

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF FEBRUARY, 2015

PRESENT

THE HON'BLE MR. D.H.WAGHELA, CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE ASHOK B. HINCHIGERI

W.A.No.426/2014 (LB-BMP)

C/w W.A.Nos.478-480/2014 and W.A.Nos.1196-1197/2014
and W.A.Nos.427-429/2014 and W.A.No.1195/2014

W.A.No.426/2014

BETWEEN:

Sri B.G.Prakash Kumar,
S/o B.R.Gopaigowda,
Aged about 58 years,
Working as Executive Engineer,
Bruhath Bangalore Mahanagara Palike,
Office at Corporation Building,
Sampige Road, Malleshwaram,
Bangalore - 560 003.

... Appellant

(By Sri M.S.Bhagwat, Advocate)

AND.

1. The Commissioner,
Bruhath Bangalore Mahanagara Palike,
Office at N.R.Square,
Bangalore - 560 002.
2. The Additional Commissioner (Administration),
Bruhath Bangalore Mahanagara Palike,
Office at N.R.Square,
Bangalore - 560 002.

3. Chief Engineer,
Technical and Vigilance Cell under Committee,
Bruhath Bangalore Mahanagara Palike,
Office at N.R.Square,
Bangalore – 560 002.
4. The Inspector General of Police,
Bangalore Metropolitan Task Force,
Bruhath Bangalore Mahanagara Palike,
Office at N.R.Square,
Bangalore – 560 002.
5. The Under Secretary,
Government of Karnataka,
Internal Administration (Crime),
Vikasa Soudha, Ambedkar Veedhi,
Bangalore – 560 001.
6. Criminal Investigation Department,
Rep. by Director General of Police (CID),
Palace Road,
Opposite to Auditor General Office,
Bangalore – 560 001. ... Respondents

(Sri R.Devdas, PGA for R-5 and R-6)

This writ appeal is filed under Section 4 of the Karnataka High Court Act praying to set aside the order passed in the W.P.No.1156/2012 dated 1.8.2013.

W.A.Nos.478-480/2014 and W.A.Nos.1196-1197/2014

BETWEEN:

1. Sri B.G.Prakash Kumar,
S/o B.R.Gopalgowda,
Aged about 58 years,
Working as Executive Engineer,
Bruhath Bangalore Mahanagara Palike,
Opp. Corporation Building,
Sampige Road, Malleshwaram,
Bangalore – 560 003.

2. Sri G.R.Kumar,
S/o G.H.Ramegowda,
Aged about 50 years,
Working as Assistant Engineer,
Malleswaram Division,
Bruhath Bangalore Mahanagara Palike,
R/at No.7, 4th Cross,
Brindavan Nagar, Mathikere,
Bangalore – 560 054.

3. Sri N.S.Revanna,
S/o Siddappa,
Aged about 47 years,
Working as Assistant Engineer,
Malleswaram Division,
Bruhath Bangalore Mahanagara Palike,
R/at No.566, 4th Cross,
Mahalakshmi Layout,
Bangalore – 560 086.

... Appellants

(By Sri M.S.Bhagwat, Advocate)

AND:

1. The Additional Chief Secretary,
Urban Development Department,
Government of Karnataka,
Vikasa Soudha, Bangalore – 560 001.

2. The Director General of Police,
Criminal Investigation Department,
Carlton House No.1, Palace Road,
Bangalore – 560 001.

3. Deputy Superintendent of Police,
Criminal Investigation Department,
Carlton House No.1, Palace Road,
Bangalore – 560 001.

4. The Commissioner,
Bruhath Bangalore Mahanagara Palike,
No.3, Devanga Samaja Road,

Sampangi Rama Nagar,
Bangalore – 560 027.

