

Karnataka High Court
Mr Yashwanth vs State Of Karnataka on 18 May, 2023
Bench: K.Natarajan

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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18 TH DAY OF MAY, 2023

BEFORE

THE HON'BLE MR. JUSTICE K.NATARAJAN

CRIMINAL PETITION NO.1099 OF 2023

BETWEEN

MR. YASHWANTH B.S.
S/O SIDDALINGAPPA,
AGED ABOUT 41 YEARS,
R/AT SIDDAGANGA NILAYA,
OPP. RAJEEVGANDHINAGAR PARK
RAJEEVGANDHINAGARA MELEKOTE
TUMAKURU - 572 102. ... PETITIONER

(BY SRI NAGABHUSHANA REDDY K., ADVOCATE)

AND

1. STATE OF KARNATAKA
BY LOKAYUKTA POLICE,
(EARLIER ANTI-CORRUPTION BUREAU,
BANGALORE CITY DIVISION)
REPRESENTED BY SPP
HIGH COURT OF KARNATAKA,
AT BANGALORE-560001
2. SHIVASHANKAR B N
AGED ABOUT 65 YEARS,
S/O DR.B. NANJUNDAPPA,
RETIRED SUBORDINATE SECRETARY
MINISTRY,
BANGALORE

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R/AT NO.842, IST STAGE,
14TH CROSS, CHANDRA LAYOUT,

NEAR DURGA PARAMESHWARI TEMPLE,
BANGALORE - 560072

... RESPONDENTS

(BY SRI B.B. PATIL, SPECIAL COUNSEL FOR R1
R2 SERVED)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C. PRAYING TO QUASH THE FIR AND COMPLAINT AGAINST THE ABOVE PETITIONER IN CR.NO.01/2021 OF LOKAYUKTA POLICE (EARLIER ANTI-CORRUPTION BUREAU, BENGALURU CITY DIVISION) FOR THE OFFENCE PUNISHABLE UNDER SECTION 7(a) OF P.C. ACT WHICH IS PENDING ON THE FILE OF COURT OF 23RD ADDL.CITY CIVIL AND SESSIONS JUDGE, BENGALURU CITY.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 17.04.2023, THIS DAY, THE COURT MADE THE FOLLOWING

ORDER

This petition is filed by the petitioner-accused No.1 under Section 482 of Cr.P.C. for quashing the FIR in Crime No.1/2021 registered by the then ACB (Bangaluru City Division), now Lokayuktha, for the offence punishable under Section 7(a) of the Prevention of Corruption Act, 1988 (for short 'P.C. Act').

2. Heard the arguments of learned counsel for the petitioner, learned Special counsel for the respondent No.1-Lokayuktha. The respondent No.2 served and unrepresented.

3. The case of the prosecution is that the complainant one Shivashankar, a retired Under Secretary worked in Secretariat, Bengaluru filed a complaint on 07.01.2021 to the Lokayuktha Police alleging that he is said to be purchased a land in Survey No.79 at Shettigere Village, Jala Hobli, Bengaluru North Taluk, Bengaluru measuring 5 acres for a sum of Rs.2.80 Crores from one Syed Babajan and an agreement of sale has been registered on 18.06.2018, but the said Syed Baba Jan said to be entered an agreement of sale with one Mukesh Mittal on 02.08.2018. Therefore, a civil case has been filed which is pending in R.A.No.6/2019 and stay has been granted by the Civil Court. Therefore, the complainant want to put up a board on the land and when he has approached the police for protection on 24.12.2019, they asked him to bring all the documents, therefore, once again he approached the Police Inspector- this petitioner. For that the petitioner said to be demanded Rs.10,00,000/- for providing protection and he also demanded to pay a part of the amount, therefore, he came back. On 29.08.2020, the Police Constable in the said police station telephoned to the complainant and demanded to pay Rs.10,00,000/- and again telephoned to the complainant on 29.08.2020. He further stated that he has put up a board on the property, it was removed by some opposite party, therefore, once again he has approached the Chikkajala Police through one Nanjappa. Then on 01.09.2020, in the house of one Nanjappa, the complainant handed over Rs.2,00,000/- and subsequently, he has given another Rs.2,00,000/- and remaining Rs.6,00,000/-

was pending. Since, the complainant was not willing to pay the bribe, he has approached the police and in turn, the Police registered the FIR and trap was set up. On the date of trap, the complainant approached accused No.2-the police constable and informed that the complainant is bringing money. Thereafter, while accused No.2 receiving the cash of Rs.6,00,000/-, the police apprehended him and seized the cash under the panchanama and then shown the name of the present petitioner as absconding and took up the investigation which is under challenge.

