VERDICTUM.IN

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 26TH DAY OF JULY, 2024

BEFORE

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

CRIMINAL REVISION PETITION NO.422/2018
C/W
CRIMINAL REVISION PETITION NO.599/2018

IN CRIMINAL REVISION PETITION NO.422/2018:

BETWEEN:

STATE BY
KARNATAKA LOKAYUKTHA POLICE,
CITY DIVISION,
BENGALURU-560001.

... PETITIONER

(BY SRI PRASAD B.S., ADVOCATE)

AND:

1 . T.MANJUNATH
SENIOR MOTOR VEHICLE INSPECTOR,
RTO OFFICE, K.R.PURAM,
BENGLAURU-560091.

2 . H.B.MASTIGOWDA
REPRESENTATIVE,
SRI SHAKTI MOTOR VEHICLE SCHOOL,
BENGALURU-43.

... RESPONDENTS

(BY SRI VIJAY KUMAR V.B., ADVOCATE)

VERDICTUM.IN

THIS CRIMINAL REVISION PETITION IS FILED 397 R/W 401 OF CR.P.C PRAYING TO SET ASIDE DATED 23.08.2017 PASSED IN SPL.C.C.NO.24/2013 PENDING ON THE FILE OF LXXVI ADDITIONAL CITY CIVIL AND SESSIONS JUDGE AND SPECIAL JUDGE, BENGALURU AND ETC.

IN CRIMINAL REVISION PETITION NO.599/2018:

BETWEEN:

SRI T. MANJUNATH
S/O THIPPESWAMY
AGED 49 YEARS
SENIOR INSPECTOR OF MOTOR VEHICLES,
INSPECTOR, RTO OFFICE, K.R.PURAM,
BANGALORE – 560079.

… PETITIONER

(BY SRI VIJAY KUMAR V.B., ADVOCATE)

AND:

STATE OF KARNATAKA
BY KARNATAKA LOKAYUKTA POLICE,
CITY DIVISION, BANGALORE-560001.
REP. BY LOKAYUKTHA SPP.
HIGH COURT, M.S.BUILDING,
BENGALURU-560001.

… RESPONDENT

(BY SRI B.S.PRASAD, ADVOCATE)

THIS CRIMINAL REVISION PETITION IS FILED 397 R/W 401 OF CR.P.C PRAYING TO QUASH THE ORDER DATED 23.08.2017 PASSED IN SPECIAL CC NO.24/2013 ON THE FILED OF THE LXXVI ADDITIONAL CITY CIVIL AND SESSIONS COURT AND SPECIAL COURT, BANGALORE CITY AND ETC.

VERDICTUM.IN

THESE CRIMINAL REVISION PETITIONS HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 12.07.2024 THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

O R D E R

These two petitions are filed challenging the order dated 23.08.2017 passed by the Trial Court in allowing the discharge application filed by the accused No.1/petitioner and giving liberty to proceed further in accordance with law and to file charge sheet afresh after obtaining necessary sanction from the Competent Authority.

2. The factual matrix of the case of the Karnataka Lokayuktha police in Crl.R.P.No.422/2018 is that the complainant was working as a Supervisor in M/s Prashanth Crushers Limited and the company operates many vehicles including tippers. Accused No.1 was working as a Senior Inspector of Motor Vehicles at RTO Office, K R Puram, Bengaluru. Accused No.1 used to threaten the drivers of tipper vehicles sating that he would seize the vehicles if they do not pay him periodical bribe. In this background, CW1-Manjunath met CW17-

VERDICTUM.IN

Sanjeevarayappa, T-Police Inspector, Lokayuktha whereupon he gave him a voice recorder to record the conversation whereby accused No.1 was said to have made a demand for bribe amount of Rs.24,000/- and after bargaining, he reduced it to Rs.18,000/-. Since the complainant was not inclined to pay the bribe amount, he gave written information to the Lokayuktha Inspector, who arranged for the trap. He secured two independent witnesses who were th Government servants and in their presence, conducted pre-trap proceedings. During the course of pre-trap proceedings, an amount of Rs.15,000/- was entrusted to the complainant to be handed over to accused No.1 upon demand. Thereafter, CW17 along with his staff, two independent witnesses and the complainant left to the RTO office, K R Puram, Bengaluru, where accused No.1 was working. Accused No.1 was trapped while demanding and accepting illegal gratification of Rs.15,000/- from the complainant through accused No.2- H B Mastigowda – a private person who is alleged to have received the amount at the instance of accused No.1. The Lokayuktha police, after completion of investigation, obtained Sanction Order from the Commissioner of Transport,

VERDICTUM.IN

for prosecution against accused No.1 and filed charge sheet against the accused Nos.1 and 2 for the offence punishable under Sections 7, 8, 13(1)(d) r/w 13 (2) of the Prevention of Corruption Act, 1988.

