

Karnataka High Court Sri Lakshmikantha S G vs The State By on 11 February, 2016 Author: Rathnakala IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 11TH DAY OF FEBRUARY, 2016

BEFORE

THE HON' BLE MRS. JUSTICE RATHNAKALA

CRIMINAL PETITION NO.3750/2013

BETWEEN:

SRI LAKSHMIKANTHA S.G., S/O GANGACHIKKAIAH AGED ABOUT 28 YEARS RESIDING AT LAKSHMI NILAYA 1ST CROSS, BEHIND VIJAYA HOSPITAL BANASHANKARI, TUMKUR - 572 101. ... PETITIONER

(BY SRI M.S.BHAGWAT, ADV.)

AND:

1. THE STATE BY KARNATAKA LOKAYUKTHA POLICE POLICE DIVISION TUMKUR DISTRICT, TUMKUR - 572 101. REP. BY ITS POLICE INSPECTOR
2. SRI S.C.RANGANATH S/O LATE CHIKKARANGAIAH AGED ABOUT 60 YEARS I CLASS ELECTRICAL CONTRACTOR RESIDENT OF NAGENAHALLI VILLAGE MADHUGIRI TALUK TUMKUR DISTRICT - 572 132. ...RESPONDENTS

(BY SRI B.S.PRASAD, SPL.PP, FOR R1; SRI B.C.RAJANNA, ADV. FOR R2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF

CR.P.C., PRAYING TO QUASH THE FIR BEARING CR.NO.3/2013 2

REGISTERED BY THE 1ST RESPONDENT POLICE ON THE FILE OF THE II ADDITIONAL DISTRICT AND SESSIONS JUDGE, TUMKUR DISTRICT, TUMKUR AND COMPLAINT AND ALL FURTHER PROCEEDINGS THEREON (ANNEXURE-A, B AND C).

THIS CRIMINAL PETITION HAVING BEEN HEARD AND

RESERVED FOR ORDERS ON 02/02/2016 AND COMING ON FOR PRONOUNCEMENT OF ORDERS THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

A nice question of law is raised which arises for consideration in this petition is, Whether conversation of the accused recorded in support of the allegation for the offence under the Prevention of Corruption Act, prior to registration of FIR amounts to preliminary enquiry or investigation? 2. Undisputed facts of the case, the petitioner is working as Junior Engineer/Section Officer in Chamundeswari Electricity Supply Company Limited. Respondent No.2 is the defacto complainant who is Class-I Electrical Contractor (for brevity, Contractor). As per his complaint allegation, in respect of works order allotted by the Company, Contractor insisted for indent in respect of a converter of 25kv, accused dodged the issue for about two months. The Contractor had already given Rs.3,500/- to the accused, but the accused demanded a gratification of Rs.10,000/- to give indent for 2 TCs. The Contractor approached the Lokayuktha Police on 26.03.2013 and divulged the alleged demand of the accused. On that information, IO handed over a voice recorder to him with an instruction to record the conversation of the accused while he is demanding illegal gratification. On 28.03.2013, the contractor met the accused in his office and dragged him to conversation. During the course of conversation, the accused demanded Rs.10,000/- to allot indent, however, finally, he came to the terms of Rs.8,000/-. The Contractor produced voice recorder before IO and FIR was registered on 28.03.2013. IO procured the panch witnesses and conducted the entrustment conducted ride with panch witnesses and his staff mahazar, the accused was trapped while he was receiving tainted currency notes from the Contractor, and Trap mahazar is drawn thereby incorporating the transcription of conversation between the accused and contractor. 3. Sri. M.S. Bhagawat, learned counsel for the petitioner submits that FIR registered on the basis of the conversation recorded in the voice recorder alleging that the accused demanded illegal gratification from the contractor is wholly illegal and against mandatory requirement under Section 154 of Cr.P.C. and it amounts to investigation. Before registering the FIR, no investigation is permissible. Consistently, this Court has held that conducting of search/raid prior to registration of FIR is illegal. Since IO commenced investigation even before registration of FIR, entire proceedings is vitiated. The allegations made in the complaint taken on its face value do not constitute any offence against the petitioner. There is no demand or acceptance of illegal gratification. Mere proof of receipt of money will not make out an offence under the provisions of PC Act. Inherent power of this Court may be exercised to quash the criminal proceeding which is illegally initiated against the petitioner. 4. In reply, Sri. B.S. Prasad, learned Special Public Prosecutor for Lokayukta/Respondent No.1 submits that it is true, the contractor approached the Lokayukta police for action against accused on 26.03.2013 and

