Shadakshari vs The State Of Karnataka on 17 January, 2024

Author: Abhay S. Oka

Bench: Abhay S. Oka

REPORT

IN THE SUPREME COURT OF INDIA

2024 INSC 42

CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.256 OF 2024

SHADAKSHARI APPELLANT(S

VERSUS

STATE OF KARNATAKA & ANR. RESPONDENT(S

JUDGMENT

UJJAL BHUYAN, J.

Heard learned counsel for the parties.

2. Challenge made in this appeal is to the order dated 25.11.2020 passed by the High Court of Karnataka at Bengaluru in Criminal Petition No.4998 of 2020 (Sri. Mallikarjuna Vs. State of Karnataka) quashing the complaint dated 19.12.2016 lodged by the appellant; the chargesheet in C.C. No.116 of 2018 including the order dated 28.03.2018 passed therein by the learned Judicial Magistrate First Class, Belur.

Facts lie within a very narrow compass. The appellant as the Date: 2024.01.17 13:56:56 IST Reason:

> complainant lodged a first information report dated 19.12.2016 (referred to as 'the complaint' in the impugned order) alleging that respondent No.2 and another were irregularly creating documents of property in the name of dead person despite knowing the fact that those were fake documents, such as, death certificate, family tree of the original successor of land of the appellant etc. for illegal gain. The said first information was received and registered by Haleebedu Police Station, Belur as Crime No. 323/2016 under Sections 409, 419, 420, 423, 465, 466, 467, 468, 471 and 473 of the Indian Penal Code, 1860 (IPC) read with Section 149 and Section 34 thereof.

4. It may be mentioned that respondent No.2 is working as Village Accountant, Kirigdalu Circle in the district of Hassan, Karnataka State.

5. Respondent No.2 filed a petition under Section 482 of the Code of Criminal Procedure, 1973 (Cr.PC) for quashing of the said FIR before the High Court of Karnataka at Bengaluru ('High Court' for short). The same was registered as Criminal Petition No.9580 of 2017.

5.1 The High Court in its order dated 05.01.2018 noted that the specific case of the appellant was that land admeasuring 1 acre 13 guntas in survey No.7/6 situated at Chattanahalli Village, Halebeedu Hobli, Belur Taluk, Hassan District belonged to the appellant and his family members. The same was given to accused No.1 for the purpose of cultivation. Accused No.1 in collusion with revenue officials including accused No.2 (respondent No.2 herein) created lot of fake documents in favour of respondent No.1. High Court vide the order dated 05.01.2018 observed that there were specific and serious allegations against respondent No.2 even as to creation of death certificate of a living person. It was observed that a reading of the FIR made out a case for investigation and that it was too premature to interfere with such FIR. Adverting to the case of Lalita Kumari Vs. Govt. of Uttar Pradesh, (2014) 2 SCC 1, the High Court did not interfere though granted liberty to respondent No.2 to seek his legal remedy in the event any adverse report was made.

6. Sub Inspector of Police, Haleebedu Police Station, who was the investigating officer submitted final report under Section 173 of the Cr.PC in the Court of the Additional Civil Judge (Junior Division) and Judicial Magistrate First Class, Belur on 20.03.2018 which was registered as chargesheet No.12/2018.

The following persons have been named as accused in the chargesheet:

i. Accused No.1 - Ramegowda
ii. Accused No.2 - Mallikarjuna (respondent No.2)
iii. Accused No.3 - Manjunath Aras

They have been charged under Sections 471, 468, 467, 465, 420, 409, 466 and 423 read with Section 34 of IPC. The chargesheet also mentions the names of thirty-one witnesses.

7. As per the chargesheet, the deceased husband of witness No.2 Somashekharappa had permitted his deceased younger brother Thumbegowda to use the subject land for cultivation about 40-50 years ago. After the death of Thumbegowda, his son i.e. accused No.1 was cultivating the subject land. During the year 1993, Somashekharappa died but accused No.1 in collusion with accused No. 2 (respondent No.2) created a fake certificate of death to the effect that Somashekharappa had died during the year 2010. In this fake document, father of the deceased Thumbegowda was mentioned as Somashekharappa instead of Sannasiddegowda. By creating such fake document, the accused sought to make illegal gain.

