

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

THE HON'BLE MR. ABHAY S. OKA, CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE ASHOK S. KINAGI

CRIMINAL PETITION NO. 3337 OF 2020 (SUO MOTU)

HIGH COURT OF KARNATAKA REPRESENTED BY REGISTRAR GENERAL BENGALURU VS. . SHRI C.M. MANJUNATH S/ O LATE VEERABHADRAIAH AND ANOTHER

ORDER

THE CHIEF JUSTICE

The question which arises for consideration in this suo motu petition under Section 482 of Code of Criminal Procedure, 1973 (for short ' Cr.P.C ') is as under:

" Whether the complaint filed by the first respondent under Section 200 of Cr.P.C as against the second respondent who is a Senior Civil Judge and Judicial Magistrate First Class is maintainable in view of Sub Section 1 of Section 3 of the Judges (Protection) Act, 1985? "

2. It will be necessary to briefly refer to the facts of the case.

The first respondent-complainant's seven years old son was ill and was taken to a Doctor, who, in turn, referred the case to a Hospital at Davanagere where the first respondent's son was admitted. The first respondent's son unfortunately died while he was admitted in intensive care unit of the hospital. A First Information Report was lodged at the instance of the first respondent with the Police Station at Kudligi against the Doctors and others alleging the commission of an offence punishable under Section 304A of Indian Penal Code (for short ' IPC '). The first respondent had filed a writ petition in this Court seeking transfer of investigation of the said offence to the Central Bureau of Investigation. Before this Court could deal with the same, ' B ' report was filed, against which a protest petition was lodged by the first respondent.

3. According to the case of the first respondent, the Manager of Ahana Souharda Credit Co-operative Limited came to him and called upon him to repay a sum of Rupees two lakhs which was allegedly borrowed by him from the said credit society. According to the case of the first respondent, he informed the said Manager of the society that only a sum of Rupees forty-five thousand was borrowed by him and the same has been repaid. According to his case, after repayment of the entire

amount, the said credit society had also executed a registered reconveyance deed in respect of the property mortgaged by him. The first respondent lodged a complaint on 27th October 2017 against the said Manager. The said Manager also lodged a complaint which was registered as Crime No. 191 of 2016 and the first respondent was arrested in connection with the same. The first respondent was produced by the Police before the second respondent-Judicial Officer at his home office. According to case of the first respondent, the second respondent asked him to withdraw the case registered by him against the Doctors and the Hospital for the offence punishable under Section 304A of IPC. According to the first respondent, the second respondent informed him that if he withdraws the said complaint, he would be released on bail and if the complaint was not withdrawn, he would be taken into custody. According to the case of the first respondent, the second respondent directed the Police to produce him in the Court on the next day. It is stated that at the Police Station, the Police Officers who have been arraigned as accused in the complaint subject matter of this petition, pressurized the first respondent to withdraw the case filed against the Doctors and the Hospital. On the next day i.e., 2nd December 2017, when the first respondent was produced before the second respondent, he was remanded to custody for fourteen days.

It is alleged by the first respondent that in the meanwhile, the case filed by him against the Doctors and the Hospital was dismissed. The allegation of the first respondent is that the second respondent before whom he was produced along with the other persons shown as accused in the complaint subject matter of this petition ensured that the case filed by the first respondent is closed. The allegation is that the second respondent-Judicial Officer misused his judicial powers and has committed offences punishable under Sections 166, 205, 120A, 211, 219 read with Section 34 of IPC and Section 499 of IPC.

4. Prior to filing the aforesaid complaint under Section 200 Cr.P.C, the first respondent filed a complaint addressed to the Chief Justice and Registrar of this Court and made a request to grant a permission to prosecute the second respondent. It was based on the allegations narrated above. The office of the Chief Justice replied to the said complaint on 13th June 2019 to the following effect:

" Dear Mr. C.M. Manjunath,

Your letter dated 27.05.2019 addressed to Hon'ble Chief Justice, is placed for orders and as directed, you may take steps on judicial side.

