HIGH COURT OF MADHYA PRADESH
CRR 217/2017
Yogendra Dusaj vs. State of MP

Gwalior, dtd. 20/03/2018

Shri Ankur Maheshwari, Counsel for the applicant.

Shri Devendra Choubey, Public Prosecutor for the respondent/ State.

Heard finally.

This Criminal Revision under Section 397/401 of Cr.P.C. has been filed against the order dated 7-12-2016 passed by J.M.F.C., Guna in Criminal Case No. 1321/2011 by which the charges under Sections 420 of I.P.C. and under Section 339-C of M.P. Municipalities Act, have been framed.

The necessary facts for the disposal of the present revision in short are that a F.I.R. was lodged by the S.D.M., against the applicant on the allegation that the applicant has illegally established a colony on the land, Survey No. 1134/04, 1138/01, Patwari Halka No.75, situated at village Guna. It is the case of the prosecution, that without getting registered as a Colonizer and Builder under the Municipalities Act, 1961 or under M.P. Nagar Palika (Registration of Colonizer) Rules, the applicant has illegally developed a colony, even without getting the land diverted for residential purposes. The charge sheet was filed on 4-5-2011. The applicant had earlier filed an application under Section 482 of Cr.P.C. before this Court, which was registered as M.Cr.C. No. 1814/2015 for quashing the F.I.R., however, the said application was dismissed by this Court by order dated 4-9-2015.

It is submitted by the Counsel for the applicant, that since, the S.D.M. was not a competent authority, therefore, the F.I.R. could not have been lodged by the S.D.M. In the present case, since, the F.I.R. has been lodged on the report of the S.D.M., therefore, the entire prosecution is bad, because of non-competence of the S.D.M. to lodge the F.I.R. To buttress his

contentions, the Counsel for the applicant has relied on the judgment passed by the Supreme Court in the case of **Smt. Nagawwa Vs. Veeranna Shivlingappa Konjalgi and others** reported in **AIR 1976 SC 1947.** Further, it is submitted by the Counsel for the applicant that even if the entire allegations are accepted, it would be clear that none of the purchasers has made a complaint, therefore, the charge under Section 420 of I.P.C. is not made out.

Per contra, it is submitted by the Counsel for the State that the question raised in the present case, has already been dealt with by this Court in the case of **Laxmandass Vs. Municipal Council, Guna** reported in **2018(1) MPLH 126.** It is further submitted that even otherwise, this Court by order dated 4-9-2015, has already dismissed the petition filed by the applicant and therefore, the same question cannot be raised again.

Heard the learned Counsel for the applicant.

The contention raised by the Counsel for the applicant is misconceived and is hereby rejected for the two reasons :-

(i) That the application filed under Section 482 of Cr.P.C. by the applicant, challenging the F.I.R., has already been rejected by this Court by order dated 4-9-2015 passed in M.Cr.C. No.1814/2015.

(ii) That a valid police report is not a *sine qua non* for the prosecution of the accused.

It is the contention of the applicant that since, the F.I.R. has been lodged by an incompetent person, therefore, the entire investigation is bad and hence, the charge sheet as well as the order framing charge is liable to be quashed. The judgment passed by the Supreme Court in the case of **Smt. Nagawwa (Supra)** relied upon by the Counsel for the applicant is distinguishable. The question before the Supreme Court in the case of **Smt. Nagawwa (Supra)** was with regard to maintainability of a criminal complaint filed before the Magistrate. Thus, it was held that the Complaint

can be dismissed on the ground of incompetency of the complainant, however, in the present case, the police after completing the investigation has filed the charge sheet. The question of competency/incompetency of informant was not the subject matter of determination in the case of **Smt. Nagawwa (supra).**

The Supreme Court in the case of **H.N. Rishbud Vs. State of Delhi** reported in **AIR 1955 SC 196** has held as under :-

