

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF DECEMBER, 2019

BEFORE

THE HON'BLE MR. JUSTICE P.S. DINESH KUMAR

WRIT PETITION No.28864 OF 2019

C/W

WRIT PETITION No.28865 OF 2019 (GM-RES)

IN W.P. NO.28864 OF 2019

BETWEEN :

SRI. M. BASAVARAJU
S/O MUNISWAMY
AGED ABOUT 45 YEARS
RESIDING AT NO.47, 2ND CROSS
3RD MAIN, UNIVERSITY LAYOUT
RAJARAJESHWARI NAGAR
BANGALORE-560 098

... PETITIONER

(BY SHRI. M.S. BHAGWAT, ADVOCATE)

AND :

THE STATE OF KARNATAKA
CRIMINAL INVESTIGATION DEPARTMENT
REPRESENTED BY ITS
DEPUTY SUPERINTENDENT OF POLICE
BANGALORE-560 001

... RESPONDENT

(BY SHRI. S. RACHAIAH, HCGP)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA R/W SECTION 482 OF THE CR.P.C
PRAYING TO CALL FOR RECORDS IN SPL.C.C. NO.273/2016
PENDING ON THE FILE OF THE COURT OF THE LXXVII ADDITIONAL

CITY CIVIL SESSIONS JUDGE AND SPECIAL JUDGE FOR
PREVENTION OF CORRUPTION ACT, BANGALORE.

IN W.P. NO.28865 OF 2019

BETWEEN :

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S/O MUNISWAMY
AGED ABOUT 45 YEARS
RESIDING AT NO.47, 2ND CROSS
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THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA R/W SECTION 482 OF THE CR.P.C
PRAYING TO CALL FOR RECORDS IN SPL.C.C. NO.521/2018
PENDING ON THE FILE OF THE COURT OF THE LXXVII ADDITIONAL
CITY CIVIL SESSIONS JUDGE AND SPECIAL JUDGE FOR
PREVENTION OF CORRUPTION ACT, BANGALORE.

THESE WRIT PETITIONS, HAVING BEEN HEARD AND
RESERVED FOR ORDERS ON 26.09.2019, COMING ON FOR
PRONOUNCEMENT OF ORDERS, THIS DAY, THIS COURT
PRONOUNCED THE FOLLOWING:-

ORDER

Petitioner is facing trial as accused No.7 in Special CC No.273/2016 on the file of LXXVII Additional City Civil & Sessions Judge and Special Judge for Prevention of Corruption Act, 1988 ('PC Act ' for short), Bengaluru. He has presented this writ petition with a prayer to quash criminal proceedings pending against him.

2. Shri.M.S.Bhagwat, learned Advocate for the petitioner submitted that during 2008-09 petitioner was working as Assistant Engineer/Draftsman in the Office of Chief Engineer. The Additional Commissioner (Administration) gave a complaint to the Inspector General of Police, that there was misappropriation of funds during asphaltting roads in several wards. Accordingly, Bengaluru Metropolitan Task Force ('BMTF' for short) registered FIR No. 4/2011 on 4th November 2011 for offences punishable under Sections 420, 406, 409, 465, 468, 471, 477(a) read with Section 120B IPC

and Section 23 of Karnataka Transparency in Public Procurement Act, 1999 ('KTPP Act' for short). The case was entrusted to CID by the State Government. The Commissioner, Bruhat Bengaluru Mahanagara Palike ('BBMP' for short) has accorded sanction to prosecute petitioner under Section 13(1)(c) & (d) read with Section 13(2) of PC Act. After investigation, CID has filed charge-sheet in respect of offences both under IPC as also PC Act.

3. Shri.Bhagwat urged following three grounds in support of these petitions:

- That no sanction has been accorded to prosecute petitioner for the alleged offences punishable under IPC;
- Sanction accorded by BBMP in respect of offences under PC Act are without application of mind; and
- CID is a special branch of the Police to investigate into the offences mentioned therein which does not include offences under PC Act. Therefore, CID could

not have filed charge-sheet under PC Act. Hence, the criminal proceedings are vitiated.

4. Shri.Rachaiah, learned HCGP for the State, opposing the petitions submitted that the first two grounds namely sanction in respect of IPC offences and the application of mind by the sanctioning authority have been covered by ***Ideya Vendan R. Vs. Additional Chief Secretary and others decided on 26th September 2013***¹, filed by the co-accused. Adverting to paragraph No.43 of the order, he submitted that this Court has held that prosecution cannot be quashed for want of sanction. The said paragraph reads as follows:

"43. In the case on hand, the allegations made against the 'Public Servants' is fabrication of the documents and based on such fabrication and forged documents allowing payments in large sums from out of the funds of the corporation and even without the work entrusted to the contractor having not been carried-out, the bills pertaining to such purported work having been allowed and passed for payment, thereby causing loss to the

¹ ***Manu/ka/1899 of 2013***

BBMP and there by resulting in defalcation of funds of BBMP. Therefore, the question as to whether these alleged acts were done in discharge of the official duty will have to be considered by the jurisdictional Magistrate at the trial of the case. Therefore, in my considered opinion, the prosecution launched by CID cannot be quashed for want of sanction, as required by Section 197 of Cr.P.C. The said question is left to be decided by the trial Court; from stage to stage as held by the Apex Court in the aforesaid decision."