5. The Additional Commissioner (Administration),
Bruhath Bangalore Mahanagara Palike,
No.3, Devanga Samaja Road,
Sampangi Rama Nagar,
Bangalore – 560 027.
6. The Superintendent of Police,
Bangalore Metropolitan Task Force,
No.3, Devanga Samaja Road,
Sampangi Rama Nagar,
Bangalore – 560 027.
7. Station House Officer,
BMTF Police,
Office at: Bruhath Bangalore
Mahanagara Palike,
No.3, Devanga Samaja Road,
Sampangi Rama Nagar,
Bangalore – 560 027. ... Respondents

(Sri R.Devdas, PGA for R-1 to R-3)

These writ appeals are filed under Section 4 of the Karnataka High Court Act praying to set aside the order passed in the W.P.No.2151-2154/2013 dated 26.9.2013.

W.A.Nos.427-429/2014 and W.A.No.1195/2014

BETWEEN:

1. Sri B.G.Prakash Kumar,
S/o B.R.Gopalgowda,
Aged about 58 years,
Working as Executive Engineer,
Bruhath Bangalore Mahanagara Palike,
R/at No.139, 10th Main, B.C.C. Layout,
Bangalore – 560 040.

2. Sri Y.M.Muniraju,
S/o Sri Munishamappa,
Aged about 57 years,
Assistant Executive Engineer,
Mathikere Sub Division,
Bruhath Bangalore Mahanagara Palike,
R/at No.935, 64th Cross,
V Block, Rajajinagar,
Bangalore – 560 010.
3. Sri M.K.Harish,
S/o Sri Kodandaram,
Aged about 50 years,
Assistant Engineer,
Mathikere Sub Division,
Bruhath Bangalore Mahanagara Palike,
R/at No.302, Gangothri Apartment,
I Cross, Friends Colony,
Utharahalli Road,
Bangalore – 560 061.

... Appellants

(By Sri M.S.Bhagwat, Advocate)

AND:

1. The Additional Chief Secretary,
Urban Development Department,
Government of Karnataka,
Vikasa Soudha, Bangalore – 560 001.
2. The Director General of Police,
Criminal Investigation Department,
Carlton House No.1, Palace Road,
Bangalore – 560 001.
3. Deputy Superintendent of Police,
Criminal Investigation Department,
Carlton House No.1, Palace Road,
Bangalore – 560 001.

4. The Commissioner,
Bruhath Bangalore Mahanagara Palike,
No.3, Devanga Samaja Road,
Sampangi Rama Nagar,
Bangalore - 560 027.
5. The Additional Commissioner (Administration),
Bruhath Bangalore Mahanagara Palike,
No.3, Devanga Samaja Road,
Sampangi Rama Nagar,
Bangalore - 560 027.
6. The Superintendent of Police,
Bangalore Metropolitan Task Force,
No.3, Devanga Samaja Road,
Sampangi Rama Nagar,
Bangalore - 560 027.
7. Station House Officer,
BMTF Police,
Office at: Bruhath Bangalore
Mahanagara Palike,
No.3, Devanga Samaja Road,
Sampangi Rama Nagar,
Bangalore - 560 027. ... Respondents

(Sri R.Devdas, PGA for R-1 to R-3)

These writ appeals are filed under Section 4 of the Karnataka High Court Act praying to set aside the order passed in the W.P.No.26744-747/2013 dated 26.9.2013.

These writ appeals having been heard and reserved for orders, coming on for pronouncement this day, **Ashok B.Hinchigeri J**, pronounced the following:

J U D G M E N T

All these appeals are clubbed, heard together and are being disposed of by this common judgment, as the questions of facts and law involved are similar.

2. W.A.No.426/2014 is directed against the learned Single Judge's order, dated 1.8.2013 passed in W.P.Nos.1156-1159/2012 and W.P.No.1160/2012. In the said writ petitions, the challenge was raised to the third respondent's report, dated 2.11.2011 (Annexure-A), second respondent's complaint, dated 3.11.2011 (Annexure-B), based on the said report, FIR No.4/2011 (Annexure-C) lodged by the respondent No.4, fourth respondent's report, dated 7.12.2011 (Annexure-D) and the fifth respondent's order, dated 7.12.2011 (Annexure-F). The learned Single Judge dismissed the writ petitions.

