

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10TH DAY OF FEBRUARY 2021

BEFORE

THE HON'BLE MR. JUSTICE JOHN MICHAEL CUNHA

CRIMINAL PETITION NO.8733 OF 2017

BETWEEN:

SRI. A. ALAM PASHA
S/O LATE P AMEER SAB,
AGED ABOUT 54 YEARS
R/AT NO.674, 1ST STAGE,
1ST CROSS, 9TH 'A' MAIN,
INDIRANAGAR,
BANGALORE-560038

...PETITIONER

(BY SRI: A.P. MOHANTHY, ADVOCATE)

AND:

1. X ADDL. CHIEF METROPOLITAN
MAGISTRATE,
REPRESENTED BY THE SHIRESTEDAR,
MAYOHALL, M.G.ROAD,
BANGALORE-560001
(DELETED VIDE COURT ORDER DATED 8.3.2018)
2. SRI. ANANT KUMAR HEGDE
S/O SRI. DATTATREYA HEGDE,
AGED ABOUT 49 YEARS,
MEMBER OF PARLIAMENT AND
UNION MINISTER OF STATE FOR
SKILL DEVELOPMENT,
GOVERNMENT OF INDIA,

PERMANENT ADDRESS:
NO.17, K.H.B. COLONY,
SIRSI,
UTTARA KANNADA DISTRICT
(NORTH CANARA)
PIN-581401.

3. SRI.C.T. RAVI
MEMBER OF LEGISLATIVE ASSEMBLY,
S/O SRI. C.F.THIMMEGOWDA,
AGED ABOUT 48 YEARS,
DEVADATTA NILAYA,
BASAVANAHALLI,
CHIKKAMAGALURU-577101.

...RESPONDENTS

(BY SRI: SANTHOSH S NAGARALE, ADVOCATE FOR R2;
R-3 SERVED-UNREPRESENTED,
R-1 IS DELETED VIDE COURT ORDER DATED 8.3.2018)

THIS CRIMINAL PETITION IS FILED U/S.482 CR.P.C BY
PRAYING TO

1) QUASH THE ORDER DATED 04.11.2017 PASSED BY THE X
ADDITIONAL CHIEF METROPOLITAN MAGISTRATE, BANGALORE,
IN THE COMPLAINT AT ANNEXURE-'A' FILED BY THE PETITIONER
AGAINST THE RESPONDENT NOS.2 AND 3.

2) DIRECT THE X ADDITIONAL CHIEF METROPOLITAN
MAGISTRATE, BANGALORE, TO SUBMIT THE ENTIRE RECORDS
ALONG WITH THE ORDER DATED 04.11.2017 IN THE
COMPLAINT AT ANNEXURE-'A' FILED BY THE PETITIONER
AGAINST THE RESPONDENT NOS.2 AND 3.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND
RESERVED FOR ORDERS ON 06.02.2021 AND COMING ON FOR
PRONOUNCEMENT OF ORDER, THIS DAY, THE COURT MADE THE
FOLLOWING:

ORDER

By this petition, the petitioner has sought to quash the order dated 04.11.2017, passed by the X Addl. Chief Metropolitan Magistrate, Bangalore, dismissing the complaint filed by the petitioner under section 2(d) read with section 156(3) of Cr.P.C.

2. The petitioner presented a complaint before the X Addl. Chief Metropolitan Magistrate at Bangalore under section 2(d) read with section 156(3) of Cr.P.C., seeking to refer the same to the jurisdictional Indiranagar Police Station, Bangalore, for investigation under section 156(3) of Cr.P.C. In the complaint, he alleged that, on October 22, 2017, "Sunday Times", an English Newspaper, carried a news item on the 1st and 5th page, pertaining to the boycott of Tipu Jayanthi Celebrations, slated to be held on November 10, 2017 at Bangalore, by the State BJP leaders. The said news item contained details about Union Minister and Karwar MP Sri.Anant Kumar Hegde (accused No.1) writing to the Government Chief Secretary, asking him to drop his name from the official invitees

to the function, saying he was boycotting it. It was reported as under:

*"On Friday, Hegde had tweeted:
'Conveyed # Karnataka Govt. NOT to invite me to shameful event of glorifying a person known as brutal killer, wretched fanatic & mass rapist.'"*

On Page 5 of the newspaper, it was reported that:

"Hegde said 'If the Government prints my name on the invitation card, I will attend the function and raise slogans from the dais against Tipu. If Siddaramaiah has the guts, let him stop me.'"

