

**THE HIGH COURT OF MADHYA PRADESH**  
**MCRC 12592/2018**  
**Deepak alias Preetam Verma and Anr. Vs. State of MP & Anr.**

**Gwalior, dated 11/09/2018**

Shri Ravi Ballabh Tripathi, counsel for the applicants

Shri B.P.S. Chouhan, Counsel for the respondent No. 1/State.

Case diary is available in M.Cr.C.No.33002/2018, which is an application filed by co-accused Ladle Vanshkar for grant of bail and has been decided today itself.

This application under Section 482 of Cr.P.C. has been filed for quashing the F.I.R. in Crime No.75/2017 registered at Police Station Godan Distt. Datia for offence under Sections 307, 294, 34 of I.P.C. as well as for quashment of all the consequent criminal proceedings.

The prosecution story in short is that the complainant lodged a report against the applicants as well as the other co-accused persons alleging that the applicant no.2 and Dayashanker fired a gun shot causing injuries whereas all other accused persons were armed with weapons and had exhorted the applicant no.2 and Dayashanker to kill the complainant.

It is submitted that the Add. S.P. had conducted an independent parallel enquiry and had found that the applicants have been falsely implicated and, therefore, relying on the report of the Add. S.P., it is prayed that the F.I.R. registered against the applicants and all other consequential proceedings may be quashed.

*Per contra*, it is submitted by the Counsel for the State, that the investigating agency has not relied upon the enquiry report submitted by the Add. S.P., and the charge sheet has been filed against the applicants and they are still absconding.

Considered the submissions made by the Counsel for the

parties as well as the documents filed in support of the same.

In the F.I.R., a specific allegation has been made against the applicant no.2 and co-accused Dayashanker that they had fired gunshots causing injuries.

Unfortunately, this case is a glaring example of interference by the political leaders in the investigation and unfortunately, the Superintendent of Police, Datia also fell pray to the pressure exerted by the local M.L.A., and without there being any provision of law, the Superintendent of Police has tried to please the local M.L.A. and has reported to the M.L.A. Such type of reporting by the Superintendent of Police in a criminal case is unknown to the criminal jurisprudence. It is true that free and fair investigation is the cardinal principle of criminal law, but interference by the politicians in the investigation, and twisting the investigation at the behest of the Superintendent of Police of a District is also really alarming. A time has come where, the Court cannot keep its eyes closed to such type of actions of the Superintendent of Police.

From the documents, which have been placed on record, it is clear that a typed application was made by one Amar Singh, the close relative of the accused persons, alleging that his son and grandson had gone to the Court of Tahsildar, Bhandar for attending a Court proceedings and a false report has been lodged against them. It appears that said Amar Singh, also approached local M.L.A. as a result of which, a letter was written by Ghanshyam Pironiya, M.L.A. to the Superintendent of Police, forwarding the letter of Amar Singh with a direction that justice may be done to Amar Singh, by conducting an impartial enquiry and the outcome of the said enquiry be reported to him. The letter dated 20-9-2017, written by the local M.L.A., which has been placed at page No.20 along with the application is reproduced as under :-

“विधायक  
मध्यप्रदेश विधान सभा

दि. 20/9/2017

प्रति,  
पुलिस अधीक्षक  
दतिया।

विषय— प्रार्थी के लडको के विरुद्ध झूठी रिपोर्ट करने बावत।  
संदर्भ— श्री अमरसिंह वंशकार निवासी कर्रा भाण्डेर का आवेदन  
उपरोक्त विषयक संदर्भित आवेदन मूल रूप में आपकी ओर  
संलग्न प्रेषित कर निवेदन है कि आवेदन की निष्पक्ष जाँच कराकर  
आवेदन को न्याय दिलाने की अनुशंसा की जाती है कृत कार्यवाही से  
अवगत कराने का कष्ट करे।

संलग्न— उपरोक्तानुसार।

भवदीय

घनश्याम पिरौनिया  
विधायक”

It appears that in compliance of letter dated 20-9-2017, written by the local M.L.A., the Superintendent of Police, Datia, directed the Additional Superintendent of Police to conduct a parallel enquiry. The letter dated 26-9-2017, written by Superintendent of Police, Datia to the Additional S.P., Datia has been placed at page No. 19 and is reproduced as under :-

“विषय:— आवेदक / आवेदिका अमर **S/O** लूटेरे वंशकार निवासी कर्रा

संदर्भ:— विधायक भाण्डेर घनश्याम पिरौनिया पत्र दि 20-9-17 के तारतम्यमें

—00—

विषयांकित शिकायती आवेदन पत्र आपकी ओर भेज कर लेख है कि शिकायत पत्र की जांच निम्न बिन्दुओ पर की जा कर प्रतिवेदन आगामी 07 दिवस के अन्दर इस कार्यालय को भेजे।

