



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 13TH DAY OF MARCH, 2024

BEFORE

THE HON'BLE MR JUSTICE SURAJ GOVINDARAJ

CRIMINAL PETITION NO. 2552 OF 2018 (482)

BETWEEN:

MR. BHARATH SHAH
S/O LATE RAMESHCHAND T SHAH
AGED ABOUT 57 YEARS,
NO.63 & 64, EURO KIDS
3RD MAIN ROAD, 4TH CORSS
H.I.G LAYOUT SANJAYNAGAR
BANGALORE-560094

...PETITIONER

(BY SRI. B.K. SAMPATH KUMAR SENIOR COUNSEL FOR
SRI. SURAJ SAMPATH., ADVOCATE)

AND:

1. STATE OF KARNATAKA
REPRESENTED BY THE
SANJAYNAGAR POLICE STATION,
REPRESENTED BY THE S.P.P
HIGH COURT BUILDING
AMBEDKAR VEEDI
BANGALORE-560 001
2. DR VEDAVATHY B J
AGED ABOUT 46 YEARS

OFFICE ADDRESS:

MEDICAL OFFICER
HEBBALA ZONE BRUHAT BENGALURU MAHANAGARA
PALIKE
BANGALORE-560032

RESIDENCE ADDRESS:

NO. 497, 8TH MAIN, WEST WING,
AMARAJYOTHI LAYOUT,

Digitally signed
by
NARAYANAPPA
LAKSHMAMMA
Location: HIGH
COURT OF
KARNATAKA



DOMLUR
BANGALORE-71.

...RESPONDENTS

(BY SRI. M.R. PATIL., HCGP FOR R1;
SRI. VASU K., ADVOCATE FOR
SRI. K.N. PUTTEGOWDA., ADVOCATE FOR R2)

THIS CRIMINAL PETITION IS FILED U/S.482 CR.P.C PRAYING TO QUASH THE COMPLAINT DATED 16.05.2017, FIR DATED 18.05.2017 AND CHARGE SHEET DATED 20.10.2017 VIDE ANNEXURES A,B AND C PENDING BEFORE THE VIII A.C.M.M., BANGALORE IN C.C.NO.232/2018, AND TO QUASH THE ORDER OF ISSUE OF SUMMONS TO THE PETITIONER IN C.C.NO.232/2018 DATED 01.01.2018, AFTER TAKING COGNIZANCE AGAINST HIM FOR THE OFFENCE P/U/S 353,504 AND 506 OF THE IPC VIDE ANNEXURE D AND ETC.

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

ORDER

1. The petitioner is before this Court seeking for the following relief:
 - a. *Quash the Complaint dated 16.05.2017, FIR dated 18.05.2017 and charge sheet dated 20.10.2017 vide Annexures A,B and C pending before the VIII Additional Chief Metropolitan Magistrate, Bangalore in C.C.No.232/2018 and to quash the order of issue of summons to the petitioner in CC No.232/2018 dated 01.01.2018 after taking cognizance against him for the offences punishable under Sections 353, 504 and 506 of the IPC vide Annexure-D*
 - b. *To grant such other relief or reliefs as this Hon'ble Court deems fit considering the facts and circumstances of the case, in order to meet the ends of justice.*
2. The petitioner is stated to be running a School for children between the age group of 2-5 years in



property Nos.63 and 64, 3rd Main Road, 4th Cross, HIG Layout, RMV II Stage, Bangalore-560094 under the franchise of Euro Kids.

3. A complaint having been filed by the neighbor as regards the running of the said school, proceedings were taken up under the Karnataka Municipal Corporation Act, 1976 (for short "KMC Act, 1976"). A notice came to be served on 30.12.2016, on 7.1.2017 as regards which a detailed reply was issued on 12.1.2017. Further notice on 13.4.2017 was issued calling upon the petitioner to attend a hearing on 15.4.2017 at 10.00 am at BBMP Office in Vyalikaval, which was not served on the petitioner and as such petitioner could not appear.
4. In the meanwhile, an order dated 22.4.2017 had been passed directing the closure of the school of the petitioner. On 16.5.2017 the respondent No.2-Health Officer is alleged to have come to the school when the petitioner and the employee of the



petitioner have stated to have obstructed the respondent No.2 and it is in that background that a compliant in Crime No.131/2017 was registered before the Sanjaynagar Police Station alleging offences punishable under Section 353 of the IPC against the petitioner. Thereafter investigation having been completed, a charge sheet has been laid in CC No.232/2018 which is pending before the 8th Additional CMM, Bangalore for the offences punishable under Section 353, 504 and 506. It is challenging the same that the petitioner is before this Court seeking for the aforesaid reliefs.

5. Sri.B.K.Sampath Kumar., learned senior counsel appearing for the petitioner would submit that;

5.1. Firstly, no such incident has occurred. The CCTV footage available at the school have not been taken into consideration by the investigating officer and the same is not made part of the charge sheet. A viewing of the



CCTV footage would have indicated that there is no such incident which has occurred.