This is for your information. "

5. Thereafter, the first respondent lodged the private complaint under Section 200 Cr.P.C which is the subject matter of this petition against the second respondent and nine other accused before the

learned Principal District and Sessions Judge at Bellary, which was forwarded by him to the Court of the learned Senior Civil Judge and Judicial Magistrate First Class at Hagaribommanahalli. The orders passed on the said private complaint show that on 20th January 2020, the learned Judicial Magistrate First Class directed that the complaint should be kept for sworn statement of the first respondent.

6. By the order dated 21st July 2020 of this Court, a direction was issued to file a suo motu criminal petition under Section 482 of Cr.P.C for quashing the said complaint filed by the first respondent only insofar as the second respondent-Judicial Officer is concerned.

7. Notice was issued on this petition to the first respondent on 27th July 2020 with a specific direction that the petition shall be disposed of finally at the stage of Preliminary Hearing. Subsequently, this Court appointed Shri Vikram Huligol, learned Advocate to assist the Court as Amicus Curiae who has filed written submissions on 11th September 2020.

8. We have heard the learned Amicus Curiae and the learned counsel appearing for the first respondent.

9. The learned Amicus Curiae has submitted written submissions. He submitted that the allegations made in the complaint filed by the first respondent against the second respondent are based on the actions done in the course of discharge of his judicial duty. He submitted that Sub-Section ( 1) of Section 3 of The Judges (Protection) Act, 1985 (for short ' the said Act of 1985 ') completely protects the second respondent from the prosecution. He relied upon a decision of a Division Bench of Bombay High Court in the case of E.S. Sanjeeva Rao Vs. Central Bureau of Investigation (C.B.I) Mumbai and others 2012 SCC Online Bom 1908. He also relied upon another decision of a Division Bench of the Bombay High Court in the case of Nilesh C. Ojha Vs. State of Maharashtra 2014 SCC Online Bom 1655 and submitted that the law laid down therein is clearly applicable to the facts of this case. He submitted that the letter dated 13th June 2019 issued by the office of the Chief Justice shows that the Chief Justice never intended to grant sanction to prosecute the second respondent. On this aspect, he placed reliance on the decision of the Apex Court in the case of R.S. Nayak vs A. R. Antulay (1984) 2 SCC 183.

10. The learned counsel appearing for the first respondent submitted that suo motu power of this Court under Section 482 of Cr.P.C can be exercised only in those cases where public interest is involved and therefore, the exercise of power in this case is uncalled for. Secondly, he submitted that the first respondent being a layman was justified in drawing a conclusion from the letter dated 13th June 2019 issued by the Secretary to the Chief Justice that a permission or sanction to prosecute the

second respondent-Judicial Officer has been granted.He placed reliance on a decision of a learned Single Judge of this Court in the case of Dr. Y.S.Bhaskar Rao Vs. State of Karnataka.He also relied upon another decision of a learned Single Judge of this Court in the case of Sharanappa Vs. State of Karnataka.He submitted that in view of the law laid down by this Court in the said two decisions, no case for interference is made out.

11. We have given careful consideration to the submissions. We have carefully perused the complaint filed by the first respondent which is the subject matter of this petition. The allegations made against the second respondent are found in paragraph VIII of the complaint. As stated earlier, the second respondent is described as the accused No.1 in the complaint filed by the first respondent. The relevant allegations in paragraph VIII read thus:

