NC: 2023:KHC-K:5794
WP No. 200473 of 2023
C/W WP No. 200524 of 2023

IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 24TH DAY OF JULY, 2023

BEFORE

THE HON'BLE MR. JUSTICE HEMANT CHANDANGOUDAR

WRIT PETITION NO.200473 OF 2023 (GM-RES)
C/W
WRIT PETITION NO.200524 OF 2023 (GM-RES)

IN W.P. NO.200473/2023:
BETWEEN:

1. SRI PRAKASH HULABUTTI S/O LATE CHANAPPA
   AGED ABOUT 53 YEARS
   WORKING AS INSPECTOR OF MOTOR VEHICLES
   DHULKHED CHECK POST, CHADACHANA TALUK
   VIJAYAPURA DISTRICT - 586 205

...PETITIONER

(BY SRI M.S. BHAGWAT, SENIOR COUNSEL FOR
SRI RAVI B. PATIL, ADVOCATE)

AND:

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Location: HIGH COURT OF KARNATAKA

1. THE STATE BY LOKAYUKTHA POLICE
   REPRESENTED BY
   DEPUTY SUPERINTENDENT OF POLICE
   VIJAYAPURA DISTRICT, VIJAYAPURA - 586 101
2. THE STATE BY LOKAYUKTHA POLICE
   REPRESENTED BY INSPECTOR OF POLICE
   VIJAYAPURA DISTRICT, VIJAYAPURA - 586 101

...RESPONDENTS

(BY SRI GOURISH S. KHASHAMPUR, SPL.PP)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA R/W SEC. 482 OF CR.P.C, PRAYING TO ISSUE WRIT OR ORDER QUASHING THE IMPUGNED COMPLAINT DATED 28.12.2022 GIVEN BY THE 1ST RESPONDENT (ANNEXURE-E) AND THE IMPUGNED FIRST

INFORMATION REPORT REGISTERED BY THE RESPONDENT NO. 2 IN CRIME NO.15/2022 DATED 28.12.2022 (ANNEXURE-F) AND ALL FURTHER PROCEEDINGS PURSUANT THERETO, IN SO FAR AS THE PETITIONER IS CONCERNED (ACCUSED NO. 2).

IN W.P. NO.200524/2023:
BETWEEN:

1. SRI MANJUNATHA G.R.
   S/O G.K. RANGACHARI,
   AGED ABOUT 52 YEARS,
   WORKING AS INSPECTOR OF MOTOR VEHICLES,
   DHULKHED CHECK POST, CHADACHANA TALUK,
   VIJAYAPURA DISTRICT-586 205.

…PETITIONER

(BY SRI M.S. BHAGWAT, SENIOR COUNSEL FOR
SRI RAVI B. PATIL , ADVOCATE)

AND:

1. THE STATE BY LOKAYUKTHA POLICE,
   REPRESENTED BY
   DEPUTY SUPERINTENDENT OF POLICE,
   VIJAYAPURA DISTRICT, VIJAYAPURA-586 101.
2. THE STATE BY LOKAYUKTHA POLICE,
   REPRESENTED BY INSPECTOR OF POLICE,
   VIJAYAPURA DISTRICT, VIJAYAPURA-586 101.

…RESPONDENTS

(BY SRI. GOURISH S. KHASHAMPUR, SPL.PP)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA READ WITH SEC. 482 OF CR.P.C, PRAYING TO ISSUE WRIT OR ORDER QUASHING THE IMPUGNED COMPLAINT DATED 28.12.2022 GIVEN BY THE I RESPONDENT (ANNEXURE-E) AND THE IMPUGNED FIRST INFORMATION REPORT REGISTERED BY THE RESPONDENT NO.2 IN CRIME No.15/2022 DATED 28.12.2022 (ANNEXURE-F) AND ALL FURTHER PROCEEDINGS PURSUANT THERETO, INSOFAR AS THE PETITIONER IS CONCERNED (ACCUSED No.1).