4. The learned counsel for the petitioner has contended that the petitioner was not at all either demanded or accepted any bribe. Accused No.2 who was accepted the bribe amount was caught red handed. At that time, the petitioner was not at all in the Police station, he was engaged in investigation in a criminal case and he is not aware about the demand and acceptance made by the accused No.2. He further contended that as per the complaint, the petitioner is said to be demanded the bribe in December 2019 and absolutely, there is no mention of date of demand and immediately, there is no complaint filed by the complainant. Even otherwise, the complaint as per the complainant, accused No.2 is said to be demanded the bribe on 29.08.2020. Even at that time, there is no complaint filed against the petitioner for demanding the bribe. Even as per the complaint, the part of the amount has been paid to the petitioner on 01.09.2020, but there is no complaint filed within seven days from the date of the demand as required under Section 8 of the P.C.Act. Therefore, it is contended that there is no demand and acceptance, work entrustment with the petitioner and no case was registered on behalf of the complainant in the Chikkajala Police Station. Even though, there is no telephonic conversation between this petitioner and the complainant. The complaint has been filed after four months of the alleged demand. Therefore, prayed for quashing the FIR.

5. Learned counsel for the petitioner also contended that even otherwise, accused No.2 was caught red handed, he has not stated in his explanation during the trap panchanama that he has accepted the cash on behalf of accused No.1-the present petitioner. Therefore, it is contended that conducting investigation against the petitioner is abuse of process of law. Hence, prayed for quashing the same.

6. Per contra, learned counsel for the respondent objected the petition and contended that accused No.2 had telephone conversation with the complainant where he has stated about the demand made by this petitioner. There was demand and acceptance of bribe by accused No.2 on behalf of this petitioner. Therefore, it is contended that the matter is required detailed investigation and the case is based upon circumstantial evidence. Hence, prayed for dismissing the petition.

7. Having heard the arguments on both the sides and on perusal of the records, which reveals, the petitioner is said to be a Police Inspector working in Chikkajala Police Station. The defacto-complainant is said to approached this petitioner for protection and keeping a board in respect of civil dispute and met this petitioner on 24.12.2019. Subsequently, accused No.2-Constable said to be took the complainant by the side of the Police station and demanded Rs.10,00,000/- as bribe. Subsequently, the complainant denied the payment and met the petitioner through Nanjappa. He said to be paid the said amount in the house of Nanjappa twice and it was prior to 01.09.2020 and remaining Rs.6,00,000/- was said to be demanded by this petitioner through accused No.2. Then on 02.12.2020, the complainant contacted accused No.2 and the complainant filed complaint

to the police on 07.01.2021 by producing the call record held between the accused No.2 and himself said on 02.12.2020. On perusal of the records, especially, the FIR and trap panchanama reveals, subsequently on 08.01.2021, the complainant contacted accused No.2 through telephone and thereafter, at 8.30 p.m. when handing over Rs.6,00,000/- to accused No.2, he was caught red handed and seized under the panchanama. On perusal of the records, it is an admitted fact, absolutely, there is no direct telephonic conversation between this petitioner and the complainant and the petitioner also not demanded directly with the complainant for any bribe either as on the date of trap or in the year 2020 either in December 2019 or August 2020. There is no telephonic conversation record produced to show that this petitioner actually demanded any bribe from the complainant. Apart from that, it is also an admitted fact, there is no acceptance of any bribe by this petitioner on 08.01.2021 as it was seized from accused No.2 while he was receiving the bribe. Absolutely, there is no demand and acceptance by this petitioner from the complainant for any bribe. The learned counsel for the petitioner has contended that the demand and acceptance is sine qua non for registering the case under the P.C. Act. That apart on 08.01.2021, this petitioner was not at all in the Police station, he was out of police station for an investigation in a criminal case in Crime No.105/2020 and the documents seized by the ACB Police also reveals that as per the SHD, the Police Inspector, the petitioner came to the Police Station at 9.00 a.m. and left the Police station at 12.30 p.m. by replacing the in charge of the Police station by ASI and other constables. The copy of the SHD dated 06.01.2021 and 07.01.2021 clearly reveals that this petitioner was not in the Police station while accused No.2 accepting the bribe.