" The said the accused No.3 and 4 by arresting complainant on 2-12-2017 taken to the house of the Honorable Junior Civil Judge and J.M.F.C, H.B. Halli i.e., accused No.1 at about 9-30 P.M. and produced before him. Accused No.1 asked the complainant to withdraw the case filed at Davanagere against the S.S. High-tech Hospital and he will release the complainant on bail otherwise he will take to the custody and he will see that the said case will be dismissed for non appearance.The complainant has flatly refused that intimated that he suffered a lot by losing his 7 years child.Then the accused No.1 directed to the said police authorities to take to the Police station and produce in the morning.The Police authorities taken the complainant to the Police station all the night on 2-12 2017 and there they pressurized to accept and withdraw the case at Davanagere and have assaulted the complainant by man-handling him with the belt and even they have not cared to see the complainant's condition of physically handicapped.On the next day they taken to the court and there the Honorable Junior Civil Judge and J.M.F.C, H.B. Halli the accused No.1 ordered for custody for 14 days and in the mean while he has not cared to here upon the bail application till 16.12.2017 wherein the case at Davanagere Court was posted for sworn statement on the said date.The said case was dismissed for the above said act of the accused No.1 and above said police authorities accused No.3 to 9. The complainant challenged the same before the appellate Court.The said Civil Judge accused No.1 and the accused No.2 to 9 with a common intention to see the criminal case filed by the complainant at Davanagere Court will be closed.

Thus the accused No.1 has mis-utilized the Judicial powers and have committed an offence punishable under Section 166, 205, 120A, 211, 219, 34 and 499 of IPC. It is very un-fortunate that such a type of persons being therein the judicial system.The people will lose faith in judicial system for the criminal act of such type of judges in the judiciary system.Further it is bring to the kind notice of the Honorable Court that accused No.1 is acting in passing the orders according to the directions

of the police i.e., Court police accused No.9 who is the mediators for his monitory benefits who has also demanded money of Rs.30,000/-for the release of the complainant. "

(Underlines supplied)

The allegations made about the grant of permission by the Chief Justice in paragraph IX which read thus:

" It is submitted that the accused being Government servants, a requisition letter also been caused to the Honorable Chief Justice, High Court of Karnataka, Bangalore, on 7.5.2019 seeking permission for lodging a complaint for the offences committed by the accused as provided under Section 197 of Cr.P.C. The Honorable Authority has granted permission for proceeding in the matter through letter dated 13.6.2019.The copy of the said requisition and the permission granted are herewith produced Annexure- O and P respectively.

12. In the cause of action paragraph, which is paragraph X of the complaint, the first respondent has stated that the second respondent at the instance of the other accused, has send complainant to the judicial custody.The second cause of action pleaded is that the second respondent demanded money through accused No.9 for release of the complainant i.e., first respondent herein.

13. In paragraph VII of the complaint, the first respondent has described the accused No.1 as the then manager of Ahana Souhardha Credit Co-operative Limited who demanded a sum of Rupees two lakhs.It is obviously a mistake as the accused No.3 appears to be the Manager and the first accused shown in the complaint is the second respondent herein.The allegation in the paragraph X relating to cause of action about demand of money is in fact against the accused No.9.There is a bald statement the money was demanded for the release of the first respondent.Therefore, in substance, the allegation made by the first respondent against the second respondent-judicial officer in the complaint is that when the first respondent was arrested and produced before the second respondent, at the instance of accused No.3 to 9, the second respondent passed an order sending the first respondent to judicial custody.Certain spoken words are attributed to the second respondent which he allegedly said when the first respondent was produced before him.

Thus, the allegations made in the complaint filed by the first respondent against the second respondent are clearly about the manner in which the second respondent passed an order sending the first respondent to judicial custody and what was allegedly spoken by him while purportedly acting in discharge of his duties as a Judicial Magistrate First Class. In this context, now we must consider the protection, if any, extended by the law to Judicial Officers against prosecution.

14. The first enactment on the subject is the Judicial Officers Protection Act, 1850 (for short 'the said Act of 1850'). Section 1 of the said Act, 1850 reads thus:

661. Non-liability to suit of officers acting judicially, for official acts done in good faith, and of officers executing warrants and orders.-No Judge, Magistrate, Justice of the peace, Collector or other person acting judicially shall be liable to be sued in any Civil Court for any act done or ordered to be done by him in the discharge of his judicial duty, whether or not within the limits of his jurisdiction: Provided that he at the time in good faith, believed himself to have jurisdiction to do or order the act complained of; and no officer of any Court or other person, bound to execute the lawful warrants or orders of any such Judge, Magistrate, Justice of the Peace, Collector or other person acting judicially shall be liable to be sued in any Civil Court, for the execution of any warrant or order, which he would be bound to execute, if within the jurisdiction of the person issuing the same. "" "

On plain reading of the Section, the same affords a protection to Judicial Officers in a limited manner. It prevents a Judicial Officer from being sued in any Civil Court. There is no protection granted under the said provision to the Judicial Officers for protecting them against a prosecution.

