

Jitendra Singh Narwariya
Vs.
State of M.P. & Ors.

08 .03.2017

Shri A.S. Bhadoriya, counsel for the appellant.

Shri N.S. Kirar, Panel lawyer for the respondents / State.

1. This intra Court appeal filed under Section 2(i) of M.P. Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 assails the final order dated 08.02.2017 passed by learned Single Judge in WP No. 829/2017 whereby the petition in question has been disposed of with observation that the investigating officer should conduct investigation in a free and fair manner without getting biased, after observing that the petition lacks in material to substantiate the allegation of malice.

2. Learned counsel for the appellant assailing the order of the writ Court primarily contends that the petitioner by way of representations Annexures P/2, P/3 and P/4, certain photographs and compact disc (CD) , wants to present cogent material before the investigating agency to establish his innocence.

2.1 Admittedly, the offence punishable under Section 376 and 506 IPC is registered against the petitioner bearing crime No. 33/2017 at Police Station Hazira, District Gwalior in which the investigation is said to be pending.

3. This Court has no manner of doubt that the order of the writ Court is unassailable and cannot be disturbed as the same has been passed based on relevant consideration of pleadings contained in the petition in question and arguments extended by the counsel for the petitioner.

4. However, before parting this Court would like to observe that the investigating agency should not feel diffident or shy of allowing the accused to furnish or disclose material or information which may help the investigation to discover the truth which is the prime

object behind every process of investigation of crime. The Criminal Procedure Code or even the M.P. Police Manual do not restrict or prohibit the investigating agency from accepting relevant material or information during the process of investigation.

5. In a recent decision of the Apex Court rendered in the case of *Pooja Pal Vs. Union of India and Ors.*; (2016) 3 SCC 135 the object and scope of free, fair and proper investigation has been appropriately described thus :-

88. The expression "fair and proper investigation" in criminal jurisprudence was held by this Court in Vinay Tyagi VS. Irshad Ali (2013)5SCC 762 to encompass two imperatives; firstly the investigation must be unbiased, honest, just and in accordance with law; and secondly, the entire emphasis has to be to bring out the truth of the case before the court of competent jurisdiction.

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95. Adverting to the role of the police to be one for protection of life, liberty and property of citizens, with investigation of offences being one of its foremost duties, it was underscored in Manohar Lal Sharma vs. Union of India (2014)2SCC 532 that the aim of investigation is ultimately to search for truth and to bring the offender to book. The observations of Lord Denning in his rendering in "The Due Process of Law" First Indian Reprint 1993 page 102 were alluded to at page 553 as under: (SCC p.553, para 25)

"25.....In safeguarding our freedoms, the police play a vital role. Society for its defence needs a well-led, well-trained and well-disciplined force of police whom it can trust; and enough of them to be able to prevent crime before it happens, or if it does happen, to detect it and bring the accused to justice.

The police, of course, must act properly. They must obey the rules of right conduct. They must not extort confessions by threats or promises. They must not search a man's house without authority. They must not use more force than the occasion warrants."

96. The avowed purpose of a criminal investigation and its efficacious prospects with the advent of scientific and technical advancements have been candidly synopsised in

the prefatory chapter dealing with the history of criminal investigation in the treatise on Criminal Investigation – Basic Perspectives by Paul B. Weston and Renneth M. Wells:

“Criminal investigation is a lawful search for people and things useful in reconstructing the circumstances of an illegal act or omission and the mental state accompanying it. It is probing from the known to the unknown, backward in time, and its goal is to determine truth as far as it can be discovered in any post-factum inquiry.

Successful investigations are based on fidelity, accuracy, and sincerity in lawfully searching for the true facts of an event under investigation and on an equal faithfulness, exactness, and probity in reporting the results of an investigation. Modern investigators are persons who stick to the truth and are absolutely clear about the time and place of an event and the measurable aspects of evidence. They work throughout their investigation fully recognizing that even a minor contradiction or error may destroy confidence in their investigation.

The joining of science with traditional criminal investigation techniques offers new horizons of efficiency in criminal investigation. New perspectives in investigation bypass reliance upon informers and custodial interrogation and concentrate upon a skilled scanning of the crime scene for physical evidence and a search for as many witnesses as possible. Mute evidence tells its own story in court, either by its own demonstrativeness or through the testimony of an expert witness involved in its scientific testing. Such evidence may serve in lieu of, or as corroboration of, testimonial evidence of witnesses found and interviewed by police in an extension of their responsibility to seek out the truth of all the circumstances of crime happening. An increasing certainty in solving crimes is possible and will contribute to the major deterrent of crime – the certainty that a criminal will be discovered, arrested and convicted.” (Emphasis supplied)

6. Thus investigating agency should seek to discover material/information from all quarters for conducting free and fair investigation to arrive at the truth.

7. The investigating agency should not forget that crime investigation is a probe in the dark moving from known to unknown backward in time, conducted to achieve the sole object of arriving at the truth. In this process the investigating agency should be receptive to all possible sources of material / information which may assist the agency to conclude the investigation properly. One of the sources can also be the accused.

8. In view of the above, while upholding the order of the writ Court, this Court directs investigating authority in crime No. 33/17 registered at Police Station Hazira, District Gwalior to allow the petitioner / accused to submit all such information which may assist the officer to arrive at the truth, which if done shall be considered by the investigating agency objectively and dispassionately without discarding it merely because of being furnished by the accused.

9. With the aforesaid observations, the writ appeal stands disposed of.

(Sheel Nagu)
Judge

(S.A.Dharmadhikari)
Judge