

The High Court of Madhya Pradesh
MCRC 39269 of 2019
Veerendra Singh Gurjar vs. State of MP

Gwalior, dtd. 24/09/2019

Shri Anil Kumar Mishra, Counsel for the applicant.

Shri Purushottam Rai, Panel Lawyer for the respondent/ State.

This is third application under Section 439 of CrPC for grant of bail. First application and second application were dismissed as withdrawn by orders dated 21/12/2018 and 04/09/2019 passed in MCRC 52495 of 2018 and MCRC 35978 of 2019 respectively.

The applicant has been arrested on 21/07/2018 in connection with Crime No.88 of 2015 registered at Police Station Noorabad, Morena for offence under Sections 302, 307, 147, 148, 149 and 294 of IPC.

It is submitted by the Counsel for the applicant that a parallel enquiry was conducted by the Additional Superintendent of Police, Morena, who, in his report dated 08/03/2016, came to the conclusion that the applicant was not present on the date of incident, however, it was observed that he might be a party to the conspiracy. It is further submitted that the witnesses are not appearing before the Trial Court and the applicant is in jail from 21/07/2018.

Per contra, it is submitted by the Counsel for the State that the applicant was arrested at a later stage and supplementary charge sheet was filed and the applicant had absconded after the incident. According to the prosecution case, the incident had taken place on 24/07/2015 whereas the applicant could be arrested only on 21/07/2018. It is further submitted that there are direct allegations against the

applicant.

Heard the learned Counsel for the parties.

So far as the question of enquiry report given by Additional Superintendent of Police is concerned, the counsel for the applicant submitted that the said report was prepared in the light of powers under Section 36 of CrPC.

It is submitted by the Counsel for the State that a circular dated 25/6/2010 has been issued by the Director General of Police, Madhya Pradesh, Bhopal and that circular still holds the field. The said circular has been issued by the State Government to ensure the compliance of the order passed by this Court in the case of **Sanjay Singh & Ors. v. State of M.P. & Ors.** reported in **2006(2) MPLJ 324**. In the case of **Sanjay Singh** (Supra), on the recommendation of a Member of Parliament, the S.P. Morena directed the S.D.O.(P) to conduct an enquiry. S.D.O.(P) conducted the inquiry and found that some of the accused persons were not involved in the crime. Thus, it was argued that on account of directions of parallel enquiry or inquiry by some superior officer, wrong message is going to the public that if somebody is in a position to wield influence, he can shun the investigation against him by adopting influential method. The Division Bench of this Court, after considering various aspects of the matter, held that Criminal Investigation Department is defined in Regulation 7. Normally, investigation should not be interfered with at the instance of accused. However, if some irregularity is found or it is found that an innocent citizen is falsely implicated, the case should be examined by Superintendent of Police and he may either depute Senior Officer to investigate the matter or may investigate the case personally. But once investigation

commenced, it should be completed without interference. Regulation 879 relates to supervision by Superintendent of Police in cases where investigation has been refused. However, where the Superintendent of Police is satisfied for the reasons to be recorded in writing that proper investigation is not carried out, then investigation officer may be changed, but practice of handing over case to CID is deprecated. Accordingly, the direction to handover the investigation to the CID was quashed.

The relevant portion of the circular dated 25.06.2010 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 जाँच उचित माध्यम से विवेचक को भेजकर जाँच विवेचना के अंश के रूप में ही करना चाहिये किसी भी दशा में विवेचक से समानांतर अथवा भिन्न जाँच पृथक से प्रारम्भ नहीं करायी जानी चाहिये।”

It is submitted by the counsel for the State that the word “enquiry” mentioned in the circular should not be construed as an enquiry as mentioned in the CrPC, but it should be construed as an enquiry as required under Section 4 of the Police Act and, therefore, the senior police officer can always direct for an enquiry to find out the truth in the complaint made by the aggrieved person.

Considered the submissions made by the counsel for the State.