8. Respondent No.2 again approached the High Court by filing a petition under Section 482 Cr.PC for quashing the complaint dated 19.12.2016 as well as the chargesheet and the order dated 28.03.2018 (what is the order dated 28.03.2018 has not been mentioned by respondent No.2). It may be mentioned that upon the chargesheet being filed in the court of the Additional Civil Judge (Junior Division) and Judicial Magistrate First Class, Belur, the same was registered as C.C. No.116 of 2018. The quash petition of respondent No.2 was registered as Criminal Petition No.4998 of 2020. The High Court observed that respondent No.2 was a public servant. The offence complained against him, as per the prosecution, was committed while discharging his duties as a public servant. Investigating officer had sought for sanction to prosecute respondent No.2 but sanction was denied. In such circumstances, High Court held that since sanction was refused, prosecution for criminal offence against a public servant cannot continue. Consequently, the complaint, the chargesheet as well as the order dated 28.03.2018 were set aside by the High Court vide the order dated 25.11.2020.

9. Aggrieved thereby, the complainant as the appellant has instituted the present proceeding.

10. This court by order dated 15.05.2023 granted permission to the appellant to file special leave petition. After condoning the delay, notice was issued. Thereafter, respondent No.2 filed counter affidavit. On perusal of the counter affidavit of the second respondent this court in the proceedings held on 21.11.2023 noted that Annexure R-1 annexed to the said affidavit was a file noting recording the opinion of some officers that it was not a fit case to accord sanction under Section 197 Cr.PC to prosecute the second respondent. However, this Court noticed that there was no decision of the competent authority granting sanction. In such an eventuality, this Court directed the State to file an affidavit dealing with the aspect of sanction and to produce the relevant document.

11. Pursuant thereto respondent No. 1 i.e State of Karnataka has filed an affidavit. The affidavit says that the investigating officer had written to the Deputy Commissioner, Hassan, on 22.01.2018 seeking sanction to prosecute the village accountant Mallikarjun (Responsible No. 2). It is further seen that the Additional Deputy Commissioner, Hassan had informed the investigating officer vide letter dated 17.03.2018 that upon examination of the concerned file and considering the opinion of the legal advisor, sanction for prosecution of respondent No. 2 was not granted.

12. Learned counsel for the appellant submits that the High Court was not justified in quashing the complaint as well as the chargesheet and the related cognizance order. He submits that no sanction to prosecute was required qua respondent No. 2 as making of a fake document cannot be said to be carried out by respondent No. 2 in the discharge of his official duty. In support of his contention, he has placed reliance on the decision of this Court in Shambhoo Nath Misra Vs State of U.P., (1997) 5 SCC

326.

13. Learned State counsel supports the contentions of the learned counsel for the appellant.

14. On the other hand, learned counsel for respondent No. 2 supports the order of the High Court and submits that the High Court had rightly quashed the complaint and the chargesheet. Without sanction to prosecute a public servant the latter cannot be prosecuted. This is a well-settled proposition and in this connection has placed reliance on a decision of this Court in D. Devaraja Vs. Obais Sanders Hussain, (2020) 7 SCC 695.

15. Submissions made by learned counsel for the parties have received the due consideration of this court.

16. The question for consideration in this appeal is whether sanction is required to prosecute respondent No. 2 who faces accusation amongst others of creating fake documents by misusing his official position as a Village Accountant, thus a public servant? The competent authority has declined to grant sanction to prosecute. High Court has held that in the absence of such sanction, respondent No. 2 cannot be prosecuted and consequently has quashed the complaint as well as the chargesheet, giving liberty to the appellant to assail denial of sanction to prosecute respondent No. 2 in an appropriate proceeding, if so advised.

17. Section 197 Cr.PC deals with prosecution of judges and public servants. Section 197 reads as under:

> "197. Prosecution of Judges and public servants:
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> (1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction (save as otherwise provided in the Lokpal and Lokayuktas Act, 2013) –
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> (a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;
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> (b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government:
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> [Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of Article 356 of the Constitution was in force in a State, clause
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> (b) will apply as if for the expression "State Government" occurring therein, the expression "Central Government" were substituted.] [Explanation — For the removal of doubts it is hereby declared that no sanction shall be required in case of a public

> servant accused of any offence alleged to have been committed under section 166A, section 166B, section 354, section 354A, section 354B, section 354C, section 354D, section 370, section 375, section 376, section 376A, section 376AB, section 376C, section 376D, section 376DA, section 376DB or section 509 of the Indian Penal Code (45 of 1860).] (2) No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government.

