IN THE COURT OF THE PRINCIPAL SESSIONS JUDGE

AT; KOLAR

DATED THIS THE 20H DAY OF AUGUST 2018

PRESENT:
SHRI NABIRASOOL S MAMADAPUR
B.Com. LL.M–(PGDIPRL-NLSIU-Bangalore)
PGD-Cyber Law & PGD-Corp Law (ASCL-PUNE)
PGD-Forensic Science (IFS-New Delhi-PUNE)
PRL DISTRICT & SESSIONS JUDGE- @ KOLAR

SPECIAL CASE (CORRUPTION) NO: 9/2014

ACCUSED: Smt. Farooq Sulthana, W/o Late Syed Azar Pasha, A/a. 57 yrs, In-charge of Taluk Social Welfare Officer, Kolar. R/at. New India Arched No.1/1, & 23,, 1st Floor, GF-1A, 4th Main Road, 2nd Cross, Rahamathnagar, R.T.Nagar Post, Bengaluru-32.

(REPRESENTED BY SRI. M.H., ADVOCATE)

- VS –

COMPLAINANT: State by Lokayuktha Police, Kolar

(REPRESENTED BY SPECIAL PUBLIC PROSECUTOR)

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ORDER ON THE APPLICATION U/S 227 CR.P.C, READ WITH SECTION 4 & 17 OF PREVENTION OF CORRUPTION ACT, 1988 FOR DISCHARGE OF ACCUSED NO.1

The accused No.1 Farooq Sulthana has filed an application under Section 227 of Cr.P.C, read with Section 4 and 17 of Prevention of Corruption Act, 1988 to her discharge or to drop proceedings against her.

02. In the application, the accused No.1 pleads that, the police have registered a case against her and after investigation submitted charge sheet for the offences 13(1)(c), 13(2) of Prevention of Corruption Act, 1988 read with Section U/s.120-B, 465, 468, 471, 409, 420 of IPC. The accused is innocent of the alleged offences and a false case has been registered against her. The charge sheet is filed for the offences punishable under Section 120-B, 465, 468, 471, 409, 420 of IPC are triable by the court of Magistrate and the offences under Section 13(1)(c), 13(2) of Prevention of Corruption Act, 1988 are triable by the Special Judge constituted U/s.3 of the Prevention of Corruption Act. Section 4 of the Prevention of Corruption Act provides the case to be tried by the Special Judge. The crucial issue for consideration as to whether the offences under the provisions of IPC are independent. The provisions of IPC have no connection whatsoever with the provisions of the Prevention of Corruption Act. As such, the said offences could not be tried together as they are independent, distinct and separate offences. The Police Officer attached to the Prevention of Corruption Act is competent to investigate into the matter. Section 17 of the Prevention of Corruption Act permits the Police Officer to investigate the offence punishable only under the Prevention of Corruption Act. In order to investigate the offences other than one from the Prevention of Corruption Act, the Police Officer shall obtain permission of the Special Judge, which is mandate. In this case, such a procedure has not been followed. In view of this fact, the very investigation conducted by the police is without jurisdiction and the entire proceedings are become null and void and the same has to be dropped. The investigation into the offences under the provisions of Indian Penal Code by the Inspector of Lokayuktha who is not authorised, but being an unauthorized person investigated the matter, submitted the charge sheet and on the basis of which, cognizance has been taken by the court. There are absolutely no materials to implicate accused No.1 for the alleged offences and the proceedings before this court is noting but an abuse of process of law. Therefore, accused No.1 has to be discharged or the proceedings against her shall be dropped.

03. The learned Special Public Prosecutor has filed his objections denying all the averments in the application. In the objections, it is pleaded that the special court empowered to try the offences under the provisions of IPC along with Prevention of Corruption Act under Sub-section (3) of Section 4 empowers a special Judge to try any offence other than an offence specified in Section with which the accused may, under the Code of Criminal Procedure be charged at the same trial. When the offences under provision of the IPC and Prevention of Corruption Act are in one series then under Section 220 of Cr.P.C., if one series of acts so connected together as to form the same transactions, more offences then one are committed by same person, he may be charged with and tried at one trial for every such offence and under Section 223 of Cr.P.C., persons accused of the same offence committed in the course of the same transaction, as well as persons accused of an offence and persons accused of abetment, or of an attempt to commit such an offence may be charged and tried together. Thus, in the facts and circumstances of the case, the learned Special Judge has jurisdiction to try the offences of IPC together with the offences under the Prevention of Corruption Act. It is not mandatory to take permission from the court for investigation of the offences falling under Section 220 of Cr.P.C. and under Section 223 of Cr.P.C., the Investigating Officer is authorized to investigate under Sub-section 15 of Section 5 of the Prevention of Corruption Act. Under Section 4 of the Prevention of Corruption Act, the Special Judge empowered to take cognizance of offences investigated by the Lokayuktha Police under the Prevention of Corruption Act read with Indian Penal Code. Therefore, there is absolute evidence to implicate offences under provisions of IPC along with Prevention of Corruption Act against accused No.1 Farooq Sulthana. The application filed on behalf of the accused No.1 under Section 227 of Cr.P.C, read with Section 4 and 17 of Prevention of Corruption Act, 1988 is not maintainable. Therefore, the same is liable to be dismissed.