IO in accordance with guidelines laid down by the Apex Court in the case of Lalita Kumari Vs. Government of U.P and others. (2014) 2 SCC 1, handed over the voice recorder to the contractor to record the conversation about demand of bribe money. Consequently, the contractor recorded the conversation between himself and the accused and produced the same before IO. On being satisfied about involvement of the accused in the offence alleged, case was registered. IO procured two official witnesses to his offence, applied sodium carbonate powder to currency notes under entrust mahazar and then proceeded to the office along with complainant/contractor, official witnesses and his staffs. The complainant approached the accused in his office and the accused demanded the bribe money of Rs.8,000/- and placed the same in the pocket of his shirt and same was witnessed by the shadow witness. After getting signal from the complainant, IO went inside the office and seized the currency notes of Rs.8,000/- from the possession of the accused. No illegality can be attributed in registration of the case and subsequent mahazars carried out. Admittedly, bribe amount having been seized from the possession of the accused and conversation of demand and acceptance having been heard and viewed by the shadow witness who is an official, investigation may not be interrupted under exercise of jurisdiction of Section 482 of Cr.P.C. 5. For our discussion, let us commence from the established premise of law, that the registration of FIR is sine-quo-non for proceeding with the investigation of a case, otherwise investigation becomes illegal and is in violation of mandatory provision of Section 154 as held by Division Bench ruling of this Court in Girish Chandra and another -vs- State of Karnataka reported in ILR 2013 KAR 983 and subsequent cases. 6. Several judgments of the co-ordinate Bench of this Court are relied by each side. In two of the judgments, Crl.P. No.2018/2013, DD 06.01.2015 and Crl.P. No.3708/2013 and connected cases, DD 08.10.2015, view taken is, recording of voice prior to registration of the case is not an investigation, but amounts to preliminary enquiry which is permissible as per guidelines of the Apex Court in the case of Lalita Kumari Vs. Government of U.P. & Others, (2013 AIR SCW 6386). While in other cases, Crl.P. Nos.5666/2012 and connected cases, DD 27.03.2013, Crl.P.Nos.6130/2010 and connected cases, DD 11.12.2012, (2012(3) KCCR 1738) Ramesh Desai and Another Vs. State of Karnataka by Raichur Lokayukta P.S., contrary view taken was, handing over the tape-recorder to record the conversation with regard to demand of bribe money does not constitute the preliminary enquiry, but amounts to collecting the evidence against the petitioner which is not permissible without registration of FIR. 7. With this background, coming to the case on hand, on the showing of the FIR itself, the Contractor approaches the IO on 26.03.2013 with the allegation that the accused is demanding bribe to get an indent for Transformer. Though the information divulged by the contractor discloses a cognizable offence without registering the case on the said information as mandated by Section 154 of Cr.P.C., IO hands over the voice recorder to him. It is only on 28.03.2013, when the contractor comes back with the recorded conversation of bribe demand, he receives a written complaint and registers the case and thereafter proceeds with entrustment mahazar and Trap. While drawing Trap mahazar, voice recorder is played and output of the audio is translated

