

**IN THE COURT OF THE PRL.SESIONS JUDGE,
KODAGU AT MADIKERI.**

PRESENT

SRI. MALLIKARJUNAGOUD, B.A.,LL.B., (SPL),,
PRL.DISTRICT AND SESSIONS JUDGE,
KODAGU, MADIKERI.

Dated, this the 26th day of August, 2020

Spl.Case (Corpn) NO.: 61/2016

COMPLAINANT:-

The State of Karnataka.
Represented by P.I,
Karnataka Lokayuktha P.S,
Madikeri, Kodagu District.

(By Spl. Public Prosecutor,
Madikeri.)

-VS-

ACCUSED:-

Sri. N.K.Rangaswamy, S/o late
N.B.Kalegowda, Aged 58 years,
Earlier working as Police
Inspector, Cubbon Park Traffic
P.S, Bengaluru City,

Now working as Dy.S.P, Rajya
Gupta Varthe, (Central
Intelligence Bureau),
Bengaluru, Residing at
No.1072, 7th Sector, 5th Main
road, 20th cross, H.S.R.Layout,
Bengaluru.

(By Sri. C.V.Sudheendra and
M.N.Shashikanth,
Advocates)

P.T.O.

ORDER

In this case the counsel for the accused filed an application u/Sec. 17-A of Prevention of Corruption Act, 2018, requesting the Court to discharge the accused for the offences p/u/Sec. 13(1)(e) r/w Sec. 13(2) of Prevention of Corruption Act, 2018.

2. The averments made in the petition are that:-

The Lokayuktha police have registered a false case against the accused for the offences p/u/Secs. 13(1)(e) r/w Sec. 13(2) of PC Act, 1988, on the false Source Report generated by the Police Inspector Sri.S.Raju. The Source Report generated by the said Police Inspector with regard to the properties of the accused is incorrect. During the investigation the I.O has not considered the schedule submitted by the accused with respect to the properties considered by the I.O as the Benami properties of the accused, so the said final report is also illegal. That in the year 2018, the earlier P.C Act is amended. In that Act, Sec. 13(1)(e) is deleted and same is replaced in Sec. 13(1)(b). On account of repeal of the said provision, the accused shall not be prosecuted for the offences u/Sec. 13(1)(e) of PC Act, 1988. As per the amended Act of 2018, Sec. 13(1)(b) states that "Intentionally enriches himself illicitly during the period of his office", while explanation to the said Section 13(1)(b) raising a statutory presumption with

reproduction of penal section, while such presumption rests on the satisfaction of the investigation officer is too dangerous and goes to the very root of fair trial. Therefore, it is controlled by Sect. 17-A of the new Act raising a presumption that it should rest with the Court based on the facts that illegally exist, while the opinion of the I.O should not make the difference as the same is contrary to Sections 24 to 28 of the Indian Evidence Act besides Article 20(3) and 21 of the Indian Constitution. As per Sec. 24 to 28 of Indian Evidence Act, the Police Officer shall not use the statements of the accused against himself as the prosecution has to prove its case against the accused beyond all reasonable doubts.

3. The Amendment to the 2018 Prevention of Corruption Act, 1988 is brought into force from 26/07/2018. The prosecution u/Sec. 13(1)(e) becomes untenable, illegal and without jurisdiction to prosecute the accused for the above said offence. The amended Section 13(1)(b) of the said Act is substituted to Section 13(1)(e) by repealing the same. On account of the same, the accused shall not prosecuted U/Sec. 13(1)(e) of the Act without it being controlled by Section 17-A as stipulated U/Sec.30 of the Prevention of Corruption Act, 1988.

4. As per Section 6 of General Clauses Act, the amendment brought to the PC Act, 1988 renders applicable

to the pending cases. As per that clause, it states that “unless a different intention appears, the repeal shall not affect the pending cases”. In view of all these reasons and in view of other reasons stated in the petition, the prosecution of this accused for the offence u/Sec. 13(1)(e) of PC Act, 1988 becomes non est. Hence, he requested the Court to consider this application and to discharge the accused on this ground also.

5. The said application is opposed by the learned Spl.Public Prosecutor by filing objection contending that the averments made in the petition are false, frivolous and vexatious one. That the ingredients of Section 17-A of amended PC Act, 2018 are not applicable to the pending case and this accused has already filed his application for discharge on 18/03/2017. The charge sheet against the accused is filed on 21/09/2016 and amended PC Act is came into force on 26/07/2018 i.e., subsequent to the submitting of charge sheet, so the provisions of Sec.6 of General Clauses Act is not applicable to the pending cases. That Sec.6 of General Clauses Act reads that “where this Act or any or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made then unless a different intention appears the repeal shall not”. Sec. 6(a) to (e) of the General Clauses Act reads as follows:-

“(a) revive anything not in force or existing at the time at which the appeal takes effect.

(b) Effect the previous operation of any enactment so repealed or anything duly done or suffered there under or

(c) Liability acquired, accrued or incurred made any enactment so repealed or

(d) Effect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed or

(e) Effect any investigation, legal proceedings or remedy in respect of any such right, privilege obligation, liability, penalty, forfeiture or punishment as aforesaid and any such investigation, legal proceedings or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if the repealing act or regulation had not been passed”.

