

ILR

3589

**ILR 2003 KAR 3589**

**KUMAR RAJARATNAM & K. BHAKTHAVATSALA, JJ**

**State of Karnataka, by Chief Secretary, Bangalore and Others  
vs Basavaraj Guddappa Maliger\***

**PREVENTION OF CORRUPTION ACT, 1988 (49 of 1988) —  
SECTION 13(1)(e) READ WITH SECTION 13(2), SECTION  
17, SECTION 19(2) — KARNATAKA LOKAYUKTA ACT, 1984  
(KARNATAKA ACT NO. 4 OF 1985)— SECTIONS 2(1), 7(2A),  
10, 12(3) AND SECTION 15 — CODE OF CRIMINAL  
PROCEDURE, 1973 ( 2 OF 1974) — SECTION 2(s)—**

**(A) The first information report was registered against the public servant under Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act, 1988 — Secretary to Government , PWD, made reference under Section 7(2A) of Karnataka Lokayukta Act for an investigation by the Upalokayukta against the public servant regarding his assets and liabilities. The Upalokayukta, on the said reference directed the Lokayukta police to hold enquiry and give report. The Police Wing of the Lokayukta on registration of the FIR filed the chargesheet before the competent Court. — Aggrieved by the registration of the FIR, the public servant filed the Writ Petition. Learned Single Judge relying on the decision reported in AIR 1998 SC 3047 - Quashed the proceedings. Writ Appeal against the order of the learned Single Judge by the state.**

**(B) Police Wing on deputation to the Lokayukta if authorised under Section 17 of the Prevention of Corruption Act and Section 2 of the Cr.P.C. — Entitled to register a case — investigate the matter — file charge sheet in a competent Court — There should be a proper sanction to prosecute the public servant as per Section 19 of the Prevention of Corruption Act.**

**(C) When once the FIR is registered — The Police Wing shall act independently — The officer of the Police Wing of the Lokayukta is the only competent authority to investigate the offence under the provisions of Prevention of**

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\* W.A. No. 1224/2001 (GM - KLA) dated 7th August, 2003

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**Corruption Act if so authorised under Section 17 of the Act — The police wing of the Lokayukta Act as a police under Section 2(s) of the Code. On facts, HELD — Upalokayukta has requested the police wing to register the case — Pursuant to the request by the Upalokayukta, the investigating wing of the Lokayukta — registered the case — Investigated the matter — Filed the chargesheet — Police Wing acted independently during investigation — The investigation has been made by the Police Wing is in conformity with the provisions of the Prevention of Corruption Act and in accordance with the Code — The police wing of the Lokayukta has independent powers to investigate and to file the charge sheet for an offence dehors of Section 15 of the Lokayukta Act — Proceedings against the public servant is within the jurisdiction of the Police Wing of the Lokayukta —**

**Court has placed its reliance on the Judgment reported in AIR 1998 SC 2496 in the case of C.Rangaswamaiah vs Karnataka Lokayukta and**

**Held:**

*That as long as the deputation is with the consent of the State Government and with the approval of the Lokayukta, no fault can be found with the independent nature of the investigation conducted by the police wing. In other words, the pronouncement of the Supreme Court in Rangaswamaiah's case would lead to the inevitable conclusion that the Lokayukta or Upa Lokayukta may request the Police Wing of a Police Officer of the competent jurisdiction to consider registering the case under the provisions of the P.C. Act, then the police wing of the Lokayukta if notified as a police station under Section 2 of the Code of Criminal Procedure may make a preliminary investigation and if a prima facie case is made out, may register the FIR and conduct investigation in accordance with the provisions of the P.C. Act and in accordance of the Code.* (Para 24)

*Once the police wing takes up the investigation in accordance with law, the Upalokayukta or Lokayukta has no power to issue directions. The Police Wing acts independently as a police officer on deputation to the Lokayukta and needless to say that the*

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*police wing shall conduct investigation without any further directions from the Lokayukta.* (Para 25)

*The Rangaswamaiah's case is an authority for the proposition as stated earlier, that the Police Wing is independent if notified under Section 2 of Cr.P.C. as a Police Station and if authorised under Section 17 of the P.C. Act to investigate offences under the provisions of the P.C. Act and the Code. The Police Officer who holds independent powers of investigation although on deputation to Lokayukta can investigate an offence under the P.C. Act.* (Para 27)

