CRR.714/2017

HIGH COURT OF MADHYA PRADESH
BENCH AT GWALIOR

(DB : SHEEL NAGU & S.A. DHARMADHIKARI, JJ.)

CRR.714/2017

R.L. Jatav

Vs.

Station House Officer

For petitioner

Shri Anil Mishra, Advocate for the petitioner.

For Respondents

Shri Susheel Chaturvedi, Advocate for the respondent / EOW.

WHETHER REPORTABLE : Yes ☐ No ☐

Law Laid Down:

A trial court while rendering a judgment in trial is empowered to direct the police to register an offence against one of the witnesses against whom the trial court while marshalling the evidence finds prima facie material of committing cognizable offence. By doing so, the trial court would not be overstepping its jurisdictional purview as the provision of Section 154 Cr.P.C. obliges the police to register an FIR on receipt of information of commission of cognizable offence from any source.

Significant Paragraph Numbers: Para 7, 8, 9 & 10.

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O R D E R

(15.05.2018)

Sheel Nagu, J

1. Revisional powers of this Court u/s. 397 r/w Sec. 401 Cr.P.C are invoked for assailing the observations made by learned Trial Judge from paragraph 105 to 108 of the judgment dated 30.06.2017 in S.T. No. 09/2012 P.C. Act (EWO) passed by1st ASJ, Special Court P.C. Act Morena whereby the trial court has found the prima facie offence to be established against the petitioner – R.L. Jatav who appeared as PW-9 in the said trial and has directed the D.G., State Economic Offence Bureau to register an offence against the petitioner and file final report u/s 173 Cr.P.C within a period of four months with the corresponding direction to the D.G. to file appropriate application before the competent authority to seek sanction for prosecution against the petitioner.

2. Learned counsel for the rival parties are heard on the question of admission.

3. Learned counsel for the petitioner by relying upon the decisions of the Apex Court in the case of **Ramlal Narang Vs. State (Delhi Administration)** reported in (**1979) 2 SCC 322, Vinay Tyagi Vs. Irshad Ali** reported in **(2013) 5 SCC 762, Anil Kumar and Ors. Vs. M.K. Aiyappa and Anr.** reported in **(2013) 10 SCC 705 and Bharti Tamang Vs. Union of India and Ors.** reported in **(2013) 15 SCC 578 & Chandra Babu Vs. State Through Inspector of Police** reported in **2015(8) SCC 774** submits that the trial court had no jurisdiction to issue direction which tantamounts to encroaching upon the rights of the investigating agency and thus is abhorrent to the scheme of Cr.P.C. It is thus contended that the trial court has usurped the power and authority of investigating agency and thereby committed a jurisdictional error.

4. On the other hand, learned counsel for the respondent- EOW submits that power exercised by the trial court while making the impugned observations and directions can be traced in Sec. 190 (1) (C) of Cr.P.C. which empowers the Magistrate to take cognizance of offence committed on receiving knowledge from any person or *suo moto*. The judgment delivered by the Division Bench of this Court on 25.09.2017 in CRA.840/2004 (Kallu Vs. State of M.P.) is relied upon.

5. After hearing learned counsel for the rival parties and considering the submissions and pleadings, this Court is of the considered view that Sec. 190(1)(c) Cr.P.C. is not attracted in the present case for the simple reason that said provision deals exclusively with the power of a Magistrate for taking cognizance of offence. Whereas in the case at hand, the power has been exercised by the Sessions Judge. Power of Sessions Judge for taking cognizance is traceable in Sec. 193 which is reproduced below for convenience and ready reference :-

> *"**193. Cognizance of offences by Courts of Session**.- Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction unless the case has been committed to it by a Magistrate under this Code."*

6. Reverting to the factual matrix of the case, it is seen that the impugned observation in para 105 and 106 deals with misdemeanor of the petitioner while discharging his duties as Auditor which was noticed by the learned trial judge while deciding S.T. No. 09/2012 . The court below found from the record available in the trial that petitioner as an Auditor had prepared a wrong note thereby, allowing the accused in the trial to commit the offence for which they were found guilty. Having noticed the said prima facie evidence against the petitioner, learned trial Judge in para 107 came to the conclusion that if petitioner had honestly discharged

his duties as an Auditor during the period 1991-92 & 1993-94 the accused could not have embezzled the amount of Rs. 3,65,960/-. This led the trial court to prima facie conclude that the petitioner was equally responsible for the offence committed by the trial court. On the basis this foundational fact and finding, the impugned directions were issued in para 108 of the judgment directing the Head of investigating agency to register FIR against the petitioner and also to apply before the competent authority for sanction for prosecuting the petitioner.