3. In pursuance of suit summons, accused Nos.1 and 2 appeared before the Court. Accused No.1 has filed an application under Section 227 read with Section 239 of Cr.P.C seeking for discharge. The learned Spl. P.P. has filed statement of objections and seriously opposed the said application.

4. The Trial Court taking into note of the grounds urged in the application and the contention raised in statement of objections, formulated the point as follows:

> Whether there are sufficient grounds to frame charge and proceed with trial of the case as against the accused persons?

5. The Trial Court taking into note of the grounds urged in the application and also taking into note of the issue involved with regard to validity of the Sanction Order, taken up for

VERDICTUM.IN

consideration as preliminary issue. The Trial Court comes to the conclusion that accused No.1 is a Group-B Officer and charge sheet would discloses that competent authority to accord sanction is the Government and the Sanction granted in this case is by the Commissioner of Transport, which is invalid and no sanction in the eye of law and comes to the conclusion that the Sanction is invalid and non-est and it is just and proper to return the entire charge sheet papers to the Investigating Agency with liberty to the State to proceed further in accordance with law and to file a charge sheet afresh after obtaining necessary sanction from the Competent Authority as far as accused No.1 is concerned who is a public servant along with accused No.2.

6. Being aggrieved by the said order, the Lokayuktha Police have filed the criminal revision in Crl.R.P.No.422/2018 on the ground that as per the Notification No.DPAR in No.SI.A.SV.I.46 SE.E.VI.2008 dated 11.02.2010, it is very clear that if a person is appointed to Group-C post and thereafter promoted to Group-B post in respect of such person the original

VERDICTUM.IN

appointing authority is a competent authority to remove him from service irrespective of cadre. Respondent No.1 is not appointed to Group-B by Government but he is promoted from Group-C post. As per the circular dated 11.02.2010, it is a Commissioner of Transport was the appointing authority. At the time of appointment to Group-C post, will continue to be the competent authority, even when respondent No.1 has moved to Group-B post. The appointment order No.EST/105/91-92 dated 23.09.1992 shown that he has been appointed as Motor Vehicle Inspector which is a Group-C post as per pay scale fixed for the post. Respondent No.1 has been promoted to the cadre of Senior Inspector of Motor Vehicle as per his service particulars referred to by the Special Court which shows that from 10.08.2010 he is promoted as Senior Inspector of Motor Vehicle which is Group-B post with basic pay of Rs.47,400/-. The trap was taken place on 13.06.2012 and as on that date, the accused was Group-B officer. As per the circular, the Commissioner is a competent authority to accord sanction but without considering all these aspects the learned Special Judge holds that the

VERDICTUM.IN

sanction is not valid. Hence, the said order is liable to be set aside.

7. On the other hand, respondent No.1/accused No.1 also filed the criminal revision in Crl.R.P.No.599/2018 contending that the Court below committed an error in giving liberty to the Lokayuktha police to obtain fresh sanction and the very registration of FIR by the Lokayuktha police is contrary to Section 154 of Cr.P.C and without following the procedure, Lokayuktha police have directed the complainant to secure the voice recorder by furnishing the digital voice recorder and thereafter on obtaining the voice recorder of the petitioner proceeded to register an FIR on 13.06.2012. In order to substantiate this contention, the counsel relied upon the decision of the Apex Court reported in **(2013) 8 SUPREME 2** in the case of **LALITH KUMARI vs STATE OF UTTER PRADESH** wherein it is held that registration of FIR is mandatory under Section 154 of Cr.P.C, if information discloses that the commission of a cognizable offence and no preliminary enquiry is permissible under such situations. In the case on hand, the Trial Court erred in not noticing the fact that the case has been registered after

VERDICTUM.IN

the investigation. The entire proceeding initiated against the petitioner/accused is in violation of principles laid down in the judgment reported in **(1992) SUPP.1. SCC 335** in the case of **STATE OF HARYANA vs BHAJANLAL AND OTHERS.** It is also the contention of the counsel that it was the specific case in the discharge application that the amount paid by the complainant was towards the payment of taxes in respect of the vehicles belonging to the complainant and not as a bribe and no sufficient materials were placed before the Trial Court on record to frame charges to proceed with the trial. Hence, the matter requires reconsideration and to set aside the order of giving liberty and quash the order dated 23.08.2017 and allow the application filed under Section 227 read with 239 of Cr.P.C.

