



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF SEPTEMBER, 2024

BEFORE

THE HON'BLE MR JUSTICE M.NAGAPRASANNA

CRIMINAL PETITION NO. 9224 OF 2024

BETWEEN:

AKASH JAISWAL,
S/O. RAJENDRA KUMAR,
AGED ABOUT 50 YEARS,
RESIDING AT NO. 1403/TOWER-14,
THE CLOSE NORTH, NIRVANA COUNTRY SECTOR,
50, NIRVANA COUNTRY, HARYANA - 122 018,
(PILOT OF THE AIRCRAFT VT-ETU CESSNA,
AGNI AERO SPORTS ADVENTURE ACADEMY PVT.
LTD., JAKKUR AERODOME, BANGALORE - 64).

...PETITIONER

(BY SRI. ARNAV A. BAGALWADI, ADVOCATE FOR
MS. KEERTHANA NAGARAJ, ADVOCATE AND
CAPTAIN ARVIND SHARMA, ADVOCATE)

AND:

1. STATE OF KARNATAKA BY
AMRUTHAHALLY POLICE STATION,
REPRESENTED BY STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDING, BANGALORE.
2. BASAVAREDDAPPA RONAD,
S/O. RUDRAPPA, AGED ABOUT 56 YEARS,
SECRETARY, GOVERNMENT FLYING TRAINING
SCHOOL, JAKKUR AERODROME,
BENGALURU CITY, KARNATAKA - 560 064.

...RESPONDENTS

(BY SMT. SOWMYA R., HCGP)





THIS CRL.P IS FILED U/S 482 OF CR.PC (FILED U/S 528 BNNS) PRAYING TO QUASH THE ENTIRE PROCEEDINGS IN C.C.NO.15835/2023 PENDING ON THE FILE OF XLI ACMM AT BENGALURU IN CR.NO.95/2022 REGISTERED BY THE 1ST RESPONDENT AMRUTHAHALLI POLICE STATION, FOR THE OFFENCE P/U/S 11 OF THE AIRCRAFT ACT, 1934.

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE M.NAGAPRASANNA

ORAL ORDER

The petitioner is before this Court calling in question the proceedings in C.C.No.15835/2023 for an offence punishable under Section 11 of the Aircraft Act, 1934 ('the Act' for short). The said proceeding arose out of registration of a crime in Crime No.95/2022.

2. Heard Sri. Arnav A. Bagalwadi along with Captain Arvind Sharma and Ms. Keerthana Nagaraj, learned counsel appearing for the petitioner and Smt. Sowmya R., learned HCGP appearing for the respondents.



3. Petitioner is a pilot by profession. A complaint comes to be registered on 17.04.2022 by respondent No.1 - police alleging that the petitioner was flying an Aircraft '*VT-ETU Cessna C185*', which belonged to '*Agni Aero Sports Adventure Academy Pvt. Ltd.*'. The petitioner sought to fly the same at Jakkur Aerodrome. At the time of take off, it appears that the flight veered to the left side and due to such veering, topples with no injuries to any person nor to the petitioner. This was termed to be an Aircraft Accident, which is said to be due to the negligence of the pilot - petitioner. Based on the incident that happened on 17.04.2022, a crime in Crime No.95/2022 comes to be registered on 19.04.2022.

4. On registration of the crime, the investigation begins. On the investigation getting completed, the police is said to have filed a charge sheet even before the concerned Court. The concerned Court on receipt of the final report - the charge sheet, takes cognizance of the offence punishable under Section 11 of the Act on 05.07.2023. Taking of the cognizance against the petitioner and registration of the crime or issuance of the summons, has driven the petitioner to this Court in the subject petition.



5. Learned counsel appearing for the petitioner would contend that the concerned Court could not take the cognizance of the offence, as it runs counter to Section 12B of the Act, which mandates that unless there is a sanction to prosecute the petitioner and the like, a sanction from the hands of the Authorities mentioned in Section 12B of the Act, taking of cognizance by any Court would be contrary to law. He would further contend that the Aviation Department conducted a Departmental Enquiry against the petitioner and has exonerated him of the allegations. He would submit that the allegations are identical and therefore, the very order of taking of cognizance should fail.

6. Learned HCGP would refute the submissions to contend that permission infact has been granted to register the crime after terming it to be an aircraft accident. She would further contend that the Court has now taken cognizance after filing of the charge sheet. Therefore, this Court should not interdict the proceedings and it is for the petitioner to come out clean in a full blown trial.



