

IN THE HIGH COURT OF KARNATAKA
CIRCUIT BENCH AT DHARWAD

JUDGMENT PRONOUNCED AT PRINCIPAL BENCH AT BANGALORE

DATED THIS THE 23RD DAY OF DECEMBER 2010

B E F O R E

THE HON'BLE MR.JUSTICE JAWAD RAHIM

CRL.PETITION NO. 7612/2010

BETWEEN:

SHRI B.P.KRISHNEGOWDA
S/O LATE PUTTASWAMYGOWDA,
AGED ABOUT 40 YEARS,
MOTOR VEHICLE INSPECTOR,
R T O OFFICE, KOPPAL

... PETITIONER

(BY SRI SHANKAR HEGDE AND ASSOCIATES, ADV.)

AND:

KARNATAKA LOKAYUKTA,
REPRESENTED BY THE INVESTIGATING OFFICER
LOKAYUKTA POLICE STATION, BELLARY

... RESPONDENT

(BY SRI JAGADISH PATIL, ADV.)

CRL.PETITION IS FILED U/S 482, Cr.P.C. SEEKING
TO QUASH FIR BEARING K.A.L. BELLARY P.S. CRIME
NO.7/2009 (ANNEXURE - A) AND PANCHANAMA DATED 24
/ 25-07-2009 (ANNEXURE - B) PENDING ON THE FILE OF
SPL. JUDGE, PRINCIPAL DISTRICT AND SESSIONS JUDGE,
BELLARY BY EXERCISING POWER U/S 482 CR.P.C SO FAR
AS PETITIONER IS CONCERNED.



This Criminal petition having been heard finally and reserved at Dharwad Circuit Bench, this day the court pronounced at the Principal Bench at Bangalore the following order:

O R D E R

B.T.Krishnegowda, Motor Vehicle Inspector posted at RTO, Koppal, is seeking quashing of proceedings in PS.Crime No.7/09 against him for offences punishable under Sections 7 and 13(1)(d) of the Prevention of Corruption Act, 1988.

2. Heard learned counsel for the petitioner and learned standing counsel for the respondent. Perused records. It reveals:

a) Sri S.D.Bhagwadmath, Deputy Superintendent of Police, Karnataka Lokayukta Hospet Camp, Bellary, on the basis of anonymous telephone call alleging that RTO officials at Hagari Check Post were demanding and receiving illegal gratification to allow free passage of transport vehicles, summoned to *Panchas* and proceeded to Hagari Check Post, where he conducted raid at 10.30 p.m.



b) He found two home guards stopping lorries passing through the check post and were checking trip sheets and other documents; drivers who showed such documents were asked to go into the check post, where there were two RTO officials interacting with the drivers and collecting money. Thus, Sri Bhagwadmath, Dy.S.P. raided the check post and seized Rs.43,500/- as also other documents. He also searched the person of the officials including the petitioner-B.P.Krishnegowda and his colleague, Bandenawaz. No money was found in their possession. He asked them to submit their explanation.

c) Petitioner and his colleague denied having demanded or received illegal gratification. Meanwhile, the Dy.S.P. questioned drivers and cleaners who informed that they had paid Rs.100/- as illegal gratification to the officers for allowing their vehicles to pass through the check post. Drivers, viz., Gurubrahma, Chandrashekar, Veeraiah and Balasubramaniam are alleged to have told them though their documents were in order, petitioner and his colleague

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had demanded and received Rs.100/- as gratification. Besides, Sriramrao, driver of another lorry informed that he was carrying 16 tonnes of overloaded goods in his vehicle and the petitioner and his colleague had demanded Rs.1,600/- as bribe to allow him to pass through the check post without paying fine.

e) On the basis of such statements as also finding that Rs.6,320/- was found in excess of the amount recorded in the official receipt book maintained, the Dy.S.P. registered the case in Crime NO.7/09 for the offences indicated above and prepared Panchnama in the early hours of 25.7.2009.

f) Petitioner was arrested but released later on bail.

3. Learned counsel for the petitioner assertively submits registration of the case by Lokayukta officials against the petitioner for the offences indicted above is impermissible in law as it is not based on any report lodged alleging demand or acceptance of illegal gratification. Referring to what transpired during the raid at 10.30 p.m. on

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24.7.2009, it is submitted since the I.O. had found no money on his person, there was no question of enquiry as to whether such money was obtained by way of illegal gratification. The cash seized during the raid was money recovered as fine from defaulters and other public money, and that cannot be incriminating material to initiate prosecution. He seriously disputed that Rs.6,320/- cash was found to be in excess of the officials receipt book. He submits to sustain action against the petitioner for the offence under Section 7, unless prosecution finds material to show that the petitioner had demanded money as illegal gratification and had accepted it, proceedings are vitiated and liable to be quashed.

4. Referring to case laws, learned counsel submits registration of case being on insufficient material, all further actions are vitiated and are not sustainable as it amounts to misuse of the process of law and hence, the right course is to quash the proceedings.



