

**SUPREME COURT OF INDIA**

Yunus Zia

Vs.

State of Karnataka

Crl.A.No.594 of 2015

(V.Gopala Gowda and C.Nagappan JJ.)

09.04.2015

**ORDER**

**V.GOPALA GOWDA, J.**

Leave granted.

This appeal is directed against the impugned order dated 14.07.2014 passed in Criminal Petition No. 2859 of 2012 by the High Court of Judicature of Karnataka at Bangalore, wherein the High Court has declined to exercise its power under Section 482 of the Code of Criminal Procedure, 1973 (in short "CrPC"). The appellant has prayed to set aside the same and quash the criminal proceedings initiated against him by the respondents, urging various legal grounds.

Mr. L. Nageswar Rao, the learned senior counsel on behalf of the appellant has submitted that the second respondent, Inspector of Police of the Karnataka Lokayukta (in short "the Lokayukta"), has made allegations against the appellant under Sections 120B and 420 of the IPC and under Sections 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 (in short "the P.C. Act"). A case has been registered by the second respondent and an FIR has been lodged against the appellant without following the due procedure contemplated under Section 9 of the Karnataka Lokayukta Act, 1984 (in short "the Lokayukta Act") which deals with the provisions relating to complaints and investigations, where any person can make a complaint under the Lokayukta Act, either to the Lokayukta or to the Upalokayukta. It provides for making a complaint in the form of settlement supported by an affidavit in such forms and in such manner as may be prescribed. The relevant provisions of the Lokayukta Act read thus: "9. Provisions relating to

complaints and investigations- (1) Subject to the provisions of this Act, any person may make a complaint under this Act to the Lokayukta or an Upalokayukta. Provided that in case of a grievance, if the person aggrieved is dead or for any reason, unable to act for himself, the complaint may be made or if it is already made, may be prosecuted by his legal representatives or by any other person who is authorized by him in writing in this behalf. (2) Every complaint shall be made in the form of a statement supported by an affidavit and in such forms and in such manner as may be prescribed. (3) Where the Lokayukta or an Upalokayukta proposes, after making such preliminary inquiry as he deemed fit to conduct any investigation under this Act, he.-

(a) shall forward a copy of the complaint and in the case of an investigation initiated suo-motu by him, the opinion recorded by him to initiate the investigation under sub-section (1) or (2), as the case may be, of section 7;

to the public servant and the Competent Authority concerned;

(b) shall afford to such public servant an opportunity to offer his comments on such complaint or opinion recorded under sub-section (1) and (2) of section 7 as the case may be;

(c) may make such order as to the safe custody of documents relevant to the investigation, as he deems fit.

(4) Save as aforesaid, the procedure for conducting any such investigation shall be such, and may be held either in public or in camera, as the Lokayukta or the Upalokayukta, as the case may be, considers appropriate in the circumstances of the case.

(5) The Lokayukta or the Upalokayukta may, in his discretion, refuse to investigate or cease to investigate any complaint involving a grievance or an allegation, if in his opinion,-

(a) the complaint is frivolous or vexatious or is not made in good faith;

(b) There are no sufficient grounds for investigating or, as the case may be, for continuing the investigation; or

(c) Other remedies are available to the complainant and in the circumstances of the case it would be more proper for the complainant to avail such remedies.

(6) In any case where the Lokayukta or an Upalokayukta decides not to entertain a complaint or to discontinue any investigation in respect of a complaint he shall record his reasons therefore and communicate the same to the complainant and the public servant concerned. (7) The conduct of an investigation under this Act against a Public servant in respect of any action shall not affect such action, or any power or duty of any other public servant to take further action with respect to any matter subject to the investigation."