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

8. The afore-narrated facts are not in dispute. On 17.04.2022, the aircraft which the petitioner sought to fly veers to the left, topples due to such veering. The veering is said to be on account of the act of the petitioner to avoid birds and dogs on the tarmac. This leads to the aircraft toppling. The toppling leads to the incident being termed as an aircraft accident and the terming of the incident as an aircraft accident leads to the registration of a crime in Crime No.95/2022. The registration of the crime is preceded by a complaint. Since the entire issue has now triggered from the complaint, I deem it appropriate to notice the complaint:

"To,
The Police Inspector
Amruthahalli Police Station
Amruthahalli Bangalore 8431843814

Date: 19-04-2022

Dear Sir,

Sub: Police Complaint Regarding Accident of Aircraft VT - ETU Cessna C185 Belonging to Agni Aerosports Adventure Academy Pvt Ltd, Bangalore

This report is to inform you that, Aircraft VT-ETU Cessna C185 Belonging to Agni Aerosports Adventure Academy Pvt Ltd, Jakkur Aerodrome, Bangalore which is



the private agency operating from Jakkur Aerodrome, was flying from Jakkur Aerodrome on 17th April, 2022. Pilot Capt Akash Jaiswal (male, age 48 yrs Indian National) and passenger Cheryl Ann Stearns (female, age 67 yrs USA National) were onboard. They were practicing circuit landings.

During first session of flying the said aircraft was airborne at 02:38 pm (09:08 GMT), with total 7 take offs and 7 landings. The 7th landing was done at 03:28 pm (09:58 GMT).

The second session of flying started when the said aircraft was airborne at 04:10 pm (10:4 GMT) and completed 10 take offs and 10 landings, with the 10th landing done at 05:37 pm (12:07 GMT).

Then, the aircraft next airborne at 05:39 pm (12:09 GMT). At 05:42 pm (12:12 GMT) when the aircraft landed on runway 08, it veered to left side and got toppled (Photograph is attached). Capt Akash and passenger Cheryl Ann Stearns were onboard throughout all these sessions of flying. No loss of life is reported in the accident and this accident's preliminary report was submitted to your station on 17th April 2022.

This case is defined as an "Aircraft Accident" as per International Civil Aviation Organisation in the Convention on International Civil Aviation Annex13. The accident seems to be due to negligence of pilot, as there were no obstructions on the runway during the said landing. Passenger Cheryl Ann Stearns was found occupying the co-pilot seat at the time of the accident.

The Preliminary report was sent to you on 17th April vide No. FTS 04 ADM/2022-23/48 dated: 17.04.2022, informing about the aircraft accident. Therefore, you are requested to lodge a FIR according to Section 11 of Aircraft Act 1934 (copy attached) and carry out necessary investigation about the aircraft accident.

Please acknowledge the receipt."



The complaint indicates that on 17.04.2022, the alleged aircraft accident has happened and the preliminary report was submitted on 17.04.2022. The last paragraph of the complaint is indicative of the fact that the preliminary report was sent to the Police Inspector on 17.04.2022 and a crime was requested to be registered. The crime so registered in Crime No.95/2022 is for an offence punishable under Section 11A of the Act. Section 11A of the Act reads as follows:

"11A. Penalty for failure to comply with directions issued under section 5A.-If any person willfully fails to comply with any direction issued under section 51, he shall be punishable with imprisonment for a term which may extend to [two years] or [with fine which may extend to ten lakhs rupees], or with both.]"

The offence under Section 11A of the Act can be permitted to investigate into only if a complaint is registered with the previous sanction of the Authorities enumerated in Section 12B of the Act. Section 12B of the Act reads as follows:

"12B. (1) No court shall take cognizance of any offence punishable under this Act, save on a complaint made by or with the previous sanction in writing by the Director General of Civil Aviation or Director General of Bureau of Civil Aviation Security or Director General of Aircraft Accidents Investigation Bureau, as the case may be.

(2) The complaint referred to in sub-section (1) shall be made within a period of one year from the date on which the offence came to the knowledge of the Director General of Civil Aviation or Director General of



Bureau of Civil Aviation Security or Director General of Aircraft Accidents Investigation Bureau, as the case may be.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, no court inferior to that of a Metropolitan Magistrate or a Magistrate of the first class shall try the offences under this Act."

The issue now would be whether the complaint was maintainable or the Court could have taken cognizance upon the said complaint.

Section 12B of the Act is unequivocal. It mandates that no Court shall cognizance of any offence under the Act same on a complaint made by or with the previous sanction in writing by the Director General of Civil Aviation or Director General of Bureau of Civil Aviation Security or Director General of Aircraft Accidents Investigation Bureau, as the case would be.

9. It is an admitted fact in the case at hand that the complaint is not preceded by a sanction, as is necessary in law. The complaint would mean a complaint before the learned Magistrate invoking Section 200 of the Cr.P.C., and not a complaint before the jurisdictional police. Therefore, on the aforesaid twin circumstance that the complaint is not before the learned Magistrate and the complaint is not with the previous



sanction of the aforesaid authorities, the entire act of registration of the complaint before the Amruthahally Police Station and the act of the learned Magistrate taking cognizance of the offence are rendered a nullity. This view of mine is fortified by the judgment of the High Court of Jharkhand in the case of ***DR. NISHKANT DUBERY AND OTHERS V. STATE OF JHARKHAND THROUGH THE DIRECTOR GENERAL OF POLICE AND OTHERS***¹, wherein it has held as follows:

"**13.** The Aircraft (Amendment) Act, 2020 was published in the Gazette 8 on 19th September, 2020 wherein Section 12B has been inserted which provides how cognizance of the offence is required to be taken in violation of Aircraft Act. The said section is quoted herein-below:—

"12B(1) No court shall take cognizance of any offence punishable under this Act, save on a complaint made by or with the previous sanction in writing by the Director General of Civil Aviation or Director General of Bureau of Civil Aviation Security or Director General of Aircraft Accidents Investigation Bureau, as the case may be. 2..... 3....."