*Admittedly, the Upalokayukta has only requested the police wing to register the case. Pursuant to the request by the Upalokayukta,*

*The investigating wing of the Lokayukta registered the case, investigated the matter and filed the charge sheet. We do not see any direction in the investigation by the Upalokayukta at any stage during the investigation. The investigation has been made by the Police Wing which is in conformity with the pronouncement of the Supreme Court in Rangaswamaiah's case.*

*Order of the learned Single Judge is set aside/Writ Appeal allowed.*

**CASES REFERRED:**

**AT PARAS**

1. AIR 1998 SC 3047 –  
*State of Karnataka and Ors. vs Kempaiah* (Relied) 4,8,9, 16,18
2. AIR 1998 SC 2496 – C . Rangaswamaiah  
*vs Karnataka Lokayukta* (foll) 5,21,22,23 24,27

Sri H.S. Chandramouli, SPP and Sri N. Basavarajaiah,  
HCGP for Appellants  
Sri B.B. Bajentri, Advocate for Respondent

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**JUDGMENT**

**Kumar Rajaratnam, J**

The State and more particularly the Superintendent of Police, Bureau of Investigation, Karnataka Lokayukta, Belgaum has preferred this writ appeal against the order of the learned Single Judge dated 25.7.2000 in W.P. No. 42407/1995 .

2. The petitioner in the Writ Petition was a public servant. He was the Chief Engineer (Communication and Building), Public Works Department, Dharwad. The allegation against the public servant was that while he was working in the PWD during the period 2/7/1963 to 30/11/1990 had amassed wealth disproportionate to his known source of income to the extent of Rs. 15,10,977/- . The first information report was registered against the public servant under Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as the P.C. Act)

3. The case was registered by the Superintendent of Police, Bureau of Investigation, Karnataka Lokayukta, Belgaum. The Police wing of the Lokayukta on registration of the FIR filed the charge sheet on 12.1.1996 for the check period from 2.7.1963 to 30.11.1990 in Spl. Case No.1 of 1996 before the competent Court. Aggrieved by the registration of the FIR, the public servant who is the respondent in the writ appeal challenged the registration of the FIR under Article 226 of the Constitution of India.

4. The learned Single Judge relying on the observations made by the Supreme Court in the case of 'STATE OF KARNATAKA AND OTHERS vs KEMPAIAH'<sup>1</sup> quashed the proceedings on the ground that the Kempaiah's case applies to the facts of the said case.

5. Before we deal with the Kempaiah's case, it would be necessary to make a reference to the judgment of the Supreme Court reported in C. RANGASWAMAIAH vs KARNATAKA LOKAYUKTA<sup>2</sup>. The Supreme Court in Rangaswamaiah's case pronounced that a police officer sent on deputation to the Office of the Lokayukta by the State Government and if that police office is entrusted with the powers of investigation under Section 17 of the

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<sup>1</sup> AIR 1998 SC 3047

<sup>2</sup> AIR 1998 SC 2496

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P.C. Act, the public servant against whom the Lokayukta police are investigating the crime cannot question such entrustment particularly when there is a tacit approval of the Lokayukta for the same. We shall deal with the law enunciated by the Supreme Court in Rangaswamaiah's case in greater detail in the latter part of our judgment.

6. We shall now prefer to the other judgment rendered by the Supreme Court in Kempaiah's case in AIR 1998 SC 3047 relied on by the learned Single Judge.

7. The Supreme Court in Kempaiah's case dealt with the definition of the word 'action' within the meaning of Section 2(1) of the Karnataka Lokayukta Act (for Short, the Lokayukta Act). In Kempaiah's case, the Upalokayukta initiated action against the public servant and conducted raids and investigated the matter and after the investigation, the matter was handed over to the Police Inspector by the Superintendent of Police to investigate the offence under Section 13 (1)(e) read with Section 13(2) of the P.C. Act.