1. शिकायत में उल्लेखित सभी बिन्दुओ की जांच बारीकी से की जावे तथा कथन एवं अन्य दस्तावेज प्रतिवेदन के साथ संलग्न कर भेजे।
2. जांच के दौरान आवेदक/अनावेदक, साक्षियो एवं स्वतंत्र साक्षियो के कथन लिये जावे एवं कथनो के उपर स्पष्ट रूप से उल्लेख करे कि यह कथन आवेदक पक्ष/अनावेदक पक्ष / स्वतंत्र साक्षी का है।
3. शान्ति व्यवस्था भंग होने की दशा में प्रतिबंधात्मक कार्यवाही कर उसका

उल्लेख प्रतिवेदन में करे।

4. प्रतिवेदन में जांच निष्कर्ष स्पष्ट रूप से लिखे एवं जांच निष्कर्ष से आवेदक को अवगत कराया जाकर प्रतिवेदन में उसका उल्लेख करे।

5. आवेदक नोटिस देने के उपरांत भी उपस्थित नहीं होने पर उसके निवास के पते पर जाकर कथन लेना सुनिश्चित करे।

6. शिकायत के संबंधित थाने से अभिलेख प्राप्त कर उसका उल्लेख प्रतिवेदन में किया जाये।

7. 22 बिन्दु के प्रोफार्मा अनुसार प्रतिवेदन देना सुनिश्चित करे।

संलग्न – मूल आवेदन पत्र एवं अन्य प्रपत्र विधायक पत्र सहित तीन पृष्ठ।

पुलिस अधीक्षक  
जिला दतिया म0प्र0”

Thereafter, it appears that the Additional S.P., Datia, recorded the statements of certain witnesses, but did not even care to examine the complainant or other injured persons. Thus, the Additional S.P., Datia also ensure that an *ex parte* parallel enquiry is conducted, inspite of the fact that the investigation was already going on.

It appears that thereafter, the Additional Superintendent of Police, Datia on the basis of *ex parte* parallel enquiry gave a clean chit to the applicants and the Superintendent of Police, Datia, in its turn, and with a sole intention of pleasing the local politician, forwarded the copy of the enquiry report to the M.L.A. The covering letter of forwarding the copy of the enquiry report to the M.L.A. has been placed at serial no. 15 which is reproduced as under :-

“विषय:— आवेदक अमर सिंह पुत्र लटोरे वंशकार नि0 ग्राम कर्रा जिला दतिया के शिकायती आवेदन पत्र की जांच के संबंध में।

सदर्भ:—आपका पत्र दिनांक 20.09.2017 के पालन मे।

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कृपया उपरोक्त विषयांतर्गत सदरभित शिकायती आवेदन पत्र का अवलोकन करने का कष्ट करे जिसके माध्यम से प्रार्थी के लडको के विरुद्ध झूठी रिपोर्ट करने बावत लेख किया है। उक्त आवेदन पत्र की जांच अतिरिक्त पुलिस अधीक्षक जिला दतिया के द्वारा की गयी संपूर्ण जांच से प्रकरण के कथित आरोपीगण दीपक,लाडले, कोक सिंह की प्रातः 11:00 बजे से सायं 05:00 बजे तक माननीय न्यायालय

जेएमएफसी भाण्डेर व न्यायालय नायब तहसीलदार वृत्त गोंदन तहसील भाण्डेर में एवं आरोपी दयाशंकर की उपस्थिती बलराम वंशकार, हरदयाल वंशकार व बाबूलाल वंशकार के साथ दिनांक 07.09.2017 तक रामलीला मैदान पण्डाल कौच जिला जालौन में पायी जा रही है उक्त घटना प्रथम दृष्टया राजकुमार सोनू अमरजीत चन्दू व हरविलास नाम व्यक्ति द्वारा बंदको से किए गये हवाई फायर से घटना घटित हुई दिनांक 04.09.2017 को राजकुमार जमादार चंदू कडेरा अमरजीत कडेरा, व कमलेश कडेरा, द्वारा आवेदक के पुत्र किशनलाल की मारपीट की गयी थी जिस पर से थाना गोदन में प्रकरण पंजीबद्ध किया गया है। उक्त रंजिश में अपराध पंजीबद्ध कराना प्रतीत है। उक्त तथ्यों को प्रकरण की विवेचना में शामिल कर प्रकरण का निराकरण करने हेतु कार्यालयीन पत्र क्र/पुअ/दतिया/शिजे/विधा0/प्रति/05-ए/14 दिनांक 30.12.2017 से थाना प्रभारी गोदन को निर्देशित किया गया।

