

IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH

DATED THIS THE 22ND DAY OF SEPTEMBER 2021

BEFORE

THE HON'BLE MR. JUSTICE SHIVASHANKAR AMARANNAVAR

W.P.NO.115181/2019(GM-RES)

BETWEEN:

KIRAN KUMAR
S/O SHANKARAPPA GURIKAR
AGE: 30 YEARS, OCC: OVERSEER (SUPERVISOR)
IN HESCOM, KERUR SECTION, TQ: BADAMI,
DIST: BAGALKOTE-587101.

...PETITIONER

(BY SRI. F V PATIL, ADV AND SRI. NANDISH PATIL, ADV.)

AND:

- 1 . THE SUPERINTENDENT OF POLICE
ANTI CORRUPTION BUREAU,
POLICE STATION, BAGALKOTE,
TQ AND DIST: BAGALKOTE-587101.
- 2 . THE DEPUTY SUPERINTENDENT OF POLICE
ANTI CORRUPTION BUREAU,
POLICE STATION, BAGALKOTE,
TQ AND DIST: BAGALKOTE-587101.

..RESPONDENTS

(BY SRI. SANTOSH B MALAGOUDAR, ADV.)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO (1) ISSUE WRIT IN THE NATURE OF CERTIORARI TO QUASH THE IMPUGNED COMPLAINT DATED 15.10.2019 VIDE ANNEXURE-B AND (2) QUASH THE IMPUGNED FIR DATED 15.10.2019 IN CRIME NO.10/2019 VIDE ANNEXURE-C, REGISTERED BY THE RESPONDENT NO.2 AND ETC.,

THIS CRIMINAL PETITION IS COMING ON FOR ORDERS, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

This petition is filed seeking issue of writ in the nature of certiorari to quash the complaint and FIR dated 15.10.2019 registered by respondent No.2 (Annexure-B and C). The petitioner is arrayed as accused No.2 in the FIR-Annexure-C.

2. The brief facts of the case are that, the petitioner was working as a Supervisor (overseer) in Kerur Section Office. One person by name G.R. Aralimatti filed complaint on 15.10.2019 in the office of the second respondent alleging that the petitioner and one Gopal Pujari, Section Officer and Hanumant, Lineman on whom a complaint has been lodged

and action should be taken against the said persons. The said complaint is at Annexure-B. On the basis of the said complaint, FIR came to be registered against the petitioner and two other persons indicated in the FIR arraying the petitioner as accused No.2. The said FIR came to be registered for offence under Section 7(b) of Prevention of Corruption Act, 1988. In the said complaint, it is alleged that one Gopal Pujari, Section Officer and the Supervisor of Kerur Section Office demanded bribe from the complainant for supplying transformer, which is to be supplied free of cost.

3. Heard the learned counsel for the petitioner and Learned Special Public Prosecutor for ACB for respondent Nos.1 and 2.

4. Learned counsel for the petitioner would contend that the petitioner was not in the office on the alleged day of trap i.e., 15.10.2019 and he was on casual leave. It is his further contention that the petitioner has not demanded and not accepted the bribe amount. It is his further contention that no work of the complainant was pending with the petitioner and supplying of transformer does not come under his job chart.

5. Learned Special Public Prosecutor for respondents-ACB would contend that the averments of the complaint and the conversation between the complainant and this petitioner recorded in the mobile will clearly show the demand of bribe by this petitioner. It is his further submission that the plea of this petitioner that he was not in the office at the time of trap

and he was on casual leave and it is a plea of alibi and it is a defence which requires to be considered at the trial. He further contended that, the powers under Section 482 of Cr.P.C. is to be exercised only in respect of interlocutory orders to give effect to an order passed under Criminal Procedure Code or to prevent abuse of process of any Court and resort to Articles 226 & 227 of Constitution, would be permissible perhaps only in the most extraordinary case and on that point, he placed reliance on the decision of the Hon'ble Apex Court in the case of ***Asian Resurfacing of Road Agency Private Limited and another Vs. Central Bureau of Investigation***, reported in ***(2018) 16 SCC 299***, wherein, it is observed thus;

"22. It was observed that power under Section 482 Cr.P.C. could be

exercised only in the rarest of rare cases and not otherwise;