5. All contentions canvassed have received my consideration and I have examined the records made available.

6. The grievance of the petitioner is, he was innocently present at the check post, but the Dy.S.P., Lokayukta has unjustifiably conducted raid at his residence also. He has referred to the order of the Joint Commissioner of Transport dated 29.6.2009 defining shifts. As per that order, his duty hours was from 10.00 a.m. to 6.00 p.m. He has further relied on the Govt. notification dated 12.1.2006 to show that no goods vehicle shall cross Bellary town between 6.00 a.m. and 9.00 p.m. Hagari Check Post is situated 40 kms. away from the city where loading will be done on one way, and on the other way, traffic will be of empty vehicles. Therefore, there is hardly any space on the road for more than one vehicle to cross. On this basis, it is submitted that the statement of another driver that he was carrying 16 tonnes overloaded goods in his vehicle was factually incorrect.

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7. Besides, he submits the raid was conducted at 10.30/10.45 p.m. and it was impossible for any official to collect Rs.43,500/- as fine within 45 minutes. Therefore, the so-called seizure of Rs.43,500/- described as implanted money to foist a false case against the petitioner. He has further commented on the allegation made by the I.O. that Rs.6,320/- was found in excess of official receipt book. Lastly, he would submit the explanation given by the petitioner has not been considered by the I.O. before registering the case and therefore, the entire action is an attempt of *mala fide* intention and not fair investigation.

8. The technical grounds urged are, for investigation under Section 7 of the Act, the I.O. is supposed to prepare bait money treating it with phenolphthalein powder to be tested after raid dipping it in sodium carbonate solution. Without following such procedure, no raid as done by the I.O. is permissible.

9. Apart from all grounds referred to above, the thrust is on the main ground that no demand or acceptance of

illegal gratification is spelled out in the report, and therefore, no case is made out to subject the petitioner to trial.

10. Learned counsel, Sri Shankar Hegde, reiterating all the grounds with his persuasive eloquence, contends the prosecution is unsustainable. But the question is, whether such grounds justify interference of this court when the investigation has just commenced?

11. On facts there is no dispute. Prosecution does not dispute registration of the case against the petitioner is based on credible information received on 24.7.2009 and raid conducted on the next day in the early hours. The place of raid is Hagari Check Post and presence of the petitioner is also not in dispute. It is not disputed that the I.O. has conducted raid and seized Rs.43,500/- out of which Rs.6,320/- is found in excess compared to official receipts issued. Prosecution has arraigned the petitioner for the offences under Sections 7, 13 (1)(d) read with Section 13(2) of the Act basically on the ground that



Rs.6,987/- found in excess of official acknowledgement is illegal gratification received from truck drivers and cleaners to show them official favour.

12. Petitioner does not dispute that the investigation has just commenced and during the course of it, I.O. has examined several witnesses including those who were detained during the raid. The offences punishable under Sections 7, 13(1)(d) and 13(2) of the Act are undoubtedly to be tried as a warrant case as prescribed by the Code of Criminal Procedure.

13. A special stage is carved out in Section 239, Cr.P.C. which mandates '*if, upon considering the police report and documents sent with it under Section 173 and **making such examination**, if any, of the accused as the magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.*' The provision of

Section 240 further envisages '*if upon such consideration, examination, if any, and hearing, the magistrate is of the opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.*' Therefore, it is evident from the provisions of Section 239, Cr.P.C. that an onerous duty is cast on the magistrate not only to examine the material sent along with the final report under Section 173, Cr.P.C., but also to examine for ascertainment as to whether the material placed before him in the form of final report and the result of examination of the accused, if any, any prima facie case is made out. If the allegation is groundless, he shall discharge the accused. That is the special stage carved out in the proceedings before framing charge and therefore, the person arraigned and sent to the magistrate has the right to be heard and also to point out lack of material in support of the charge. The power conferred

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under Section 239 is exercisable by the jurisdictional magistrate he is empowered to discharge the accused.

14. If on examination of such material, the magistrate finds it makes out a prima facie case, then under Section 240, he may presume accused has committed the offence, and frame charge to put him to trial. Therefore, the right of the accused to seek discharge is always saved by Section 239, Cr.P.C. In the instant case, the petitioner has not availed that opportunity, but has rushed to the court much before final report is filed, seeking quashing of proceedings under Section 482, Cr.P.C.

15. It is a settled principle of law that before final report is filed, the magistrate is not conferred with any power to interfere with investigation or to quash the proceedings pending investigation by the investigating officer.

16. The power of the High Court conferred is no doubt unbridled, but such power does not justify interference with lawfully commenced investigation. May be, the

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material on the basis of which investigation commenced is too vague, but it cannot be said it will not result in unearthing incriminating aspects for which I.O. is conferred with sufficient power.

16. I have already referred in paragraphs supra that the petitioner may have an arguable case on all grounds urged in this petition to seek discharge. But those grounds are not sufficient to quash the proceedings at the initial stage. In this view, reserving the right of the petitioner to canvass all grounds urged in this petition in addition to any other grounds for seeking discharge before the trial court, this petition is disposed of.

Sd/-
JUDGE

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