

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 05TH DAY OF JANUARY 2021.

BEFORE

THE HON'BLE MR. JUSTICE JOHN MICHAEL CUNHA

CRIMINAL PETITION NO.9361 OF 2016

BETWEEN:

SRI A ALAM PASHA
W/O LATE P. AMEER SAHEB
AGED ABOUT 52 YEARS
NO.674, 9TH 'A' MAIN
1ST CROSS, 1ST STAGE
INDIRANAGAR
BENGALURU-560038

...PETITIONER

(BY SRI: A.P.MOHANTY, ADVOCATE A/W
Ms: VIJAY LAKSHMI, ADVOCATE)

AND:

- 1 . SRI MURUGESH R NIRANI
AGED ABOUT 51 YEARS
FORMER MINISTER FOR INDUSTRIES
GOVERNMENT OF KARNATAKA
44/13, FAIR FIELD LAYOUT
RACE COURSE ROAD
BENGALURU-560 001
- 2 . SRI. B.S. YEDDIYURAPPA
AGED ABOUT 73 YEARS
FORMER CHIEF MINISTER OF KARNATAKA,
R/AT NO.381, 6TH CROSS,
80 FEET ROAD, RMV II STAGE,

DOLLARS COLONY,
BENGALURU-560 094.

- 3 . SRI. V.P. BALIGAR, IAS
FORMER PRINCIPAL SECRETARY TO
GOVERNMENT (C&I),
PRESENTLY POSTED AS CHAIRMAN
AND MANAGING DIRECTOR
HUDCO, HUDCO BHAVAN
INDIA HABITAT CENTRE
LODHI ROAD
NEW DELHI-01
- 4 . SRI. SHIVASWAMY.K.S
FORMER MANAGING DIRECTOR
KARNATAKA UDYOG MITRA (KUM)
VISHVESHWARA TRADE
PROMOTION CENTRE
3RD FLOOR, VISHVESHWARA
INDUSTRIAL TRADE CENTRE BUILDING
KASTURBA ROAD,
BENGALURU-560 001.

...RESPONDENTS

(BY SRI: C.V.NAGESH, SR. ADVOCATE FOR
SMT: SANJANTHI SAJAN POOVAYYA, ADVOCATE FOR R1;
SRI: C.V.NAGESH, SR. ADVOCATE FOR
SRI: SANDEEP PATIL, ADVOCATE FOR R2;
SRI: ASHOK HARANAHALLI, SR. ADVOCATE FOR
SRI: MANMOHAN P.N., ADVOCATE FOR R3;
SRI: ARAVIND V. CHAVAN, ADVOCATE FOR R4)

THIS CRIMINAL PETITION IS FILED U/S.482 CR.P.C PRAYING
TO QUASH THE ORDER DATED 26.08.2016 PASSED IN
PCR.NO.32/2014 ON THE FILE OF THE LXXVIII ADDL. CITY CIVIL AND
S.J., AND SPL. JUDGE (PCA), MAYO HALL UNIT, BANGALORE AND
FURTHER BE PLEASED TO RESTORE THE SAID COMPLAINT BEARING
NO.PCR.NO.32/2014 ON THE FILE OF THE LXXVIII ADDL. CITY CIVIL
AND S.J., AND SPL. JUDGE (PCA), MAYO HALL UNIT, BANGALORE
(CCH-79).

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 08.12.2020 AND COMING ON FOR PRONOUNCEMENT OF ORDER, THROUGH VIDEO CONFERENCE, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The short question that arises for consideration in this petition is,

Whether the presentation of a fresh complaint under section 200 Cr.P.C. is barred on account of quashing of the earlier complaint filed against respondent No.2/public servant for want of sanction under section 19 of the Prevention of Corruption Act?

2. The outline facts necessary to answer the above question are that the petitioner herein filed a complaint under sections 190 and 200 of Cr.P.C., seeking action against the respondent Nos.1 to 4 for the alleged offences punishable under sections 418, 465, 468, 471 read with 120B of IPC and sections 13(1)(c), 13(1)(d)(ii) of the Prevention of Corruption Act.

3. The allegations against the respondents were that the respondents entered into a criminal conspiracy and forged documents purported to have been issued by the petitioner / complainant seeking to withdraw the approval granted by the High Level Clearance Committee for allotment of 26 acres of land to the complainant at Devanahalli Industrial Area, Bengaluru Rural District.

4. At the first instance, the complaint filed by the petitioner was registered in PCR.No.25/2012 and the same was referred for investigation by the S.P. Lokayukta, Bengaluru, under section 156(3) of Cr.P.C. by order dated 21.05.2012. Based on this order, FIR in Crime No.49/2012 was registered against the respondents. After investigation, Lokayukta Police submitted a final report in Spl.C.C.No.142/2013. Respondent No.2 challenged the said report in Criminal Petition No.4497/2013 and this court vide order dated 11.10.2013 quashed PCR.No.25/2012 in its entirety for the reason that the complaint was not accompanied by a valid order of sanction from the competent authority.