> **''9.** The question then requires to be considered whether and to what extent the trial which follows such investigation is vitiated. Now, trial follows cognizance and cognizance is preceded by investigation. This is undoubtedly the basic scheme of the Code in respect of cognizable cases. But it does not necessarily follow that an invalid investigation nullifies the cognizance or trial based thereon. Here we are not concerned with the effect of the breach of a mandatory provision regulating the competence or procedure of the Court as regards cognizance or trial. It is only with reference to such a breach that the question as to whether it constitutes an illegality vitiating the proceedings or a mere irregularity arises. A defect or illegality in investigation, however serious, has no direct bearing on the competence or the procedure relating to cognizance or trial. No doubt a police report which results from an investigation is provided in Section 190 of the Code of Criminal Procedure as the material on which cognizance is taken. But it cannot be maintained that a valid and legal police report is the foundation of the jurisdiction of the Court to take cognizance. Section 190 of the Code of Criminal Procedure is one out of a group of sections under the heading "Conditions requisite for initiation of proceedings". The language of this section is in marked contrast with that of the other sections of the group under the same heading i.e. Sections 193 and 195 to 199. These latter sections regulate the competence of the Court and bar its jurisdiction in certain cases excepting in compliance therewith. But Section 190 does not. While no doubt, in one sense,

clauses (*a*), (*b*) and (*c*) of Section 190(1) are conditions requisite for taking of cognizance, it is not possible to say that cognizance on an invalid police report is prohibited and is therefore a nullity. Such an invalid report may still fall either under clause (*a*) or (*b*) of Section 190(1), (whether it is the one or the other we need not pause to consider) and in any case cognizance so taken is only in the nature of error in a proceeding antecedent to the trial. To such a situation Section 537 of the Code of Criminal Procedure which is in the following terms is attracted:

> "Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered on appeal or revision on account of any error, omission or irregularity in the complaint, summons, warrant, charge, proclamation, order, judgment or other proceedings before or during trial or in any enquiry or other proceedings under this Code, unless such error, omission or irregularity, has in fact occasioned a failure of justice."

If, therefore, cognizance is in fact taken, on a police report vitiated by the breach of a mandatory provision relating to investigation, there can be no doubt that the result of the trial which follows it cannot be set aside unless the illegality in the investigation can be shown to have brought about a miscarriage of justice. That an illegality committed in the course of investigation does not affect the competence and the jurisdiction of the Court for trial is well settled as appears from the cases in *Prabhu* v. *Emperor* and *Lumbhardar Zutshi* v. *King*. These no doubt relate to the illegality of arrest in the course of investigation while we are concerned in the present cases with the illegality with reference to the machinery for the collection of the evidence. This distinction may have a bearing on the question of prejudice or miscarriage of justice, but both the cases clearly show that invalidity of the investigation has no relation to the competence of the Court. We are, therefore, clearly, also, of the opinion that where the cognizance of the case has in fact been taken and the case has proceeded to

> termination, the invalidity of the precedent investigation does not vitiate the result, unless miscarriage of justice has been caused thereby.''

Thus, it is clear that once the charge sheet is filed, then it is the evidence which has been collected during investigation, would be of utmost importance, unless and until it is shown by the applicant, that a prejudice has been caused to him. "Prejudice" is a question of fact, which can be decided only after the conclusion of the Trial. Thus, the proceedings cannot be quashed merely on the ground of incompetency of the first informant to lodge the F.I.R.

It is next contended by the Counsel for the applicant that no charge under Section 420 of I.P.C. is made out, as none of the purchasers of plot had made any complaint against the applicant.

The submissions made by the Counsel for the applicant cannot be accepted at this stage. The word "Cheating" cannot be given a narrower meaning. If a person has acted contrary to the mandatory provisions of law, then it can be inferred that he has cheated the persons who have purchased the plots from the applicant. Even otherwise, this Court is not in a position to consider the allegations made against the applicant, because the applicant has not placed the copy of the charge sheet on record.

So far as the question of framing of charges on the basis of the allegations as contained in the charge sheet are concerned, it is well established principle of law that if the allegations *prima facie* make out a even a strong suspicion to the effect that the accused might have committed an offence, then the Court is under obligation to frame charges.

The Supreme Court in the case of **Soma Chakravarty vs. State (Th. CBI)** reported in **2007 AIR SCW 3683** has held as under:-

> "**20**. It may be mentioned that the settled legal position, as mentioned in the above decisions, is that if on the basis of 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 doubt that the accused *has* committed the offence. At the time of framing of the charges the probative value of the material on record cannot be gone into, and the material brought on record by the prosecution has to be accepted as true at that stage. Before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commitment of offence by the accused was possible. Whether, in fact, the accused committed the offence, can only be decided in the trial."

