REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICITON

CRIMINAL APPEAL NO. 1289 OF 2008
(Arising out of SLP (Crl.) No.1585 of 2007)

Superintendent of Police, Karnataka Lokayuktha and Anr. ...Appellants

Versus

B. Srinivas ...Respondent

JUDGMENT

Dr. ARIJIT PASAYAT, J.

1. Leave granted.

2. Challenge in this appeal is to the judgment of a learned Single Judge of the Karnataka High Court accepting the petition filed by the respondent under Section 482 of the Code of Criminal Procedure, 1973 (in short the 'Code'). Prayer in the petition was to quash the order dated 12.6.2000 passed

by the Superintendent of Police, Karnataka Lokayuktha and investigation pursuant to the said order, including lodging of the first information report.

3. At the relevant point of time the respondent was working as an Engineer-in-Chief of Rural Development Engineering Department, Bangalore. The Lokayuktha police had registered a case in respect of offences punishable under Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act, 1988 (in short the 'Act').

4. Background facts in a nutshell are as follows:

Search was conducted in the house of the respondent on $15^{th}/16^{th}$ June, 2000 and certain records and documents were seized. Documents relating to the respondent, his son-in-law, his daughter and son were seized. The Superintendent of Police had authorized the Inspector of Police to conduct investigation. The petition was filed essentially on three grounds; firstly, the authorization given by the Superintendent

of Police to conduct the investigation was contrary to the view expressed by this Court in State of Haryana and Ors. v. Bhajan Lal and Ors. (1992 Supp (1) SCC 335). The basis for such stand was that no reason had been indicated as to why it was entrusted to the Inspector. When the petition was finally heard in the year 2006, second stand taken was that there was inordinate delay of 6 years in filing the charge sheet. The High Court accepted both the stands and quashed the proceedings. The third stand was that exaggerated figures were shown in the chargesheet. This aspect does not appear to have been dealt with by the High Court. It, however, permitted the prosecution to take action on the facts afresh keeping in view certain aspects referred to in the judgment.

5. In support of the appeal, Mr. Sanjay Hegde, learned counsel for the appellants submitted that the High Court erroneously exercised jurisdiction under Section 482 of Code. When the petition was initially filed, there was no question of any delay. An amendment had been sought for in the petition and prayer was to quash the order passed by the

Superintendent of Police and further part of the investigation done by the Inspector of Police-respondent No.2. It is pointed out that the High Court erroneously observed that there was delay in filing the charge sheet. In any event, the delay was occasioned on account of the part played by the respondent and delay, if any, alone cannot be a ground to quash the legitimate proceedings. Further, it is pointed out that the High Court has erroneously held that no reasons were indicated. Reference is made in the order passed by the Superintendent of Police to contend that reasons in fact had been indicated.

6. Per contra, learned counsel for the respondent submitted that though the High Court has not specifically referred to this aspect, the fact that after completing investigation the amount of alleged disproportionate asset which was initially stated to be more than one crore has been sealed down substantially cannot be lost sight of. Further, it is submitted that delay itself can be a ground to quash the proceedings. It is also submitted that the High Court has rightly observed that reasons are not discernible from the order passed by the

Superintendent of Police while authorizing investigation by the Inspector.

7. We shall first deal with the question of alleged delay. It is of some significance to note that an FIR was lodged on 12.6.2000 and few days thereafter the petition under Section 482 was filed. On the basis of FIR the house of respondent was searched on 15th and 16th June. The petition was filed on 11.7.2000. Application seeking permission to substitute additional grounds was filed in the year 2005. It is not a case where charge sheet had not been filed or that there was no explanation for the delay. There is no general and wide proposition of law formulated that whenever there is delay on the part of the investigating agency in completing the investigation, such a delay can be a ground for quashing the FIR. It would be difficult to formulate inflexible guidelines or rigid principles in determining as to whether the accused has been deprived of fair trial on account of delay or protracted investigation would depend on various factors including whether such a delay was reasonably long or caused deliberately or intentionally to hamper the defence of the