THESE PETITIONS COMING ON FOR PRELIMINARY HAERING 'B' GROUP, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The search warrant was issued by the Lokayukta, State of Karnataka, Bengaluru on 28.09.2022 authorizing the Superintendent of Police, Karnataka Lokayutka Police, Vijayapura, to carryout the following:-

a) Search of Zalaki (Dhulkhed) Check posts (two offices on other side of the road) by entering the check post/office premises and temporary vehicle, if any used as office, any person who is suspected of concealing any article, pertaining to collection of money and other documents, including registers, counterfoils of the receipts maintained in the check post in connection with the duty discharged in the check post.

b) To seize such documents, money or other valuable articles found as a result of such search, take out an inventory of such property, money, documents, etc., and

c) To bring before me such of the documents / records / counterfoils of the receipts / money, etc., which may be taken possession of returning this warrant with an endorsement certifying what you have done under it, immediately after its execution.

IN W.P.NO.200473/2023:

2. In pursuance of the search warrant, the Superintendent of Police, Karnataka Lokayukta, Vijayapura conducted the search and after conducting the search, a

panchanama was drawn in which, unaccounted sum of Rs.2,09,600/- was found in the almera kept in Tin Shed adjoining the office of the check post. The search was conducted on 13.09.2022. Thereafter, the Superintendent of Police, Karnataka Lokayukta, Vijayapura, by communication dated 21.12.2022, directed the Deputy Superintendent of Police, Vijayapura to register the FIR and conduct investigation and submit a report. Thereafter, the Deputy Superintendent of Police, Karnataka Lokayutka, lodged the FIR with the Police Inspector, Lokayukta Vijayapura. Based on the complaint lodged by the Deputy Superintendent of Police, the Police Inspector, Lokayukta, Vijyapura, registered FIR on 28.12.2022 for the offences punishable under Sections 7(a), 7(A), 12, 13 (1) (b) read with Section 13 (2) of the Prevention of Corruption Act. The registration of the FIR is impugned in this petition by the petitioner herein.

3. **IN W.P.No.200524/2023**:

Upon search, sum of Rs.2,26,776/- was allegedly found in possession of one Sri. Raju @ Anthoni Raju and Sri. Suresh S/o Siddagiryappa. However, perusal of search panchanama indicates that a sum of Rs.8,450/- was found in possession of the petitioner herein and the petitioner has declared the said money in the cash register maintained in the said office. The said money having been accounted, has been returned to the petitioner herein.

4. Sri. M.S. Bhagwat, learned Senior Counsel appearing on behalf of the learned counsel for the petitioners would make the following submissions:

a) The FIR was lodged after an inordinate delay of more than three months from the date of search, without offering any proper explanation.

b) The FIR registered for the offence punishable under Section 13 (1) (b) of the P.C. Act is one without authority of law in the absence of order passed by the Superintendent of Police as specified under the second proviso to Section 17 of the P.C. Act.

c) In the absence of any demand and acceptance and pendency of work, the registration of the FIR for the aforesaid offences, is without any substance.

5. In support of his submissions, he placed reliance on the decision of the Co-Ordinate Bench of this Court in the case of Sri L. Sathish Kumar S/o G. Lakshman Rao vs. State of Karnataka and another (Writ Petition No.15314/2022 (GM-RES), disposed of on 07.12.2022).

6. In respect of delay in lodging the FIR, he placed reliance on the decision of the Co-ordinate Bench of this Court in Writ Petition No.10023/2022 C/W Writ Petition No.10029/2022 (GM-RES), disposed of on 26.07.2022.

7. The learned Special Public Prosecutor for the respondent-Lokayukta would make the following submissions:

a) The seizure mahazar discloses that, a sum of Rs.2,09,600/- was found in the almirah kept in the tin shed attached to the office of the RTO check post, and the tin shed is used as rest room for security Guards. Hence, he submits that, there was a demand and acceptance of gratification by the petitioners herein from the general public for release of vehicles, and the same requires to be investigated, and at this stage, the registration of the FIR for the offences punishable under Sections 7(a) and 7A of the Prevention of Corruption Act does not warrant any interference.

b) Upon the search warrant issued under Section 10 of the Lokayukta Act, the petitioners were found in possession of unaccounted money, and the Superintendent of Police concerned, upon receipt of the inspection report has granted permission to the Police Inspector, Lokayukta, to register the FIR for the offences punishable under Sections 7(a), 7A, 12, 13(1)(b) R/w Section 13(2) of the Prevention of Corruption Act. Hence, the registration of FIR for the aforesaid offences is in conformity with the second proviso to Section 17 of the P.C. Act.

c) The Superintendent of Police concerned has authorised the Deputy Superintendent of Police to investigate the offences punishable under the provisions of the P.C. Act against the petitioners

herein and in the light of the said authorisation, the Deputy Superintendent of Police has lodged the FIR with the Police Inspector concerned to investigate the allegations made against the petitioners herein. Hence, the FIR registered against the petitioners herein by the Police Inspector is in conformity with the second proviso to Section 17 of the P.C. Act.

