IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 16th DAY OF AUGUST 2023

BEFORE

THE HON'BLE MR JUSTICE M.NAGAPRASANNA

CRIMINAL PETITION NO. 103443 OF 2022

BETWEEN:

DR. KALLAPPA

,

... PETITIONER

(BY SRI. GURUDAS KHANNUR, SR. COUNSEL FOR
SRI. A.S. PATIL, ADVOCATE)

AND:

THE DEPUTY SUPERINTENDENT OF POLICE,
KARNATAKA LOKAYUKTH , DHARWAD
NOW R/BY THE STATE OF KARNATAKA,
R/BY ITS SPECIAL PUBLIC PROSECUTOR,
DEPUTY SUPERINTENDENT OF POLICE,
KARNATAKA LOKAYUKTA,
DHARWAD-580001.

... RESPONDENTS

(BY SRI. ANIL KALE, ADVOCATE)

THIS CRIMINAL PETITION IS FILED U/S 482 OF CR.P.C., SEEKING TO QUASH THE IMPUGNED FIR DATED 11.06.2019 REGISTERED IN CRIME NO.10/2019 BY RESPONDENT POLICE AND CONSEQUENTIAL PROCEEDINGS PENDING ON THE FILE OF IIIRD ADDITIONAL DISTRICT AND SESSIONS JUDGE AND SPECIAL JUDGE,

DHARWAD FOR THE OFFENCES PUNISHABLE U/S 13(b) OF PREVENTION OF CORRUPTION ACT, 1988 AGAINST THE PETITIONER.

THIS PETITION, HAVING BEEN HEARD AND RESERVED FOR ADMISSION, ON 10/08/2023 AND COMING ON FOR PRONOUNCEMENT OF ORDERS THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The petitioner is before this Court calling in question registration of crime in Crime No.10 of 2019 registered on 11.06.2019 for offences punishable under Section 13(1)(b) and 13(2) of the Prevention of Corruption Act, 1988 ('the Act' for short) and pending before the III Additional District and Sessions Judge & Special Judge, Dharwad.

2. Heard the learned senior counsel Sri Gurudas Khannur appearing for the petitioner along with Sri A.S. Patil, Advocate and the learned counsel Sri Anil Kale, representing the respondent/Karnataka Lokayukta.

3. Facts adumbrated are as follows:-

The petitioner was appointed as a Lecturer in J.S.S. College, Dharwad in the year 1991. Later on 28-12-1998 the petitioner was appointed as a Reader by direct

recruitment in the discipline of Organic Chemistry in the Postgraduate Department of Studies, Karnataka University, Dharwad. After about 10 years of working as a Reader, owning to his eligibility, the petitioner was promoted to the post of Professor in the said Department of the University and worked as Professor up to 4-08-2018. Holding the substantive post of Professor, the petitioner worked as Chairman of Postgraduate Studies between 4-08-2018 and 22.09.2018. Later from 22-09-2018 the petitioner also worked as Registrar, Administration of the University up to 31-01-2009. He later goes back to his substantive post of Professor.

4. On 11-06-2019 anonymous complaint emerges before the then Anti-Corruption Bureau. On receipt of the said complaint, suo motu proceedings were initiated by the respondent in Crime No.10 of 2019 for offences punishable under Section 13(1)(b) and 13(2) of the Act. Registration of crime led the petitioner to this Court in Writ Petition No.111720 of 2019 calling in question investigation being conducted in Crime No.10 of 2019 on several grounds.

This Court rejected the writ petition keeping open all the contentions and permitting the petitioner to take steps seeking closure of proceedings against him after filing of the charge sheet by availing any remedy available to him in law. The charge sheet is yet to be filed. The petitioner has again knocked at the doors of this Court in the subject petition contending that charge sheet has not been filed despite passage of 3 years and he wants to apply for the post of Vice-Chancellor of the University as he has retired on attaining the age of superannuation and his eligibility would expire on 30th August 2023.

5. The learned senior counsel representing the petitioner would vehemently contend that the crime is registered on 11.06.2019 and though more than 4 years have passed by the respondent/Lokayukta is yet to file its final report. He would submit that so long as the crime is pending on his head, the petitioner is unable to apply for any post which is taking away his fundamental right. He would contend that on anonymous complaint proceedings are instituted that too for offences punishable under

Section 13(1)(b) and 13(2) of the Act. Therefore, the proceedings should be quashed on account of such delay in conclusion of investigation and the petitioner be released from the clutches of crime. He would seek to place reliance on several judgments of this Court as also of the Apex Court to buttress his submissions.

6. Per contra the learned counsel representing the respondent/Lokayukta would vehemently refute the submissions to contend that this Court has already considered all these submissions and has directed the petitioner to avail of appropriate remedy after filing of the charge sheet. The delay has caused not because of the respondent/Lokayukta but on account of the petitioner himself as the petitioner has grossly delayed in submission of his Schedules-I to XXIII as is required for further investigation in which he admits that he has 20 bank accounts. That on further investigation it is revealed that he has 58 bank accounts. Going behind these bank accounts and deciphering the transactions has led to gross delay. He would submit that everything is now ready and

final report would be filed before the concerned Court within 2 months.

7. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

8. The chain of events with regard to the petitioner holding certain posts in the University are all as narrated hereinabove which do not require any reiteration. A complaint comes to be registered on 11-06-2019 on account of which a crime is registered in Crime No.10 for 2019 for offences punishable under Section 13(1)(b) and 13(2) of the Act. Section 13 of the Act reads as follows:

> "**13. Criminal misconduct by a public servant**.—(1) A public servant is said to commit the offence of criminal misconduct,—
>
> (*a*) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or any property under his control as a public servant or allows any other person so to do; or
>
> (*b*) if he intentionally enriches himself illicitly during the period of his office.

> *Explanation 1*.—A person shall be presumed to have intentionally enriched himself illicitly if he or any person on 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.]
>
> (2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than four years but which may extend to ten years and shall also be liable to fine."

Section 13(1)(b) deals with a public servant accepting or attempts to accept for himself or for any other purpose any consideration in connection with official functions. Immediately after registration of crime for the afore-quoted offence, the petitioner knocks at the doors of this Court in Writ Petition No. 111720 of 2019 calling in question the very registration of crime as aforesaid. Submissions akin to what is now being urged including the demands that are now sought to be pressed into service were all made before the co-ordinate Bench. The co-

ordinate Bench by its order dated 27th August, 2020 dismissed the petition by the following order:

> *"8. Insofar as the contentions urged on behalf of the petitioner with regard to the Deputy Superintendent of Police who conducted investigation in the instant case not being a person authorized to conduct investigation in view of the embargo contained in the second proviso to Section 17 of the P.C. Act which mandates that no person below the rank of the Superintendent of Police can conduct the investigation is concerned, it is relevant to state that the second proviso prohibits investigation without an order of a Police Officer not below the rank of the Superintendent of Police. In other words, the second proviso does not mandate that the investigation should be conducted by the Superintendent of Police himself; all it states is that in the absence of an order of a Police Officer not below the rank of Superintendent of Police, investigation into alleged offences under Section 13(1)(b) of the Act cannot be conducted by an Investigating Officer.*
>
> *9. In the instant case, learned counsel for the respondent has produced a proceedings of the Office of the Superintendent of Police dated 11.06.2019 where under the Superintendent of Police has passed a specific order authorizing the Deputy Superintendent of Police to conduct the investigation in respect of the petitioner. A perusal of the said order dated 11.06.2019 will*

clearly indicate that the same is in complete and total compliance of the provisions contained in the second proviso to Sec. 17 of the Act. Consequently, it has to be held that the Dy. Superintendent of Police was clearly authorized by an order dated 11.06.2019 passed by the Superintendent of Police in terms of the second proviso to Sec.17 of the Act and as such the investigation conducted by him was completely legal and proper and as such, the said contention urged on behalf of the petitioner cannot be accepted.

10. Insofar as the second contention urged by the petitioner with regard to absence of material so as to attract the offences alleged u/s 13(1)(b) of the Act is concerned, a perusal of the source report will indicate that the petitioner is alleged to have assets to the tune of Rs.1,05,00,000/- in excess of his known sources of income. It is not in dispute that charge sheet has not been filed so far. Though the petitioner contends that the said figures are fictitious, imaginary and exaggerated and that he is not guilty of the alleged offences, it is not possible to decide these issues in a petition u/s 482 of Cr.P.C. or Article 226 of the Constitution of India and consequently, the facts of the instant case do not warrant interference by this Court at this stage of the proceedings. Suffice it to state that it is open for the petitioner to take appropriate steps and seek closure of the proceedings as against him after filing of the charge sheet by availing any remedy

available to him in law including seeking discharge of the petitioner before the trial Court.

In the result, I pass the following order.

ORDER

i. *Criminal Petition is hereby dismissed.*

ii. *All rival contentions between the parties are hereby kept open.*

iii. *Liberty is reserved in favour of the petitioner to take appropriate steps and seek closure of the proceedings as against him after filing of charge sheet by availing any remedy available to him in law including seeking discharge of the petitioner before the trial Court.*

The coordinate Bench considers all the contentions of the petitioner and holds that since the charge sheet has not been filed and though the petitioner contends that the figures projected are all imaginary and exorbitant, it is not possible to decide the issues involved under Section 482 of the CrPC at that stage. Liberty was reserved in the petitioner to avail all such remedy in the event the charge sheet is filed against him. The order was passed on 27th