8. The Division Bench of the High Court in Writ Petition No. 16857/93 and Criminal Petition No. 1155/93 by a judgment dated 2.7.1996 only quashed the investigation done by the Upalokayukta. The Division Bench did not quash the FIR registered against the public servant. The Division Bench further stated that it is open to the State to have the offence investigated in accordance with law. This matter was taken up in appeal by the State in Kempaiah's case. The Supreme Court in Kempaiah's case (AIR 1998 SC 3047) affirmed the judgment of the High Court on the ground that the Upalokayukta had no power to investigate into a crime allegedly committed by the public servant under the provisions of the P.C. Act. The Supreme Court in Kempaiah's case set aside the preliminary enquiry but did not quash the FIR. A reading of the Division Bench judgment of the High Court at para 29 is as follows:-

"The criminal petition is allowed in part quashing the authorization given by the Superintendent of Police by his order dated 31.5.93 to the Police Inspector for investigating the criminal case under Section 13(1)(e) read with Section 13(2) of P.C. Act, 1988 against the petitioner and the investigation, if any, done by

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the Police Inspector in pursuance of that order. It is made clear that the F.I.R. registered against the petitioner is not quashed and that it is open to the State to have the offence investigated in accordance with law."

### Emphasis by the Court

9. This view was affirmed by the Supreme Court in Kempaiah's case. The Supreme Court pronounced as follows:-

"10. In as much as Upalokayukta initiated investigation against the respondent on the basis of an unsigned letter forwarded by the Under Secretary to the Governor of Karnataka to the Registrar, Lokayukta, the scope of investigations by the Upalokayukta under Section 7(2) has to be limited to 'action' as explained above.

11. In this view of the matter, we are in entire agreements with the view expressed by the High Court. The appeals are devoid of any merit so they are dismissed."

### (Emphasis by the Court)

10. The vexed question before this Court is different. The question is whether investigation under Section 17 of the P.C. Act entrusted by the State of Karnataka to the Police Wing of the Lokayukta having the requisite rank could still be said to be vitiated because of the fact that the said officers were on deputation to the Police wing of the Karnataka State Lokayukta at the relevant time?

To answer this question it is necessary to refer to the background of this case.

11. Secretary to Government PWD made reference under Section 7(2 A) of Karnataka Lokayukta Act for an investigation by the Upalokayukta against the public servant regarding his assets and liabilities. The reference was registered under the Lokayukta Act in Compt/Uplok/BGM/81/90-91.

12. The Upalokayukta, on the said reference directed the Lokayukta Police to hold enquiry and give report. The Inspector of Police attached to the Police Wing of Lokayukta, Belgaum gave a report after holding an enquiry stating that the public servant is in possession of excess assets worth Rs. 15,10,977/-.

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13. Thereafter, the Upalokayukta as per Section 12(3) of the Lokayukta Act sent a report (dated 10.5.93) to the Government. Paras 16(i) and 16(ii) of the said report read as follows:

“16(i) The AGO may be prosecuted for an offence punishable under Section 13(1)(e) read with 13(2) of the P.C. Act 1988 after the requisite sanction under Section 19(2) of that Act of the competent Authority for the purpose. This recommendation is also being marked to the Director General of Police, Bureau of Investigation of the Lokayukta Organisation for such action, as he may consider appropriate in the matter.

16(ii) A Departmental disciplinary enquiry may be instituted against the AGO for acts of mis-conduct falling within scope of Rule 3(1)(i) and (iii) of the K.C.S. (conduct) Rules, 1966.”

14. Even after a lapse of two years from the date of sending report i.e, 10.5.93, the Government did not intimate the action taken on the said report. The Police wing sought permission of the Upalokayukta to register a case. The Upalokayukta on 7.11.1995 permitted the Police Wing to register a case. It is not in dispute that the State Government by a Notification dated 26.5.1986 has declared the Deputy Superintendent of Police, Office of the Lokayukta, Dharwad as a police Station within the meaning of Section 2(s) of the Cr.P.C. for the jurisdiction of Dharwad and Uttara Kannada Districts who is the third appellant in the writ appeal.

15. The Investigating Officer registered a case in Cr.No. 27/95 on 11.11.1995 and obtained search warrant from Spl. Judge, Dharwar and conducted the raid on the premises of the public servant on 12.11.1995. Thereafter, on 14.12.95, the Government issued an order under Section 19 of the P.C. Act granting permission to prosecute the public servant in a Court of law under Section 13(1)(e) r/w Section 13(2) of the P.C. Act in pursuance of the recommendation of the Upalokayukta. Further, the Investigating Officer filed the charge sheet in the Court on 12.1.1996 and the case was registered in Spl. Case No. 1/1996. The said charge sheet is filed for the check period from 2.7.1963 to 30.11.1990.

