

HIGH COURT OF MADHYA PRADESH
BENCH AT GWALIOR

SINGLE BENCH
MISCELLANEOUS CRIMINAL CASE No.20798/2017

Narendra Singh
Vs.
Superintendent of Police & Anr.

Shri Anil Mishra, learned counsel for the petitioner.
Shri G.S. Chauhan, learned Public Prosecutor for the
respondents/State.

Present : **Hon. Mr. Justice Anand Pathak**

ORDER
{Pass on 16th day of November, 2018}

Present petition under Section 482 of the Code of Criminal Procedure, 1973 has been preferred by the petitioner for quashment of FIR registered at crime No.74/2012 at Police Station Dehat Bhind in respect of offence under Sections 353, 186 and 147 of IPC against the petitioner. Petitioner is also seeking quashment of the order dated 10-10-2017 passed by the JMFC, Bhind in Criminal Case No.1206/2017 whereby the application preferred by the accused Yogendra Singh alias Lala under Sections 467 and 468 of Cr.P.C. has been rejected. Petitioner is further aggrieved by the order dated 26-10-2017 whereby bailable warrant against the petitioner has been issued. Petitioner is also challenging the order dated 21-09-2017 passed by the trial Court whereby a date has been fixed for presence of petitioner before the Court.

2- Case of the prosecution reveals that an FIR has been registered by the police on the allegation that on 08-03-2012, an information was received by the police about selling of illicit liquor and therefore, raid was conducted and the accused Poot Jatav and Sanjeev Yadav were arrested in connection with selling of the said illicit liquor. Sum of Rs.28,700/- along with illicit liquor was

recovered from them. The said action of the police precipitated the event under which petitioner along with other co-accused persons came to the spot and interfered in official duty of the police personnel, therefore, the offence has been registered against the petitioner and other accused persons at crime No.74/2012 under Sections 353, 147 and 186 of IPC. In the aforesaid offence, the accused persons, namely, Lala alias Yogendra Singh, Lala alias Jitendra Singh, Nehru alias Arvind Singh, Bobby alias Vikram Pratap Singh, Bhanu alias Chhote Singh, Raju alias Rajendra Singh, Rahul Singh all resident of Chaturvedi Nagar, Bhind, Brijendra alias Sanju resident of Barkalan were arrested and charge-sheet on dated 13-07-2017 has been filed against them and investigation remained opened under Section 173(8) of Cr.P.C.

3- After registration of offence against the petitioner, petition under Section 482 of Cr.P.C. was preferred bearing M.Cr.C.No.4162/2012 in which the relief for quashment of FIR was sought. The said petition was disposed of on 30-07-2012 with a direction to the petitioner along with Pushpendra Singh to appear before the investigating officer along with all the documents and proof showing their innocence. Due hearing was directed to be given to them. Thereafter, charge-sheet or final report in the matter was directed to be preferred.

4- It appears that the representation preferred by the petitioner was considered by the investigating officer and final report has been filed on 25-09-2017 against the petitioner but prior to it, on 21-09-2017, trial Court has taken cognizance against the petitioner and directed prosecution to bring the petitioner before law and therefore, bailable warrant has been issued.

5- Main grievance as echoed in the present petition by learned counsel for the petitioner is that although trial Court has passed the order dated 21-09-2017 and took cognizance against the petitioner but later on, when closure report has been filed in favour of petitioner then the said closure report has not been taken into consideration and vide order dated 10-10-2017 and 26-10-2017, trial Court declined to consider the closure report and bailable warrant against the petitioner has been issued. He relied upon the

judgment of the Hon'ble Apex Court in the matter of **Vinay Tyagi Vs. Irshad Ali and others, (2013) 5 SCC 762** and in the matter of **Chandra Babu Vs. State Through Inspector of Police and others, (2015) 8 SCC 774** and submitted that the trial Court erred in not considering the closure report in favour of petitioner and erred in issuing the bailable warrant.

6- Another ground raised, is in regard to the bar created under Section 468 of Cr.P.C. in respect of limitation. According to him, Section 353 of IPC gives maximum period of punishment as two years. Matter is of year 2012 and cognizance has been taken in 2017 therefore, cognizance is hit by the limitation enumerated under Section 468 of Cr.P.C.

7- On the other hand, learned counsel for the respondents/State opposed the prayer made by the petitioner on the basis of judgment rendered by this Court in the matter of **Amit Purohit Vs. State of M.P. 2015 (3) MPHT 117** and submitted that no further investigation can be done and prayed for dismissal of the petition. State supported the order of trial Court.

8- Heard learned counsel for the parties and perused the documents appended with the petition.