04. Heard arguments. The learned counsel for the accused No.1 has relied on the decision reported in **2016**

CRIMINAL LAW JOURNAL 482 (CHRISTY FRIED GRAM FACTORY, BENGALURU AND ANOTHER VS. STATE OF KARNATAKA AND OTHERS) with reference to preliminary investigation before registering FIR, whereas the learned Special Public Prosecutor has relied on the decision reported in **2017 (1) KCCR 4 (MAHENDRA MISHRA AND OTHERS VS. STATE OF KARNATAKA)** with reference to discharge of accused and similarly relied on the decisions of Hon'ble Apex Court in **CRL.A.594/2015 BETWEEN YUNUS ZIA VS. STATE OF KARNATAKA & ANOTHER** and **CRL.A.NO.1365/2014 BETWEEN DINESH TIWARI VS. STATE OF UTTAR PRADESH**.

05. The only point that arose for my consideration is:

> Whether the application filed on behalf of the accused No.1 under Section 227 of Cr.P.C read with Section 4 and 17 of Prevention of Corruption Act, 1988 to discharge her or to drop proceedings against her is maintainable?

06. My answer to the above point is in the **NEGATIVE** for the following:

REASONS

07. Perused the records. This is a charge sheet filed by Lokayuktha Police against the accused for the offences punishable under Section 13(1)(c), 13(2) of Prevention of Corruption Act, 1988 read with Section U/s.120-B, 465, 468, 471, 409, 420 of IPC. After receipt of charge sheet, the police papers were furnished to the accused. At the stage of hearing charge, this application is filed. On perusal of discharge application filed on behalf of the accused, two grounds have been raised in regard to investigation of offences pertaining to Indian Penal Code by the Lokayuktha Inspection and it is the specific case of the learned counsel for the accused that this court has no jurisdiction to try the offences of Indian Penal Code along with the provisions of Prevention of Corruption Act.

08. In this regard, the learned Special P.P., has relied on the decision reported in **2017 (1) KCCR 4 (MAHENDRA MISHRA AND OTHERS VS. STATE OF KARNATAKA BY ASST. COMMISSIONER OF POLICE, BENGALURU AND ANOTHER)** wherein an application was filed under Section 239 and 482 for discharge of accused from the offences punishable U/s.12 of Prevention of Corruption Act, 1988 and Sections 120-B, 114 and 419 read with Section 34 of Indian Penal Code. Similar question was arised in this case also and the Hon'ble High Court of Karnataka has held as under:

> "Held, as regards the question whether Section 12 of the PC Act could be independently invoked against petitioners No.2 and 3, alleging that they had instigated or abetted the complainant, a public servant, to agree to receive illegal gratification and whether they could be prosecuted for an offence punishable under the said section is concerned. It is clear that the provision is intended to prosecute and punish a bribe give, who instigates a public servant to receive illegal gratification irrespective of whether the public servant receives or agrees to receive such illegal gratification or not and whether an offence under Section 7 of the PC Act was commode or not. It would then follow hat it is possible to prosecute petitioners No.2 and 3. The present petitioners would have to await the completion of the trial, in order that the question where there was any criminal intent or not on their part to be determined. Insofar as certain other procedural

lapses which are sought to be highlighted, the same could be raised at the trial to strengthen the defence of the accused on merits and cannot be grounds on which the impugned order could be set aside."

In the present case also, the I.O., has investigated the offences punishable under the provisions of IPC along with the provisions of Prevention of Corruption Act. The arguments advanced by the learned counsel for the accused are not supported by any legal proposition. Therefore these arguments are not sustainable.