15. The second protection is under Chapter-IV under the heading general exceptions in IPC. It is in the form of Section 77 which reads thus:

" 77. Act of Judge when acting judicially. Nothing is an offence which is done by a Judge when acting judicially in the exercise of any power which is, or which in good faith he believes to be, given to him by law. "

It protects a Judicial Officer from offences punishable under IPC provided the act or omission by him is while acting judicially in the exercise of any power which is, or which in good faith, he believes to be, given to him by law.

16. The third provision is Section 197 which provides that when a Judicial Officer is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction as provided therein.

17. There is one more enactment which is most relevant. It is the Judges (Protection) Act, 1985 (for short 'the said Act of 1985'). In the preamble of the said Act of 1985, it is stated thus:

" An Act for securing additional protection for Judges and others acting Judicially and for matters connected therewith "

Section 2 to 4 of the said Act of 1985 read thus:

" 2. Definition. In this Act, " Judge " means not only every person who is officially designated as a Judge, but also every person-

( a ) who is empowered by law to give in any legal proceeding a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive; or

( b ) who is one of a body of persons which body of persons is empowered by law to give such a judgment as is referred to in clause ( a ).

3. Additional protection to Judges.- ( 1 ) Notwithstanding anything contained in any other law for the time being in force and subject to the provisions of sub-sec.( 2 ), no Court shall entertain or continue any civil or criminal proceeding against any person who is or was a Judge for any act, thing or word committed, done or spoken by him when, or in the course of, acting or purporting to act in the discharge of his official or judicial duty or function.

( 2 ) Nothing in sub-sec.( 1 ) shall debar or affect in any manner the power of the Central Government or the State Government or the Supreme Court of India or any High Court or any other authority under any law for the time being in force to take such action (whether by way of civil, criminal, or departmental proceedings or otherwise) against any person who is or was a Judge.

4. Saving. The provision of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force providing for protection of Judges. "

(underlines supplied)

18. In the preamble of the said Act of 1985, it is stated that the said Act of 1985 is for securing additional protection for Judges and others acting judicially. Section 4 makes it clear that the provisions of the said Act of 1985 are in addition to, and not in derogation of the provisions of any other law for the time being in force providing for protection to Judges. Thus, the protection granted under the said Act of 1985 is in addition to the protection granted under Section 77 of IPC and Section 197 of Cr.P.C. It is important to note that Sub-Section 1 of Section 3 starts with a non-obstante clause which shows that Sub-Section 1 of Section 3 overrides the provisions of the other laws.

19. Sub-Section 1 of Section 3 of the said Act imposes a prohibition on entertaining or continuing any Criminal or Civil Proceedings against any person who is or was a Judge for any act, thing or word committed, done or spoken by him when, or in the course of, acting or purporting to act in discharge of a Judicial function. It must be noted here that Sub-Section 1 of Section 3 of 1850 protects a Judicial Officer from being sued in any Civil Court for any act done in discharge of his judicial duty provided that the Judicial Officer in good faith, believed himself to have jurisdiction to do or to order the act complained of. Even Section 7 of IPC incorporates a condition of acting in good faith. Section 3 of the said Act of 1985 does not incorporate requirement of a judge acting in good faith or a Judge believing that he had jurisdiction to do what he has done. For an act or word, committed, done or spoken by a Judicial Officer in the course of acting or purporting to act in discharge of his official duty or function, no Court can entertain or continue any Civil or Criminal proceedings against the Judicial Officer.