The Supreme Court in the case of **P. Vijayan vs. State of Kerala and Anr.** reported in **2010 CrI.L.J. 1427** has held as under:-

> "**10**. 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. Further, the words "not sufficient ground for proceeding against the accused" clearly show that the Judge is not a mere Post Office to frame the charge at the behest of the prosecution, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. In assessing this fact, it is not necessary for the Court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really the function of the Court, after the trial starts. At the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. In other words, the sufficiency of ground would take within its fold the nature of the evidence recorded by the police or the documents produced before the Court which *ex facie* disclose that there are suspicious circumstances against the accused so as to frame a charge against him."

The Supreme Court in the case of **State of Bihar vs.**

Ramesh Singh reported in **AIR 1977 SC 2018** has held as under:-

> ".....Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding prima facie whether the Court should proceed with the trial or not. If the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial. …. "
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> This Court has thus held that whereas strong suspicion may not take the place of the proof at the trial stage, yet it may be sufficient for the satisfaction of the Trial Judge in order to frame a charge against the accused."

The Supreme Court in the case of **Union of India vs. Prafulla Kumar Samal** reported in **AIR 1979 SC 366** has held as under:-

> "(*1*) That the Judge while considering the question of framing the charges under Section 227 of the Code 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.
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> (*2*) 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.
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> (*3*) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.
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> (*4*) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced 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 appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."

The Supreme Court in the case of **Niranjan Singh vs. K.S. Punjabi vs. Jitendra Bhimraj Bijjaya** reported in **AIR 1990 SC 1869** has held as under:-

> "Can he marshal the evidence found on the record of the case and in the documents placed before him as he would do on the conclusion of the evidence adduced by the prosecution after the charge is framed? It is obvious that since he is at the stage of deciding whether or not there exists sufficient grounds for framing the charge, his enquiry must necessarily be limited to deciding if the facts emerging from the record and documents constitute the offence with which the accused is charged. At that stage he may sift the evidence for that limited purpose but he is not required to marshal the evidence with a view to separating the grain from the chaff. All that he is called upon to consider is whether there is sufficient ground to frame the charge and for this limited purpose he must weigh the material on record as well as the documents relied on by the prosecution. In the State of Bihar v. Ramesh Singh (AIR

> 1977 SC 2018) this Court observed that at the initial stage of the framing of a charge if there is a strong suspicion-evidence which leads the court to think that there is ground for presuming that the accused has committed an offence then it is not open to the court to say that there is no sufficient ground for proceeding against the accused. If the evidence which the prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged by cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial. In Union of India v. Prafulla Kumar Samal *(AIR 1979 SC 366)* this Court after considering the scope of Section 227 observed that the words 'no sufficient ground for proceeding against the accused' clearly show that the Judge is not merely a post office to frame charge at the behest of the prosecution but he has to exercise his judicial mind to the facts of the case in order to determine that a case for trial has been made out by the prosecution. In assessing this fact it is not necessary for the court to enter into the pros and cons of the matter or into weighing and balancing of evidence and probabilities but he may evaluate the material to find out if the facts emerging therefrom taken at their face value establish the ingredients constituting the said offence."

The Supreme Court in the case of **Sheoraj Singh Ahlawat Vs. State of U.P.** Reported in **(2013) 11 SCC 476** has held as under :-

> **"15.** This Court partly allowed the appeal qua the parents-in-law while dismissing the same qua the husband. This Court explained the legal position and the approach to be adopted by the court at the stage of framing of charges or directing discharge in the following words: (*Onkar Nath case [(2008) 2 SCC 561]*, SCC p. 565, para 11)
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> > "*11*. It is trite that at the stage of framing of charge the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, *taken at their face value*,

> disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the court is not expected to go deep into the probative value of the material on record. *What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence*."
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> (emphasis supplied)

16. Support for the above view was drawn by this Court from the earlier decisions rendered in *State of Karnataka* v. *L. Muniswamy [(1977) 2 SCC 699]*, *State of Maharashtra* v. *Som Nath Thapa[(1996) 4 SCC 659]* and *State of M.P.* v. *Mohanlal Soni [(2000) 6 SCC 338]*. In *Som Nath case [(1996) 4 SCC 659]* the legal position was summed up as under: (SCC p. 671, para 32)