8. In support of his arguments, learned Special Public Prosecutor has placed reliance on the decision of the Co-ordinate Bench of this Court in W.P.No.16556/2021 disposed of 23.09.2021.

9. Considered the submissions made by the learned counsel for the parties and perused the material on record.

10. Based on the investigation report submitted by the Superintendent of Police, the FIR was registered against the petitioners for the offences alleged against them. In the investigation report, it is stated that a sum of Rs.2,09,600/- unaccounted money was found in the almera kept in the tin shed adjoining the office of the Check Post, which is used as rest room for Home Guards. Admittedly, the amount of Rs.2,09,600/- was not recovered from the possession of the petitioner in W.P.No.200473/2023.

11. The Co-ordinate Bench of this Court in the case of ***Sri L. Sathish Kumar*** (supra) at paragraphs 10 to 13 has held as follows:

"10. On that background of the principle laid down by hon'ble supreme court and perusal of averments made in complaint and charge sheet. Now coming to the first ground urged by the learned senior counsel for petitioner in respect of demand and acceptance.

*(**I) Demand and Acceptance:-***

*i) **Regarding Demand***

In this regard the petitioner counsel contended there is no demand and acceptance of illegal gratification and contended that the petitioner was Assistant Commissioner and he was not present when there was demand said to be made by the accused No.1 on 4.11.2016 at 12.45 pm by meeting accused No.1 he is said to be demanded Rs.60,000/- at the rate of 10% on Rs.6 lakhs and odd amount refundable by the excise Commercial Tax officer. Subsequently, the complainant lodged complaint to the police and thereafter a trap was laid on 08.11.2016 and even at that time the petitioner was not present, the accused No.1 was trapped. Therefore, it is contended there is no demand and acceptance by this petitioner. on perusal of the complaint filed by the respondent No.2 herein which reveals he is said to be approached accused No.1 on 03.03.2016 but they have not refunded the amount, therefore, the

complainant approached accused No.1 on 04.11.2016 at that time accused No.2 was not present. The accused No.1 said to have demanded 10% of Rs.6 lakhs for Rs.60,000/- as bribe, therefore the complainant went back and discussed with Sunil Naik the managing director of their company and CEO of the company, then they lodged the complaint. Admittedly the accused No.1 was demanded bribe at the rate of 10% on 6 lakhs for Rs.60,000/- for refund of Rs.6 lakhs. The complainant has stated that the accused No.1 said to have informed the accused No.1 present petitioner through mobile phone and accused No.2 said to have demanded the bribe through accused NO.1. Admittedly, except the oral statement of the complainant where the accused No.1 told that the accused No.2 had demanded the amount but infact the complainant not met the accused No.2 and also the accused No.2 the present petitioner not made any demand to the complainant. It is only the accused No.1 who has stated that he has to pay Rs. 30,000/- to accused No.2, there is no direct or indirect evidence to show this petitioner demanded either Rs.60,000/- or Rs.30,000/- from the complainant and it is also an admitted fact. In this regard, the police relied upon the statement of the complainant where she has stated when she met accused No.1, the accused No.1 who demanded the

amount and accused No.1 said to have telephoned to accused No.2 the present petitioner and the petitioner informed the accused No.1 for payment of Rs.60,000/- and Rs.30,000/- for accused No.1 and Rs.30,000/- for this petitioner. Even there is no record of any telephonic conversation to show accused no.2 actually demanded the bribe form the complainant though accused No.1