accused or whether delay was inevitable in the nature of things or whether it was due to dilatory tactics adopted by the accused. It would depend upon certain peculiar facts and circumstances of each case i.e. the volume of evidence collected by the investigating agency, the nature and gravity of the offence for which accused has been charge sheeted in a given case. The nexus between whole and some of the above factors is of considerable relevance. Therefore, whether the accused has been deprived of fair trial on account of protracted investigation has to come on facts. He has also to establish that he had no role in the delay. Every delay does not necessarily occur because of the accused.

8. A 7-Judge Bench of this Court in P. Ramachandra Rao v. State of Karnataka (2002 (4) SCC 578) affirmed the view taken in Abdul Rehman Antulay v. R.S. Nayak (1992 (1) SCC 225) and clarified confusion created by certain observations in 'Common Cause' a Registered Society v. Union of India (1996 (4) SCC 33), 'Common Cause' a Registered Society v. Union of India (1996 (6) SCC, 775), Raj Deo Sharma v. State of Bihar

(1998 (7) SCC 507) and Raj Deo Sharma (II) v. State of Bihar (1999 (7) SCC 604). It was observed that the decision in A.R. Antulay's case (supra) still holds the field and the guidelines laid down in said case are not exhaustive but only illustrative. They are not intended to operate as hard and fast rules or to be applied like a straitjacket formula. Their applicability would depend on the factual situations of each case. It is difficult to foresee all situations and no generalization can be made. It has also been held that it is neither advisable nor feasible nor judicially permissible to draw or prescribe an outer limit for conclusion of all criminal proceedings. Whenever there is any allegation of violation of right to speedy trial the Court has to perform by balancing the act by taking into consideration all attending circumstances and to decide whether the right to speedy trial has been denied in a given case. As noted above, one month after the order relating to investigation and lodging of FIR, a petition under Section 482 of Code was filed before the High Court.

9. It is interesting to note that while the High Court quashed the proceedings because of alleged delayed investigation, it permitted the authorities to take decision to continue the proceedings. Therefore, the first ground on which the High Court interfered cannot be maintained.

10. The other question relates to the alleged deficiency in authorization made by Superintendent of Police authorizing the Inspector to investigate the case. The High Court placed strong reliance on Bhajan Lal's case (supra), more particularly, in para 134. Though the High Court referred to certain decisions of this Court, the decision in State of M.P. and Ors. v. Ram Singh (2000 (5) SCC 88), was not followed. It is to be noted that in Ram Singh's case (supra) the view expressed in Bhajan Lal's case (supra) has been explained after referring to the relevant para.

11. The order passed by Superintendent of Police reads as follows:

"KARNATAKA LOKAYUKTA

NO: KLA/PW/SP/City.Dn./99-2000

Superintendent of Police
City Division,
M.S. Buildings, Dr. Ambedkar
Veedhi, Bangalore-560 001.
Dated: 12th June, 2000.

M E M 0

Sub: Possession of Disproportionate Assets
to the known source of income by
Sri. B. Srinivasa, Engineer-in-chief,
Rural Development Engineering Department-reg.

Ref: Report of Sri. M.D. Khalander Presently
working as police Inspector, Police Wing,
City Division, Karnataka Lokayukta.

I have gone through the report of Sri. Md. Khalander, presently working as Police Inspector, Police Wing City division, Karnataka Lokayukta, Bangalore relating to Inquiry report (IE) receipt of credible information that Sri. B. Srinivas at present working as Engineer-in-chief, Rural Development Engineering Department has acquired properties disproportionate to his known source of income to the extent of about Rs. 1,13,000,00/- and thereby committed offence U/s. 13 (12)(e) R/W. 13(2) of the P.C. Act, 1988.