Further, the learned senior counsel has relied upon Section 7 of the Lokayukta Act, wherein on receipt of such complaint, either the Lokayukta or the Upalokayukta can make such preliminary enquiry as he may deem fit to conduct an investigation under the Act. He can initiate investigation under Section 7(1) & (2) of the Lokayukta Act on the public servant and the competent authority concerned as defined under Section 2(4)(a) to (d) of the Lokayukta Act. The relevant provision of the Lokayukta Act reads thus:- "7. Matters which may be investigated by the Lokayukta and an Upalokayukta.-

(1) Subject to the provisions of this Act, the Lokayukta may investigate any action which is taken by or with the general or specific approval of,-

(a) (i) the Chief Minister;

(ii) a Minister;

(iii) a member of the State Legislature;

(iv) the Chairman and Vice-Chairman (by whatever name called) or a member of an authority, board, or a committee, a statutory or non-statutory body or a corporation established by or under any law of the State Legislature including a society, cooperative society or a Government company within the meaning of section 617 of the Companies Act, 1956, nominated by the State Government; in any case where a complaint involving a grievance or an allegation is made in respect of such action.

(b) any other public servant holding a post or office carrying either a fixed pay, salary or remuneration of more than rupees twenty thousand per month or a pay scale the minimum of which is more than rupees twenty thousand, as may be revised from time to time in any case where a complaint involving a grievance or an allegation is made in respect of such action or such action can be or could have been, in the opinion of the Lokayukta, recorded in writing, the subject of a grievance or an allegation. (2) Subject to the

provisions of the Act, an Upalokayukta may investigate any action which is taken by or with the general or specific approval of, any public servant not being the Chief Minister, Minister, Member of the Legislature, Secretary or other public servant referred to in sub-section (1), in any case where a complaint involving a grievance or an allegation is made in respect of such action or such action can be or could have been, in the opinion of the Upalokayukta, recorded in writing. the subject of a grievance or an allegation."

Section 8 of the Lokayukta Act further states that:- "8. Matters not subject to investigation:-

(1) Except as hereinafter provided, the Lokayukta or an Upalokayukta shall not conduct any investigation under this Act in the case of a complaint involving a grievance in respect of any action, -

(a) if such action relates to any matter specified in the Second Schedule; or

(b) if the complainant has or had, any remedy by way of appeal, revision, review or other proceedings before any tribunal, Court officer or other authority and has not availed of the same. (2) The Lokayukta or an Upalokayukta shall not investigate, -

(a) any action in respect of which a formal and public enquiry has been ordered with the prior concurrence of the Lokayukta or an Upalokayukta, as the case may be;

(b) any action in respect of a matter which has been referred for inquiry, under the Commission of Inquiry Act, 1952 with the prior concurrence of the Lokayukta or an Upalokayukta, as the case may be;

(c) any complaint involving a grievance made after the expiry of a period of six months from the date on which the action complained against become known to the complainant; or

(d) any complaint involving an allegation made after the expiry of five years from the date on which the action complained against is alleged to have taken place:

Provided that he may entertain a complaint referred to in clauses (c) and

(d) if the complainant satisfies that he had sufficient cause for not making the complaint within the period specified in those clauses. (3) In the case of any complaint involving a grievance, nothing in this Act shall be construed as empowering the Lokayukta or an Upalokayukta to question any administrative action involving the exercise of a discretion except where he is satisfied that the elements involved in the exercise of the discretion are absent to such an extent that the discretion can prima facie be regarded as having been improperly exercised."

The learned senior counsel for the appellant by placing strong reliance upon the aforesaid provisions of the Lokayukta Act, has contended that it is applicable in relation to the persons who were enumerated under Section 2 of the Lokayukta Act, which reads thus:-

"2. (1) xxx (2) "Allegation" in relation to a public servant includes any affirmation that such public servant-

(a) has abused his position as such public servant to obtain any gain or favour to himself or to any other person or to cause undue harm or hardship to any other person;

(b) was actuated in the discharge of his functions as such public servant by personal interest or improper or corrupt motives;

(c) is guilty of corruption, favouritism, nepotism or lack of integrity in his capacity as such public servant;

OR

(d) has failed to act in accordance with the norms of integrity and conduct which ought to be followed by public servants of the class to which he belongs:

(3) "Chief Minister" means the Chief Minister of Karnataka; (4) "Competent Authority" in relation to a public servant means-

(a) in the case of Chief Minister or a member of the State Legislature, the Governor acting in his discretion;

(b) in the case of a Minister or Secretary, the Chief Minister;

(c) in the case of a Government servant other than a Secretary, the Government of Karnataka;

(d) in the case of any other public servant, such authority as may be prescribed;

(5) "corruption" includes anything made punishable under Chapter IX of the Indian Penal Code or under the Prevention of Corruption Act, 1947; (6) "Government Servant" means a person who is a member of the Civil Services of the State of Karnataka or who holds a civil post or is serving in connection with the affairs of the State of Karnataka and includes any such person whose services are temporarily placed at the disposal of the Government of India, the Government of another State, a local authority or any person whether incorporated or not, and also any person in the service of the Central or another State Government or a local or other authority whose services are temporarily placed at the disposal of the Government of Karnataka."