09. Further the learned counsel for the accused has relied upon a decision reported in **2016 CRIMINAL LAW JOURNAL 482 (CHRISTY FRIED GRAM FACTORY, BENGALURU AND ANOTHER VS. STATE OF KARNATAKA AND OTHERS)** wherein the Hon'ble High Court of Karnataka has observed that the prosecution is not justified in conducting investigation before registration of FIR in the guise of preliminary enquiry and investigation for a period of about 18 months is beyond the 7 days period said to be permissible. Delay in lodging the FIR loses the advantage of spontaneity, danger creeps in the introduction of coloured version, exaggerated account or concocted story as a result of large number of consultation/deliberations. It is specifically held that the investigation and primary enquiry before registration of FIR is not permissible and the prosecution cannot take shelter under Sections 460, 461 to save such proceedings and it is vehemently argued on behalf of the learned counsel for the accused that in the present case, the Lokayuktha Officer has made preliminary investigation before registering the FIR. Therefore, the accused is entitled for discharge.

10. At this stage, I refer the latest decision of Hon'ble Apex Court reported in **2014 (2) SCC 1 (LALITHAKUMARI VS. STATE OF U.P. AND OTHERS)** wherein the Hon'ble Apex Court while dealing with the power of incharge of a police station with respect to registration of FIR when he received information disclosing a cognizable offence has held that: "The registration of FIR is mandatory under S. 154 of Cr.P.C., if the information discloses commission of a cognizable offence and no preliminary enquiry is permissible in such a situation. Such a preliminary enquiry may be conducted only when the information does not disclose a cognizable offence but indicates the Officer for an enquiry and when after such enquiry, commission of such cognizable offence is disclosed, FIR must be registered. Nothing has been laid down by the Hon'ble Apex Court that at the stage of registration of FIR or an enquiry to ascertain commission of cognizable offence, the accused would have a right to hear and would have locus-standi to challenge the registration of FIR". In the present case, the I.O., has made a preliminary enquiry before registering FIR. So I am of the view that the ground urged on behalf of the accused that without registering FIR, the primary enquiry made by the I.O., is not in accordance with law cannot be accepted and on this ground alone, accused cannot be discharged.

11. In this regard, the learned Special P.P., has relied on the judgment of the Hon'ble Apex Court in **CRIMINAL APPEAL NO.594/2015 (YUNUS ZIA VS. STATE OF KARNATAKA & ANOTHER)** and the same has been reported in **2015 (7) SCC 327** wherein the Hon'ble Apex Court has held as:

> "Criminal Procedure Code, 1973 –Ss. 2(d), 154 and 482 – Power under S.2(d) –Exercise of –Scope –Power of Lokayuktha Police/Inspector of Police on deputation to

Lokayuktha attached to Lokayuktha Police station, to act suo motu and register complaint/cognizable offence against any person, based on reports published in newspapers against that person, warranting police investigation, dehors the Lokayuktha Act –Availability of –Power as Inspector of Police to act dehors the Lokayuktha Act and to act under CrPC/IPC/PC act, etc., held, not denuded by deputation to Lokayuktha as he remained attached to the State-Registration of complaint/FIR against person concerned (appellant herein) under IPC/PC Act, without following procedure contemplated under S.9 of Karnataka Lokayuktha Act, held, proper –High Court, held, rightly refused to quash such proceedings under S.482 Cr.PC."

12. Further the learned Special P.P., has relied on another decision reported in **2014 (8) SCALE 427 (DINESH TIWARI VS. STATE OF UTTAR PRADESH)** wherein the Hon'ble Apex Court discussing the provisions of Sections 227 and 228 has held that

"From Sub-section (1) of Section 2278, it is cleat that after such consideration and hearing, as given under Section 227, if Judge forms an opinion that there is a ground for presuming that the accused has committed an offence, Judge may frame the charge(s).

From Section 228 it is clear that no separate hearing is required to be given for framing the charge if the accused is not discharged upon consideration of the record of the case and documents and after hearing the submissions under Section 227.

10. Relative scope of Sections 227 and 228 Cr.P.C. was noticed and considered by this Court in Amit Kapoor v. Ramesh Chander and another, (2012) 9 SCC 460. This Court held as follows:

17. Framing of a charge is an exercise of jurisdiction by the trial court in terms of Section 228 of the Code, unless the accused is discharged under Section 227 of the Code. Under both these provisions, the court is required to consider the "record of the case" and documents submitted therewith and, after hearing the parties, may either discharge the accused or where it appears to the court and in its opinion there is ground for presuming that the accused has committed an offence, it shall frame the charge. Once the facts and ingredients of the section exists, then the court would be right in presuming that

there is ground to proceed against the accused and frame the charge accordingly. This presumption is not a presumption of law as such. The satisfaction of the court in relation to the existence of constituents of an offence and the facts leading to that offence is a sine qua non for exercise of such jurisdiction. It may even be weaker than a prima facie case. There is a fine distinction between the language of Sections 227 and 228 of the Code. Section 227 is the expression of a definite opinion and judgment of the Court while Section 228 is tentative. Thus, to say that at the stage of framing of charge, the Court should form an opinion that the accused is certainly guilty of committing an offence, is an approach which is impermissible in terms of Section 228 of the Code.