Section 4 of the Police Act reads as under:-

“4. Inspector-General of Police etc.- The administration of the police throughout a general police-district shall be vested in an officer to be styled the Inspector-General of Police, and in such Deputy Inspectors-General and Assistant Inspectors-General as to the State Government shall seem fit.

The administration of the police throughout the local jurisdiction of the Magistrate of the District shall, under the general control and direction of such Magistrate, be vested in a District Superintendent and such Assistant District Superintendents as the State Government shall consider necessary.”

It is clear from this Section that this Section provides that the administration of the police shall be vested in an officer mentioned in this Section. Whether “administration” would include “supervision of investigation” or not, is a moot question for determination. At this juncture, the counsel for the State is unable to answer that whether the “administration” would include the “supervision of the investigation” or not? However, the question that whether the superior officer can supervise the investigation or not, is not important because the senior police officer can always issue instructions to the Investigating Officer to consider various aspects as suggested by the superior officer while conducting the investigation. Thus, the supervision of the investigation by a superior officer is not a phenomena which is not approved by the law. However, the question for determination is that whether without issuing instructions to the Investigating Officer and without withdrawing the investigation from the Investigating Officer, whether there can be a parallel enquiry into the offence or not? It is well-established principle of law that for a single offence, there cannot be two FIRs and the natural consequence of the law is that for a single offence, there cannot be two investigations. Thus, it is clear that the “enquiry” cannot be equated with the “investigation”. If the superior officer is of the view that the Investigating Officer is not investigating the matter in a free and fair manner, then he is well within his rights to withdraw the investigation and hand over

to other police officer. However, there cannot be two parallel investigations in a single offence simultaneously. Thus, the stand taken by the State in the reply that by virtue of Section 4 of the Police Act, the superior officer can always direct for an independent parallel enquiry cannot be accepted at this stage.

Thus, this Court is of the view that the circular which has been issued by the State Government mentioning specifically that in any condition, there should not be any parallel enquiry in the matter appears to be correct.

It is next submitted by the counsel for the State that the parallel enquiry conducted by the superior police officer may be considered as a part of the investigation and, therefore, it may not be termed as a parallel enquiry.

The submission made by the counsel for the State cannot be accepted for the simple reason that there cannot be two different parallel investigations in respect of the same offence. Under the provisions of CrPC, it is the Investigating Officer, who can conduct the investigation. Furthermore, although the superior officer can issue instructions to the Investigating Officer, as to how the investigation is to be done but such instructions cannot be substituted by a finding recorded in parallel enquiry which has no legal foundation in law.

In view of the above, this Court is of the view that the circular dated 25.06.2010 issued by the Director General of Police, State of Madhya Pradesh, Bhopal is in consonance with the law, but in utter violation of the said circular, independent parallel enquiries are being directed without withdrawing the investigation which results in hampering of the investigation.

This Court in the case of **Sanat Kumar Jain and Ors. Vs. State of MP and**

Others, by order dated **09/05/2018** passed in **CRR No. 968 of 2018** has held as under:-

"Under these circumstances, this Court has no hesitation in directing that henceforth no parallel enquiry shall be conducted in any case till further order, and all the S.P.s are directed to strictly comply the circular dated 25.06.2010 issued by Director General of Police, Mahdya Pradesh. The Director General of Police is also directed to immediately issue instructions to all the S.P.s in this regard."

In the present case, the investigation was not withdrawn from the Investigating Officer and it appears that without any authority of law, a parallel enquiry was done by Additional Superintendent of Police, Morena. Thus, this Court is of the considered opinion that the report given by Additional Superintendent of Police, Morena was without jurisdiction.

So far as the period of detention is concerned, the Supreme Court in the case of **Anil Kumar Yadav vs. State (NCT of Delhi) and Another** reported in **(2018) 12 SCC 129**, has held that incarceration of one year in the case of murder is not sufficient for enlarging the accused on bail.

Considering the submissions made by the Counsel for the parties, this Court is of the considered opinion that no case is made out warranting grant of bail. The application is, accordingly, **rejected**.

(G. S. Ahluwalia)
Judge