After placing strong reliance upon the aforesaid provisions of the Lokayukta Act, the learned senior counsel has submitted that the appellant herein is neither a government servant nor is or was at any time holding the post of Chief Minister, Member of Legislature and Chairman etc. as is enumerated in the aforesaid Sections of the Lokayukta Act. Therefore, the suo-moto complaint registered by the second respondent in the Police Station of Lokayukta against the appellant is without jurisdiction and therefore, the same is liable to be quashed. He has submitted that this important aspect of the matter has not been considered by the learned judge of the High Court and he has declined to grant the prayer of the appellant without examining the legal submissions urged before it. Therefore, he has urged that the impugned order is vitiated in law and the same is liable to be set aside by this Court in exercise of its jurisdiction. On the other hand, Mr. Basava Prabhu S. Patil, the learned senior counsel on behalf of the respondents has rebutted the aforesaid legal contentions urged on behalf of the appellant, stating that the Inspector of Police of the Lokayukta has taken note of the news item published in the Newspaper on 28.12.2011 in 'Vijaya Karnataka' a Kannada daily, which was repeated on 3.1.2012 in 'Bangalore Mirror' and on 05.01.2012 in The Times of India, English edition. The complaint against the appellant has not been lodged either before the Lokayukta or Upa lokayukta but the same was registered suo-moto at the Police Station attached to the Lokayukta and therefore, the procedure provided under the provisions of the Lokayukta Act was not required to be followed as contended by the learned senior counsel on behalf of the appellant.

The learned senior counsel on behalf of the respondents has further contended that the registration of the complaint by the second respondent suo-moto on the basis of the Newspaper publication is permissible in law as the same is in accordance with the judgments of this Court in the cases of C. Rangaswamaiah & Ors. v. Karnataka Lokayukta & Ors.[1] and State Of Karnataka v. Kempaiah[2]. These judgments have been adverted to by the Division Bench of Karnataka High Court in the case of State of Karnataka, by Chief Secretary and Ors. v. Basavaraj Guddappa Maliger[3]. In the Kempaiah's case referred to supra, this Court affirmed the judgment of the Division Bench of the High Court on the ground that the Upalokayukta had no power to investigate into a crime allegedly committed by the public servant under the provisions of the P.C.Act, however, this Court did not quash the FIR. Further, this Court made it clear that the FIR registered against the petitioner is not quashed and that it is open to the State to have the offence investigated in accordance with law. Further, in the C. Rangaswamaiah's case, this Court has held that the police wing on deputation to the Lokayukta, if authorised under Section 17 of the P.C.Act and Section 2(d) of the CrPC, is legally entitled to register a case and investigate the matter and file a charge sheet in a competent court of law under the provisions of the P.C.Act and the CrPC. The relevant paragraphs of C. Rangaswamaiah (supra), read thus:

"21. The next question is whether when the State Government had sent the police officers on deputation to the Lokayukta, it was permissible for the Government to entrust them with additional duties under the Prevention of Corruption Act, 1988?

22. The learned Single Judge as well as the Division Bench are one, as already stated, in accepting that the police officers of the State on deputation continue to remain as public servants in the service of the State Government, as long as they are not absorbed in the Lokayukta. This legal position is absolutely unassailable because the State of Karnataka has merely lent the services of these officers to the Lokayukta and the officers continue to be employees of the State. In spite of the deputation of these officers with the Lokayukta, the relationship of master and servant between the State of Karnataka and these officers does not stand terminated (State of Punjab v. Inder Singh).

23. There is no dispute that though these officers are on deputation, they are otherwise of the requisite rank as contemplated by Section 17 of the Prevention of Corruption Act, 1988 and that other formalities under that Act are satisfied for entrustment of duties under the Prevention of Corruption

Act, 1988. Question is whether these police officers of the State can be invested with powers of investigation under Section 17 of the Prevention of Corruption Act, 1988 by the State under its statutory powers traceable to the same section?"

