

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 4TH DAY OF AUGUST 2011

BEFORE

THE HON'BLE MR. JUSTICE V. JAGANNATHAN

CRIMINAL REVISION PETITION NO.745 OF 2011

BETWEEN:

SHIVARAYA
S/O YAMUNAPPA JAVAGADI
AGED ABOUT 63 YEARS
RETIRED DEPUTY INSPECTOR GENERAL
OF REGISTRATION
R/O.NO.2, 15TH CROSS
MUNESHWARA NAGARA
ULLALA MAIN ROAD
BANGALORE - 560 056.

...PETITIONER

(BY SRI: SUBRAHMANYA JOIS, SENIOR COUNSEL FOR
SRI: B S BUDHIHAL, ADVOCATE)

AND:

THE STATE OF KARNATAKA
BY SUPERINTENDENT OF POLICE
CITY DIVISION, KARNATAKA LOKAYUKTA
M.S.BUIDLING, BANGALORE - 560 001.

...RESPONDENT

(BY SMT: T M GAYATHRI, ADVOCATE)

THIS CRIMINAL REVISION PETITION IS FILED UNDER SECTION 397
READ WITH SECTION 401 OF CODE OF CRIMINAL PROCEDURE BY THE
ADVOCATE FOR THE PETITIONER PRAYING TO SET ASIDE THE IMPUGNED
ORDER DATED 13.6.2011 PASSED BY THE SPL. JUDGE, PREVENTION OF
CORRUPTION ACT, BANGALORE URBAN DISTRICT, BANGALORE CITY, IN
SPL.C.C.NO.108/2005 (ANNEXURE-A).

THIS CRIMINAL REVISION PETITION COMING ON FOR ADMISSION
THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

In this petition filed under Section 397 read with Section 401 of Cr.P.C., the petitioner assails the order passed by the Court below on the application filed by the petitioner under Section 239 of Cr.P.C. for his discharge. The trial Court had dismissed the said application.

2. A case was registered in Crime No.16/2003 for the offence punishable under Sections 7, 12, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1989, (for short, 'the Act') against the petitioner on complaint allegations of one Rajanna that the petitioner, who was working as Deputy Inspector General of Registration (Administration and Law), Department of Registration and Stamps, had demanded a bribe of ₹1,50,000/- and brought it down to ₹1/- lakh for showing official favour to the complainant in respect of under valuation of the property bearing Survey No.94 situated at Basavanahalli Village, Nelamangala Taluk. The petitioner approached this Court earlier in W.P.No.6699/2006, questioning the validity of the sanction order dated 2.5.2006 and another order dated



16.5.2006 and sought for quashing of the same. This Court by its order dated 2.9.2008 in the aforementioned writ petition directed the petitioner to agitate the matter before the criminal Court, during trial. Thereafterwards, the petitioner filed an application under Section 239 of Cr.P.C. seeking discharge from the case mainly on the ground that the sanction order dated 17.7.2004 had been withdrawn and this is clear from the subsequent order passed on 5.9.2005 (Annexure-H to this petition) and therefore, it is contended by the learned senior counsel, Sri.Subrahmanya Jois, for the petitioner that when the Government had withdrawn the sanction order dated 17.7.2004 by its order dated 5.9.2005 and had entrusted the matter to be enquired into by the Department by subjecting the petitioner to Departmental Enquiry, the question of once again issuing sanction order dated 16.5.2006 does not arise (Annexure-J to this petition). It is also contended by the learned Senior Counsel for the petitioner that the subsequent sanction order dated 16.5.2006 is invalid in law and consequently it is also the specific stand of the petitioner that the said order dated 16.5.2006 is not genuine Government Order, but it is concocted one. As there is



no valid sanction order, the question of prosecuting the accused before the Court below in respect of the offence punishable under the Act, therefore, would not arise and the proceedings are liable to be set aside on this ground alone. Learned Senior Counsel also referred to several decisions on the aspect of quashing of the proceedings and power of this Court under Section 482 of Cr.P.C.

3. On the other hand, the submission of Smt.T.M.Gayathri, for respondent-Lokayuktha is that the sanction order was earlier issued on 17.7.2004 and as there was some defect in the said sanction order, the Lokayuktha wrote to the Government to rectify the defect and subsequently, the defects were rectified and the sanction order dated 16.5.2006 has been issued and therefore, there is no infirmity in the prosecution case with regard to the sanction order is concerned. As far as sanction order at Annexure-J being not genuine is concerned, learned counsel for the respondent submitted that the sanctioning authority, who had accorded the sanction and who was at the relevant point of time was the Under Secretary, namely one


/s/

Ramesh K. Jahagirdar, has also been examined before the trial Court as P.W.2 but his cross-examination has not been over. Therefore, it is contended that the sanction order dated 16.5.2006 is a valid sanction order and it is the genuine Government order. As ^{far} as the say of Ramesh K. Jahagirdar, the original file has not been traced and efforts have been made to trace the original file. Learned counsel in this connection presses for perusal of the letter written by one K.K.Ramachandra, the present Under Secretary to Revenue Department (Administration and Starnps), addressed to the Secretary to the Government.

4. Learned counsel for the respondent also referred to the decision of this Court in the case of B.SHIVARUDRASWAMY V/S. STATE reported in 2008 (3) AIR Kar 83 to contend that once the sanction order is issued by the authority concerned, it cannot pass a fresh order and therefore, with the passing of the sanction order, the authority becomes functus officio to issue any fresh order and therefore, the order dated 5.9.2005 has no effect and since the Government Order dated 5.9.2005 cannot



affect and validate the earlier sanction order, which was later on rectified, therefore, learned counsel sought for dismissal of the present petition.

5. Having heard both the sides, as the petitioner is seriously questioning the validity of the sanction order dated 16.5.2006 and also has taken up a contention before this Court that the said order is not a genuine order and secondly in view of the order dated 5.9.2005, the question of issuing a fresh sanction order on 16.5.2006 also does not arise, in my view, as the sanctioning authority has also been examined in part and the cross-examination of the said witness is to be done, all the contentions raised by the learned Senior counsel for the petitioner, therefore, can be urged before the trial Court with regard to the validity or otherwise or even the absence of sanction order. The trial Court therefore, shall take into account the aforesaid contentions raised on behalf of the petitioner and after the evidence of the sanctioning authority is completed, the trial Court, thereafterwards, shall record a finding as to whether there is any sanction order permitting the petitioner to be



prosecuted in respect of the offences under the Act. Thereafterwards, the Court shall proceed with the trial, in accordance with law.

6. With the above observations, the petition is disposed of and obviously, the question of setting side the order that is impugned in this petition does not arise.

Sd/-
JUDGE

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