जाँच प्रतिवदेन सादर अवलोकनार्थ प्रेषित है।

- संलग्न:-1 मूल आवेदन पत्र- एक पृष्ठ।  
 2 जाँच प्रतिवेदन की छायाप्रति- तीन पृष्ठ।  
 3. कथन छायाप्रति- बारह पृष्ठ।  
 4 आदेश दि 12.09.17 JMFC प्रेषित

पुलिस अधीक्षक  
 जला दतिया म0प्र0

छायाप्रति -एक पृष्ठ एवं थाना प्रभारी गोदन को प्रेषित किया जावे छायाप्रति- एक पृष्ठ।

प्रतिलिपि:- आवेदक अमर सिंह पुत्र लटोर वंशकार नि0 ग्राम केरो जिला दतिया की ओर सूचनार्थ थाना प्रभारी गोंदन जिला दतिया को निर्देशित किया जाता है आवेदिका को सूचना पत्र तामिल करना सुनिश्चित करे।

पुलिस अधीक्षक  
 जिला दतिया म0प्र0

It is really surprising that the local politicians have not been assigned any role under any of the provisions of Criminal Procedure Code, but in spite of that, the Superintendent of Police, Datia, not only entertained the recommendation of the M.L.A., and directed for parallel enquiry but thereafter, also forwarded the copy of the enquiry report to the M.L.A., just in order to please the politicians. This act of the Superintendent of Police, Datia, cannot be appreciated and is hereby deprecated.

Not only this, the Counsel for the State also could not point

out any provision in Cr.P.C., which empowers the Superintendent of Police, to direct for an independent and parallel enquiry, specifically when the investigating officer was already conducting the investigation. Here, it is not out of place to mention that the investigation was never withdrawn from the investigating officer. No allegations of bias were ever made against the investigating officer.

Section 36 of Cr.P.C. reads as under :-

**"36. Powers of superior officers of police.**

— Police Officers superior in rank to an officer in charge of a police station may exercise the same powers, throughout the local area to which they are appointed, as may be exercised by such officer within the limits of his station."

The moot question for consideration in short is that whether the enquiry report given by the Additional S.P., Datia was in accordance with law and whether the same can be considered by the Trial Court while deciding the trial.

The police department has issued a circular dated 25.6.2010 under the signatures of Director General of Police, Madhya Pradesh and the said circular still holds field. The circular dated 25.6.2010 has been issued by the police department in order to ensure the compliance of the order passed by this Court in the case of **Sanjay Singh & Ors. vs. State of M.P. & Ors.** reported in **2006 (2) MPLJ 324**. The relevant portion of the circular dated 25.6.2010 reads as under:-

“उपरोक्त निर्देशों में यह स्पष्ट किया गया है कि आरोपी/संदेही के आवेदन पर अपराध की विवेचना प्रभावित नहीं होना चाहिए। अतः स्पष्ट किया जाता है कि:-  
1- यदि विवेचना के दौरान इस प्रकार के आवेदन या शिकायत पत्र प्राप्त होते हैं अथवा समाचार पत्रों में कोई समाचार प्रकाशित होता है तो आवेदन या समाचार जॉच उचित माध्यम से विवेचक को भेजकर जॉच विवेचना के अंश के रूप में ही करना चाहिये किसी भी दशा में विवेचक से समानांतर अथवा भिन्न जॉच पृथक से प्रारम्भ नहीं करायी जानी चाहिये।”

Thus, it is clear that the police department itself is of the view that during the pendency of an investigation the parallel independent enquiry should not be conducted under any circumstance. Even otherwise there is no provision under the Code of Criminal Procedure which empowers the Superintendent of Police to hold the parallel independent enquiry during the pendency of an investigation.

Thus, it is clear that where the Director General of Police has also issued a circular, making it crystal clear that during the pendency of the investigation, a parallel and independent enquiry cannot be done, but it appears that flouting the instructions of the Director General of Police, the Superintendent of Police, Datia, had directed the Add. S.P., Datia to conduct a parallel and independent enquiry. Thus, the action of the Superintendent of Police is not only contrary to the provisions of Cr.P.C., but is also contrary to the circular issued by the Director General of Police, Madhya Pradesh, Bhopal.

Unfortunately, that is not the end of the matter. The Additional S.P., submitted his report on 8-12-2017 and the Superintendent of Police, by its letter dated 30-12-2017, directed the S.H.O., Police Station Godan, Distt. Datia to include the enquiry report as an evidence and to proceed and also to inform the Superintendent of Police, within 7 days. It appears that when the investigating officer did not agree to act upon the report of the Additional Superintendent of Police, Datia, then the Superintendent of Police, Datia, by letter dated 5-2-2018 forwarded the entire documents, including the enquiry report, statements of the witnesses, etc. to the M.L.A. Thus, it is clear that the Superintendent of Police, Datia, was well aware of the fact that he has already directed the S.H.O., Police Station Godan, Distt. Datia, to make the enquiry report and other documents as part of case diary in the form of evidence.