19. At the initial stage of framing of a charge, the court is concerned not with proof but with a strong suspicion that the accused has committed an offence, which, if put to trial, could prove him guilty. All that the court has to see is that the material on record and the facts would be compatible with the innocence of the accused or not. The final test of guilt is not to be applied at that stage. We may refer to the well-settled law laid down by this Court in State of Bihar v. Ramesh Singh: (SCC pp. 41- 42, para 4)"

In view of the legal propositions referred above, I am of the definite view that the Police Officer attached to the Prevention of Corruption Act is competent to investigate into the matter.

13. The learned counsel for the accused has also raised another ground that permission of Special Judge is required for investigation of offences under Indian Penal Code. It is to be noted that once the accused has been charge sheeted and cognizance has been taken by the court, any illegality attached to the investigation, that would not be sufficient to discharge the accused and that can be considered only during the course of the trial. Whether the same has caused any prejudice to the accused, I am of the view that if the charge sheet in its entirety is taken into consideration, there are ample reasons to proceed against the accused. Merely on the ground of illegality or irregularity committed by the I.O., that cannot be considered for discharge of the accused and the same can be considered only after conclusion of the trial.

14. Section 239, CRPC states when accused shall be discharged. - (1) If, upon considering the police report and the documents sent with it under Section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing. The Ingredients for Discharge are, the Court will have to consider the Police Report and the Charge sheet (F.I.R and Final Case Report) as submitted to it by the Police under Section 173. Further the Magistrate may examine the Accused if he deems fit. Thereafter both the Prosecution and the Accused Parties versions would be heard Charge against the accused to be groundless- There should not be in existence an iota of evidence against the accused. The Court also has to satisfy itself that there is no prima facie (on the face of it) case against the accused. Then the Accused shall be discharged

15. Indeed the documents must be perused by the Court. It is further pertinent to mention that at the stage of framing of charges, the prosecution evidence does not commence, therefore the Magistrate has to generally consider the materials as placed before it by the Investigating Police Officer. To put it differently, if the court were to think that the accused might have committed the offence it can frame the charge, though for conviction the conclusion is required to be that the accused has committed the offence. It is apparent that at the stage of framing of a charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution have to be accepted as true at that stage. The crystallized judicial view is that the Court cannot conduct a deep roving enquiry into the evidence at this stage. Law is well settled with regard to the scope of Section 227 and 228 of the Criminal Procedure Code, the following principles emerge from the catena of decisions of the Hon'ble Apex Court:

> **(i)** The Judge while considering the question of framing the charges Under Section 227 of the Code of Criminal Procedure has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case

(ii) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial.

(iii) The Court cannot act merely as a Post Office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the Court could form an opinion that the accused might have committed offence; it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubtthat the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the Court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the Court is required to evaluate the material and documents on record with a view to find out if the facts emerging there from taken at their face value discloses the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal."

The Hon'ble Apex Court in the decision reported **2012 (9) SCC 460 (AMIT KAPOOR VS. RAMESHCHANDAR & ANOTHER)** wherein it is observed that "Section 227 and 228 CRPC stage is not concerned with proof and merely strong suspicion that accused has committed offence. Final test of guilt is not to be applied at stage of framing of charge." The ground urged on behalf of the accused that the I.O., has not taken permission of the Special Judge to investigate the offence pertaining to IPC can be considered only after conclusion of the trial of the case. At this stage, there are sufficient materials to frame the charges against the accused. Therefore, I gave my finding to the above point in the **NEGATIVE** and proceed to pass the following:

O R D E R

The application filed on behalf of accused No.1 Farooq Sulthana under Section 227 of Cr.P.C., read with Section 4 and 17 of Prevention of Corruption Act, 1988 to discharge her or to drop the proceedings is hereby rejected.

(Dictated to the Judgment Writer directly on computer, print out taken by her, corrected and then pronounced by me in the open court on this the **20TH DAY OF AUGUST 2018**)

(NABIRASOOL MAMADAPUR)
PRINCIPAL DISTRICT & SESSIONS JUDGE
KOLAR

Ms./*