August 2020 and we are now on 10th August 2023. Even then the final report is not filed by the respondent/Lokayukta. In the normal circumstances if four years had been taken for filing a charge sheet in any matter except in heinous offences or economic offences, this Court would have viewed that with a different lens. Though four years have passed by, the case at hand is one of disproportionate assets. It is the case of the petitioner himself that he is operating 20 bank accounts. Justification is that those are accounts in which loans have been taken for various necessities of the petitioner and few of them are joint accounts. The admission did not stop at that. It is the submission of the learned counsel for the respondent who has produced several documents by way of a memo to demonstrate that there are 58 bank accounts of the petitioner which have been unearthed during investigation and there are transactions in all the 58 bank accounts. Insofar as submission of Schedules I to XXIII which are necessary for consideration of further investigation, it is the case of the Lokayukta that despite

issuance of several notices, the petitioner has submitted his Schedules I to XXIII only on 19-02-2022. The disproportionate assets projected on account of those transactions is 136%. Whether they are fanciful figures or simply projected without any realm or reason cannot at this juncture be considered particularly in the light of the fact that the petitioner had approached this Court earlier calling in question the very same registration of crime on the very same grounds and has suffered an order of dismissal and the said order has become final. A perusal at the documents appended to the memo would indicate that the petitioner is operating 31 savings bank accounts and about 21 loan accounts. But the petitioner had only divulged 20 bank accounts which were inclusive of both savings and loan accounts. The investigation has led to existence of 54 accounts. The learned counsel submits that four more have now been gathered. If in the teeth of the aforesaid facts the petitioner is left off the hook on the score that despite passage of 4 years no charge sheet has been filed, it would run counter to law. The income

yearwise and all other investigations are now complete as per the records produced and as per the submissions made on the strength of records and they now come within the realm of seriously disputed questions of fact as all the materials are gathered during investigation. Projection of fanciful figures in the source report and continuing criminal proceedings on such fanciful reports have been found fault with by this Court in plethora of cases. Since that has already been decided by the co-ordinate Bench of this Court while answering the crime so challenged in the aforesaid petition and the said order becoming final, the fate of contentions of the petitioner have all been frozen up to the point of the respondent/prosecution filing its final report before the concerned Court.

9. The submission of the learned senior counsel that the petitioner is deprived of his right of application for the post of Vice-Chancellor and therefore, the proceedings should be quashed is unacceptable as it is the act of the petitioner that has led to the situation that he is now been

shrouded with. If only all the information at the outset had been divulged by the petitioner, the situation that has now emerged would not have been there. Therefore, on the score that the petitioner cannot apply to the post of Vice-Chancellor on account of pendency of crime and for that reason it should be quashed is noted only to be rejected.

10. In so far as judgments that are relied on by the learned senior counsel for the petitioner on entertainment of anonymous complaint in the case of CHRISTY FRIED GRAM INDUSTRIES AND OTHERS v. STATE OF KARANTAKA AND OTHERES – Writ Petition Nos.6225-26/2014 c/w Writ Petition Nos.2172-2173/2015, Criminal Petition Nos. 7997/2013, 815/2014 and 7996/2013 rendered by a co-ordinate Bench of this Court on 30.10.2015 or the mandatory requirement of conduct of a preliminary enquiry in the case of KOGUNDI DYAMANNA AND OTHERS v. MANIKANTA SARKAR AND OTHERS – Criminal Petition No.8034/2013 c/w Criminal Petition 7948/2013 decided on 13.02.2017 by another co-ordinate Bench or the judgment of the Apex Court in the case of

STATE OF HARYANA v. BHAJAN LAL – 1992 Supp (1) SCC 335 would not come to the aid of the petitioner at this juncture only on the score that he has approached this court on the very same ground and his contentions have been negatived. Insofar as reliance being placed on the judgment of the Apex Court with regard to delay in filing the charge sheet is concerned, the same again would be unacceptable for the reason that the delay will have to be considered on a case to case basis. As observed hereinabove, the enormous task that was faced by the prosecution to unearth transactions of the petitioner had undoubtedly taken time. Therefore, the delay in the peculiar facts of the case at hand is not vital which would lead to obliteration of the crime itself. The prosecution cannot now sleep over the matter any further. An outer limit is required to be directed for filing of the final report before the concerned Court.

11. A parting observation would not be inapt owing to the facts obtaining in the case at hand. In the present case the delay has occasioned account of the petitioner in

not divulging numerous accounts held by him. Unearthing of those accounts by the prosecution is one of the reason for delay. This Court has come across several cases where investigation has gone on for ages and no final report was filed. It, therefore, speaks of volumes of lackadaisical attitude on the part of the prosecution/ Lokayukta. In this view of the matter, the Lokayukta is required to set its house in order by directing completion of investigation within a time frame failing which the Damocles sword of prosecution will always be hanging on the head of the public servant and defeat several of his rights, if any. It is hoped that this case would become an eye opener for speedy completion of investigation for which lack of will of the Lokayukta has to be effaced.

12. For the aforesaid reasons, I pass the following:

O R D E R

i) The Criminal Petition stands rejected.

ii) The respondent/ Lokayukta shall file its final report within 2 months from the date of receipt

of a copy of this order. In the event the final report is not filed within the said time, the concerned Court is at liberty to draw adverse inference against the Lokayukta.

Sd/-
JUDGE

kmv
Ct:Bck