3. W.A.Nos.478-480/2014 and 1196-1197/2014 and W.A.Nos.427-429/2014 and 1195/2014 are directed against the learned Single Judge's order, dated 26.9.2013 passed in W.P.Nos.2151-2154/2013 and W.P.Nos.26744-26747/2013

and other connected petitions. In the said writ petitions, the petitioners sought the quashing of the FIR registered by the Bangalore Metropolitan Task Force ('BMTF' for short) in Crime No.4/2011 for the offences punishable under Sections 420, 406, 409, 465, 468, 471, 477(A) read with Section 120(B) of IPC and Section 23 of the Karnataka Transparency in Public Procurements Act, 1999 and the chargesheet filed thereon. The sum and substance of the allegations is that there are large scale illegalities, irregularities, fabrication of documents, manipulation of tender process, defalcation of funds in the various civil works in some divisions of Bruhat Bengaluru Mahanagara Palike ('BBMF' for short).

4. On the dismissal of both the batches of petitions, some of the writ petitioners have preferred these appeals.

5. Sri M.S.Bhagwat, the learned counsel appearing for the appellants in all these appeals submits that the BMTF has no jurisdiction to register the FIR in question. When the registration of the FIR by the BMTF itself is illegal, the question of transferring the same to the CID for continuing the investigation is also illegal.

6. The learned counsel submits that the sanction under Section 197 of the Code of Criminal Procedure, 1973 is a condition precedent for launching the prosecution against a public servant. In support of his submissions, he read paragraph No.22 from the Apex Court's judgment in the case of **SANKARAN MOITRA v. SADHNA DAS AND ANOTHER** reported in **(2006) 4 SCC 584**. The said paragraph is extracted hereinbelow:

“22. Learned counsel for the complainant argued that want of sanction under Section 197(1) of the Code did not affect the jurisdiction of the Court to proceed, but it was only one of the defences available to the accused and the accused can raise the defence at the appropriate time. We are not in a position to accept this submission. Section 197(1), its opening words and the object sought to be achieved by it, and the decisions of this Court earlier cited, clearly indicate that a prosecution hit by that provision cannot be launched without the sanction contemplated. It is a condition precedent, as it were, for a successful prosecution of a public servant when the provision is attracted, though the question may arise necessarily not at the inception, but even at a subsequent stage. We cannot therefore accede to the request to postpone a decision on this question.”

7. For advancing the contention that no investigation can be ordered without previous sanction and without due application of mind, he relies on the Apex Court's judgment in the case of **ANIL KUMAR AND OTHERS v. M.K. AIYAPPA AND ANOTHER** reported in **(2013) 10 SCC 705**.

8. He has also relied on this Court's decision in the case of **Dr.S.M.KALLIGUDD AND OTHERS v. STATE OF KARNATAKA AND OTHERS** reported in **1998 (1) Kar.L.J. 252**. Paragraph Nos.13 and 15 relied upon by him read as follows:

13. In the present case under the notification dated 27-5-1996 (Annexure - H), the office of the Deputy Inspector General of Police, Bangalore Metropolitan Task Force, Bangalore, has been declared to be a Police Station with a territorial jurisdiction over Bangalore Metropolitan Area and in respect of the offences committed under the Special Acts like Karnataka Municipal Corporation Act, 1976, the Bangalore Development Authority Act, 1976, the Karnataka Municipalities Act, 1964, the Bangalore Water Supply and Sewerage Act, 1964, the Karnataka Slum Areas (Improvement and Clearance) Act, 1973 and read with various offences mentioned in the Indian Penal Code and the Karnataka Police Act. Therefore, on a plain

reading of the notification it is quite clear that the Officer-in-charge of the said police station can register a case and proceed with the investigation of case if the facts contained in the F.I.R. disclose the offences under the said Special Acts read with or without those under the Indian Penal Code and the Karnataka Police Act. Consequently, it has to be held that if the F.I.R. discloses commission of offences only under the Indian Penal Code or under the Karnataka Police Act, then it will not be competent on the part of the Officer-in-charge of the police station constituted under Annexure-H to proceed with the investigation thereof.