into writing and made part of the Trap mahazar. Lokayukta cannot approbate and reprobate at the same time. In one breath they contend, voice recording is only preliminary enquiry to find out the veracity of the allegation, on the other, they rely on the transcription of conversation as part of their investigation by incorporating the same in the Trap mahazar. They cannot expel a part of the mahazar and intake remaining, while producing the trap mahazar as piece of evidence at the time of the trial. Trap mahazar if produced in evidence with all its incorporation, conversation between the accused and complainant while demanding bribe, the contents which is inadmissible in evidence will not allow to accept the mahazar as legal evidence. If really conversation was recorded was only in lieu of preliminary enquiry, why it should be made a part of investigation/Trap mahazar? That drives an inference that preliminary enquiry made to blend with investigation vitiates the entire investigation itself. 8. Lokayukta relied on the judgment of the Apex Court in the case of Yusufalli Esmail Nagree Vs. The State of Maharashtra, reported in AIR 1968 SC 147(1), wherein it was held that “the contemporaneous dialogue about the demand of bribe during trap mahazar forms part of the res gestae and it is relevant under Section 8 of the Indian Evidence Act. Like a photograph of a relevant incident, a contemporaneous tape record of a relevant conversation is a relevant fact and is admissible under Section 7 of the Indian Evidence Act. Unfortunately, this is not a contemporaneous dialogue at the time of the mahazar, it is all about recording the conversation prior to registration of the case. If the IO after convincing himself about demand of bribe on the basis of the conversation recorded, had on registration of FIR, proceeded with investigation, independently, I feel he had ground to urge that recording of conversation is not a part of investigation and does not fall under the term investigation. 9. In the terms of the Apex Court, in the case of H.N. Rishbud Vs. State of Delhi, reported in 1955-1 SCR 1150, investigation is”under the Code investigation consists generally of the following steps: (1) Proceeding to the spot, (2) Ascertainment of the facts and circumstances of the case, (3) Discovery and arrest of the suspected offender, (4) Collection of evidence relating to the commission of the offence which may consist of (a) examination of various persons (including the accused) and the reduction of their statements into writing, if the officer thinks fit, (b) the search of places of seizure of things considered necessary for the investigation and to be produced at the trial, and (5) Formation of the opinion as to whether on the material collected there is a case to place the accused before a Magistrate for trial and if so taking the necessary steps for the same by filing a charge sheet under Section 173“. Handing over the voice recorder though was to form an opinion as to whether there is a case for prosecution, still falls under category 5(supra), hence is part of illustration. Hence, by necessary implication in this case, the investigation commenced prior to registration of the case. Had if the IO immediately after receiving the information on 26.03.2013 had followed the procedure under Section 154 (1) of Cr.P.C. thereby register the FIR and used his strategies for recording the conversation, by using the electric device, then the accused had no case to seek indulgence of this Court at the crime stage. As such, Lalita Kumari(Supra) permits seven days for preliminary enquiry before

registration of FIR in the matter of corruption cases, so that the IO can convince himself about reliability of information received. In the present case complaint is prepared on 28.03.2013 by incorporating the events that happened prior to 28.03.2013 i.e., Contractor approaching on 26.03.2013 IO with his allegations against the accused, IO handing over the tape recorder to the contractor and recording of conversation of the accused. Definitely the FIR of 28.03.2013 which is acted upon, is not the first information that reached the Police Station, at the earliest it is not saved by the judgment of the Apex Court in the case of Lalita Kumari(Supra). It is the information of 26.03.2013, that can be conceded as First Information which is not registered and not acted upon. The case of the petitioner shall succeed on two counts that (1) IO omitted to comply with the provisions of Section 154(1) of Cr.P.C., immediately after receiving information from the contractor on 26.03.2013, (2)The material collected before registration of the case now made to blend with the trap mahazar, subsequent to registration of the FIR vitiates entire investigation. The illegality noticed as above being abuse of process of law calls for interference in exercise of jurisdiction under Section 482 of Cr.P.C. For the discussions supra, the petition is allowed. The FIR in Crime No.3/2013 registered by the 1st Respondent, on the file of the II Addl. District & Sessions Court, Tumkur District, Tumkur, is quashed. Sd/- JUDGE JTR