served upon the members of the Village Panchayat calling them to attend the meeting convened on 28.06.2016. In the said meeting, Panchayat decided to take up the said subject along with other subjects and it was decided to act in accordance with approval to be granted by the Taluk Panchayat.

5. It is further contended that the Panchayat Development Officer vide communication dated 20.07.2016 once again forwarded the proceedings of the meeting dated 28.6.2016 seeking approval of the Taluk Panchayat, which through its Chief Executive Officer-accused No.1 issued a memorandum dated 28.07.2016 permitting the Vishwanathapura Gram Panchayat to execute the lease deed subject to the condition that deposit

amount shall not be utilized for any other purpose except utilizing the interest amount accrued for the public works. Pursuant to the approval of the Taluk Panchayat, lease deed was executed on 15.09.2016. As there was some error, a rectification deed was executed on 23.01.2017. It is also contended that the State Government vide its order dated 05.12.2017 cancelled the lease deed and report was called, immediately petitioner No.2 got issued a notice of emergency meeting dated 18.01.2018. In the emergency meeting held on 19.01.2018, the Gram Panchayat decided to give effect to the Government Order dated 05.12.2018. In view of the decision taken by the Gram Panchayat on 19.01.2018, the PDO vide communication dated 06.04.2018 requested the Sub-Registrar, Devanahalli Taluk to cancel the lease deed, in the light of the Government order dated 05.12.2017. The action taken by the Gram Panchayat was intimated to accused No.1-Chief Executive Officer of Taluk Panchayath by the communication dated 03.02.2018.

6. It is contended that the Trial Court without the application of his judicious mind to the facts and circumstances of the case has mechanically taken cognizance and hence, the very initiation of the proceedings amounts to gross abuse of process of Court and law. Hence, the petitioners are constrained to file the present petition.

7. Learned counsel appearing for the petitioners would vehemently contend that Section 19 of the PC Act, 1988 was amended vide Act 16 of 2018 which states that no Court shall

take cognizance of the offence punishable under Sections 7, 11, 13 and 15 alleged to have been committed by the public servant except with the previous sanction in the case of person who is employed or as the case may be was at the time of communication of the alleged offence employed with the affairs of the Union or a State with the sanction of the Central Government or the State Government as the case may be. Learned counsel would vehemently contend that the said amended Section 9 of the PC Act, 1988 was substituted by the Act 16 of 2018 with effect from 26.07.2018. In view of the amendment, the Court shall not take cognizance of an offence which is punishable under Sections 7, 11, 13 and 15 against the public servant "who is or was" employed at the time of commission of alleged offence without the previous sanction from the competent authority in respect of the cases as on the date of 26.07.2018.

8. In the present case, accused No.3 was serving as President of Vishwanathapura Gram Panchayat at the time when the alleged FIR was registered and as on the date of taking cognizance of the alleged offence, petitioner No.2 i.e., accused No.3 was a public servant. Therefore, as per the amended Section 19 of the PC Act, without the previous sanction from the competent authority, the Trial Court could not have taken cognizance inasmuch as Section 19 of the PC Act was applicable with effect from 26.07.2018. Hence, the order of taking the

cognizance dated 19.01.2019 is liable to be quashed.

9. Learned counsel also would vehemently contend that the learned Trial Judge while taking the cognizance also has committed an error and only reference has been made while taking the cognizance. On perusal of the records, it does not indicate that the Trial Judge has applied his judicious mind. Learned counsel also would submit that the membership of petitioner No.2 was cancelled and the same was questioned in W.P.No.20304/2018, which came to be allowed by setting aside the order. It is contended that the Gram Panchayat had infact obtained the prior permission of Taluk Panchayat before executing the lease deed. Indeed, Taluk Panchayath had issued a memorandum dated 28.07.2016 according approval for execution of the lease deed in favour of M/s Fortius Land Developers L.L.P.. Hence, it cannot be said that there is no proper prior approval of the Taluk Panchayath. It is also contended that it is the collective decision of the Gram Panchayat, which unanimously decided to allot the Civic Amenity Sites in favour of M/s. Fortius Land Developers L.L.P. on collecting Rs.30 lakhs as deposit and also to prevent illegal encroachment of the public properties belonging to the Village Panchayat. Therefore, no criminal act can be fastened against the petitioners herein even on cancellation of the lease deed, in view of the State Government decision and the same being communicated to the Sub Registrar and lease deed was also got cancelled. Hence, there cannot be any criminal prosecution against

the petitioners herein.

