THE HIGH COURT OF MADHYA PRADESH
MCRC 18380/2018
Vinod Jain and Others vs. State of MP

Gwalior, dtd. 14/05/2018

Shri V. K. Saxena, Senior Counsel with Shri Vibor Kumar Sahu, counsel for the applicants.

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

Case diary is available.

This is first application under Section 438 of CrPC for grant of anticipatory bail.

The applicants apprehend their arrest in connection with Crime No.49/2016 registered at Police Station Shadora, District Ashok Nagar for offence under Section 420 read with Section 34 of IPC.

At the outset, it is submitted by the learned Senior Counsel for the applicants that applicant No.1 Vinod Jain has been arrested and, therefore, the application has rendered infructuous so far as it relates to applicant No. 1 Vinod Jain. Accordingly, the application for grant of anticipatory bail filed by the applicant No.1 Vinod Jain is hereby dismissed as infructuous.

It is submitted by the learned Senior Counsel for the applicants that applicant No.2 Ashok Jain is the Chairman of Wagad Infra Projects Private Ltd, whereas applicant No.3 Sudhir Kumar Jain is the Assistant General Manager of the said Company. According to the prosecution case, construction of Guna to Ashok Nagar and Ashok Nagar to Ishagard Road, was given to M/s. Aryavat Tollways Private Limited, Bhopal under BOT Scheme and the said M/s Aryavat Tollways Private Limited entered into sub-contract with Wagad Infra Projects Private Limited for completion of said construction work. The complainant B.T. Ramchandra Rao made a written complaint to the Police Station Shadora, District Ashok Nagar that for the construction of road the mining site was also transferred to the applicants

from where Wagan Infra Projects Private Limited was to extract aggregate (Kali Gitti) which was to be used for construction of road. The allegations were made against the applicants that the applicants have committed theft of aggregate (Kali Gitti) and sold the same to other persons. Accordingly, a FIR in Crime No.281/2015 was registered against the applicants for offence under Section 379 of IPC. The applicants filed a petition under Section 482 of CrPC for quashing the FIR which has been registered as MCRC No.13723/2015 and along with that petition, some copies of bills were produced by the applicants. However, a complaint was made by complainant B.T. Ramchandra Rao alleging that the copies of the bills filed by the applicants before this Court in MCRC 13723/2015 are alleged to have been issued by Vinayak Stone Crusher, are false. Accordingly, after conducting a preliminary enquiry the police has registered a FIR in Crime No.49/2016 for offence under Section 420/34 of IPC. However, in spite of full cooperation given by the applicants, the police has filed the charge-sheet.

A preliminary objection was raised by the counsel for the State that once the charge-sheet has been filed against the applicants showing them absconding under Section 299 of CrPC and warrant of arrest has been issued by the Magistrate, then in the light of judgment passed by the Supreme Court in the **State of MP vs. Pradeep Sharma, reported in (2014) 2 SCC 171** this application for grant of anticipatory bail is not maintainable.

In reply, it is submitted by learned Senior Counsel for the applicants where the prosecution itself is void, then there cannot be any bar in entertaining the application under Section 438 of CrPC itself.

It is submitted by the learned Senior Counsel for the applicants that where a forged document is filed in a Court proceedings, then only a complaint can be filed and the police has no jurisdiction to lodge the F.I.R. under Section 154 of Cr.P.C. By referring to the judgment passed by the

Supreme Court in the case of **Iqbal Singh Marwah Vs. Meenakshi Marwah,** reported in **(2005) 4 SCC 370**, it is submitted that although the document might not have been manipulated while the same was in the custody of the Court and although the bar as contained under Section 195 of Cr.P.C. may not be applicable, however, by referring to para 34 of the judgment passed in **Iqbal Singh Marwah (Supra)**, it is submitted that in such a situation, the only remedy available to the private complainant is to file the complaint and F.I.R. cannot be registered by the Police. Para 34 of judgment passed in **Iqbal Singh Marwah (Supra)** reads as under :-

> **"34.** In the present case, the Will has been produced in the court subsequently. It is nobody's case that any offence as enumerated in Section 195(1)(*b*)(*ii*) was committed in respect to the said Will after it had been produced or filed in the Court of District Judge. Therefore, the bar created by Section 195(1)(*b*)(*ii*) CrPC would not come into play and there is no embargo on the power of the court to take cognizance of the offence on the basis of the complaint filed by the respondents. The view taken by the learned Additional Sessions Judge and the High Court is perfectly correct and calls for no interference.

In the case of **Iqbal Singh Marwah (Supra)**, as the complaint was filed by the private complainant, therefore, it was held by the Supreme Court, that since, the bar as contained under Section 195 of Cr.P.C. would not apply, therefore, the complaint filed by the Complainant is maintainable. But, it does not mean, that the Supreme Court, has held that the F.I.R. cannot be lodged. Whether the complaint by a private complainant would be maintainable or the F.I.R. is to be lodged, would depend on the fact that, whether the private complainant is complaining of commission of cognizable offence or non-cognizable offence. If the allegation of private complainant is of commission of non- congnizable offence, then only a complaint would be maintainable,but if the allegations made by the Private

Complainant are of cognizable offence, then, it is well-established principle of law, that firstly, the private complainant has to approach the police, and in case, no action is taken, then he can file a complaint along with an application under Section 156(3) of Cr.P.C. The Supreme Court in the case of **Lalita Kumari Vs. Govt. of U.P.** reported in **(2014) 2 SCC 1** has held as under :-

> **"120.** In view of the aforesaid discussion, we hold:
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> **120.1.** The registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.
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> **120.2.** If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.
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> **120.3.** If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.
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> **120.4.** The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.
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> **120.5.** The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.
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> **120.6.** As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:
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> (*a*) Matrimonial disputes/family disputes
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> (*b*) Commercial offences
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> (*c*) Medical negligence cases
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> (*d*) Corruption cases
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> (*e*) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months' delay in reporting the matter without satisfactorily explaining the reasons

for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

120.7. While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time-bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

120.8. Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above."