8. Learned counsel for the petitioner has relied upon the judgment of the Co-ordinate Benches of this Court in the case of Sri Prabhu Shankar S/o. Muniyappa vs. State of Karnataka and others in Crl.P.No.2470/2020 and connected matters and in the case of P. Manjunath vs. State by Lokayuktha in W.P.No.10027/2022 dated 16.11.2022 where the Co- ordinate Benches have quashed the FIR and criminal proceedings. That apart, when the accused demanded any bribe, it is punishable under Section 7(a) of the P.C. Act and as per proviso to the Section 8 of the P.C. Act, if there is any demand, it shall be brought to the notice of the Police or Authority within seven days. Here in this case, the alleged demand was in December 2019 and also August 2020, but the complaint was filed only on 07.01.2021 beyond the statutory period of seven days as per the proviso to Section 8 of the P.C. Act. By considering the judgment of the Hon'ble Supreme Court, the Co-ordinate Bench in the case of P. Manjunath vs. State as held at paragraph Nos.13 and 14 which are as under:

"13. If the facts obtaining in the case at hand are considered on the bedrock of the principles laid down by the Apex Court, what would unmistakably emerge is that, there is neither demand nor acceptance in the case at hand. The demand should be for any work to be performed and acceptance should be towards the said work. The documents produced along with the petition are so unimpeachable that they would clearly demonstrate that the work that came before the petitioner on 24-02-2022 was performed and the document was released on the same day itself. If the complainant had complained that the petitioner had demanded money for release of document that would have been a circumstance altogether different.

The complaint is made after *07 days of release of the document when no work was pending with the petitioner, the final trap is laid after two months of registration of the document and the petitioner is not even caught accepting any illegal gratification for him to have demanded so, two months ago. Section 7 of the Act would clearly hint at a pre-paid demand for performing a work and acceptance. There is no post-paid concept under Section 7 of the Act, that too, on a trap that is laid after two months after the alleged demand. The first trap fails and the second trap is a failure.

14. The contention of the learned counsel representing the 1st respondent-

ACB/Lokayukta is neither here nor there as he is unable to wriggle out of the fact that the work had already been done and the alleged demand was projected after *07 days of the work and trap was laid after two months of the work completion. Reliance being placed on certain audio conversation between the petitioner and the complainant cannot even be pressed in his defence in view of unequivocal facts narrated hereinabove. Therefore, if further proceedings are permitted to continue against the petitioner, it would become an abuse of the process of law, result in miscarriage of justice, degenerate into harassment of public servant and would run foul of the judgment rendered by the Apex Court in the case of STATE OF HARYANA v.

BHAJAN LAL, wherein the Apex Court
holds as follows:-

"102. In the backdrop of the

interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted
allegations made in the FIR or

complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-

cognizable offence, no investigation is permitted by a police officer 4 1992 Supp (1) SCC 335 without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the

concerned Act (under which a

criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

(Emphasis supplied) The Apex Court has laid down postulates of circumstances in which an FIR can be quashed. Two postulates are applicable to the case at hand. One being the first postulate, that even if the complaint is taken on its face value, prima facie would not make out a case against the petitioner. The other being inherent improbability shrouded with the complaint. Therefore, following the judgment of the Apex Court in the case of BHAJAN LAL (supra) and the unequivocal fact that there is neither demand nor acceptance as laid down by the Apex Court in the aforesaid judgment, I deem it appropriate to obliterate the crime registered against the petitioner in Crime No.3 of 2022 for offences punishable under Section 7(a) of the Act."

9. The Hon'ble Supreme Court in the case of K.Shantamma vs. State of Telangana reported in 2022 3 Supreme 127 at paragraph No.15 has held that the demand and acceptance are sine qua non for establishing the offence under Section 7 of the P.C. Act and if it is not found, the accused cannot be tried or convicted.

10. It is well settled by the Hon'ble Supreme Court in the recent judgment as the demand and acceptance is a sine qua non for the Prevention of Corruption Act. Here in this case, there is no demand, acceptance of bribe and there is no work pending with the petitioner as on the date of filing the complaint. Apart from that, there was inordinate delay in lodging the complaint as per proviso to Section 8 of the P.C. Act. Therefore, the FIR and conducting the investigation against this petitioner is nothing but abuse of process of law and hence the petition is deserves to be allowed.

Accordingly, the petition is allowed. Consequently, the FIR and investigation in Crime No.1/2021 registered by the then ACB (Bengaluru Division) now pending with Lokayuktha, is hereby quashed.

Sd/-

JUDGE GBB