

IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH

THE HON'BLE MR. JUSTICE MOHAMMAD NAWAZ

CRL.P. NO.100859 OF 2018

C/W

CRL.P.NO.101492 OF 2017

Dated:24-03-2021

SRI. ASHOK HANAMANTHAPPA BADAMI vs. THE STATE OF KARNATAKA and
Another

ORDER

In these petitions, the petitioners have questioned the order dated 29.6.2017 passed in PC No.1 /2017 by the Principal District and Sessions Judge, Gadag, taking cognizance of the offence alleged and registering the case as a private complaint and thereafter, referring the matter for investigation and sought to quash the entire proceedings pending before the trial Court.

2. The contention of the learned counsel for the petitioners is that the procedure followed by the learned Sessions Judge on receiving the complaint is not in accordance with law and it is contrary to the various judgments of the Apex Court as well as this Court. It is also contended that the entire allegations in the complaint are baseless and the petitioners have been falsely

implicated, though they are not involved in the alleged transaction. He submits that the cognizance has been taken without assigning any reasons, which clearly indicates that there is no application of mind by the learned Sessions Judge. 3. It is further contended that the petitioner in CrI. P. No.101492/2017 is an advocate on the panel of Karnataka Housing Board and in view of Section 2 (c) of the Prevention of Corruption Act, 1988, he is a public servant and therefore, sanction is required to proceed against him. Accordingly, seeks to allow the petitions.

4. Learned counsel appearing for respondent No.1 /ACB has contended that the matter is still at the stage of investigation and statutory duty of the police to conduct investigation and file a report cannot be curtailed at its inception. It is contended that there is no illegality committed by the learned Sessions Judge in referring the matter for investigation. Accordingly, he has sought to reject the petitions.

5. Respondent No. 2 herein filed a private complaint under Section 200 of Cr.P.C. against the petitioners, who have been arraigned as accused Nos.7 and 10 respectively, alleging offence

punishable under Sections 417 , 418, 419, 420, 465, 467, 468, 471, 120B read with Section 149 of IPC and under Section 13(d)(i) of the Prevention of Corruption Act, 1988.

6. The order dated 29.6.2017 passed by the learned Sessions Judge reads as under:

“ Complainant and counsel absent.

Perused the complaint and other materials.

Cognizance taken for the offences alleged.

Register as Private Complaint.

Matter is referred for investigation to DSP, ACB Gadag as per Section 156(3) of Cr.P.C.

Await report by 30.08.2016.”

7. The Hon’ ble Apex Court in the case of ***Priyanka Srivastava and Another Vs. State of Uttar Pradesh and Others*** reported in **2015 (6) SCC 287** has laid down certain guidelines regarding the procedure to be followed by the trial Court when a complaint is filed under Section 200 of Cr. P.C. It is also observed therein that when an application for direction for investigation is filed under Section 156 (3), the Magistrate has to exercise his/her discretion and in the interest of justice, the Magistrate has to apply his/her proper

mind prior to directing for investigation. The duty and approach of the trial Court while exercising the power under Section 156 (3) of Cr. P. C. has been clarified in the said decision.

8. It is also to be noted that in the present case, the matter was referred for investigation to the Police under Section 156(3) of Cr. P. C. after taking cognizance of the alleged offence.

9. Paragraph-24 of the judgment in **Priyanka Srivastava' s** case (supra), is extracted herein below:

"24. In *CREF Finance Ltd. Vs. Shree Shanthi Homes (P) Ltd. (2005) 7 SCC 467*, the Court while dealing with power of the Magistrate taking cognizance of the offences, has opined that having considered the complaint, the Magistrate may consider it appropriate to send the complaint to the police for investigation under Section 156 (3) of the Code of Criminal Procedure, and again: (Madhao Vs. State of Maharashtra, (2013) 5 SCC 615, para-18:

18. "When a Magistrate receives a complaint he is not bound to take cognizance if the facts alleged in the complaint disclose the commission of an offence. The Magistrate has discretion in the matter. If on a reading of the

complaint, he finds that the allegations therein disclose a cognizable offences and the forwarding of the complaint to the police for investigation under Section 156(3) will be conducive to justice and save the valuable time of the Magistrate from being wasted in enquiring into a matter which was primarily the duty of the police to investigate, he will be justified in adopting that court as an alternative to taking cognizance of the offence itself. As said earlier, in the case of a complaint regarding the commission of a cognizable offence, the power under Section 156 (3) of Cr. P.C. can be invoked by the Magistrate before he takes cognizance of the offence under Section 190(1)(a) of Cr.P.C. However, if he once takes such cognizance and embarks upon the procedure embodied in Chapter XV, he is not competent to revert back to the pre-cognizance stage and avail of Section 156(3)."

10. The impugned order dated 29. 6.2017 passed by the learned Sessions Judge is therefore contrary to the procedure contemplated under Cr. P.C. and the law laid down by the Hon' ble Apex Court in the aforesaid decision. The learned Sessions Judge after taking cognizance has referred the

matter for investigation under Section 156(3) of Cr. P. C. Therefore, the impugned order is not sustainable in law and the same is liable to be set-aside. Hence, the following:

ORDER

- a) Petitions are allowed.
- b) The order dated 29.6.2017 passed by the learned Prl. District and Sessions Judge, Gadag in PC No.1/2017 is hereby set-aside.
- c) The matter is remitted back to the trial Court with a direction to proceed in accordance with law from the stage of receiving the complaint on its file.
- d) All other contentions of the parties are kept open.