It is also well-established principle of law that in an application under Section 156(3) of Cr.P.C., the complainant must spelt out, specifically with regard to the application made by him to the police under Section 154 of Cr.P.C. The Supreme Court in the case of **Priyanka Shrivastava Vs. State of U.P.** reported in **(2015) 6 SCC 287** has held as under :-

"**31**. We have already indicated that there has to be prior applications under Sections 154(1) and 154(3) while filing a petition under Section 156(3). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. The warrant for giving a direction that an application under Section 156(3) be supported by an affidavit is so that the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with law. This will deter him to casually invoke the authority of the Magistrate under Section 156(3)....."

The Supreme Court in the case of **C.P. Subhash Vs. Inspector of Police, Chennai** reported in **AIR 2013 SC (Supp) 390,** while refusing to quash the F.I.R., has held as under :-

"11.Equally untenable is the view taken by the High

Court that the bar contained in Section 195(1)(b)(ii) could be attracted to the case at hand. In Iqbal Singh Marwah's case (AIR 2005 SC 2119 : 2005 AIR SCW 1929) (supra) a Constitution Bench of this Court had authoritatively declared that Section 195(1)(b)(ii), Cr.P.C. was attracted only when the offences enumerated in the said provision have been committed with respect to a document after it has been produced or given in evidence in any court and during the time the same was in custodia legis. This Court while taking that view approved the ratio of an earlier decision in Sachida Nand Singh and Anr. v. State of Bihar and Anr. (1998) 2 SCC 493 : (AIR 1998 SC 1121 : 1998 AIR SCW 932) where this Court held:

> "12. It would be a strained thinking that any offence involving forgery of a document if committed far outside the precincts of the Court and long before its production in the Court, could also be treated as one affecting administration of justice merely because that document later reached the court records.
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> 23. The sequitur of the above discussion is that the bar contained in Section 195(1)(b)(ii) of the Code is not applicable to a case where forgery of the document was committed before the document was produced in a court."

12.Mr. Venugopal was, therefore, correct in contending that the bar contained in Section 195 against taking of cognizance was not attracted to the case at hand as the sale deeds relied upon by GWL for claiming title to the property in question had not been forged while they were in custodia legis.

13.In the light of the above, the High Court was wrong in quashing the FIR on the ground that the allegations did not constitute an offence even when the same were taken to be true in their entirety. It was also,in our view, wrong for the High Court to hold that the respondents were not the makers of the documents or that the filing of a civil suit based on the same would not constitute an offence. Whether or not the respondents had forged the documents and if so what offence was committed by the respondents was a matter for investigation which could not be prejudged or quashed by the High Court in exercise of its

> powers under Section 482 of Cr.P.C. or under Article 226 of the Constitution of India."

The Supreme Court in the case of **Sachidanand Singh and another Vs. State of Bihar and another** reported in **AIR 1998 SC 1121**, while refusing to quash the F.I.R., had held as under :

> **"24**.The sequitur of the above discussion is that the bar contained in S. 195(1)(b)(ii) of the Code is not applicable to a case where forgery of the document was committed before the document was produced in a Court."

The Supreme Court in the case of **Iqbal Singh Marwah (Supra)** has also held that where the forgery of the document was committed prior to filing of the same in the Court, then the bar as contained in Section 195(1)(b)(ii) of Cr.P.C. would not apply and it was held that the law laid down in the case of **Sachida Nand Singh (Supra)** was correct law.

Thus, the contention made by the applicants that FIR is not maintainable, cannot be accepted.

This Court in the case of *Bhupendra Singh vs. State of Madhya Pradesh* by order dated 21/12/2017 passed in MCRC No. 24897/2017 has held that after the filing of charge-sheet showing the applicant absconding, the application under Section 438 of CrPC is not maintainable. The said order of this Court has been affirmed by the Supreme Court by order dated 27/3/2018 passed in the case of *Bhupendra Singh vs. The State of Madhya Pradesh* in SLP (Cri) No. 2569/2018. Similarly, this Court in the case of *Ku. Aditi Tyagi @ Gudia @ Rani v. State of Madhya Pradesh* by order dated 12/1/2018 in MCRC 28068/2017 has held that where the charge-sheet has been filed against the applicant showing him absconding and the trial Court has issued the warrant of arrest, then the application for grant of anticipatory bail would not be maintainable. The said order of this Court has also been affirmed by the Supreme Court by order dated 19/3/2018 passed in the case

of *Ku. Aditi Tyagi @ Gudia @ Rani (supra)* in SLP (Cri) No. 2132/2018.

Considering the allegations made against the applicants as well as the fact that the charge sheet has been filed against the applicants showing them as absconding under Section 299 of CrPC and the warrant of arrest has been issued by the Magistrate, this Court is of the considered opinion that this application for grant of anticipatory bail is not maintainable. Accordingly, the application is **dismissed.**

(G. S. Ahluwalia)
Judge

MKB