8. The counsel for the accused/petitioner in his arguments would vehemently contend that the Trial Court fails to take note of the fact that the accused/petitioner was exonerated in a departmental proceedings and the allegation in the departmental enquiry as well as in a criminal prosecution is identical. The counsel further would vehemently contend that in

VERDICTUM.IN

the similar set of facts and circumstances, this Court vide order dated 18.12.2021 in Crl.P.No.200542/2017, relying upon the decision of **Radheshyam Kejriwal** and **Ashoo Surendranath Tewari** comes to the conclusion that both the cases are aptly applicable to the facts of the case on hand and quashed the proceedings and the petitioner is also entitled for the relief of quashing the order of the Trial Court and consequently allowed the application filed for discharge. The counsel also would vehemently contend that the Departmental Enquiry is clear that there is no material and he was exonerated and there cannot be a criminal prosecution against the petitioner herein.

9. The counsel in support of his arguments also relies upon the judgment of the Apex Court reported in **(2020) 9 SCC 636** in the case of **ASHOO SURENDRANATH TEWARI vs DEPUTY SUPERINTENDENT OF POLICE, EOW, CBI AND ANOTHER** and brought to notice of this Court in paragraph 8 wherein the Apex Court held that the standard of proof in a departmental proceeding, being based on preponderance of probability is somewhat lower than the standard of proof in a

VERDICTUM.IN

criminal proceeding where the case has to be proved beyond reasonable doubt. The counsel also brought to notice of this Court paragraphs 12 and 13 wherein the Apex Court referring some of the judgments held that the finding in the adjudication proceedings in favour of the person facing trial for identical violation will depend upon the nature of finding. If the exoneration in adjudication proceedings is on technical ground and not on merit, prosecution may continue and in the case of exoneration, however, on merits where the allegation is found to be not sustainable at all and the person held innocent, criminal prosecution on the same set of facts and circumstances cannot be allowed to continue, the underlying principle being the higher standard of proof in criminal cases.

10. Per contra, the counsel appearing for Lokayuktha in his arguments would vehemently contend that a very approach of the Trial Court is erroneous. The Trial Court failed to take note of the Notification dated 11.02.2010 and sanction is also accorded in terms of the said sanction and nothing is discussed in the order of the Trial Court with regard to the Notification is

VERDICTUM.IN

concerned. Even the order of sanction itself clearly discloses that sanction is given based on the Notification of the Government and the same has not been considered by the Trial Court and committed an error in giving liberty to file fresh charge sheet along with fresh sanction. The counsel also brought to notice of this Court to the sanction order issued by the Commissioner of Transport wherein, in paragraph 6, the Commissioner of Transport referred the Notification dated 11.02.2010 and categorically stated that in terms of the said Notification, in respect of Group-B Officer, except the Tahsildar Group-II, appointed the Departmental Head as an appointing/removing authority and also referred the order dated 19.05.2010 and hence, sanction was accorded under Section 19(1)(c) and the same has not been considered by the Trial Court and proceeded erroneously in coming to the conclusion that there is no any valid sanction.

11. The counsel also in support of his arguments relied upon the judgment of the Apex Court passed in **Criminal Appeal No.1322/2018** in the case of **STATE OF MIZORAM vs**

VERDICTUM.IN

DR. C SANGNGHINA and brought to notice of this Court the discussion made in the very same judgment wherein an observation is made that accused was discharged due to lack of proper sanction there is no charge sheet after obtaining valid sanction unless there is failure of justice on account of error, omission or irregularity in grant of sanction for prosecution, the proceedings under the Act could not be vitiated. The counsel referring this judgment would vehemently contend that the judgment is very clear that even valid charge sheet can be obtained. The counsel also relied upon the recent judgment of the Apex Court passed in **Criminal Appeal arising out of Spl. (Crl.) No.8254/2023 dated 23.04.2024** wherein the Apex Court made an observation that more so when despite the accused having been exonerated in the departmental proceedings yet the competent authority, vide Annexure P3 proceeded to accord sanction for prosecution. The High Court, failed to account for the principles enunciated by this Court in the case of **State of Haryana and others VS Bhanjan Lal and others** and also comes to the conclusion that it was the pleaded case of the Lokayukta before the High Court that the

VERDICTUM.IN

continuance of the trial was not on the very same evidence as what weighed with the authorities in exonerating the employee in the departmental proceedings and hence, High Court committed an error in not proceedings in a proper perspective.