(3) The State Government may, by notification, direct that the provisions of Sub-Section (2) shall apply to such class or category of the members of the Forces charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that sub-section will apply as if for the expression "Central Government" occurring therein, the expression "State Government" were substituted.

[(3A) Notwithstanding anything contained in sub- section (3), no Court shall take cognizance of any offence, alleged to have been committed by any member of the Forces charged with the maintenance of public order in a State while acting or purporting to act in the discharge of his official duty during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force therein, except with the previous sanction of the Central Government.] [(3B) Notwithstanding anything to the contrary contained in this Code or any other law, it is hereby declared that any sanction accorded by the State Government or any cognizance taken by a Court upon such sanction, during the period commencing on the 20th day of August, 1991 and ending with the date immediately preceding the date on which the Code of Criminal Procedure (Amendment) Act, 1991, receives the assent of the President, with respect to an offence alleged to have been committed during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in the State, shall be invalid and it shall be competent for the Central Government in such matter to accord sanction and for the Court to take cognizance thereon.] (4) The Central Government or the State Government, as the case may be, may determine the person by whom, the manner in which, and the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the Court before which the trial is to be held."

18. As per sub section (1) of Section 197 where any person who is or was a judge or magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no court shall take cognizance of such offence except with the previous sanction of the Central Government or the State Government, as the case may be.

19. The ambit, scope and effect of Section 197 Cr.PC has received considerable attention of this court. It is not necessary to advert to and dilate on all such decisions. Suffice it to say that the object of such sanction for prosecution is to protect a public servant discharging official duties and functions from undue harassment by initiation of frivolous criminal proceedings.

20. In State of Orissa Vs. Ganesh Chandra Jew, (2004) 8 SCC 40, this court explained the underlying concept of protection under Section 197 and held as follows:

> "7. The protection given under Section 197 is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act as public servants. The policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for anything done by them in the discharge of their official duties without reasonable cause, and if sanction is granted, to confer on the Government, if they choose to exercise it, complete control of the prosecution. This protection has certain limits and is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant of the protection. The question is not as to the nature of the offence such as whether the alleged offence contained an element necessarily dependent upon the offender being a public servant, but whether it was committed by a public servant acting or purporting to act as such in the discharge of his official capacity. Before Section 197 can be invoked, it must be shown that the official concerned was accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties. It is not the duty which requires examination so much as the act, because the official act can be performed both in the discharge of the official duty as well as in dereliction of it. The act must fall within the scope and range of the official duties of the public servant concerned. It is the quality of the act which is important and the protection of this section is available if the act falls within the scope and range of his official duty. There cannot be any universal rule to determine whether there is a reasonable connection between the act done and the official duty, nor is it possible to lay down any such rule. One safe and sure test in this regard would be to consider if the omission or neglect on the part of the public servant to commit the act complained of could have made him answerable for a charge of dereliction of his official duty. If the answer to this question is in the affirmative, it may be said that such act was committed by the public servant while acting in the discharge of his official duty and there was every connection with the act complained of and the official duty of the public servant. This aspect makes it clear that the concept of Section 197 does not get immediately attracted on institution of the complaint case."

21. This aspect was also examined by this court in Shambhu Nath Misra (supra). Posing the question as to whether a public servant who allegedly commits the offence of fabrication of records or misappropriation of public funds can be said to have acted in the discharge of his official duties. Observing that it is not the official duty to fabricate records or to misappropriate public funds, this court held as under:

> "5. The question is when the public servant is alleged to have committed the offence of fabrication of record or misappropriation of public fund etc. can he be said to have acted in discharge of his official duties. It is not the official duty of the public servant to fabricate the false records and misappropriate the public funds etc. in furtherance of or in the discharge of his official duties. The official capacity only enables him to fabricate the record or misappropriate the public fund etc. It does not mean that it is integrally connected or inseparably interlinked with the crime committed in the course of the same transaction, as was believed by the learned Judge. Under these circumstances, we are of the opinion that the view expressed by the High Court as well as by the trial court on the question of sanction is clearly illegal and cannot be sustained."