20. Thus, for attracting the protection of Sub-Section 1 of Section 3 of said Act of 1985, the act, thing or words of the Judicial Officer need not have been done or said in good faith. This is an additional protection extended to the Judicial Officers for protecting them against both Civil and Criminal cases. Obviously, the legislature in its wisdom was of the view that the protection granted to the Judges by earlier statutes was not enough and therefore, the said Act of 1985 was enacted which came into force from 6th September 1985.

21. As can be seen from the definition of the word ' Judge ' in the said Act of 1985, the second respondent at the relevant time was a Judge as he was a Judicial Magistrate First Class. Secondly, all the allegations made against him by the first respondent are about the acts done by the said Judicial Officer in the course of, acting or purporting to act in discharge of his official or judicial duty. The spoken words which are attributed to the first respondent by the second respondent in his complainant, are also spoken in the course of acting or purporting to act in discharge of his duties as a Judicial Officer. Therefore, Sub-Section ( 1 ) of Section 3 of the said Act of 1985 is clearly applicable

and hence, the learned Judicial Magistrate could not have entertained the complaint filed by the first respondent as against the second respondent. The complaint cannot be continued as against the second respondent.

22. We have perused the decision of this Court in the case of Dr.Y.Bhaskar Rao (supra). The petitioner in the said case was the Lokayuktha of the Karnataka State and a First Information Report was registered against him for the offences punishable under the provisions of the Prevention of Corruption Act, 1988 and various Sections of IPC. Question No.3 on availability of protection of Sub Section ( 1) of Section 3 of the said Act of 1985 to Lokayuktha was specifically framed.

Apart from answering the issue regarding the existence of a valid sanction, about protection of said Act of 1985, it was specifically held that under the Karnataka Lokayuktha Act, the Lokayuktha does not render any judgments and he has no occasion to decide a lis. For that reason, the Question was answered against the petitioner. As far as the decision in the case of Sharanappa is concerned, the petitioner was a Judicial Officer who was kept under suspension and a crime alleging commission of offences under the Prevention of Corruption Act, 1988 was registered against him. He applied for quashing the same. One of the main questions canvassed before this Court was, whether Vigilance Cell of this Court is a Police Station within the meaning of Section 2 ( s) of Cr.P.C. The issue whether Judicial Officer will have the protection under Sub-Section ( 1) of Section 3 of the said Act of 1985 was not considered. Hence, both the decisions will not be applicable to the facts of this case.

23. Now, coming back to Sub-Section ( 1) of Section 3 of the said Act of 1985. It will be necessary to make a reference to the decision of the Bombay High Court in the case of Nilesh C. Ojha (supra). Paragraphs 29 and 30 of the said decision read thus:

" 29. For the reasons aforesaid, it is directed that in view of the protection granted by Section 3 ( 1) of the Judges (Protection) Act, 1985 and Section 77 of the Indian Penal Code, 1861, no Court in the States of Maharashtra and Goa, Union Territories of Daman, Diu, Dadra and Nagar Haveli shall entertain any prosecution or any complaint under any provision of the Code of Criminal Procedure, 1973, including under section 156 ( 3) of Cr.P.C. for investigation against a Judge of this Court or any judicial officer in respect of an offence alleged to have been committed in the discharge of purported discharge of official duty or judicial function by passing a judicial order or by committing any act or omission or by doing anything or by speaking any words in the Court precincts.

30. Where the act constituting an offence is alleged to have been committed by passing a judicial order or committing an act within the Court precincts coupled with some other material and on that basis the case falls under Section 3 ( 2) of the Judges (Protection) Act, 1985, as explained by this

Court in *E.S. Sanjeeva Rao v. CBI, Mumbai (supra)*, prior sanction of the competent Authority will be required to initiate prosecution. Once it is noticed that there is no prior sanction, no Special Judge or Magistrate will have the jurisdiction to order an investigation against a Judge by invoking section 156 (3) of the Code of Criminal Procedure, 1973. In view of the above settled legal position, in such a case, neither a Court of Sessions nor a Magistrate's Court shall take any steps under section 156 (3) of the Code of Criminal Procedure, 1973 even for the purpose of recording statement of complainant or his witness. "

In view of the reasons which we have already recorded, we concur with a view taken by the Bombay High Court.