12. Having heard the learned counsel appearing for the respective counsel and also on perusal of the material available on record, the points that would arise for the consideration of this Court are:

1. Whether the Special Court committed an error in allowing the application filed under Section 227 r/w 239 of Cr.P.C in discharging the accused Nos.1 and 2 on the ground that sanction is not valid?
2. Whether the Special Court committed an error in giving liberty to file the charge sheet along with fresh sanction and giving of liberty is erroneous as contended by the accused No.1/petitioner?
3. What order?

VERDICTUM.IN

Point Nos.1 and 2

13. Having considered the materials available on record, it is the case of the prosecution that accused No.1 demands bribe amount of Rs.24,000/- and the same was reduced to Rs.18,000/- and trap was conducted while accepting the amount of Rs.15,000/- through accused No.2 who is the private person. The police investigated the matter and filed the charge sheet and sanction was obtained from the Transport Commissioner and no dispute with regard to the said fact is concerned. It is also not in dispute that accused No.1 was appointed as a Motor Vehicle Inspector as Group-C employee and he was promoted in 2010 as Group-B Officer. It is the main contention that sanction is not valid and sanction ought to have been obtained from the Government not from the Transport Commissioner. It is brought to notice of this Court by the Special Counsel for Lokayukta to the Notification dated 11.02.2010 issued by the Government of Karnataka, which read thus:

> *"In exercise of powers conferred by the proviso to sub-rule (1) of Rule 7 of the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957, the Government of Karnataka hereby specifies that the Heads*

VERDICTUM.IN

of Department concerned shall be the Appointing Authorities in respect of first appointment to Group-B poses in all Departments/Services, except Group-B posts of Tahsildar Grade-II.

Provided that the Government shall continue to be the disciplinary authority for the purpose of imposing any of the penalties specified under Clauses (v) to (viii) of Rule 8 of the Karnataka Civil Services (Classification, Control and Appeal) Rules, 1957 in respect of the persons appointed by the Government to the States Civil Services Group-B posts except the Group-B posts in respect of which Heads of Departments concerned have already been notified as the Appointing Authorities."

14. Having read this Notification, it is very clear that Heads of Departments concerned shall be the Appointing Authorities in respect of first appointment to Group-B posts in all departments except the Group-B posts of Tahsildar Grade-II. It is also important to note that the Transport Commissioner while giving sanction also referred this Notification but the Trial Court even not discussed anything about this Notification and it appears that even not read the Sanction Order of the Transport Commissioner which was given as sanction and proceeded erroneously in coming to the conclusion that the Government is

VERDICTUM.IN

the Competent Authority. The power exercised by the Commissioner is also not considered by the Trial Court and the Transport Commissioner while giving the sanction also even referred the Government Order dated 19.05.2010 and so also Government Order dated 15.11.2012 wherein specifically he has stated that he is having the power of appointing or removing of the employees and hence, he had invoked Section 19(1)(c) of the Prevention of Corruption Act, 1988 to give the sanction.

15. The counsel for respondents, no doubt, relied upon the judgment of this Court passed in Crl.P.No.200542/2017. But the factual aspects of the said case and the present case is different and said judgment is not applicable to the facts of the case on hand. No doubt, the Apex Court also in the case of **ASHOO SURENDRANATH TEWARI** which has been relied upon by the counsel for the respondent held that when the identical issues involved in the Departmental Enquiry as well as the charges leveled against him in the criminal proceedings, discussion was made that the higher standard of proof in criminal cases is beyond reasonable doubt and in a case of

VERDICTUM.IN

Departmental Enquiry, preponderance of probabilities and no discharge with regard to the principles laid down in the judgment.

16. This Court has to take note of the factual aspects of the case and also the judgments relied upon by the counsel appearing for the Lokayukta in the case of **State of Mizoram** referred *supra* wherein the Apex Court held that it will not amounts to double jeopardy and also taken note of Article 20(2) of the Constitution of India and comes to the conclusion that the Special Court finds that sanction is not valid and directed the prosecution to proceed further in accordance with law. In view of the discussions made above, it is clear that the very approach of the Special Court is erroneous. The counsel for the Lokayukta police brought to notice of this Court to the recent judgment of the Apex Court passed in **Criminal Appeal arising out of Slp (Crl.) No.8254/2023 dated 23.04.2024** wherein also the case of invoking Section 7(a) of the Prevention of Corruption Act, 1988 was discussed in detail. Hence, this Court would like to

VERDICTUM.IN

supply the emphasis of the said judgment to consider the same in the present case.