10. Learned counsel in support of his arguments also relied upon the judgment of the Apex Court in the case of **PEPSI FOODS LIMITED AND ANOTHER v. SPECIAL JUDICIAL MAGISTRATE AND OTHERS**, reported in **(1998) 5 SCC 749**, wherein the Apex Court discussed with regard to invoking of Section 482 of Cr.P.C. by quashing the proceedings and held that power of the Court to discharge the accused at the stage of framing of charge or existence of remedy of appeal and revision not a bar to invoke the jurisdiction of the High Court under Article 227 of the Constitution of India or Section 482 of Cr.P.C.

11. Learned counsel also relied upon the judgment in the case of **SUNIL BHARTI MITTAL v. CENTRAL BUREAU OF INVESTIGATION** reported in **(2015) 4 SCC 609** and referring this judgment, learned counsel brought to the notice of this Court with regard to scope of Section 204 of Cr.P.C. for issuing the process and the Apex Court held that the Magistrate could not have issued the process and set aside the order and also clarified that the present order not to affect future exercise of power by Magistrate and he would be at liberty to take action under Section 319 of Cr.P.C. later, if warranted. The Apex Court held that when Company is the accused, its Directors can be roped in only if there is sufficient incriminating evidence against them coupled with criminal intent or the statutory regime attracts the doctrine of vicarious liability.

12. Learned counsel also relied upon the unreported judgment of this Court passed in Criminal Petition Nos.5134/2014 connected with 5148/2014 dated 07.11.2014 and this Court observed, the charge sheet papers discloses that the Deputy Superintendent of Police has sought for permission to prosecute the public servants and the sanction is yet to be obtained from the competent authority and he requested the Court to permit him to file the charge sheet against the above said persons after getting permission from the competent authority. The Court also discussed with regard to whether the allegations made in the charge sheet against the accused persons are separable in nature or inter twined with each other. In para No.4 of the judgment, this Court set aside the order passed by the Special Court in taking cognizance against the offences against some of the accused.

13. Learned counsel further relied upon the unreported judgment of this Court decided on 19.04.2017 passed in CrI.P.No.3053/2017 and brought to the notice of this Court para Nos.3 and 5, wherein this Court fully endorsed the opinion expressed by the Co-ordinate Bench of this Court and held that it would not be possible for the Court below to take cognizance piecemeal against some of the accused and to have postponed the question of taking cognizance against the other accused till such time, sanction for prosecution was obtained.

14. Per contra, learned counsel appearing for the



respondent would submit that the request was made in the year 2016 and resolution was also passed to obtain the prior permission from the Taluk Panchayat and subsequently, without the prior sanction from the Taluk Panchayat, lease deed was executed. Learned counsel would vehemently contend that the complaint was given on 21.04.2017 and offence invoked is under the provisions of the PC Act. The specific allegation against the petitioners is that without the approval from the Taluk Panchayat, the file was not placed before the Taluk Panchayat. A decision was taken by the Government vide its proceedings dated 14.05.2017, from which it is very clear that the same is in violation of the statute and prima facie found that an illegal decision was taken. Hence, accorded the permission against petitioner No.1 in terms of the complaint dated 21.4.2017, by granting sanction to prosecute petitioner No.1.

15. Learned counsel would vehemently contend that sanction was also sought against the second petitioner herein and an endorsement was issued that there is no need to accord sanction against petitioner No.2 herein and his office was ceased. Learned counsel also vehemently contend that the amendment which was brought in the year 2018 i.e., 26.07.2018 is prospective in nature and the same cannot be a retrospective one, wherein its applicability would go back to the commission of an offence. Hence, the very contention of the learned counsel for the petitioners cannot be accepted.