16. In Kempaiah's case, an anonymous complaint had been received from the Under Secretary to Governor by the Lokayukta, making certain allegations against Kempaiah in him having amassed

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wealth disproportionate to his known source of income. The matter was referred to the Upalokayukta and the Upalokayukta took upon himself the role of an investigator and conducted search and investigation in his capacity as a Upalokayukta under the provisions of the Lokayukta Act and sought to prosecute the accused after completing the investigation for offences under the P.C. Act.

17. Whereas, in the case before us, the Upalokayukta referred the complaint to the Police Wing for a preliminary investigation into the allegations. Accordingly, the Police Wing after holding preliminary investigation gave a report to the Upalokayukta.

18. It is clear from the facts of both these cases, that in Kempaiah's case the Upalokayukta proceeded to get the allegation investigated under Section 9 of the Lokayukta Act by authorizing an officer of the Police Wing by exercising power under Section 10 of the Lokayukta Act. But, in the present case, the Upalokayukta has not ordered investigation by the police by exercising power under the Lokayukta Act but only referred the allegations against the public servant to the Police Wing of the Lokayukta. Accordingly, the Superintendent of Police has ordered for investigation under the provisions of the P.C. Act by registering a case, which is an independent investigation within the scope of the P.C. Act.

19. We shall now revert to the question posed by us in the earlier part of the judgment as to whether the investigation for an offence under Section 13(1)(e) r/w Section 13(2) of the P.C. Act by the Police Wing of the Lokayukta if entrusted with such a power under Section 17 of the P.C. Act can be faulted?

20. The other question that falls for consideration is whether the Police Wing of the Lokayukta if authorized under Section 17 of the P.C. Act, has independent powers to investigate and file charge sheet for an offence de hors of Section 15 of the Lokayukta Act and in what manner can the provisions of Section 17 of the P.C. Act be harmonised with Section 15 of the Lokayukta Act? In other words, can the Police Wing register a case under the provisions of the P.C. Act and investigate the matter independently de hors of the Lokayukta or Upalokayukta and file charge sheet for an offence under the provisions of the P.C. Act?

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21. The answer to these questions is no longer res-integra. The answer lies in the judgment of the Supreme Court in the case of 'C. RANGASWAMIAH AND OTHERS vs KARNATAKA LOKAYUKTA AND OTHERS' reported in AIR 1998 SC 2496. The questions posed by the Supreme Court in Rangaswamaiah's case amongst others as is relevant to this case are as follows:-

- (a) Is the entrustment of functions under the Prevention of Corruption Act, 1988 by the Government to the police officers on deputation with the Lok Ayukta without jurisdiction?
- (b) In what manner can the provisions of Section 17 of the Prevention of Corruption Act, 1988 and Section 15 of the Karnataka Lok Ayukta Act, 1984 be harmonised?
- (c) Is the further investigation in the present cases to be continued by the police officers on deputation to the Lok Ayukta?

22. The answer to the first question lies at paragraphs 20,21,22 and 23 of the Supreme Court judgment in Rangaswamaiah's case. The said paras read as follows:-

'20. The next question is whether when the State Government had sent the police officers on deputation to the Lok Ayukta, it was permissible for the Government to entrust them with additional duties under the Prevention of Corruption Act, 1988?

21. The learned Single Judge as well as the Division Bench are one, as already stated, in accepting that the police officers of the State on deputation continue to remain as public servants in the service of the State Government, as long as they are not absorbed in the Lok Ayukta. This legal position is absolutely unassailable because the State of Karnataka has merely lent the services of these officers to the Lok Ayukta and the officers continue to be employees of the State. In spite of the deputation of officers with the Lok Ayukta the relationship of master and servant between the State of Karnataka and these officers does not stand terminated (STATE OF PUNJAB VSINDER SINGH, (1997( 8) SCC 372: (1997 AIR SCW 3949).

22. There is no dispute that though these officers are on deputation they are otherwise of the requisite rank as contemplated

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by Section 17 of the Prevention of Corruption Act, 1988 and that other formalities under that Act are satisfied for entrustment of duties under the Prevention of Corruption Act, 1988. Question is whether these police officers of the State can be invested with powers of investigation under Section 17 of the Prevention of Corruption Act, 1988 by the State under its statutory powers traceable to the same Section?