11. On perusal of the both panchanamas i.e. entrustment panchanama as well as pre-trap panchanama where the conversations are mentioned in the pre-trap panchanama or in the entrustment panchanama, where the complainant has stated accused No.1 informed that accused No.2 demanded but there is no telephone conversations or call records to show the accused no.1 actually contacted accused No.2and contacted the complainant and accused No.2 demanded the money from the complainant. The call digit record does not reveals the accused No.1 actually contacted the complainant through his mobile phone of accused No.1 from the mobile phone of accused No.2. it appears the accused No.1 took up the phone and told the complainant that accused No.2 also demanding bribe of Rs.30,000/-, it reveals purely accused No.1 informed to the complainant that he has to pay Rs.30,000/- to accused No.2. Absolutely there is no connecting

material to show the accused No.2 demanded any bribe from the complainant either directly or indirectly through accused No.1 and accused No.2 not spoken with the complaint at all. Therefore, it is not acceptable that the accused No.1 demanded gratification form the complainant. The trial court also, observed, in the order of dismissal of discharge application that there is no occasions for the complainant to record the telephone conversation between accused Nos.1 and 2 and complainant. That apart, the telephone conversation produced by the prosecution is only the telephonic conversation between accused No.1 and the complainant but not by the accused No.2 with complainant.

ii) Regarding Acceptance:-

It is an admitted fact, that after lodging the complaint the police set up the trap and sent two envelops containing Rs.30,000/- each on 08.11.2016 whether the same was accepted by the accused No.1 and he was trapped, his hand wash turned to pink in order to show that he has accepted the envelope form the complainant. Admittedly, the accused No.2 was not present in the office and said to be in the meeting with Deputy Commissioner and as per the trap panchanama the accused No.1 alone trapped while acceptance of the

envelope from the complainant, therefore, absolutely there is no connection between the demand and acceptance of the bribe money by the accused No.1 with this accused No.2 and in the explanation offered by the accused No.1 during the trap, the accused No.1 has stated that he has received the envelops and kept it in the drawer of the table and it was seized from accused No.1 but accused No.2 was in the meeting with Deputy Commissioner and later he was arrested by police, therefore it is a clear case that there is no demand and acceptance by accused No2. from the complainant regarding any illegal gratification. It is well settled by the Hon'ble Supreme Court that the demand and acceptance is ***sine quo non*** *for establishing the offences under Section 7 of the PC Act. The Hon'ble Supreme Court has held in the case of* ***K Shanthamma vs State of Telangan*** *stated supra and the co-ordinate bench as well as this court also held in* ***Thejas kumar's*** *case, as well as in* ***Manjunath's case*** *absolutely, there is no demand and acceptance by accused No.2 for illegal gratification from the complainant and he has been implicated only based upon the voluntary statement of the accused No.1*

12. Therefore, without demand and acceptance the offence under Section 7 of the PC is not made out for the purpose of framing of charge

and proceed with trial against accused No.2, which is nothing but abuse of process of law.

(II). <u>As regards to the Work Entrustment/Work pending with the accused No.2/petitioner</u>

i) *The learned senior counsel submits that as on the enquiry made by the complainant with accused No.1 on 4.11.2016 or the subsequent demand on 5.11.2016 the file is not pending with the accused No.2 and he has already sent back the file to the accused No.1 as on 2.11.2016 itself, there is no dispute in this regard. The accused No.2 also given explanation that there is nothing pending with him as on the date of demand and acceptance by accused by No.1. That apart the Investigating Officer seized the file belonging to the complainant from the accused No.1 and there is no order passed by accused No.2 for refund of taxes requested by the complainant. Therefore, in this regard the prosecution utterly failed to connect the accused No.2 with the work of the complainant pending with the accused No.2. He may be an authority for passing the order but accused No.1 had kept the file, it was seized by the police from the custody of the accused No.1 , therefore it cannot be said that the work was pending with accused No.2/ present petitioner. The similar view was taken by this Court*

*in the **Tejas Kumar's case.** Therefore there is no material to proceed against this petitioner for trail.*