From the materials placed before me with the application of my mind I am satisfied that a prima facie case is made against Sri B. Srinivas U/s 13(1)(e) r/w 13 (2) of the Prevention of Corruption Act, 1988.

Therefore by virtue of the power vested in me, S.G. Ramesh Superintendent of Police, Police Wing City Division, Karnataka Lokayukta, Bangalore, order under the provisions of S.C. 17 of the Prevention of corruption Act, 1988, Sri. M.D. Khalander Police Inspector, Police Wing City Dn. Karnataka Lokayukta Bangalore to register a case U/s. 13(1)(e) read with 13(2) of the P.C. Act, 1988 against Sri B Srinivas, Engineer-in-Chief, Rural Development Engineering Department, Bangalore and investigate the said case.

Further U/W.18 of the Prevention of Corruption Act, 1988, Sri. M.D. Khalander is authorised to inspect the Bankers books, so far as it relates to money on behalf of such person and take or cause to be taken certified copies of the relevant entries therefrom and the Bank concerned shall be bound to assist the Police Inspector, Police wing City Dn., Karnataka Lokayukta, Bangalore in the exercise of his powers under this section.

To:

M.D. Khalander
Police Inspector,
Police Wing, City Division,
Division,
Bangalore

Sd/-
Superintendent
of Police, City

Office of the Lokyukta
Bangalore."

12. In Ram Singh's case (supra) this Court indicated the position lucidly after referring to Bhajan Lal's case (supra) in para 14. The same reads as follows:

> "**14.** It may be noticed at this stage that a three-Judge Bench of this Court in *H.N. Rishbud* v. *State of Delhi (AIR 1955 SC 196)* had held that a defect or illegality in investigation, however serious, has no direct bearing on the competence or the procedure relating to cognizance or trial. Referring to the provisions of Sections 190, 193, 195 to 199 and 537 of the Code of Criminal Procedure (1898) in the context of an offence under the Prevention of Corruption Act, 1947, the Court held:
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> "A defect or illegality in investigation, however serious, has no direct bearing on the competence or the procedure relating to cognizance or trial. No doubt a police report which results from an investigation is provided in Section 190 Cr.P.C as the material on which cognizance is taken. But it cannot be maintained that a valid and legal police report is the foundation of the jurisdiction of the court to take cognizance. Section 190 Cr.P.C

is one out of a group of sections under the heading 'Conditions requisite for initiation of proceedings'. The language of this section is in marked contrast with that of the other sections of the group under the same heading, i.e., Sections 193 and 195 to 199.

These latter sections regulate the competence of the court and bar its jurisdiction in certain cases excepting in compliance therewith. But Section 190 does not. While no doubt, in one sense, clauses (*a*), (*b*) and (*c*) of Section 190(1) are conditions requisite for taking of cognizance, it is not possible to say that cognizance on an invalid police report is prohibited and is therefore a nullity. Such an invalid report may still fall either under clause (*a*) or (*b*) of Section 190(1), (whether it is the one or the other we need not pause to consider) and in any case cognizance so taken is only in the nature of error in a proceeding antecedent to the trial. To such a situation Section 537 CrPC which is in the following terms is attracted:

> 'Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a court of competent jurisdiction shall be reversed or altered on appeal or revision on account of any error, omission or irregularity in the complaint, summons, warrant, charge, proclamation, order, judgment or other proceedings before or during trial or in any inquiry or other proceedings under this Code, unless such error,

> omission or irregularity, has in fact occasioned a failure of justice.'

If, therefore, cognizance is in fact taken, on a police report vitiated by the breach of a mandatory provision relating to investigation, there can be no doubt that the result of the trial which follows it cannot be set aside unless the illegality in the investigation can be shown to have brought about a miscarriage of justice. That an illegality committed in the course of investigation does not affect the competence and the jurisdiction of the court for trial is well settled as appears from the cases in - '*Parbhu* v. *Emperor'(AIR 1944 PC (73)* and - '*Lumbhardar Zutshi* v. *R. (AIR 1950 PC 26).*"

It further held:

> "In our opinion, therefore, when such a breach is brought to the notice of the court at an early stage of the trial, the court will have to consider the nature and extent of the violation and pass appropriate orders for such reinvestigation as may be called for, wholly or partly, and by such officer as it considers appropriate with reference to the requirements of Section 5-A of the Act. It is in the light of the above considerations that the validity or otherwise of the objection as to the violation of Section 5(4) of the Act has to be decided and the course to

> be adopted in these proceedings, determined."