23. It is true that normally, in respect of officers sent on deputation by the State to another authority, the lending authority should not, after deputation of its officers, entrust extra duties concerning the said lending authority to such officers without the consent of the borrowing authority. If, however, such action is taken by the lending authority by virtue of statutory powers and such a course is not objected to by the borrowing authority, can it be said that the entrustments is without jurisdiction? In our opinion, from a jurisdictional angle, the entrustment being under statutory powers of the State traceable to Section 17 of the Prevention of Corruption Act, 1988 the same cannot be said to be outside the jurisdiction of the State Government. May be, if it is done without consulting the Lok Ayukta and obtaining its consent, it can only be treated as an issue between the State and Lok Ayukta and is none of the concern of those public servants against whom these police officers on deputation are conducting the investigation. Such entrustment of duties has statutory backing and obviously also the tacit approval of the Lok Ayukta. Once there is such tacit approval of the Lok Ayukta, the writ petitioners cannot have any grievance that the Lok Ayukta ought not to have permitted such a course."

23. The other two questions are answered at paragraphs Nos. 25 and 26 of the said judgment. Paras 25 and 26 read as follows:

"25. In our view, if the State Government wants to entrust such extra work to the officers on deputation with the Lok Ayukta, it can certainly inform the Lok Ayukta of its desire to do so. If the Lok Ayukta agrees to such entrustment, there will be no problem. But if for good reasons the Lok Ayukta thinks that such entrustment of work by the State Government is likely to affect its functioning or is likely to affect its independence, it can certainly inform the State Government accordingly. In case the State Government does not accept the view point of the Lok Ayukta,

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then it will be open to the Lok Ayukta having regard to the need to preserve its independence and effective functioning to take action under Section 15(4) (read with Section 15(2)) and direct that these officers on deputation in its police wing will not take up any such work entrusted to them by the State Government. Of course, it is expected that the State Government and the Lok Ayukta will avoid any such unpleasant situations but will reasonably in their respective spheres.

26. But once the Lok Ayukta has, as in the present case, not objected, at the threshold to such entrustment of work by the State Government to the officers on deputation, then it will not normally be reasonable for the Lok Ayukta to object to said entrustment when these officers are half way through the extra work. Such withdrawal by the Lok Ayukta at a latter stage might create various administrative problems and will only help the public servants against whom investigation is being done to raise unnecessary legal issues. Of course, in the present case, it is not the Lok Ayukta which has raised any objection but it is the public servants against whom the investigation is going on who have raised objections. As already stated, they cannot raise objections if the Lok Ayukta has not raised any objection at the threshold. The above, in our view, will take care of the independence and effective working of the Lok Ayukta and at the same time will enable the State of Karnataka if need be, to exercise its statutory powers under Section 17 of the Prevention of Corruption Act, 1988."

24. The Supreme Court further held that as long as the deputation is with consent of the State Government and with the approval of the Lok Ayukta, no fault can be found with the independent nature of the investigation conducted by the Police Wing. In other words, the pronouncement of the Supreme Court in Rangaswamaiah's case would lead to the inevitable conclusion that the Lokayukta or Upalokayukta may request the Police Wing of a police officer of the competent jurisdiction to consider registering the case under the provisions of the P.C. Act, then the Police Wing of the Lokayukta if notified as a Police Station under Section 2 of the Code of Criminal Procedure may make a preliminary investigation and if a prima facie case is made out. may register the FIR and conduct investigation in accordance with the provisions of the P.C. Act and in accordance of the Code.

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25. Once the Police Wing takes up the investigation in accordance with law, the Upalokayukta or the Lokayukta has no power to issue directions. The Police Wing acts independently as a police officer on deputation to the Lokayukta and needless to say that the Police Wing shall conduct investigation without any further directions from the Lokayukta.

26. In other words, more significantly, the Kempaiah's case is an authority for the proposition that the Lokayukta should follow policy of "hands off" with respect to the investigation by the Police Wing under the P.C. Act. The cardinal error committed by the Upalokayukta is Kempaiah's case was that the Upalokayukta took upon himself the power of investigation and conducted searches not for the purpose of investigation or action under the Lokayukta Act but for conducting Investigation under the P.C. Act. However, in Kempaiah's case, the Supreme Court did not quash the FIR but only quashed the investigation done by the Upalokayukta.