"38. The Criminal Procedure Code is undoubtedly a complete code in itself. As has already been discussed by us, the discretionary jurisdiction under Section 397(2) Cr.P.C., is to be exercised only in respect of final orders and intermediate orders. The power under Section 482 of Cr.P.C. is to be exercised only in respect of interlocutory orders to give effect to an order passed under the Criminal Procedure Code or to prevent abuse of the process of any court or otherwise to serve the ends of justice. As indicated above, this power has to be exercised only in the rarest of rare cases and not otherwise. If that is the position, and we are of the view that it is so, resort to Articles 226 and 227 of the Constitution would be permissible perhaps only in the most extraordinary case. To invoke the constitutional jurisdiction of the High Court when the Criminal Procedure Code restricts it in the interest of a fair and expeditious trial for the benefit of the accused person, we find it difficult to accept the proposition that since Articles

226 and 227 of the Constitution are available to an accused person, these provisions should be resorted to in cases that are not the rarest of rare but for trifling issues."

6. He further contended that, at the stage of framing of charge and/or considering the discharge application mini trial is not permissible. Even as per Section 7 of P.C.Act, even an attempt constitutes an offence. On that point, he placed reliance on the decision of the Apex Court, in the case of ***State of Rajasthan Vs. Ashok Kumar Kashyap***, reported in **2021 SAR (Cri.) 801**, wherein, it is observed thus;

"11. Having considered the reasoning given by the High Court and the grounds which are weighed with the High Court while discharging the accused, we are of the opinion that the High Court has exceeded in its jurisdiction in exercise of the revisional jurisdiction and has acted beyond the scope of Section 227/239 Cr.P.C. While discharging the

accused, the High Court has gone into the merits of the case and has considered whether on the basis of the material on record, the accused is likely to be convicted or not. For the aforesaid, the High Court has considered in detail the transcript of the conversation between the complainant and the accused which exercise at this stage to consider the discharge application and/or framing of the charge is not permissible at all. As rightly observed and held by the learned Special Judge at the stage of framing of the charge, it has to be seen whether or not a prima facie case is made out and the defence of the accused is not to be considered. After considering the material on record including the transcript of the conversation between the complainant and the accused, the learned Special Judge having found that there is a prima facie case of the alleged offence under Section 7 of the PC Act, framed the charge against the accused for the said offence. The High Court materially erred in negating the exercise of considering the transcript in detail and in considering whether on the basis of the material on record the accused is likely to be convicted for the offence under Section 7 of the

PC Act or not. As observed hereinabove, the High Court was required to consider whether a prima facie case has been made out or not and whether the accused is required to be further tried or not. At the stage of framing of the charge and/or considering the discharge application, the mini trial is not permissible. At this stage, it is to be noted that even as per Section 7 of the PC Act, even an attempt constitutes an offence. Therefore, the High Court has erred and/or exceeded in virtually holding a mini trial at the stage of discharge application."

7. It is his further submission that, whether any work of the complainant is pending with the petitioner, whether he demanded and accepted the bribe or not, are the matters of investigation. It is his further submission that, the investigation is to be undertaken, which is stayed by this Court.

8. In the averments of the complaint there is an averment that this petitioner has demanded

Rs.18,000/- for supply of Transformer. The conversation between the petitioner and the complainant regarding balance bribe of Rs.5,000/- which took place on 13.10.2019 is recorded in the mobile phone of the complainant. A trap was laid on 15.10.2019 and accused No.3 Hanumanth, Lineman, has received balance bribe of Rs.5,000/- and caught red-handed and Rs.5,000/- were found in his pant's chor-pocket. The learned Special Prosecutor for ACB has brought to the notice of this Court, the statement of the accused No.3 given by him in writing, wherein, it is mentioned that he has received Rs.5,000/- on instructions of this petitioner. Therefore, the above aspects show that there is a demand by this petitioner and acceptance of the bribe amount through accused No.3. What are all the duties assigned to this

petitioner and whether the work of the complainant is pending with the petitioner, are the matters of investigation. The absence of the petitioner on the date of complaint and trap in the office and his plea that, he was on casual leave and he was not in station are the matters of defence/plea of alibi which have to be considered at the time of trial. Considering all these aspects, the petitioner has not made out a case for quashing the complaint and FIR. Hence, the petition is dismissed.

Sd/-
JUDGE

MNS/Para No.1 to 5
SVH/