Further, it has been contended by the learned senior counsel for the respondents that the second respondent has registered the case on the basis of the abovementioned report published in the Newspaper referred to supra, after satisfying himself with the fact that the material information published in the aforesaid newspapers are cognisable offences punishable under Section 420 and 120B of the IPC, for which he can suo-moto register a complaint in the Police Station attached to the Lokayukta. He has further made the categorical submission that the case is neither registered against the appellant on the complaints submitted to the Lokayukta or Upalokayukta, in the prescribed form by the second respondent nor the due procedure contemplated under Section 9(2) & (3) of the Act has been followed after holding preliminary enquiry. Thus, he has made it very clear that the initiation of the proceedings against the appellant is not under the provisions of the Lokayukta Act but the same has been done in accordance with the provisions of the CrPC and the second respondent who is attached to the Police Station of Lokayukta can register the FIR and investigate the case independently against the appellant as held by this Court in the cases referred to supra. Therefore, the learned senior counsel for the respondents has fairly submitted that if the appellant has got any grievance or apprehension for registering and investigating the case against him by the second respondent, then this Court may pass the appropriate order to transfer the case to any police agency in the state. He has placed reliance upon the cases referred to supra and has further made it clear that transferring of the case registered by the second respondent to any other police agency in the State of Karnataka shall not be henceforth construed or understood as an act beyond the scope of authority of the Lokayukta Police to register case/cases against such persons and investigate the offences under the provisions of the CrPC or under the P.C.Act.

We have heard both the learned senior counsel for the parties and perused the reports published in the Newspapers on the dates mentioned above which were taken into consideration suo-moto by the second respondent, wherein he has registered the FIR after being satisfied with the material facts published in the Newspapers that there is a cognisable offence to be investigated by the police against the appellant. The same cannot be found fault with either by the High Court or by this Court for the reason that the second respondent, who is on deputation to the Lokayukta, is an Inspector of Police attached to the State of Karnataka.

Therefore, he has got every power under Section 2(d) of the CrPC, to act suo-moto and take cognisance of the offence/offences alleged to have been committed by the appellant on the basis of the reports published against him, which according to him warranted registration of an FIR and investigate the matter against him in accordance with law.

The learned senior counsel on behalf of the respondents has rightly made the categorical submission that there is no need for the registration of the FIR under Section 9 of the Lokayukta Act, in relation to the matters to be investigated under Section 8 of the Lokayukta Act. Therefore, in the light of the above contentions urged on behalf of the parties and in view of the law laid down by this Court under the Lokayukta Act and keeping in mind the apprehension expressed by the learned senior counsel on behalf of the appellant with regard to the investigation that may be carried out by the Lokayukta Police, we are of the considered view that the learned Judge of the High Court has rightly declined to exercise his inherent power to quash the proceedings, which does not call for our interference in this appeal.

Having regard to the facts and circumstances of the case, it would be just and proper for this Court to see that justice is meted out and the case is fairly investigated by the Corps of Detectives (COD) of the State. The said investigation shall be entrusted to an officer of the rank equivalent to the Superintendent of Police in the COD.

For the foregoing reasons and the decisions of this Court referred to supra, we direct the second respondent to transmit the FIR to the COD Bangalore for further investigation in the matter. The COD represented by the Director General of Police must entrust the same to the officer of the rank of Superintendent of Police for conducting impartial investigation and proceed with the matter in accordance with law.

We make it amply clear that the direction is given to second respondent to transfer the case registered against the appellant to COD, keeping in view the facts and circumstances of this particular case only and it shall not be construed as precedent for any future case(s) before the Lokayukta or the courts. In view of the judgments of this Court referred to supra, we hold that the second respondent has the right to register a cognizable offence against any person under the provisions of the IPC, CrPC and the P.C. Act. The same shall be legal and valid.

The appeal is dismissed. The order dated 05.01.2015 granting stay of further proceedings shall stand vacated.

[1] [2] (1998) 6 SCC 66 [3] [4] (1998) 6 SCC 103 [5] [6] ILR 2003  
KARNATAKA 3589