27. The Rangaswamaiah's case is an authority for the proposition as stated earlier, that the Police Wing is independent if notified under Section 2 of the Cr. P.C. as a Police Station and if authorised under Section 17 of the P.C. Act to investigate offences under the provisions of the P.C. Act and the Code. No criminal punitive action can be taken by the Lokayukta against a public servant under the provisions of the P.C. Act. The police officer who holds independent powers of investigation although on deputation to Lokayukta can investigate an offence under the P.C. Act.

28. We see no difference of opinion between the judgments rendered by the Supreme Court in Kempaiah's case and Rangaswamaiah's case as was submitted by the learned Counsel for the public servant as the facts stated in both the cases are entirely different.

29. On the contrary, the legal position is clear and unambiguous if we consider both the pronouncements of the Supreme Court.

30. We reiterate that Kempaiah's case is an authority for the proposition that the Lokayukta or the Upalokayukta shall not investigate and to direct filing of charge sheet for offences under the provisions of the P.C. Act and Cr.P.C. and Rangaswamaiah's

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case is an authority for the proposition that the Police Wing on deputation to the Lokayukta if authorised under Section 17 of the P.C. Act and Section 2 of the Code is perfectly entitled to register a case and investigate the matter and file charge sheet in a competent Court under the provisions of the P.C. Act.

31. The following conditions are to be fulfilled for conducting an investigation of an offence under the provisions of the P.C. Act:-

- (a) The officer of the Police Wing of the Lokayukta, and not the Lokayukta or the Upalokayukta, is the only competent authority to investigate offences under the provisions of the P.C. Act if so authorised under Section 17 of the P.C. Act.
- (b) There must be a Notification declaring the Police Wing of the Lokayukta as a Police Station under Section 2(s) of the Code.
- (c) Once the FIR is registered, the Police Wing shall act independent of the Lokayukta.
- (d) Once the FIR is registered by the independent Police Wing of the Lokayukta, the Lokayukta or the Upalokayukta shall have no jurisdiction over the investigation and investigation will be done strictly by the Police Wing with respect to offences under the provisions of the P.C. Act.
- (e) There should be a proper sanction to prosecute the public servant in conformity with Section 19 of the P.C. Act.

32. We have perused the records.

33. In the present case, admittedly, the Upalokayukta has only requested the Police Wing to register the case. Pursuant to the request by the Upalokayukta, the investigating wing of the Lokayukta registered the case, investigated the matter and filed the charge sheet. We do not see any direction in the investigation by the Upalokayukta at any stage during the investigation. The investigation has been made by the Police wing which is in conformity with the pronouncement of the Supreme Court in Rangaswamaiah's case.

34. We accordingly allow the Writ Appeal. Following the judgment of the Supreme Court in Rangaswamaiah's case and for the reasons

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stated therein, we set aside the order of the learned Single Judge dated 25.7.2000 passed in W.P. No. 42407/95.

35. However, we make it clear that any observation made by this Court is only with respect to the jurisdiction of the Police Wing of the Lokayukta and not with respect to the merits of the case or with respect to any infraction in the investigation conducted under the provisions of the P.C. Act.

36. This Court places on record its appreciation for the able assistance rendered by Sri H.S. Chandramouli, learned SPP and the Registrar of Lokayukta who assisted the Court with the relevant records.

37. We place on record our deep sense of appreciation for the tireless services being rendered by the Lokayukta under the provisions of the Lokayukta Act in weeding out corruption amongst the public servants which has become a menace in today's Society.

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### **ILR 2003 KAR 3602**

**TIRATH S. THAKUR & MOHAN SHANTANAGOUDAR, JJ**

**Smt. Shivleela and Others vs Karnataka State Road Transport Corporation, by Managing Director, Bangalore\***

**MOTOR VEHICLES ACT, 1988 (CENTRAL ACT NO. 59/1988)  
— SECTION 173(1) — Travelling on the roof of the Bus —  
Percentage of contributory negligence on the part of driver  
and conductor —Contributory negligence on the part of  
the driver may vary depending on whether the driver  
knows about the presence of the person on the roof or  
he is unaware of the same — But in so far as the  
passenger is concerned — He takes a risk by travelling  
in breach of the law and he must share the consequences  
flowing their from — On facts — HELD — Based on the  
material facts and the evidence on record, the tribunal  
rightly rejected the case of the claimants that the**

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\*M.F.A.No. 4396/1997 (MVC) dated 17th July 2003