Section 172 of Cr.P.C. reads as under :

**"172. Diary of proceedings in investigation.**—(1) Every police officer making an investigation under this Chapter shall day by day enter his proceedings in the investigation in a diary, setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him, and a statement of the circumstances ascertained through his investigation.

<sup>1</sup>[(1-A) The statements of witnesses recorded during the course of investigation under Section 161 shall be inserted in the case diary.

(1-B) The diary referred to in sub-section (1) shall be a volume and duly paginated.]

(2) Any Criminal Court may send for the police diaries of a case under inquiry or trial in such Court, and may use such diaries, not as evidence in the case, but to aid it in such inquiry or trial.

**(3) Neither the accused nor his agents shall be entitled to call for such diaries, nor shall he or they be entitled to see them merely because they are referred to by the Court; but, if they are used by the police officer who made them to refresh his memory, or if the Court uses them for the purpose of contradicting such police officer, the provisions of Section 161 or Section 145, as the case may be, of the Indian Evidence Act, 1872 (1 of 1872), shall apply."**

Thus, it is clear that the accused is not entitled to call for such diaries nor shall he or they be entitled to see them. However, in the present case, not only the documents have been made available by the Superintendent of Police, to the applicants under the Right to Information Act, but has also provided the same to the local M.L.A. who had recommended in favor of the applicants. Thus, it is clear that at all stages, the Superintendent of Police, Datia was acting contrary to the provisions of law.

Further, it is mentioned in the application that on the date of incident, the applicant no.2 along with other persons, had



attended the Court proceedings of the Court of Tahsildar Bhandar as well as the Court of J.M.F.C., Bhandar, Distt. Datia and the copy of the ordersheets have been placed on record.

It is fairly conceded by the Counsel for the State that the distance of Bhandar from the place of incident is just about 35 Kms.

From the order-sheet of the Court of Tahsildar, it appears that the applicants had appeared before the Court of Tahsildar, Bhandar, Distt. Datia on 12-9-2017. If the order-sheet is considered, then it would be clear that below the signatures of the Tahsildar, the date is mentioned as 27-9-2017 and it was signed by the Tahsildar at 2 P.M. as the time is also specifically mentioned. Thus, it is clear that although the order sheet of the Court of Tahsildar, Bhandar is alleged to have been written on 12-9-2017, but from the date and time, mentioned below the signatures of the Tahsildar, it is clear that the said order-sheet was signed by the Tahsildar on 27-9-2017 at 2 P.M. Thus, it is a glaring example of ante dated and ante timed order sheets of the Court proceedings. Even otherwise, if it is presumed that the order sheet was signed by the Tahsildar on 12-9-2017 itself, it is clear that the said order sheet was signed at 2:00 P.M., whereas the incident took place at 12:45 P.M. and the distance of 35 Km.s can be covered within a period of 1:15 hours.

Similarly, the order sheet of the Court of J.M.F.C., Bhandar, Distt. Datia, has been placed on record to show that the applicant no.2 had appeared before the said Court on 12-9-2017. Since, the time of appearance of the applicant no.2 before the said Court is not mentioned in the ordersheet, therefore, considering the distance of Bhandar, Distt. Datia from the place of incident, it is clear that after committing the offence, the applicant no.2 can very well go to Bhandar, Distt. Datia within a short span of less than 1 hour.

Thus, it is clear that the plea of alibi which has been raised by the applicants cannot be accepted.

Considering the grounds raised in the application, along with the documents which have been placed on record by the applicants, as well as the case diary, coupled with the fact that the applicants are still absconding and the charge sheet has been filed, by showing them as absconding, as well as considering the political interference and the fact that the S.P. and Additional S.P. also succumbed to the said pressure, this Court is of the considered opinion, that this is not a fit case for quashing the F.I.R. as well as the Criminal proceedings.

As already pointed out that the Superintendent of Police, Datia as well as the Additional Superintendent of Police, Datia have acted in most irresponsible manner and *de hors* the provisions of law, therefore, the Director General of Police, Madhya Pradesh, Bhopal, is directed to keep a copy of this order, in their service book. The Director General of Police, Madhya Pradesh, Bhopal is directed to inform the Principal Registrar of this Court within a month, about the compliance.

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

Let a copy of this order be immediately sent to the Trial Court/Committal Court for placing the same on record.

Let a typed copy of the order be made available to Shri B.P.S. Chouhan, the Public Prosecutor for forwarding the same to the Superintendent of Police, Gwalior, who in its turn shall deliver the same within 3 days from thereafter, to the Director General of Police, Madhya Pradesh, Bhopal.

**(G. S. Ahluwalia)**  
**Judge**