5. In view of decision in *Ideya Vendan*, the first two grounds do not survive for consideration.

6. So far as third ground with regard to CID investigating into offences under PC Act, Shri.Rachaiiah submitted that CID can investigate cases entrusted to it by the Government. The list of cases ordinarily dealt by the COD also include cases of such complicated nature as in the opinion of the Government or the Director General or Inspector General of Police calls for investigation by the COD, as described in paragraph No.1770 of the Police Manual and paragraph 13 of Standing Order No.613 dated 21st April 1974 by which the Corps of Detectives

has been established. Keeping in view the gravity of the offences, the State Government have entrusted the case to CID. During the course of investigation, CID have unearthed commission of offences under provisions of PC Act also. Sanction has been accorded by the competent authority to prosecute petitioner under the provisions of PC Act. He further contended that corruption cases under the Prevention of Corruption Act fall under a category of economic offences, which, the CID is empowered to investigate.

7. Shri. Rachaiah further submitted that the alleged criminal acts have been committed by the petitioner not in the course of discharge of official duty. CID is a Special Branch of the Police entrusted by the State Government to investigate into the alleged misappropriation of funds in asphaltting the roads. He placed reliance on paragraph No.14 of

Yunus Zia V/s. State of Karnataka and Another²

and prayed for dismissal of this writ petition.

8. I have carefully considered rival contentions and perused the records.

9. In view of the above, the only point which remains for consideration is whether CID could have investigated into the charges under the Prevention of Corruption Act.

10. Shri.Bhagawat's main contention is, a complaint under the Prevention of Corruption Act has to be investigated only by the Lokayuktha and CID has no jurisdiction to investigate into offences under the PC Act.

Section 17 of PC Act reads as follows:

"17. Persons authorised to investigate Notwithstanding anything contained in the Code of Criminal Procedure, 1973, no police officer below the rank,-

(a) in the case of the Delhi Special Police Establishment, of an Inspector of Police;

² (2015)7 SCC 327

(b) in the metropolitan areas of Bombay, Calcutta, Madras and Ahmedabad and in any other metropolitan area notified as such under sub-section (1) of section 8 of the Code of Criminal Procedure, 1973 (2 of 1974), of an Assistant Commissioner of Police;

(c) elsewhere, of a Deputy Superintendent of Police or a police officer of equivalent rank, shall investigate any offence punishable under this Act without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make any arrest therefor without a warrant:

Provided that if a police officer not below the rank of an Inspector of Police is authorised by the State Government in this behalf by general or special order, he may also investigate any such offence without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make arrest therefor without a warrant:

Provided further that an offence referred to in clause (e) of sub-section (1) of section 13 shall not be investigated without the order of a police officer not below the rank of a Superintendent of Police."

11. A careful reading of the above shows that no Police Officer below the rank of a Deputy Superintendent of Police or equivalent rank can investigate into the offences under the PC Act.

12. Thus, the PC Act does not mandate that investigation must be conducted only by Police Officers deputed to Lokayuktha.

13. Prosecution is launched by the State. The Police Officers conduct investigation and file charge sheet. In the instant case, the investigation has been done by the CID and charge sheet has been filed.

14. In ***H.N.Rishbud and Another Vs. State of Delhi***³ the Supreme Court of India has held as follows:

"9. The question then requires to be considered whether and to what extent the trial which follows such investigation is vitiated. Now, trial follows cognizance and cognizance is preceded by investigation. This is undoubtedly the basic scheme of the Code in respect of cognizable cases. But it does not necessarily follow that an invalid investigation nullifies the cognizance or trial based thereon. Here we are not concerned with the effect of the breach of a mandatory provision regulating the competence or procedure of the Court as regards cognizance or trial. It is only with reference to such a breach that the question as to whether it constitutes an illegality vitiating the proceedings or a mere irregularity

³ (AIR 1955 SC 196)

arises. A defect or illegality in investigation, however serious, has no direct bearing on the competence or the procedure relating to cognizance or trial.

15. The Apex Court has concluded thus:

"9. We are, therefore, clearly, also, of the opinion that where the cognizance of the case has in fact been taken and the case has proceeded to termination, the invalidity of the precedent investigation does not vitiate the result, unless miscarriage of justice has been caused thereby.

16. It is further held as follows:

10. It does not follow, however, that the invalidity of the investigation is to be completely ignored by the Court during trial. When the breach of such a mandatory provision is brought to the knowledge of the Court at a sufficiently early stage, the Court, while not declining cognizance, will have to take the necessary steps to get the illegality cured and the defect rectified, by ordering such reinvestigation as the circumstances of an individual case may call for.

17. In the case on hand, except contending that CID has no jurisdiction to investigate into offences under the PC Act, no material is placed nor any argument is

advanced to demonstrate that investigation by CID has resulted in miscarriage of justice. As held in *Rishbud*, there can be no doubt that the result of trial cannot be set-aside unless illegality in the investigation can be shown to have brought about 'mis-carriage of justice'.

18. Admittedly, charge-sheet has been filed and trial is in progress. Perusal of charge-sheet in the instant case shows that it has been filed by Deputy Superintendent of Police, CID. Therefore, there is no infraction of Section 17 of PC Act. Shri.Rachaiah is right in his submission that in Yunus Zia's case, the Hon'ble Supreme Court of India has directed entrustment of case to COD to complete the investigation. Therefore, challenge to competence of CID (formerly COD) must fail.

19. Resultantly, these petitions fail and they are accordingly ***dismissed***.

**Sd/-
JUDGE**

SPS