Further the same page of the newspaper contained a caption

"Congress insulting Hindus by making Tipu Jayanthi: Ravi"

The news item was to the following effect:-

*"BJP spokesperson and MLA C.T.Ravi tweeted:
'Communal Congress led by arrogant @ Siddaramaiah is repeatedly insulting Hindus by celebrating Tyrant Tipu Jayanthi despite severe opposition and thrive on anti-Hindu appeasement policies.'"*

It was averred in the complaint that the above said publication was provocative, baseless, false and amounted to irresponsible

imputations attracting the offences under sections 153-A, 153-B, 295-A and 505(2) of IPC, intended to promote enmity between two religions namely, Hindu and Muslim on the ground of religion and such acts being prejudicial to the maintenance of harmony, the complainant sought to refer the said complaint for investigation by the jurisdictional police under section 156(3) of Cr.P.C.

3. On receiving the complaint, learned X Addl. Chief Metropolitan Magistrate, Bangalore, passed the impugned order rejecting the complaint on the ground that, in view of the provisions under section 196(1) and (1-A) of Cr.P.C., there is a bar for taking cognizance of the offences punishable under sections 153-A, 295-A, 153-B and 505(2) of IPC without previous sanction from the Government.

4. Learned counsel appearing for the petitioner would submit that the bar under section 196(1) of Cr.P.C., would be applicable only at the stage of taking cognizance of the offences by the Court and not at the stage of reference under section 156(3) Cr.P.C. In the instant case, Trial Court has neither taken

cognizance of the alleged offences nor did the complainant sought for cognizance of the alleged offences by the Magistrate. The complainant had prayed for reference of the complaint for investigation under section 156(3) of Cr.P.C. and therefore, the bar contained under section 196(1) of Cr.P.C. did not apply to the facts of the case. Further, learned counsel would submit that the Trial Court has dismissed the complaint placing reliance on the decision of the Hon'ble Supreme Court in *ANIL KUMAR vs. M.K.AIYAPPA (2013) 10 SCC 705*. The ratio of the said decision cannot be made applicable to the prosecution of the accused for the offences under sections 153-A, 153-B, 295-A and 505(2) of IPC, as observed by the Hon'ble Supreme court in *RAMDEV FOOD PRODUCTS PVT. LTD., vs. STATE OF GUJARAT (2015) 6 SCC 439*, that the observations made in the case of *ANIL KUMAR vs. M.K.AIYAPPA* are applicable only to the category of cases mentioned in para 120.6 in *LALITA KUMAR vs. STATE OF U.P., (2014) 2 SCC 1*, namely,

- (a) Matrimonial disputes / family disputes
- (b) Commercial offences
- (c) Medical negligence cases

- (d) Corruption cases
- (e) Cases where there is abnormal delay / laches in initiating criminal prosecution

Learned counsel further pointed out that the impugned order was passed by learned Magistrate without even registering the complaint which disclosed a predetermined mind to dismiss the complaint without even going into the merits of the case. The impugned order, on the face of it, reflects non-application of mind. Thus, he sought to quash the impugned order and to remit the case to the Trial Court to consider the complaint in accordance with law.

5. Learned counsel appearing for respondent No.2 refuted the above submissions and emphasized that the allegations made in the complaint prima facie did not disclose the ingredients of the offences under sections 153-A, 295-A, 153-B and 505(2) of IPC and under the said circumstances, the Trial Court was justified in dismissing the complaint as the complainant failed to make out a case for issuance of direction to the Investigating Agency to investigate into the alleged offences.

Further, placing reliance on the decision of this court in Criminal Petition No.3632 of 2018 (*Sri A Alam Pasha vs. Sri Ravishankar*) dated 29.05.2019, learned counsel would submit that, in view of the enunciation of law by the Hon'ble Supreme Court in *L.NARAYANA SWAMY vs. STATE OF KARNATAKA & Others* (2016) 9 SCC 598, *SANKARAN MOITRA vs. SADHNA DAS & Another* (2006) 4 SCC 584, *MANHARIBHAI MULJIBHAI KAKADIA vs. SHAILESHBHAI MOHANBHAI PATEL*, (2012) 10 SCC 517, *STATE OF U.P. vs. PARAS NATH SINGH*, (2009) 6 SCC 372 and *STATE OF W.B. vs. MOHD. KHALID* (1995) 1 SCC 684, an order directing investigation under 156(3) of the Code cannot be passed in the absence of a valid sanction and therefore, the impugned order does not suffer from any error or illegality warranting interference by this Court under section 482 Cr.P.C.

I have bestowed my careful thought to the submissions made at the Bar and have carefully considered the material on record.

The question that arises for consideration is:

"Whether section 196(1) and 196(1-A) of Cr.P.C. debars the Court from referring the complaint for investigation under section 156(3) Cr.P.C. in respect of offences enumerated therein, without prior sanction of the competent Government?"