(III) As regard to the regarding Sanction

It is an admitted fact, that the Investigating Officer sent requisition to the State Government for seeking permission to prosecute against the accused Nos.1 and 2. The State Government has considered the case of the prosecution and the complainant passing an order on 30.05.2018 by granting the sanction to prosecute case against accused no.1 and rejected the prayer for sanction for the prosecution against petitioner accused No.2. Subsequently, the investigation officer once again requested the State Government to accord sanction to prosecute against this petitioner on 08.02.2019, thereafter once again the State Government accorded sanction to prosecute against this petitioner on 06.05.2019. The learned senior counsel for the petitioner has contended there is no specific reason assigned by State while reconsidering the rejection of the Sanction Order an granting sanction to prosecute against this petitioner. Both the rejection order as well as granting sanction order were produced which reveals the Under Secretary of State Government has in detail order, by application of mind had rejected the prayer of the Lokayuktha police for

granting sanction against petitioner accused no2. But while according sanction there is no proper reason assigned while granting sanction on 06.05.2019. In order to reconsider the rejection of sanction order the State no assigned any specific reason for reconsidering the previous order. It has just mentioned the fact of the case, seizure of the cash from accused no.1 and granted permission. Absolutely there is no application of mind by State while granting sanction. Therefore, without any adequate reason and application of mind, the State has granted sanction to prosecute case against accused NO.2 by overruling the previous order for rejection of sanction. Hence, the sanction accorded by State is non-application of mind, which cannot be considered as valid sanction.

13. The coordinate bench of this court in case of ***Manjunath Vs State*** *quashed the criminal proceedings on the same ground in W.P.No. 10027/2022 relying upon the principle laid down by the Hon'ble Supreme Court in the case of* ***State of Haryana Vs Bhajan lal.*** *This court also taken the similar view in* ***Tejas kumar's case.*** *Considering the reason assigned by this court in the above para of the order that there is no demand and acceptance of bribe/gratification for prosecuting case against accused No.2 and in view of the non-application of mind while setting aside the rejection*

of sanction order and granting sanction, subsequently without any reasons, on this ground the prosecution cannot be proceeded against the accused No.2 for the reason that there is no damand and acceptance of bribe by the accused No.2 from the complainant and there is no work pending with him as on 05.11.2016 and no valid sanction. Therefore, continuing the proceedings against this petitioner, is nothing but abuse of process of law, hence the proceedings against the petitioner, is liable to be quashed."

12. To constitute an offence punishable under Sections 7(a), 7A of the P.C. Act, the following essential elements have to be satisfied:

a) Work of the complainant must be pending before the accused;

b) There must be a demand by the accused from the complainant to show official favour;

c) There must be acceptance of the gratification amount in pursuance of the demand.

13. In the instant case, there is no material produced along with the FIR that the petitioners had demanded gratification amount to do any official work in favour of any persons for checking the vehicles as to whether the said

vehicles are transporting the goods after obtaining the permit from the competent authorities. The investigation report also discloses that the amount which was found in possession of the petitioners herein was returned to them after the said amount was accounted, and the same was reflected in the cash register maintained in the office of the Check Post. In the absence of any material that the petitioners herein either demanded or accepted gratification to do any official favour, the registration of the FIR for the offences punishable under Sections 7(a) and 7A of the P.C. Act is one without any substance.

14. To investigate an offence punishable under Section 13(1)(b) of the P.C. Act, the second proviso of Section 17 of the Act specifies that, an offence referred to in clause (b) of sub-section (1) of Section 13 of the P.C. Act shall not be investigated without the order of the Police Officer not below the rank of the Superintendent of Police.

15. In the instant case, the Superintendent of Police has authorised the Deputy Superintendent of Police to investigate the offences punishable under the provisions of the P.C. Act. However, the Dy.S.P. instead of investigating the offences under the provisions of P.C. Act, has lodged the FIR with the Police Inspector concerned for investigating the offence under Section 13(1)(b) of the P.C. Act against the petitioners herein. Hence, the registration and conducting investigation of the offences by the Police Inspector on the FIR

lodged by Dy.S.P. is contrary to the second proviso to Section 17 of the P.C. Act. Therefore, the registration of the FIR stands vitiated. Accordingly, I pass the following:

ORDER

i. Writ petitions are allowed.

ii. The order dated 28.12.2022 passed by the 1st respondent at Annexure-E and the impugned FIR registered by respondent No.2 in Crime No.15/2022 dated 28.12.2022 at Annexure-F insofar as it relates to the petitioners herein is hereby quashed.

Sd/-
JUDGE

KJJ/LG
List No.: 1 Sl No.: 39