15. For the aforesaid reasons I am constrained to hold that since in the present case even as per the respondents no offences have been alleged against the petitioners under the Special Act referred to above, therefore, it is not competent on the part of the 4th respondent to continue with the investigation against the petitioners. As such he is directed to refer the case pending with him to the Officer-in-charge of the jurisdictional police station for further investigation. The writ petitions are accordingly allowed to the said extent only. No costs.

9. The learned counsel submits that the impugned proceedings are without the authority of law in the absence of sanction under Section 487 of the Karnataka Municipal

Corporations Act, 1976. He read out the provisions contained therein, which are as follows:

“487. Sanction for prosecution of Mayor, Deputy Mayor, etc. – *When the Mayor or Deputy Mayor, or any Councillor or the Commissioner or any officer of Government working in the Corporation on deputations is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharging of his official duty, no magistrate shall take cognizance of such offence except with the previous sanction of the Government.”*

10. He submits that the Explanation to Section 197(1) of Cr.P.C. is inserted by Act 13/2013. The said Explanation reads as follows:

“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 376C, section 376D or section 509 of the Indian Penal Code (45 of 1860).”

11. As the appellants are not facing the charges under the sections enumerated in the afore-extracted Explanation, the prior permission is required for prosecuting them.

12. The submissions of the learned counsel have received our thoughtful consideration. The perusal of the learned Single Judge's order, dated 26.9.2013 reveals that on his examining the various notifications and orders issued by the Government, Sections 2(s), 154, 156 and 157 of Cr.P.C. and 149 of Karnataka Municipal Corporations Act, he has come to the judicious conclusion that the BMTF is empowered to proceed against the employees and officers of the organization and also against private persons, who commit offences of creating false and forged documents, which result in the loss of revenue. The learned Single Judge has said that assuming for the purpose of argument that the BMTF had no jurisdiction and authority for investigating the offences alleged, the prosecution cannot be quashed, because the investigation is transferred to the CID after the registration of the case. Therefore, the learned Single Judge has rightly held that the BMTF had jurisdiction and authority

to register the case for the offences alleged in Crime No.4/2011. The appellants' grievance over the investigation by the CID is also not understandable. Criminal Investigation Department is a part of the State's police force. The said investigating police wing, namely, Corps of Detectives (CoD) is created in the CID establishment. If the Government has thought it fit to transfer the investigation to CID having regard to the nature of allegations of defalcation of funds of BBMP in the region of hundreds of crores of rupees, the Government cannot be found to be at fault for it.

13. It is the Government's prerogative to entrust the investigation to any of its agencies. The appellants cannot question the transfer of investigation to CID police with any rate of success.

14. We do not find any foundation either in the pleadings or in the arguments before the learned Single Judge for the contention of the appellants in these appeals that the prosecution is bad for want of sanction under Section 487 of the Karnataka Municipal Corporations Act, 1976. Be it as it

may, what can be said is that Section 487 of the said Act, requiring the sanction for prosecuting the Mayor or Deputy Mayor or any Councillor or the Commissioner or any officer of the Government working in the BBMP, corresponds to Section 197 of Cr.P.C. in respect of public servants.

15. The protection given under Section 197 of Cr.P.C. is available only when the alleged act by a public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing an objectionable act. In taking this view, we are fortified by the Apex Court's judgment in the case of **RAGHUNATH ANANT GOVILKAR v. STATE OF MAHARASHTRA AND OTHERS** reported in **(2008) 11 SCC 289**.