6. On perusal of the records, it is seen that the complaint was presented before the Court on 31.10.2017, with the following prayer:-

Wherefore, the Complainant above named most respectfully prays that this Hon'ble Court be pleased to:

- (a) Take the instant complaint filed by the Complainant on the file of this Court.*
- (b) To refer the same to the jurisdictional Indiranagar Police Station, Bangalore, under section 156(3) of Cr.P.C.*
- (c) Pass such orders, direction, etc., as deemed fit by this Hon'ble Court, in the interest of justice and equity.*

Learned Trial Judge without registering the case, heard learned counsel for complainant and pronounced the impugned order on 04.11.2017 dismissing the complaint, without even considering the merits of the case, which indicate that the impugned order is passed with a predisposition to dismiss the complaint, without proper regard to the merits of the case.

7. The sole ground on which the Trial Court has dismissed the complaint is that the previous sanction of the Central Government or State Government, as the case may be, is necessary to take cognizance of the offences under sections 153-A, 295-A, 153-B and 505(2) of IPC, in view of the mandate contained in section 196(1) and (1-A) of Cr.P.C. unmindful of the fact that Section 196(1) and (1-A) of Cr.P.C. bars the Court from taking cognizance of the offence and not from directing investigation under section 156(3) of Cr.P.C. The section reads as under:-

"Section 196. *Prosecution for offences against the State and for criminal conspiracy to commit such offence. –*

(1) No Court shall take cognizance of-

(a) any offence punishable under Chapter VI or under section 153A, (section 295-A or sub-section (1) of section 505) of the Indian Penal Code, 1860 (45 of 1860); or

(b) a criminal conspiracy to commit such offence; or

(c) any such abetment, as is described in section 108A of the Indian Penal Code (45 of 1860),

except with the previous sanction of the Central Government or of the State Government.

(1A) No Court shall take cognizance of-

(a) any offence punishable under section 153B or sub-section (2) or sub-section (3) of section 505 of the Indian Penal Code (45 of 1860); or

(b) a criminal conspiracy to commit such offence,

except with the previous sanction of the Central Government or of the State Government or of the District Magistrate."

The section does not state that the bar under section 196(1) and (1-A) operates at the stage of referring the complaint for investigation under section 156(3) of Cr.P.C. The Trial Court

appears to have held a contrary view by misreading the decisions in *RAMDEV FOOD PRODUCTS PVT. LTD., vs. STATE OF GUJARAT*, (2015) 6 SCC 439 and *ANIL KUMAR vs. M.K.AIYAPPA*, (2013) 10 SCC 705. Undisputedly, these decisions were rendered in the context of section 19 of the Prevention of Corruption Act. No ratio is laid down in the said decisions to the effect that even at the stage of referring the complaint for investigation under section 156(3) of Cr.P.C., in every case the previous sanction of the Government is required at the pre-cognizance stage. On the other hand, it is explained therein that the Magistrate while issuing direction under section 156(3) of Cr.P.C., is required to apply his mind to the facts of the case. It is laid down in the above decision that it is only when the learned Magistrate applies his mind, it can be said that he has taken cognizance of the alleged offences. When the learned Magistrate has not applied his mind, it cannot be said that he has taken cognizance of the alleged offences.

8. A reading of the impugned order clearly indicates that the learned Magistrate has not applied his mind to the facts

and circumstances of the case and merely by referring to the provisions of law quoted in the complaint, has proceeded to hold that, in view of bar contained under section 196(1) and (1-A) of Cr.P.C., the previous sanction of the Government is necessary for referring the complaint for investigation. This approach cannot be countenanced for the following reasons:-

9. In *ANIL KUMAR & Others vs. M.K.AIYAPPA & Another*, (2013) 10 SCC 705, the Hon'ble Supreme Court has laid down the law to the effect that, when the allegations pertain to the public servant as defined under section 2(c) of the Prevention of Corruption Act, by virtue of section 19 of the said Act, sanction is a pre-condition even at the pre-cognizance stage. This is clear from para Nos.15 and 21 of the said judgment, wherein it is held as under:-

"15. ... the word 'cognizance' has a wider connotation and is not merely confined to the stage of taking cognizance of the offence. When a Special Judge refers a complaint for investigation under Section 156(3) Cr.P.C., obviously, he has not taken cognizance of the offence and, therefore, it is a pre-cognizance stage and cannot be equated with post-cognizance stage. When a Special Judge takes

cognizance of the offence on a complaint presented under Section 200 Cr.P.C. and the next step to be taken is to follow up under Section 202 Cr.P.C. Consequently, a Special Judge referring the case for investigation under Section 156(3) is at pre-cognizance stage."