In *Bhajan Lal case (1992 Supp (1) SCC 335)* this Court had found on facts that the SP had passed the order mechanically and in a very casual manner regardless of the settled principles of law. The provisions of Section 17 of the Act had not been complied with. As earlier noticed the SP while authorising the SHO to investigate had made only an endorsement to the effect "Please register the case and investigate". The SP was shown to be not aware either of the allegations or the nature of the offences and the pressure of the workload requiring investigation by an Inspector. There is no denial of the fact that in cases against the respondents in these appeals, even in the absence of the authority of the SP the investigating officer was in law authorised to investigate the offence falling under Section 13 of the Act with the exception of one as is described under sub-section (1)(*e*) of the Act. After registration of the FIR the Superintendent of Police in the instant appeals is shown to be aware and conscious of the allegations made against the respondents, the FIR registered against them and pending investigations. The order passed by the SP in the case of Ram Singh on 12-12-1994 with respect to a crime registered in 1992 was to the effect:

> "In exercise of powers conferred by the provisions on me, under Section 17 of the Prevention of Corruption Act, 1988, I, P.K. Runwal,

> Superintendent of Police, Special Police Establishment, Division I, Lokayukta Karyalaya, Gwalior Division, Gwalior (M.P.), authorised Shri D.S. Rana, Inspector (SPE), Lak-Gwl (M.P.) to investigate Crime No. 103 of 1992 under Sections 13 (1)(*e*), 23(2) of the Prevention of Corruption Act, 1988 against Shri Ram Singh, DO, Excise, Batul (M.P.).”

Similar orders have been passed in the other two cases as well. The reasons for entrustment of investigation to the Inspector can be discerned from the order itself. The appellant State is, therefore, justified in submitting that the facts of *Bhajan Lal case* were distinguishable as in the instant case the Superintendent of Police appears to have applied his mind and passed the order authorising the investigation by an Inspector under the peculiar circumstances of the case. The reasons for entrustment of investigation were obvious. The High Court should not have liberally construed the provisions of the Act in favour of the accused resulting in closure of the trial of the serious charges made against the respondents in relation to commission of offences punishable under an Act legislated to curb the illegal and corrupt practices of the public officers. It is brought to our notice that under similar circumstances the High Court had quashed the investigation and consequent proceedings in a case registered against Shri Ram Babu Gupta against which Criminal Appeal No. 1754 of 1986 was filed in this Court which was allowed on 27-9-1986 by setting aside the order of the High Court with

> a direction to the trial court to proceed with the case in accordance with law and in the light of the observations made therein."

13. If one looks at the order passed, which formed the subject matter of challenge in Ram Singh's case (supra) it is crystal clear that the order passed in the present case by the Superintendent of Police is more elaborate and as rightly submitted by learned counsel for the appellant, the reasons are clearly discernible. Even otherwise, the effect of Section 19(3) of the Act relating to prejudice has been completely lost sight of by the High Court. The second reason indicated by the High Court to quash the proceedings also has no substance.

14. The inevitable conclusion is that the order passed by the High Court is indefensible and is set aside. However, it would be in the interest of justice if the trial is completed on the basis of the charge sheet filed as early as practicable preferably by the end of February, 2009.

15. The appeal is allowed.

……………………………………J.
(Dr. ARIJIT PASAYAT)

……………………………………J.
(Dr. MUKUNDAKAM SHARMA)

New Delhi,
August 18, 2008