> *"7. In the aforesaid backdrop, in the considered view of this Court, the approach adopted by the Courts in quashing the FIR in the attending facts and circumstances, is legally unsustainable. It ventured into an inquiry, unwarranted at this stage, holding that there is no direct evidence that the present respondent had demanded any money and that there was no material to proceed against him, completely forgetting, if not ignoring the material which had surfaced during the course of investigation, amongst others, the pendrive, allegedly, indicating his complicity in the crime.*
>
> *8. Under these circumstances, in the attending facts and circumstances, we allow the appeal, more so when despite the accused having been exonerated in the departmental proceedings yet the competent authority, vide Annexure P3 proceeded to accord sanction for prosecution. The High Court, in our considered view, failed to account for the principles enunciated by this Court in the case of State of Haryana and others VS Bhajan Lal and others (1992) SCC Suppl.1 335.*

VERDICTUM.IN

> *9. We may also observe that it was the pleaded case of the Lokayukta before the High Court that the continuance of the trial was not on the very same evidence as what weighed with the authorities in exonerating the employee in the departmental proceedings. This fact, also appears not to have been considered by the High Court in its correct perspective."*
>
> *(emphasis supplied)*

17. The Apex Court in the above judgment made an observation that the High Court ventured into an inquiry, unwarranted at this stage, holding that there is no direct evidence that the present respondent had demanded any money and that there was no material to proceed against him, completely forgetting, if not ignoring the material which had surfaced during the course of investigation, amongst others, the pendrive, allegedly, indicating his complicity in the crime. In the case on hand also it has to be noted that accused was trapped and a conversation was recorded and in this regard, FSL report is also collected and demand also made and received alleged bribe of Rs.15,000/- through accused No.2. It is also important

VERDICTUM.IN

to note that in paragraph 8, the Apex Court also observed that more so when despite the accused having been exonerated in the departmental proceedings yet the competent authority, vide Annexure P3 proceeded to accord sanction for prosecution. The High Court, in our considered view, failed to account for the principles enunciated by this Court in the case of **State of Haryana and others VS Bhajan Lal and others**. In the case on hand also sanction was granted having considered the material available on record regarding demand and acceptance of the alleged bribery.

18. The Apex Court also an observation is made in paragraph 9 that the continuance of the trial was not on the very same evidence as what weighed with the authorities in exonerating the employee in the departmental proceedings. This fact, also appears not to have been considered by the High Court in its correct perspective. In the case on hand also, departmental enquiry is different with regard to misconduct. But in the case on hand, there is a criminal misconduct making demand and acceptance of bribe amount. Hence, having considered the

VERDICTUM.IN

material available on record, it needs to comes to the conclusion that the principles laid down in the case of **ASHOO SURENDRANATH TEWARI** is not applicable to the facts of the case on hand when there is an evidence of conversation with regard to demand and acceptance of bribe amount of Rs.15,000/- through accused No.2. When the criminal misconduct has been alleged against a Government employee who is discharging the duty as a public servant, demanded the amount illegally and raid was conducted and material discloses regarding demand and acceptance of the same, it needs trial and even exonerating him in Departmental Enquiry will not come in the way of continuing the trial against the petitioner/accused No1. Hence, I do not find any merit in the petition filed by the petitioner/accused No1. Even though, questioning of giving liberty to proceed further against accused No.1/petitioner, no grounds are made out even for setting aside the order of giving liberty to proceed against him in accordance with law. I have already pointed out that the question of giving liberty also does not arise when sanction is accorded by the Competent Authority in terms of the Notification dated 11.02.2010 which has been

VERDICTUM.IN

extracted above which confers on the Transport Commissioner to accord the sanction in view of the order of the Government. Hence, the order impugned is liable to be set aside and the Trial Court has to proceed further against the accused Nos.1 and 2 in accordance with law. Hence, answer the points accordingly.

Point No.3:

19. In view of the discussions made above, I pass the following:

ORDER

The Crl.R.P.No.422/2018 filed by the Lokayukta is allowed by setting aside the order dated 23.08.2017 passed in SPL.C.C.No.24/2013 by the Trial Court and the Crl.R.P.No.599/2018 filed by the petitioner/accused is dismissed.

Sd/-
JUDGE

SN