16. The learned Single Judge, on considering the various judgments on Section 197 of the Cr.P.C. has held that the point as to whether the sanction is necessary or not may have to be determined from stage to stage. The order taking cognizance of the offences against the public servants for want of sanction at this stage cannot be a ground for

quashing the prosecution. Hazardous guess-work or premature conclusion to hold that the alleged works were done in the discharge of the official duties of the appellants, is not warranted and more in the pre-trial stage.

17. In this regard, it is helpful to refer to the Apex Court's judgment in the case of **PARKASH SINGH BADAL AND ANOTHER v. STATE OF PUNJAB AND OTHERS** reported in **(2007) 1 SCC 1**. The Apex Court has this to say in paragraph No.33 and 50 of its judgment:

“38. The question relating to the need of sanction under Section 197 of the Code is not necessarily to be considered as soon as the complaint is lodged and on the allegations contained therein. This question may arise at any stage of the proceeding. The question whether sanction is necessary or not may have to be determined from stage to stage.

50. The offence of cheating under Section 420 or for that matter offences relatable to Sections 467, 468, 471 and 120-B can by no stretch of imagination by their very nature be regarded as having been committed by any public servant while acting or purporting to act in discharge of official duty. In such cases, official status only provides an opportunity for commission of the offence”

18. It is also profitable to refer to the Hon'ble Supreme Court's judgment in the case of **URMILA DEVI v. YUDHVIR SINGH** reported in **(2013) 15 SCC 624**. The relevant portions of the said judgment are extracted hereinbelow:

“59. The expression “official duty” would in the absence of any statutory definition, therefore, denote a duty that arises by reason of an office or position of trust or authority held by a person. It follows that in every case where the question whether the accused was acting in discharge of his official duty or purporting to act in the discharge of such a duty arises for consideration, the court will first examine whether the accused was holding an office and, if so, what was the nature of duties cast upon him as holder of any such office. It is only when there is a direct and reasonable nexus between the nature of the duties cast upon the public servant and the act constituting an offence that the protection under Section 197 CrPC may be available and not otherwise. Just because the accused is a public servant is not enough.....”

19. In the case of **AJOY ACHARYA v. STATE BUREAU OF INVESTIGATION AGAINST ECONOMIC OFFENCES** reported in **(2013) 16 SCC 728**, the Apex Court held that whether the public servant adopted corrupt or

illegal means and abused his official position as a public servant is a mixed question of fact and law and that therefore whether the sanction is necessary or not calls for determination but only after the rival parties have adduced evidence to establish their respective claims.

20. The submission that the sanction is necessary, as the appellants are not facing the charges under the Sections enumerated in the newly inserted Explanation to Section 197 does not commend itself to us. The Memorandum explaining the modifications contained in the Criminal Law Amendment 2013 itself states that the Explanation to Section 197 is proposed to be inserted so as to clarify that no sanction is required for prosecuting a public servant, if the offence relates to crimes against woman. Such a clarification cannot be stretched to mean that the sanction for prosecuting a public servant is a must, if the offence alleged does not relate to a crime against woman.

21. For yet another reason too, we are disinclined to interfere in the matter. Another Division Bench, by its

judgment, dated 9.2.2015 passed in W.A.No.2843/2014 has this to say on the intra court appeals:

“11. In view of the above discussion, we hold that the petition filed before the learned single Judge, notwithstanding its nomenclature, as one filed under Articles 226 and 227 of the Constitution of India read with section 482 Cr.P.C., was actually one filed under section 482 Cr.P.C. The learned single Judge was justified in treating and deciding the petition under Section 482 Cr.P.C.

Therefore, this writ appeal filed under Section 4 of the Karnataka High Court Act, 1961, is not maintainable.”

22. For all the aforesaid reasons, we dismiss these appeals. No order as to costs.

Sd/-
CHIEF JUSTICE

Sd/-
JUDGE