

Karnataka High Court Sri.Rathnakar Shetty vs State on 3 December, 2015
Author: Rathnakala -1-

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 3RD DAY OF DECEMBER 2015

BEFORE

THE HON'BLE MRS.JUSTICE RATHNAKALA

CRIMINAL PETITION NO.2812/2013

BETWEEN:

SRI RATHNAKAR SHETTY S/O NARAYANA SHETTY AGED ABOUT 40 YEARS R/O NO.A-3, A STREET POLICE QUARTERS, BURLEE STREET, SHANTHI NAGAR, BANGALORE - 560 025. ...PETITIONER

(BY SRI SHASHI KIRAN SHETTY, SR.ADV. AND SRI PAVAN G.N. FOR SMT.LATHA SHETTY, ADV.)

AND:

1. STATE THROUGH LOKAYUKTHA POLICE, BANGALORE CITY, BANGALORE - 560 001.
2. SRI NOOR AHMED S/O LATE ALI JAHN AGED ABOUT 52 YEARS R/O NO.3, NANJAPPA GARDEN HAYNES ROAD BANGALORE - 560 005. ...RESPONDENTS

(BY SRI MALLIKARJUN C. BASAREDDY, SPL PP. FOR R1; SRI SYED UMMER, ADV. FOR R2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482

OF CR.P.C., PRAYING TO QUASH THE FIR AND COMPLAINT BEARING NO.38/2011 DATED 7.9.2011, REGISTERED WITH THE -2-

LOKAYUKTHA POLICE, BANGALORE CITY, FOR ALLEGED OFFENCES U/S 7, 13(1) (D) R/W SECTION 13(2) OF THE PREVENTION OF CORRUPTION ACT, (ANNEXURE A AND A1) QUASH THE FINAL REPORT FILED BY THE LOKAYUKTHA POLICE IN MATTER BEARING SPL. C.C. NO.34/13 PENDING IN THE FILE OF THE XXIII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BANGALORE (ANNEXURE-B).

THIS CRIMINAL PETITION HAVING BEEN HEARD AND

RESERVED FOR ORDERS ON 26/11/2015 AND COMING ON FOR PRONOUNCEMENT OF ORDERS THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioner/Accused No.1 herein is a Police Inspector of Amruthahalli Police Station, Bangalore. Along with a Police Constable/Accused No.2 at Sampigehalli Police Station, he is charge sheeted for the offence under Section 7 of the Prevention of Corruption Act, 1988 ('the Act' for short) and Section 120B of IPC. 2. The summary of the prosecution case is, the petitioner/accused No.1 and accused No.2 failed to maintain integrity in their public service; on 2.9.2011, first accused inspected the godown of CW-1, locked the same and detained the key with himself. He inspected another godown belonging to CW at Jalahalli Cross and he locked the godown and withheld the key. He procured CW-1 to the Police Station. On 3.9.2011, he insisted for a bribe amount of Rs.10 lakhs, not verbally but through visual representation, which was mistaken by CW-1 as Rs.10,000/-; when he sent Rs.10,000/- through his son CW-2, accused No.1 reprimanded him for tendering only Rs.10,000/- instead of Rs.10 lakhs. Agitated by the above response of CW-1, on 4.9.2011, with the assistance of his staff, he shifted 35 sewing machines from the godown of CW-1 located at Jalahalli cross to the Police Station and detained the same illegally. He conspired with accused No.2 and through him pleaded fresh demand with CW-1 for a bribe of Rs.50,000/-. On 7.9.2011, he was yet to receive Rs.50,000/- bribe, by way of cash from CW-1 and the Investigating Officer planned to catch hold of him red-handed at that juncture through CW-4, the matter got leaked and accused No.1 escaped without receiving the bribe amount. When the Investigating Officer along with Panch witness and Staff visited the Amruthahalli Police Station, accused No.1 was not available in the Police Station. 3. Sri.Shashikiran Shetty, learned Senior Counsel appearing for the petitioner submits that the FIR in Crime No.112/2010 was registered for the offence under Sections 7, 13(1)(d) read with Section 13(2) of the Act on 7.9.2011, though it is the case of the prosecution that the Investigating Officer has information on 5.9.2011 itself. However, after investigation, the prosecution gave up allegation under Section 13(1)(d) read with Section 13(2) of the Act and Section 120 of IPC. Second respondent/complainant is a habitual offender. He is a Receiver of stolen properties. He is shown as absconding criminal in C.C.No.7755/2003 pending before the IV Addl.C.M.M., Bangalore. In the year 2010, there was a complaint to the Amruthahalli Police Station about theft of Sewing machines from the premises of M/s.Jasmine Apparels and the case was registered against unknown individuals. The then Police Inspector had suspected the involvement of one Hamid Khan and his gang, who are M.O.B. criminals and they were absconding and were not available for investigation. The petitioner took over charge of the Police Station in June 2011; at the instruction of his superiors, he made effort to trace the absconding accused persons and during the course of investigation,