7. In the above factual backdrop it is now to be adjudged whether the learned trial judge in the attending facts could have directed for registration of an offence and made the impugned directions against the petitioner or not.

7.1. A bare perusal of the scheme of Cr.P.C. especially Chapter XII and in particular Sec. 154 discloses that the source of information regarding commission of cognizable offence is not provided in express or implied terms, thereby leaving it open for anyone and everyone to inform the police regarding commission of any cognizable offence that comes his knowledge. Thus such information regarding commission of cognizable offence can very well be furnished even by a person who is not aggrieved by the offence or who is not the victim. Factum of knowledge of commission of cognizable offence to a person is a good enough cause for such person to inform the police about the same. The reason for keeping all avenues open to receive information regarding commission of cognizable offence is not far to see. The legislature did not want any cognizable offence under the IPCwhich is punishable with penalty of imprisonment for more than 7 years to go unreported, uninvestigated, untried and if found proved, unpunished.

8. When the impugned observations and directions made in

para 108 of the impugned judgment are tested on the anvil of Sec. 154 of Cr.P.C., it is evident that the trial court while directing for registration of an offence after prima faice finding commission of cognizable offence by the petitioner, did not travel beyond its jurisdiction since the learned trial judge was merely informing the police about commission of cognizable offence which had come to its knowledge while adjudication in undertaking the exercise of the trial. Thus, the direction for registration of FIR against petitioner to the investigation agency cannot be found fault with.

9. As regards the subsequent directions contained in para 108 of the impugned judgment directing the investigating authority to file an application for seeking sanction for prosecution from the competent authority is concerned, the same appears to have been passed overstepping the jurisdictional purview of the trial court. The reason is obvious. By directing for seeking sanction for prosecution, the learned trial judge has stepped into the shoes of the investigating agency without any authority of law. The issue of seeking sanction for prosecuting a civil post holder lies within the exclusive domain of the investigating agency but not within the powers of Sessions Court.

10. In view of the above, this Court is of the considered view that as regards the observation contained in paragraphs 105, 106, 107 and 108 finding the petitioner to have committed the cognizable offence and directing registration of an FIR against the petitioner, this court declines interference. However, the direction contained in paragraph 108 directing the investigating agency to seek sanction for prosecution from the competent authority, the same deserves interference as Sessions Court usurped the authority of the investigating agency while doing so.

10.1 Impugned paragraph 108 further contains direction for the investigating agency to file the final report u/s 173 Cr.P.C within

four months which does not deserve interference as the said does not compel the investigating agency to necessarily file an implicative charge sheet. This direction is merely to the extent that investigating agency after conducting investigation may file a final report u/s 173 Cr.P.C. which includes even a closure report and therefore, the trial court has left it open for the investigating agency to collect evidence on the basis of the FIR directed to be lodged and thereafter, if there is sufficient evidence for prima facie constituting the basic ingredient of any cognizable offence, then to file implicative charge sheet or a closure report in the absence of evidence. The Sessions court thus has not directed to file an implicative charge-sheet only and therefore has not travelled beyond its jurisdictional limits.

11. Consequently, present revision stands allowed to the extent indicated below :-

(i) The direction contained in paragraph 108 of the judgment dated 30.06.2017 passed in Special S.T. No. 09/2012 P.C. Act (EOW) by 1st ADJ, Special Court, P.C. Act Morena to the extent it directs the investigating agency to file an application before competent authority for seeking sanction for prosecution against the petitioner is set aside leaving it open for the investigating agency to act in accordance with law on the basis of evidence collected during investigation.

(ii) So far as other direction of registration of FIR against the petitioner and of filing final report contained in para 108 is concerned, the same do not deserve any interference.

(iii) No costs.

(Sheel Nagu)
Judge

(S.A. Dharmadhikari)
Judge

sarathe