21. ... Once it is noticed that there was no previous sanction, as already indicated in various judgments referred to hereinabove, the Magistrate cannot order investigation against a public servant while invoking powers under Section 156(3) Cr.P.C. The above legal position, as already indicated, has been clearly spelt out in State of U.P. v. Paras Nath Singh (2009) 6 SCC 372 and Subramanian Swamy v. Manmohan Singh (2012) 3 SCC 64 cases."

(underlining supplied)

10. In the instant case, there are no allegations attracting the offences under the Prevention of Corruption Act. Therefore, the question of obtaining the sanction at the stage of referring the complaint for investigation under section 156(3) of Cr.P.C., does not arise at all. In this context, it may be useful to refer to the view taken by the Hon'ble Supreme Court in *MANJU SURANA vs. SUNIL ARORA & Another*, (2018) 5 SCC 557. While explaining the implication of law enunciated in *ANIL KUMAR &*

Others vs. M.K.AIYAPPA & Another, the Hon'ble Supreme Court, in para 33, has observed thus:-

"33. The catena of judgments on the issue as to the scope and power of direction by a Magistrate under Chapters XII & XIV is well established. Thus, the question would be whether in cases of the PC Act, a different import has to be read qua the power to be exercised under Section 156(3) CrPC i.e. can it be said that on account of section 19(1) of the PC Act, the scope of inquiry under Section 156(3) CrPC can be said to be one of taking 'cognizance' thereby requiring the prior sanction in case of a public servant? It is trite to say that prior sanction to prosecute a public servant for the offences under the PC Act is a provision contained under Chapter XIV CrPC. Thus, whether such a purport can be imported into Chapter XII CrPC while directing an investigation under Section 156(3), merely because a public servant would be involved, would beg an answer."

11. From the above observation, it is clear that the purport of section 19(1) of PC Act cannot be imported into Chapter XII and Chapter XIV of Cr.P.C. while directing the

investigation under section 156(3) Cr.P.C. There is a clear distinction between issuing a direction for investigation under section 156(3) Cr.P.C. in respect of the offences under IPC and a direction for investigation into the offences against a public servant under the provisions of the PC Act. As per the provisions of the PC Act, a public servant is armed with the protection under section 19 of the PC Act. This safeguard is provided to a public servant to protect him from false and frivolous prosecution, by insisting for a previous sanction, before initiating prosecution for the offences alleged under PC Act. It is in this context, it has been held in *ANIL KUMAR & Others vs. M.K.AIYAPPA & Another* that the learned Special Judge or learned Magistrate referring the case for investigation under section 156(3) Cr.P.C., is deemed to have taken cognizance of the offences and therefore, the Magistrate was required to proceed in the matter only after the production of sanction by the competent authority. But, such an interpretation, in my view, cannot be imported in respect of the offences under IPC.

12. The position of law in this regard is clarified by the Hon'ble Supreme Court in *STATE OF KARNATAKA & Another vs. PASTOR P. RAJU* (2006) 6 SCC 728, wherein considering the requirement of sanction at the stage of taking cognizance in respect of an offence punishable under section 153-B and sub-sections (2) and (3) of section 505 of IPC, after extracting section 196(1-A) of the Code, it was held as under:-

8. A plain reading of this provision will show that no Court can take cognizance of an offence punishable under Section 153-B or sub-section (2) or sub-section (3) of Section 505 of Indian Penal Code or a criminal conspiracy to commit such offence except with the previous sanction of the Central Government or of the State Government or of the District Magistrate. The opening words of the Section are "No Court shall take cognizance" and consequently the bar created by the provision is against taking of cognizance by the Court. There is no bar against registration of a criminal case or investigation by the police agency or submission of a report by the police on completion of investigation, as contemplated by Section 173 Cr.P.C. If a criminal case is registered, investigation of the offence is done and the police submits a report

as a result of such investigation before a Magistrate without the previous sanction of the Central Government or of the State Government or of the District Magistrate, there will be no violation of Section 196(1-A) Cr.P.C. and no illegality of any kind would be committed.

13. From the above enunciation, it is clear that the need to obtain the sanction from the competent Government would arise only after completion of investigation at the stage of taking cognizance by the Magistrate or the Court and not at the pre-cognizance stage.

14. In the light of the above discussion, the impugned order is liable to be quashed.

Accordingly, Criminal Petition is **allowed**. The impugned order dated 04.11.2017, passed by the X Addl. Chief Metropolitan Magistrate, Bangalore, is quashed. As the learned Magistrate has failed to apply his mind to the facts of the case and has passed the impugned order by misconstruing the scope of section 196(1) and (1-A) of the Code, the matter is remitted

to the jurisdictional Court to consider the complaint afresh in accordance with law.

Sd/-
JUDGE

Bss.