complainant was apprehended on 5.9.2011. During his custodial interrogation, he disclosed his involvement along with two accused in the theft of Sewing machines including the subject matter of Crime No.11/2010 and also disclosed that he had sold the machines to various persons. He led the Police and panchas to his residence where he had stored the stolen machines and also to various persons to whom he had sold the machines. The stolen property was seized under mahazar on 5.9.2011. On the same day, certain sewing machines were seized from the residence of Salman Pasha as shown by Hamid Khan. On 6.9.2011, Hamid Khan was produced before the Court and remanded to Police custody till 8.9.2011 for further interrogation and investigation. The seized property was incorporated in the property form and submitted to the Court. The second respondent / complainant / Noor Ahmed approached him with accused No.2 claiming to be the owners of Sewing machines seized under mahazar. However, the petitioner advised him to take interim custody in accordance with law. That being the state of affairs, present complaint is filed on 7.9.2011 at 5.30 p.m. As per complaint allegations, the FIR is registered on the oral complaint of complainant dated 5.9.2011 and written complaint of 7.9.2011. There cannot be two complaints. The Lokayuktha Police ought to have registered the F.I.R. on the first information received on 7.9.2011. Without registering the F.I.R., they have commenced investigation from 5.9.2011. In view of the judgment of the Division Bench of this Court in Girishchandra and Another -vs- State by Lokayuktha Police, Yadgir reported in 2013(5) Kar.L.J. 470(DB), entire investigation conducted prior to registration of the case is vitiated. As per prosecution case, on 5.9.2011, the complainant was entrusted with a Tape Recorder to record the conversation between himself and the petitioner; accordingly, complainant approached the petitioner on 6.9.2011 and was directed to contact accused No.2, who in turn, negotiated for Rs.75,000/-. After recording the conversation, the complainant returned the Tape Recorder to Lokayuktha Police. It is evident from the complaint itself that FIR is registered against him only with a mala fide intention to distract from the investigation undertaken by him in respect of Crime No.112/2010 registered by Amruthahalli Police. The case is registered violating the mandatory procedure of Section 154(1) of Cr.P.C. belatedly. In the light of the judgment of the Apex Court in AIR 1992 SC 604 (State of Haryana and Others -vs- Bhajan Lal and Others), the FIR deserves to be quashed. The complainant is a habitual offender in receiving stolen properties. He is a absconding accused in C.C.No.7755/2003 on the file of IV A.C.M.M., Bangalore. While registering the case on the basis of recorded conversation, the Police violated the guidelines laid down by the Apex Court in Ram Singh and Others -vs- Ram Singh reported in AIR 1986 SC 3. As per prosecution story, one Jhabbi/CW-4 negotiated with the accused for illegal gratification and was responsible for escape of accused from trap. That being so, he should have been arraigned as accused, but he is left out. Since he had incorporated the seized Sewing machines on 5.9.2011 itself in the Property Form and reported to Court, there was nothing for him to forbear from doing an official act for the greed of gratification. The Police officials who assisted him for the seizure of Sewing machines are not arraigned as accused. In respect of the conversation by the

petitioner, the Government Forensic Science Laboratory have opined that voice is 'incomparable' but the Investigating Officer manipulated a favourable report from a private Forensic Laboratory only to implicate him in this case. The final report is fraught with anomalies and failed to make out a prima facie case for the offence under Section 7 of the Act. In the light of the ruling of the Apex Court in *Madhu Limaye -vs- The State of Maharashtra* reported in AIR 1978 SC 47, since the prosecution cannot carry the guilt of the petitioner, the criminal case is liable to be dismissed. 4. During his reply, Sri.Mallikarjun C.Basareddy, learned Counsel appearing for respondent No.1/Lokayuktha Police takes me through the complaint allegation wherein the sequence of events commenced on 3.11.2011. He also took me through the decoded conversation from the C.D. and the supporting statements of witnesses and submits that, there is enough of incriminating evidence against the petitioner on record for his indulgence in the offence under the Act. It is permissible for the Investigating Officer to hold a preliminary enquiry before registering the corruption case in view of the judgment of the Apex Court in *Lalita Kumari -vs- Government of U.P. and Others* reported in (2014) 2 SCC 1. At this stage, this Court cannot evaluate the merits of the evidence collected by the Investigating Agency. The entire case displayed by the petitioner before this Court may be availed by him as his defence during trial and the matter does not call for exercise of extra-ordinary jurisdiction of this Court under Section 482 of Cr.P.C. 5. It is undisputed that, the trap laid to catch the petitioner red-handed has failed. The telephonic conversation of the accused and the complainant is opined by the Forensic expert as disguised speech "The sample speeches said to be of Sri Ratnakar Shetty are disguised speech. The types of disguise are slow rate of speech and omission of speech sounds in pronounced words. Hence comparison is not possible with questioned recordings." However, further test - 10 - carried out by private agency 'Truth Lab, Thaverekere' asserts that voice found in the recorded conversation is that of petitioner. There is sufficient circumstantial evidence on record about the conduct of accused subsequent to failure of trap. 6. As pointed out by the learned Counsel for respondent No.1/Lokayuktha, the sequence of events commence from 3.9.2011. As per law laid down in *Lalita Kumari's case* (supra), it is permissible in the corruption cases for the Investigating Officer to hold preliminary enquiry before registering the FIR upto seven days. However, the judgment of the Division Bench of this Court in *Girishchandra's case* (supra) is binding to the extent that investigation conducted prior to registration of case do not fall under the broad investigation contemplated in Section 154 of Cr.P.C. Even after taking the charge sheet material through the sieve of judgment of *Girishchandra* (supra), there remains enough of incriminating material against the petitioner warranting trial. At this stage, I refrain from making any observation on the quality of evidence relied by the prosecution in support of - 11 - their allegation since it may prejudice the case of either of the party before Trial Court. It is the fundamentals of Criminal Jurisprudence that an offence can be proved not only on the basis of direct evidence but also through circumstantial evidence without forsaking rule of proof beyond reasonable doubt. In that view of the matter, I am of the firm opinion that the petitioner has to face the trial

and cannot seek quashing of the proceedings on technical grounds. The petition is dismissed. Sd/- JUDGE KNM/-