14. Looking into Section 12B it is crystal clear that no Court is allowed to take cognizance under the said Act save on a complaint made by or with the previous sanction in writing by the Director General of Civil Aviation or Director General of Bureau of Civil Aviation Security or Director General of Aircraft Accidents Investigation Bureau, as the case may be. Thus F.I.R. itself is not maintainable when the complaint is required to be filed pursuant to sanction as disclosed in that Act. Reference may be made to the case of "C. Muniappan. v. State of Tamil Nadu" reported in (2010) 9

¹ **2023 SCC OnLine Jhar 304**



SCC 567 wherein para 33, 34 and 35 the Hon'ble Supreme Court has held as under:—

“33. Thus, in view of the above, the law can be summarised to the effect that there must be a complaint by the public servant whose lawful order has not been complied with. The complaint must be in writing. The provisions of Section 195 CrPC are mandatory. Non-compliance with it would vitiate the prosecution and all other consequential orders. The court cannot assume the cognizance of the case without such complaint. In the absence of such a complaint, the trial and conviction will be void ab initio being without jurisdiction.

34. The learned counsel for the appellants have submitted that as no charge could have been framed under Section 188 IPC in the absence of a written complaint by the officer authorised for that purpose, the conviction under Section 188 IPC is not sustainable. More so, it falsifies the very genesis of the case of the prosecution as the prohibitory orders had not been violated, no subsequent incident could occur. Thus, the entire prosecution case falls.

35. Undoubtedly, the law does not permit taking cognizance of any offence under section 188 I.P.C. unless there is a complaint in writing by the competent public servant. In the instant case, no such complaint had ever been filed. In such an eventuality and taking into account the settled legal principles in this regard, we are of the view that it was not permissible for the trial court to frame a charge under Section 188 I.P.C. However, we do not agree with the further submission that absence of a complainant under Section 195 Cr. P.C. falsifies the genesis of the prosecution case and is fatal to the entire prosecution case”

15. In view of the matter the F.I.R. is not maintainable as has been held by the Hon'ble Supreme Court in the case of C. Muniappan (supra).”



The High Court of Jharkhand considering the very issue of maintainability of a complaint for an offence under Section 11A of the Act holds that the FIR itself was not maintainable, as the complaint was required to be filed pursuant to sanction.

10. I deem it appropriate to follow the said order passed by the High Court of Jharkhand. A little earlier to the afore-quoted judgment of the High Court of Jharkhand, the High Court of Kerala in the case of **SRIDEVI PADMANABHAN V. SUB-INSPECTOR OF POLICE²**, has held as follows:

"**12.** In the light of the above authoritative judgments of the Apex Court and this Court, it is clear that, no police officer can investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial. Section 11A of the Air Craft Act, 1934 is a non-cognizable offence. It is not stated in the Air Craft Act, 1934 that the same is a cognizable offence. Moreover, the maximum punishment that can be imposed under Section 11A of the Air Craft Act, 1934 is for a term which may extend to two years or with fine which may extend to ten lakh rupees. Category 3 of Schedule II of Cr.P.C clearly says that, if an offence punishable with imprisonment for less than three years or with fine only are non-cognizable offence. In such circumstances, there is no doubt that Section 11A is a non-cognizable offence. In the light of the decisions of this Court and the Apex Court, the learned Magistrate erred in taking cognizance based on Annexure IV Final Report in which the offence alleged is under Section 11A of the Air Craft Act, 1934, which is a non-cognizable offence. Since it is non-cognizable offence, the police ought not have registered Annexure III FIR also."

² 2020 SCC OnLine Ker 846



11. In the light of what is narrated hereinabove and the admitted fact being the complaint not preceded by a sanction from the Authorities enumerated therein, the very registration of the FIR is contrary to law and permitting further trial in the case at hand merely because the police have filed their charge sheet and the Court has taken cognizance would undoubtedly become an abuse of the process of the law and result in miscarriage of justice.

12. For the aforesaid reasons, the following:

ORDER

- (i) Criminal Petition is allowed.
- (ii) Proceedings pending in C.C.No.15835/2023 before the XLI ACMM, Bengaluru, stand quashed, *qua* the petitioner.

**Sd/-
(M.NAGAPRASANNA)
JUDGE**

SJK
List No.: 1 Sl No.: 17
CT: BHK