24. Sub-Section (2) of Section 3 is an exception to Sub-Section (1) of Section 3 of the said Act of 1985. The exception is applicable only when the State Government or the Supreme Court of India or any High Court or any Authority under any law for the time being in force takes such action against a person who is or was a Judge.

The first respondent is not an Authority as provided under Sub-Section (2) of Section 3. Therefore, it is crystal clear that the learned Judicial Magistrate First Class could not have entertained the complaint filed by the first respondent as against the second respondent and in fact the learned Judicial Magistrate before whom the complaint is pending ought to have dismissed the same as against the second respondent.

25. Now, we come to the issue of grant of sanction. By addressing a letter dated 27th May 2019 to the Chief Justice, the first respondent did not specifically pray for grant of sanction and applied for permission to prosecute the second respondent. As a grievance was made by the first respondent about the alleged actions of the second respondent while acting as a Judicial Officer, the Secretary to the Chief Justice informed the first respondent to take action on the judicial side, if he was aggrieved by the actions of the second respondent. In fact, in the complaint and in particular paragraph IX, it is not even the case made out by the first respondent that a sanction to prosecute the second respondent was granted to the first respondent. All that paragraph IX avers is that this Court granted permission for proceeding in the matter.

Thus, no such sanction to prosecute the second respondent is in existence.

26. Now, coming to the argument regarding improper exercise of suo motu power, on plain reading of Section 482 of Cr.P.C, there is a power vesting in the High Court to exercise the power suo motu. At this stage, it is necessary to make a reference to the decision of the Apex Court in the case of *Popular Muthiah Vs. State*. In paragraph 30, the Apex Court held thus:

" 30. In respect of the incidental or supplemental power, evidently, the High Court can exercise its inherent jurisdiction irrespective of the nature of the proceedings. It is not trammelled by procedural restrictions in that:

( i) Power can be exercised suo motu in the interest of justice. If such a power is not conceded, it may even lead to injustice to an accused.

(ii) Such a power can be exercised concurrently with the appellate or revisional jurisdiction and no formal application is required to be filed therefore.

(iii) It is, however, beyond any doubt that the power under Section 482 of the Code of Criminal Procedure is not unlimited. It can inter alia be exercised where the Code is silent, where the power of the court is not treated as exhaustive, or there is a specific provision in the Code; or the statute does not fall within the purview of the Code because it involves application of a special law. It acts ex debito justitiae. It can, thus, do real and substantial justice for which alone it exists. "

(emphasis added)

There is nothing in Section 482 which suggests that the suo motu power of this Court can be exercised only in public interest. Assuming that it could be exercised only in public interest, there is definitely an element of public interest involved in the present petition. Independence of judiciary is one of the basic structures of the Constitution of India. Notwithstanding the protection granted by Sub-Section ( 1) of Section 3 of the said Act of 1985, if the Judicial Officers are prosecuted before the criminal Courts for the acts done or words spoken by them while discharging judicial duty, the Judicial Officers will not be in position to discharge their duties without fear or favour. Therefore, this Court is perfectly justified in initiating action under Section 482 of Cr.P.C. The power to initiate the suo motu proceedings under Section 482 Cr.P.C is not curtailed as contended by the learned counsel appearing for the first respondent.

27. It is necessary that a copy of this Judgment be circulated to all Judicial Officers in the State through the respective Principal District Judges. We acknowledge the services rendered by the learned Amicus Curiae.

28. Therefore, the petition succeeds and we pass the following:

ORDER

( i) The complaint filed by the first respondent which is now pending in the Court of Senior Civil Judge and JMFC at Hagaribommanahalli, being PCR No.11/2019 stands quashed and set aside only as against the second respondent;

(ii) However, we make it clear that the complaint as against the other accused in the case shall proceed;

(iii) The petition is allowed on above terms;

(iv) We direct Registrar (Judicial) to forward a soft copy of this Judgment to all the Principal District Judges who in turn will forward the same to all the Judicial Officers in the respective Districts.