5. After the respondents demitted the office which they were holding on the date of commission of the alleged offence, petitioner presented a fresh complaint. It was numbered as PCR No.32/2014.

6. The contention of the petitioner is that the respondents having demitted the office which they were holding on the date of commission of alleged offences, sanction for prosecution of the respondents was not necessary in view of the ruling rendered by the Hon'ble Apex Court in the case of *R.S.NAYAK vs. A.R.ANTULAY, (1984) 2 SCC 183* and *ABHAY SINGH CHAUTALA vs. CENTRAL BUREAU OF INVESTIGATION, (2011) 7 SCC 141*. This plea was resisted by the respondents and by the impugned order dated 26.08.2016, learned Special Judge (PCA), Bengaluru dismissed the complaint, reserving liberty to the petitioner / complainant to approach the court after getting prior sanction from the competent authority.

I have heard learned counsel for petitioner Sri.A.P.Mohanty and learned Senior Counsel Sri.C.V.Nagesh on behalf of Smt.Sanjanthi Sajan Poovayya and Sri.Sandeep Patil, learned

counsels for respondent No.1 and respondent No.2 and Sri.Ashok Haranahalli, learned Senior Counsel on behalf of Sri.Manmohan P.N., learned counsel for respondent No.3 and Sri. Aravind V. Chavan, learned counsel appearing for respondent No.4.

7. Learned counsel for petitioner / complainant has placed reliance on the decision of the Hon'ble Supreme Court in the case of *STATE OF MIZORAM vs. C.SANGNGHINA, (2019) 13 SCC 335* and would submit that the complaint having been dismissed at the first instance for lack of proper sanction, there is no bar for filing a fresh complaint as sanction for prosecution of the respondents is not necessary on account of the respondents demitting the office which was abused by them during the commission of the alleged offences.

8. Sri.C.V.Nagesh, learned Senior Counsel appearing for respondent Nos.1 and 2 however would submit that the order passed by this court in Criminal Petition No.4497/2013 having attained finality, no fresh complaint is tenable without production

of the fresh sanction as ordered by this court and hence, no fault could be found with the order passed by the learned Special Judge.

9. Sri.Ashok Haranahalli, learned Senior Counsel appearing for respondent No.3 submitted that the sanction for prosecution of accused No.3 Sri.V.P.Baligar has been rejected by the Government vide G.O.No.DPAR.240.SAS.2013 dated 30.07.2013 and in view of the law laid down by the Hon'ble Apex Court in *CHITTARANJAN DAS vs. STATE OF ORISSA, (2011)7 SCC 167*, respondent No.3 cannot be prosecuted despite the fact that no sanction for prosecution is required under relevant law after retirement or demitting the earlier office.

10. Considered the submissions and perused the records.

Indisputably, the earlier complaint filed by the petitioner in PCR No.25/2012 was quashed by this Court for want of sanction. The operative portion of the order passed by this court reads as under:-

"The Apex Court in a recent decision rendered in the case of Anil Kumar & Ors. vs. M.K.Aiyappa & Anr. in Criminal Appeal Nos.1590-91/2013 disposed of on 1.10.2013 has considered this very question and has held that a private complaint filed against the public servant alleging offences under the Prevention of Corruption Act, 1988 without accompanied by a previous sanction from the competent authority cannot be entertained and the Special Judge or the Magistrate has no jurisdiction to refer such complaint under Section 156(3) of Cr.P.C. to the police for investigation when such complaint is not accompanied by a prior sanction. In the light of the law laid down by the Apex Court in the aforesaid decision, the order passed by the Special Judge in PCR.No.25/12 referring the said complaint to the Lokayukta Police under Section 156(3) of Cr.P.C. for investigation was bad in law since, admittedly, the complaint was not accompanied by previous sanction accorded by the competent authority. In this view of the matter, all further actions taken thereon also becomes illegal and without jurisdiction. In this view of the matter, petition is allowed. The private complaint lodged by respondent No.2 in PCR.No.25/12 before the XXIII Additional City Civil and Special Judge, Bangalore, the order passed thereon dated 21.5.12 referring the said complaint to the Lokayukta Police for investigation and all subsequent proceedings thereon are hereby quashed."