9- In the present case, charge-sheet against the co-accused has been filed in the year 2017 and direction was sought for further investigation under Section 173(8) of Cr.P.C. against the petitioner and some other persons. Thereafter, on 21-09-2017, cognizance was taken by the trial Court under Section 190 of Cr.P.C. It was observed by the trial Court in the same order that the present petitioner is an accused in the charge-sheet and effectively it was charge-sheet under Section 299 of Cr.P.C. in absence of accused. Trial Court took cognizance of contents of FIR as well as statements of witnesses recorded under Section 161 of Cr.P.C. Witness disclosed the act of present petitioner and the name of witnesses and their designation have been specifically mentioned by the trial Court and discussed the role of present petitioner in the case in hand. Thereafter, trial Court exercised power under Section 190(1)(b) of the Cr.P.C. and found involvement of petitioner in commission of offence on the basis of statements of witnesses,

therefore, took cognizance against the petitioner as well as other absconding accused persons under Sections 353, 186 and 147 of IPC and issued bailable warrant for causing their presence. The matter was placed on 26-10-2017. It appears that immediately thereafter, Station House Officer, Police Station Dehat Bhind has given closure report on 25-09-2017 and submitted that no case against the petitioner is made out on the basis of statements taken by the investigating officer of some witnesses who were present on dated 08-03-2012 at Lahar Chauraha.

10- Interestingly, Station House Officer, Police Station Dehat Bhind refers the statements of witnesses who made statement on affidavit about the alleged innocence of petitioner but ignored the statements of earlier witnesses; Sub Inspector Rabudi Singh, Addl. Superintendent of Police Jaidewan, SHO City Kotwali Bharat Singh Rajput, Reserved Inspector Madhukar Chaukikar, Constable Rameshwar Sharma, Sonendra Singh, Manish Singh, Bhavesh Dixit, Omprakash Mishra, Krishna Kumar Singh, ASI S.K. Mishra, Driver Dinesh Kumar, Head Constable Ramjilal, Constable Indal Singh Chauhan and constable Rambahadur Sharma who categorically referred involvement of petitioner as public representative when the police officers were conducting their duties under the M.P. Excise Act and when they were arresting the accused persons for sale of illicit liquor. These statements were recorded in March, 2012 when the alleged incident took place, indicate that role of petitioner was *prima facie* apparent and he interfered in functioning of the public servants. It is not the duty of the public representative to protect a person who is facing police action for committing illegal and anti-social activities rather, he has to take the side of law and legal enforcement. Therefore, trial Court rightly took cognizance against the petitioner and issued bailable warrant against him. When the cognizance has been taken by the trial Court, the Station House Officer, Police Station, Dehat Bhind had no authority to submit closure report. If the investigation against the petitioner had to be ended in the closure report then why the charge-sheet on 13-07-2017 was filed purportedly under Section 299 of Cr.P.C. in absence of petitioner, in which statements

of witnesses indicate the role of petitioner *prima facie* and when the trial Court in specific terms took cognizance, then filing of closure report was a futile exercise of Station House Officer, Police Station Dehat Bhind just to protect the petitioner.

11- Once trial Court taken cognizance in specific terms vide order dated 21-09-2017 then the closure report had no legal sanctity. The trial Court rightly concluded that in view of the judgment of Hon'ble Apex Court rendered in the case of **Adalat Prasad Vs. Rooplal Jindal and others, AIR 2004 SC 4674** and in the case of **Subramaniam Sethuraman vs State Of Maharashtra & Anr, AIR 2004 SC 4711**, trial Court cannot review the order passed earlier. Although petitioner has preferred this petition under Section 482 of Cr.P.C. and tried to assert that the closure report can be seen by this Court at least but *prima facie* on the basis of contents of the charge-sheet and submission of Public Prosecutor for the respondents/State, no case for interference is made out for giving direction to the trial Court for consideration of the closure report, a report which does not take care of earlier statements of departmental witnesses who in specific terms referred the role of petitioner in causing obstruction and deterrence to public servants from discharging their duty.

12- Some of the witnesses have categorically referred that the petitioner and his accomplice were creating commotion over the place of incident (नरेन्द्र सिंह कुशवाह एवं उनके साथी उत्पात मचा रहे थे). It is surprising that the said closure report submitted by the Station House Officer, Police Station Dehat Bhind nowhere took care of those statements of his own fellow officers and constables who referred the name of petitioner, therefore, it appears that the closure report of SHO was not result of fair and impartial investigation. Therefore, on this count also, closure report has no legal sanctity. Thus, the extra ordinary jurisdiction vested under Section 482 of Cr.P.C. cannot be invoked to consider the said closure report in any manner.

13- In the considered opinion of this Court, trial Court has rightly rejected the submission of petitioner. Section 473 of Cr.P.C. provides for extension of period of limitation in certain cases,

therefore, sufficient discretion is vested in the Court if delay has been properly explained or if it is necessary so to do in the interests of justice. Present case is one such case, because a public servant can not be deterred while conducting his duty specifically when he is restraining or restricting any illegal activity. Any obstruction would amount to abetment to such illegal activity and encouragement to such anti-social intention.

14- In the considered opinion of this Court, no case for interference is made out. Trial Court rightly took cognizance in the case in hand. Petitioner has to appear before the trial Court in accordance with law.

15- Office is directed to send copy of this order to the Superintendent of Police, Bhind and trial Court for information and for compliance as per law.

Petition stands dismissed.

Anil*

(Anand Pathak)
Judge