- 5.2. Secondly he submits that the Health Officer has no jurisdiction to implement the closure order passed under Section 321 of the KMC Act, 1976 and as such even assuming but not considering that such event has occurred the action on part of respondent No.2 not being in discharge of a duty by public servant, such action not being in good faith there cannot be an offence said to have occurred in terms of Section 353 of the IPC. On these grounds he submits that the prayer sought are required to be allowed.
6. Sri.K.N.Puttegowda., learned counsel for respondent No.2 would submit that the Commissioner of the BBMP had directed the Health Officer to serve the notice dated 13.4.2017 on the petitioner calling upon the petitioner to attend the hearing on 15.4.2017 at 10.00 a.m. in the Vyalikaval Office of the BBMP and



it is in pursuance of the said direction of the Commissioner that respondent No.2 visited the premises and served the notice. Thereafter once an order on 22.4.2017 was passed by the Commissioner the same was also tried to be implemented by respondent No.2. Thus, he submits that the action taken by respondent No.2 in pursuance of the directions issued by the Commissioner of the BBMP and as such it is in discharge of official duty.

7. As regards the submission of the learned senior counsel of the event having occurred or not, he submits that the same is subject matter of trial and this Court did not go into those matters.
8. Heard Sri.B.K.Sampath Kumar., learned senior counsel appearing for the petitioner and Sri.M.R.Patil., learned HCGP for respondent No.1, Sri.Vasu.K., learned counsel for respondent No.2. perused papers.
9. Section 353 of IPC, reads as under;



353. Assault or criminal force to deter public servant from discharge of his duty.—

Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

10. A perusal of the said provision would indicate that whoever assaults using criminal force on any person being a public servant in the execution of the duty as a public servant or with intent to prevent or deter that a person from discharging his duty as public servant or a consequence of anything done or attempted to be done by such persons in lawful discharge of his duty as a public servant shall be punishable. Thus, the sine-qua-non for initiating proceeding by invoking Section 353 of the IPC is that firstly, the person should be a public servant and secondly he is discharging his duty as a public servant at the time of the incident.



11. In the present case there is no dispute about the respondent No.2 not being a public servant. What would have to be considered is whether respondent No.2 was discharging her duty as a public servant when the incident is allegedly stated to have occurred.
12. Respondent No.2 is an Health Officer whose duties are indicated in the KMC Act, 1976 those duties do not indicate any duty in respect of either the violation of the plan sanction or violation of the Zonal Regulations in terms of the usage of residential property for a commercial purpose as alleged in the matter.
13. Even if the submission of the learned counsel for respondent No.2 is accepted that she was acting on the instructions of the Commissioner of the BBMP. The instructions vide the notice dated 13.4.2017 was only to serve the said notice on the petitioner and nothing else.



14. The contention of learned senior counsel is that even the said notice was not served on the petitioner and as such petitioner could not appear on 15.4.2017 with lack of knowledge of the said notice. Thus, the only action that respondent No.2 could have taken in furtherance of the instructions of the Commissioner was to serve the notice and nothing more. Subsequent, to the order having been passed on 13.4.2017 for closure of the school being run by the petitioner. It was for the concerned authorities to do the needful in terms of Section 321 and Section 462 of the KMC Act, 1976. Respondent No.2 is not an officer authorized to take any action under Section 321 or 462 of the KMC Act, 1976.

15. In that view of the matter the visit by respondent No.2 to the premises of the petitioner on 16.5.2017 to close down the school, in furtherance of the orders of the Commissioner cannot be one which could be said to be in discharge of duty as a public servant as contemplated in Section 353 of the IPC.



16. When the action on part of respondent No.2 is not in discharge duty as a public servant there is no protection which is available to such an officer nor could such an officer claim a benefit of Section 353 of the IPC to initiate proceedings. The benefit of Section 353 of the IPC is only available to an officer who is discharging the permitted role duty/and responsibility assigned to such officer and not as regards the action which are not so authorized.
17. In that view of the matter, whether the incident actually occurred or not respondent No.2 not being entitled to benefit of Section 353 of the IPC, the prosecution could not have been initiated in respect thereto by filing FIR which came to be registered as Crime No.131/2017 by respondent No.1-Police.
18. The investigating officer has also not taken into account these aspects while laying the chargesheet, it was presumed by him that, since respondent No.2 is a public servant the benefit of the Section 353 of



the IPC would be applicable which is complete misconstrued. As such, I pass the following;

ORDER

- i. The Criminal Petition is ***allowed***.
- ii. The FIR in Crime No.131/2017 dated 16.5.2017 registered by the Sanjayanagara Police Station and subsequent chargesheet in CC No.232/2018 now pending in the Court of the 8th Additional CMM, Bangalore are hereby quashed.

**Sd/-
JUDGE**

SR
List No.: 1 Sl No.: 41