11. Subsequent to this order, respondents having demitted the office which was alleged to have been abused by them at the time of commission of alleged offences, the sanction for prosecution of the accused is not necessary. This question

has been considered by the Hon'ble Supreme Court in *STATION HOUSE OFFICER, CBI/ACB/BANGALORE vs. B.A.SRINIVASAN* (2020)2 SCC 153, wherein following the various decisions on the point, in paras 11, 12 and 13 of the judgment, the Hon'ble Supreme Court has held as hereunder,

"11. *In S.A. Venkataraman vs. The State, AIR 1958 SC 107, while dealing with the requirement of sanction under the pari materia provisions of the Prevention of Corruption Act, 1947, it was laid down that the protection under the concerned provisions would not be available to a public servant after he had demitted his office or retired from service. It was stated:-*
(AIR p.111, para 14)

'14 ...if an offence under Section 161 of the Penal Code was committed by a public servant, but, at the time a court was asked to take cognizance of the offence, that person had ceased to be a public servant one of the two requirements to make Section 6 of the Act applicable would be lacking and a previous sanction would be unnecessary. The words in Section 6(1) of the Act are clear enough and they must be given effect to. There is nothing in the words used in Section 6(1) to even remotely suggest that previous sanction was necessary before a court could take cognizance of the offences mentioned therein in the case of a person who had ceased to be a public servant at the time the court

was asked to take cognizance, although he had been such a person at the time the offence was committed.'

12. The law so declared by this Court has consistently been followed. For example, in *STATE OF PUNJAB vs. LABH SINGH*, (2014) 16 SCC 807, it was observed:

'9. In the present case the public servants in question had retired on 13-12-1999 and 30-4-2000. The sanction to prosecute them was rejected subsequent to their retirement i.e. first on 13-9-2000 and later on 24-9-2003. The public servants having retired from service there was no occasion to consider grant of sanction under Section 19 of the PC Act. The law on the point is quite clear that sanction to prosecute the public servant for the offences under the PC Act is not required if the public servant had already retired on the date of cognizance by the court. In S.A. Venkataraman v. State while construing Section 6(1) of the Prevention of Corruption Act, 1947 which provision is in pari materia with Section 19(1) of the PC Act, this Court held that no sanction was necessary in the case of a person who had ceased to be the public servant at the time the court was asked to take cognizance. The view taken in *S.A. Venkataraman* was adopted by this Court in *C.R. Bansi v. State of Maharashtra* (1970) 3 SCC 537 and in Kalicharan Mahapatra v. State of Orissa (1998) 7 SCC 411 and by the Constitution Bench of this Court in K.

Veeraswami v. Union of India (1991) 3 SCC 655. The High Court was not therefore justified in setting aside the order passed by the Special Judge insofar as charge under the PC Act was concerned.

13. *Consequently, there was no occasion or reason to entertain any application seeking discharge in respect of offences punishable under the Act, on the ground of absence of any sanction under Section 19 of the Act. The High Court was also not justified in observing "that the protection available to a public servant while in service, should also be available after his retirement". That statement is completely inconsistent with the law laid down by this Court in connection with requirement of sanction under Section 19 of the Act.*

(underlining supplied)

12. That being the position of law, the quashing of the earlier complaint filed by the petitioner in PCR.No.25/2012 for want of sanction, in my view, will not operate as a bar to maintain the instant complaint. The prohibition contained in Article 20(2) of the Constitution of India and section 300 Cr.P.C. does not get attracted to the facts of the case as the respondents have not been prosecuted or acquitted based on the earlier complaint lodged against them in PCR.No.25/2012. In

that view of the matter, I do not find any impediment for the Trial Court to proceed with the instant complaint as per law. If the complainant had liberty to approach the Court after obtaining sanction from the competent authority, as ordered by the Trial Court in the impugned order, by the same logic, the complaint could be maintained if the sanction for prosecution of the accused is not required under law. Since the impugned order is contrary to the well established principle of law that sanction for prosecution of the public servants is not necessary after they demit the office or retire from service, the same cannot be sustained.

13. However, insofar as accused No.3 is concerned, as rightly submitted by Sri.Ashok Haranahalli, learned Senior Counsel appearing for the third respondent, the Government having refused sanction for prosecution of respondent No.3 vide Government Order No.DPAR.240.SAS.2013, Bangalore dated 30.07.2013, in view of the law laid down by the Hon'ble Supreme Court in the case of *CHITTARANJAN DAS vs. STATE OF ORISSA, (2011)7 SCC 167*, the sanction having been refused

while the public servant was in service, he cannot be prosecuted later after retirement or after change of office notwithstanding the fact that no sanction for prosecution under the Prevention of Corruption Act is necessary after demitting the office or retirement of the public servant.

Accordingly, the petition is **allowed-in-part**.

(i) The impugned order dated 26.08.2016 passed by learned LXXVIII Addl. City Civil and Sessions Judge and Special Judge(PCA), Mayo Hall Unit, Bengaluru insofar as rejecting the complaint against respondent No.3/accused No.3 Sri.V.P.Baligar is confirmed.

(ii) Rest of the impugned order is set-aside.

(iii) The complaint in PCR.No.32/2014 is directed to be restored to file, insofar as respondent Nos.1, 2 and 4 / accused Nos.1, 2 and 4 are concerned and the same shall be proceeded with in accordance with law.

Sd/-
JUDGE

Bss/-