16. Learned counsel in support of his argument, relied upon the judgment of the Kerala High Court in the case of ***K.R.RAMESH v. CENTRAL BUREAU OF INVESTIGATION AND ANOTHER*** reported in ***2020 SCC Online Ker. 2529*** and brought to the notice of this Court para Nos.1, 7, 10, 38, 42 and 43, wherein it has been elaborately discussed with regard to scope of offence under Section 13(1)(d) of the PC Act and also the amendment which was brought to the PC Act. The Kerala High Court in this judgment, particularly in para No.44, held that the Prevention of Corruption (Amendment) Act 2018 has to be held to be prospective and has no application to the cases registered prior to the amendment and pending under various stages of investigation and to cases, in which investigation has been completed and are pending trial. Learned counsel referring to this judgment would vehemently contend that the contention of the petitioners cannot be accepted.

17. Learned counsel also relied upon the judgment of this Court dated 20.12.2019 passed in W.P.No.29176/2019 and brought to the notice of this Court para No.19 of the judgment, wherein it is held that the Statute may operate retrospectively by express enactment, by necessary implication from the language implied or where the statute is explanatory or declaratory or where statute is passed for the purpose of protecting the public against some evil or abuse and also taken note of there is no express amendment nor it is discernable from

the language that amendment is retrospective in nature.

18. Learned counsel also relied upon the judgment of the Apex Court in the case of **L.NARAYANA SWAMY v. STATE OF KARNATAKA AND OTHERS** reported in **(2016) 9 SCC 598**. Learned counsel referring to this judgment brought to the notice of this Court para No.21, wherein the Apex Court discussed with regard to the principles laid down in the case of *Abhay Singh Chautala and Prakash Singh Badal* in respect of obtaining the sanction. It is also made clear that where the public servant had abused the office which he held in the check-up period, but had ceased to hold "that office" or was holding a different office, then sanction would not be necessary. Likewise, where the alleged misconduct is in some different capacity than the one which is held at the time of taking cognizance, there will be no necessity to take the sanction. It is further observed that a detailed discussion contained in these judgments would indicate that the principle laid down therein would encompass and cover the cases of all public servants, including the government employees who may otherwise be having constitutional protection under the provisions of Articles 309 and 311 of the Constitution. Having relied upon these judgments, learned counsel would vehemently contend that the contention of the learned counsel for the petitioners cannot be accepted and there is no need to take sanction against the petitioner as he has ceased his office.

19. Having heard the respective counsel and also the

principles laid down in the judgments referred supra by both the learned counsel, the moot point that would arise for the consideration of this Court is whether it is a fit case to exercise the powers under Section 482 of Cr.P.C. to quash the proceedings on the ground that no sanction is obtained consequent upon the amendment to the PC Act in the year 2018 and so also whether the learned Judge has applied his judicious mind in taking the cognizance. It is also settled law that while exercising the powers under Section 482 of Cr.P.C., the Court has to exercise its power sparingly where there is a case of abuse of process, which leads to miscarriage of justice. The Apex Court also in ***Pepsi Foods'*** case held that power of the Court to discharge the accused at the stage of framing of charge or existence of remedy of appeal and revision not a bar to invoke the jurisdiction of High Court under Article 227 of Constitution of India or Section 482 of Cr.P.C.

20. The Apex Court in ***Sunil Bharti Mittal's*** case discussed with regard to the scope of the Court while exercising the powers under Section 204 of Cr.P.C. The other judgments of this Court are with regard to quashing of the proceedings on the ground of absence of any sanction.

21. Learned counsel appearing for the respondent No.1 also relied upon the decisions of the Kerala High Court, Apex Court and also this Court with regard to when the sanction is

required for prosecution.

22. Having given anxious consideration to the principles laid down in the judgments referred supra, this Court has to look into the factual aspects of the case on hand. In the case on hand, it has to be noted that the specific allegations against these two petitioners along with accused No.1 are that they executed the lease deed in respect of CA site Nos.1 and 2 in favour of M/s. Fortius Land Developers L.L.P. as against the statute and thereby, committed the offences under the PC Act. On perusal of the records, document No.2 discloses with regard to giving of sanction to proceed against accused Nos.1 and 2 vide order dated 21.04.2017. The main contention of the petitioners before this Court is also that before executing the lease deed, they had obtained the prior permission from the Taluk Panchayat. It is not in dispute that when the sanction was not obtained, the Government in the year 2017 set aside the lease granted in favour of M/s. Fortius Land Developers L.L.P. It is also the contention of the petitioners that in view of the Government order, the lease has been cancelled, but the fact remains before the Court is that whether they had executed the lease deed without obtaining the approval from the Taluk Panchayat. In order to substantiate the fact that prior approval was obtained from the Taluk Pachayat, no document is placed before the Court. But only the documents with regard to the resolution being passed by the Panchayat has been placed and also the documents relating to

calling of the Special Meeting and proceedings of the meeting are also placed before the Court.