> "*32*. … if on the basis of materials on record, a court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. 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 has to be accepted as true at that stage*.
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> (emphasis supplied)

17. So also in *Mohanlal case[(2000) 6 SCC 338]* this Court referred to several previous decisions and held that the judicial opinion regarding the approach to be adopted for

framing of charge is that such charges should be framed if the court prima facie finds that there is sufficient ground for proceeding against the accused. The court is not required to appreciate evidence as if to determine whether the material produced was sufficient to convict the accused. The following passage from the decision in *Mohanlal case [(2000) 6 SCC 338]* is in this regard apposite: (SCC p. 342, para 7)

> "*7*. The crystallised judicial view is that at the stage of framing charge, the court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused."

18. In *State of Orissa* v. *Debendra Nath Padhi [(2005) 1 SCC 568]* this Court was considering whether the trial court can at the time of framing of charges consider material filed by the accused. The question was answered in the negative by this Court in the following words: (SCC pp. 577 & 579, paras 18 & 23)

> "*18. We are unable to accept the aforesaid contention*. The reliance on Articles 14 and 21 is misplaced. … Further, at the stage of framing of charge roving and fishing inquiry is impermissible. If the contention of the accused is accepted, there would be a mini-trial at the stage of framing of charge. That would defeat the object of the Code. *It is well settled that at the stage of framing of charge the defence of the accused cannot be put forth. The acceptance of the contention of the learned counsel for the accused would mean permitting the accused to adduce his defence at the stage of framing of charge and for examination thereof at that stage which is against the criminal jurisprudence. By way of illustration, it may be noted that the plea of alibi taken by the accused may have to be examined at the stage of framing of charge if the contention of the accused is accepted despite the well-settled proposition that it is for the accused to lead evidence at the trial to sustain such a plea. The accused*

> *would be entitled to produce materials and documents in proof of such a plea at the stage of framing of the charge, in case we accept the contention put forth on behalf of the accused. That has never been the intention of the law well settled for over one hundred years now*. It is in this light that the provision about hearing the submissions of the accused as postulated by Section 227 is to be understood. It only means hearing the submissions of the accused on the record of the case as filed by the prosecution and documents submitted therewith and nothing more. The expression 'hearing the submissions of the accused' cannot mean opportunity to file material to be granted to the accused and thereby changing the settled law. *At the state of framing of charge hearing the submissions of the accused has to be confined to the material produced by the police*.
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> *23. As a result of aforesaid discussion, in our view, clearly the law is that at the time of framing charge or taking cognizance the accused has no right to produce any material*."
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> (emphasis supplied)

19. Even in *Rumi Dhar* v. *State of W.B. [(2009) 6 SCC 364]*, reliance whereupon was placed by the counsel for the appellants, the tests to be applied at the stage of discharge of the accused person under Section 239 CrPC were found to be no different. Far from readily encouraging discharge, the Court held that even a strong suspicion in regard to the commission of the offence would be sufficient to justify framing of charges. The Court observed: (SCC p. 369, para 17)

> "*17*. … While considering an application for discharge filed in terms of Section 239 of the Code, it was for the learned Judge to go into the details of the allegations made against each of the accused persons so as to form an opinion as to whether any case at all has been made out or not as a strong suspicion in regard thereto shall subserve the requirements of law."

20. To the same effect is the decision of this Court in *Union of India* v. *Prafulla Kumar Sama* [(1979) 3 SCC 4]where this Court was examining a similar question in the context of Section 227 of the Code of Criminal Procedure. The legal position was summed up as under: (SCC p. 9, para 10)

> "*10*. Thus, on a consideration of the authorities mentioned above, the following principles emerge:
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> (*1*) That the Judge while considering the question of framing the charges under Section 227 of the Code 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.
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> (*2*) 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.
>
> (*3*) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.
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> (*4*) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced Judge 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 appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was

conducting a trial."

Thus, considering the totality of the facts and circumstances of the case, this Court is of the considered opinion that the Trial Court did not commit any mistake in framing charge under Section 420 of I.P.C. and under Section 339-C of M.P. Municipalities Act. Accordingly, the order dated 7-12-2016 passed by J.M.F.C., Guna in Criminal Case No.1321/2011 is hereby affirmed.

The revision fails and is hereby **dismissed.**

(G.S. Ahluwalia)
Judge

MKB