6. In view of the same, the present application filed by the accused is not maintainable. Since, the charge sheet against the accused is filed much earlier to the introduction of the amended PC Act, so the present application filed by the accused for his discharge U/Sec. 17-A of PC Act, 2018 is not maintainable. In view of these reasons and other reasons stated in the objection petition, the learned Spl.Public Prosecutor has requested the Court to dismiss the application.

7. Heard Arguments.

8. After hearing arguments, after perusal of the petition, objections of the Public Prosecutor and submissions of both the sides, the points arise for consideration of this Court are:

1. Whether the petitioner proves that, he is entitled for discharge on account of non obtaining of previous approval of the appointing authority of the accused by Lokayuktha Police for conducting raid as contended U/Sec. 17-A of Amended PC Act, 2018?

2. What Order?

9. My findings on the above points are as under:-

Point No.1: In the Negative.

Point No.2: As per final Order,
the following....

REASONS

10. **POINT NO.1:-** In support of the case of the accused, the learned counsel for the accused submitted before the Court stating that, in view of the amendment in the P.C Act 2018 after 26/07/2018, the prosecution of a public servant for the offence u/Sec. 13(1)(e) r/w Sec. 13(2) is not maintainable as the said provision is repealed. Further he has contended that in view of Sec. 17-A of P.C Act, previous approval from the competent authority is necessary for conducting raid on the properties of the accused as stated u/Sec. 17-A of PC Act. No approval is obtained by the I.O for raid on the properties of accused, so on this count also the accused is entitle for discharge.

11. Contrary to this, the learned Spl.Public Prosecutor submitted before the Court stating that the said contentions are not maintainable, because even if Sec. 13(1)(e) is repealed the said Act is p/u/Sec. 13(1)(b) of Amended Act. The counsel for the accused cannot take the benefit of Sec. 17-A of PC Act as obtaining of no previous approval is necessary. The said amendment is introduced by way of insertion and such amendment will take perspective effect, but not retrospective effect.

12. After considering the submissions of both the sides and after going through the provisions of Sec.13 of PC Act 2018, it is clear that though the Sec.13(1)(e) is repealed, same is introduced in 13(1)(b) by making some modifications and it reads as follows:-

“13. Criminal misconduct by a public servant

[(1) A public servant is said to commit the offence of criminal misconduct -

(b) if he intentionally enriches himself illicitly during the period of his offence.

Explanation 1: A person shall be presumed to have intentionally enriched himself illicitly if he or any person of his behalf, is in possession of or has, at any time during the period of his office, been in possession of pecuniary resources or property disproportionate to his known sources of income which the public servant cannot satisfactorily account for.

Explanation 2: The expression ‘known sources of income’ means income received from any lawful sources]”.

13. By looking into the same, it indicates that, if a public servant found in possession of illegal gratification which is disproportionate to his known source of income, then that act of public servant amount to

criminal misconduct. Here in this case also, by looking into the alleged benami properties of the accused standing in the name of family members of accused and in the name of his sister-in-law, the prosecution held that, same are the benami properties purchased by accused out of his unknown source of income, so he cannot take the benefit of amendment of that Act for his discharge.

14. It is true that in the year 2018 Sec. 17-A of PC Act is introduced by way of insertion and amendment to the P.C Act. Said Section reads as follows:-

“17A. Enquiry or Inquiry or Investigation of offences relatable to recommendations made or decision taken by public servant in discharge or official functions or duties.

(1) No police officer shall conduct any enquiry or inquiry or investigation into any offence alleged to have been committed by a public servant under this Act, where the alleged offence is relatable to any recommendation made or decision taken by such public servant in discharge of his official functions or duties, without the previous approval.

15. By looking into the definition of that Section, it is clear that previous approval of the concerned authority is necessary for enquiry or inquiry or investigation of a public servant, only with regard to any recommendations made or decisions taken by such public servant in discharge of his official functions or duties. Here

in this case, acquiring of properties in the name of his wife and sister-in-law by way of benami do not come within the purview of any recommendation or decision taken by him while discharging his duty as a public servant. Since it is the contention of prosecution stating that properties possessed by the accused in his name, in the name of his family members and his sister-in-law are his benami properties, so conducting enquiry or inquiry or investigation against him by Lokayuktha police, no previous approval is necessary as stated in the same. In view of all these reasons, this Court answered Point No.1 in the '**Negative**'.

16. **POINT NO.2:-** In view of all these reasons, this Court proceed to pass the following.....

ORDER

The application filed by counsel for the accused u/Sec. 17-A of Prevention of Corruption Act, 2018 for discharge of accused is dismissed.

Dictated to the Judgment Writer, transcript revised, then corrected and pronounced by me in Open Court on this the **26nd day of August, 2020.**

Sd/xxx
(MALLIKARJUNAGOUD)
PRL. SESSIONS JUDGE,
KODAGU, MADIKERI.

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