23. The main contention of the learned counsel for the petitioners is that without sanction, there cannot be any prosecution against the petitioner No.2 herein, who has been arraigned as accused No.3. It is pertinent to note that the case was registered prior to the amendment and it is also not in dispute that the amendment was brought on 26.07.2018. Learned counsel for the petitioners also brought to the notice of this Court that the charge sheet was filed on 25.10.2018. No doubt, in view of the amendment, it is clear that for prosecuting the public servant, who is or was working or holding the public office, the sanction is necessary. But the question before the Court is that in view of the amended Section, the sanction is necessary in respect of petitioner No.2, who has been arraigned as accused No.3.

24. Learned counsel appearing for the respondent – Lokayuktha also not disputed the fact that the sanction is not obtained. Learned counsel for the petitioners also not disputed the fact that the membership of accused No.3 was seized. The judgment relied upon by the respondent's counsel subsequent to the amendment in the judgment of the Kerala High Court reported in 2020 SCC online Ker. 2529 in detailed discussed with regard to the amendment is concerned and ultimately, comes to the conclusion in para No.44 that the Prevention of Corruption (Amendment) Act, 2018 has to be held to be prospective and

has no application to cases registered prior to the amendment and pending under various stages of investigation and to cases in which investigation has been completed and are pending trial.

25. Having perused the principles laid down in the said judgment, it is clear that the amendment brought in the year 2018 is prospective and has no application to the cases registered prior to the amendment. In the case on hand, the case was registered prior to the amendment and also the fact that an endorsement was issued stating that there is no need to issue the sanction. Hence, it is clear that when the post of petitioner No.2 was ceased, on account of completion of his term, the very amendment brought in the year 2018 is not applicable to the case on hand. This Court also in the W.P.No.29176/2019 in para No.19 discussed with regard to the implication of the amendment and the Statute operates retrospectively only by express enactment, by the necessary implication from the language implied or where the statute is explanatory or declaratory or where the statute is passed for the purpose of protecting the public against some evil or abuse.

26. In the case on hand also, the allegation is made against petitioner No.2 herein that when he was working as a President along with other accused persons, indulged in executing the lease deed. When such being the facts and circumstances of the case and also the Apex Court in **L.Narayana Swamy**'s case in para No.21 categorically held that where the public

servant had abused the office, which he held in the check-up period, but had ceased to hold "that office" or was holding a different office, then sanction would not be necessary. Likewise, where the alleged misconduct is in some different capacity than the one which is held at the time of taking cognizance, there will be no necessity to take the sanction. Hence, the very contention of the learned counsel for the petitioners that without the sanction, there cannot be any prosecution against petitioner No.2, cannot be accepted. The other contention of the learned counsel for the petitioners before this Court is that learned Judge has not applied his judicious mind while issuing the process against the petitioners.

27. Having perused the order, the learned Judge, considering the material available on record i.e., first information, statement of witnesses recorded by the investigating officer and also the document seized and collected at the time of investigation and so also on perusal of the entire prosecution papers, the learned Magistrate found that there are sufficient grounds and materials to take cognizance for the offence, particularly, for the offence under Section 13(1)(c) and 13(2) of PC Act and issued the process. When such being the facts and circumstances of the case and when the learned Judge has applied his judicious mind while issuing the process, the very contention of the learned counsel for the petitioners that the learned Trial Judge has not applied his judicious mind also cannot be accepted. Hence, it is not a fit case to exercise the powers under Section 482 of Cr.P.C.



28. In view of the discussion made above, I pass the following:-

ORDER

The petition is hereby dismissed.

In view of allowing the main petition, I.A.No.1/2021 for stay does not survive for consideration and the same stands disposed of.