22. Even in D. Devaraja (supra) relied upon by learned counsel for respondent No. 2, this court referred to Ganesh Chandra Jew (supra) and held as follows:

> "35. In State of Orissa v. Ganesh Chandra Jew [State of Orissa v. Ganesh Chandra Jew, (2004) 8 SCC 40 : 2004 SCC (Cri) 2104] this Court interpreted the use of the expression "official duty" to imply that the act or omission must have been done by the public servant in course of his service and that it should have been in discharge of his duty. Section 197 of the Code of Criminal Procedure does not extend its protective cover to every act or omission done by a public servant while in service. The scope of operation of the section is restricted to only those acts or omissions which are done by a public servant in discharge of official duty."

23. Thus, this court has been consistent in holding that Section 197 Cr.PC does not extend its protective cover to every act or omission of a public servant while in service. It is restricted to only those acts or omissions which are done by public servants in the discharge of official duties.

24. After the hearing was over, learned counsel for respondent No.2 circulated a judgment of this Court in A. Srinivasulu Vs. State Rep. by the Inspector of Police, 2023 SCC OnLine SC 900 in support of the contention that a public servant cannot be prosecuted without obtaining sanction under Section 197 of Cr.PC. We have carefully gone through the aforesaid decision rendered by a two Judge Bench of this Court in A. Srinivasulu (supra). That was a case where seven persons were chargesheeted by the Central Bureau of Investigation (CBI) for allegedly committing offences under Section 120B read with Sections 420, 468, 471 along with Sections 468 and 193 IPC read with Sections 13 (2) and 13(1)(d) of the Prevention of Corruption Act, 1988 (for short 'P.C. Act, 1988'). Four of the accused persons being A-1, A-2, A-3 and A-4 were officials of Bharat Heavy Electricals Limited, a public sector undertaking and thus were public servants both under the IPC as well as under the P.C. Act, 1988. Accused No.1 had retired from service before filing of the chargesheet. Insofar accused Nos. 3 and 4, the competent authority had refused to grant sanction but granted the same in respect of accused No.1. It was in that context that this court considered the requirement of sanction under Section 197 Cr.P.C qua accused No.1 and observed that accused No.1 could not be prosecuted for committing the offence of criminal conspiracy when sanction for prosecuting accused Nos.3 and 4 with whom criminal conspiracy was alleged, was declined. This court held as follows:

> "52. It must be remembered that in this particular case, the FIR actually implicated only four persons, namely PW-16, A-3, A-4 and A-5. A-1 was not implicated in the FIR. It was only after a confession statement was made by PW-16 in the year 1998 that A-1 was roped in. The allegations against A-1 were that he got into a criminal conspiracy with the others to commit these offences. But the Management of BHEL refused to grant sanction for prosecuting A-3 and A-4, twice, on the ground that the decisions taken were in the realm of commercial wisdom of the Company. If according to the Management of the Company, the very same act of the co-conspirators fell in the realm of commercial wisdom, it is inconceivable that the act of A-1, as part of the criminal conspiracy, fell outside the discharge of his public duty, so as to disentitle him for protection under Section 197(1) of the Code." 24.1 Admittedly, facts of the present case are clearly distinguishable from the facts of A. Srinivasulu (supra) and, therefore, the said decision cannot be applied to the facts of the present case.
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> 25. The question whether respondent No.2 was involved in fabricating official documents by misusing his official position as a public servant is a matter of trial. Certainly, a view can be taken that manufacturing of such documents or fabrication of records cannot be a part of the official duty of a public servant.

If that be the position, the High Court was not justified in quashing the complaint as well as the chargesheet in its entirety, more so when there are two other accused persons besides respondent No.2. There is another aspect of the matter. Respondent No.2 had unsuccessfully challenged the complaint in an earlier proceeding under Section 482 Cr.PC. Though liberty was granted by the High Court to respondent No.2 to challenge any adverse report if filed subsequent to the lodging of the complaint, instead of confining the challenge to the chargesheet, respondent No.2 also assailed the complaint as well which he could not have done.

26. That being the position, we are of the unhesitant view that the High Court had erred in quashing the complaint as well as the chargesheet in its entirety. Consequently, we set aside the order of the High Court dated 25.11.2020 passed in Criminal Petition No. 4998/2020. We make it clear that observations made in this judgment are only for the purpose of deciding the present challenge and should not be construed as our opinion on merit. That apart, all contentions are kept open.

27. Appeal is accordingly allowed. No costs.

.....J. [ABHAY S. OKA] .....J. [UJJAL BHUYAN] NEW DELHI;

17.01.2024