

Vijay Singh Vs. State of M.P. and others

**HIGH COURT OF MADHYA PRADESH**

**BENCH GWALIOR**

**SINGLE BENCH:**

**HON. SHRI JUSTICE G.S. AHLUWALIA**

**M.Cr.C. No.46932/2019**

.....Applicant: Vijay Singh

**Versus**

.....Respondents: State of M.P. and others

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None for the applicant.

Shri Vijay Sundaram, Panel Lawyer for the respondent No.1/State.

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Date of hearing : 20/11/2019  
Date of Order : .../11/2019  
Whether approved for reporting :  
Law laid down :  
Significant paragraphs :

**ORDER**  
**(30/11/2019)**

The case was taken up on 19-11-2019 and this Court was of the view that the record of the Court below is necessary, therefore, the same was requisitioned on administrative side being the Portfolio Judge of Distt. Morena and the case was adjourned to 20-11-2019.

2. Shri Vijay Sundaram, Panel Lawyer was heard on 20-11-2019 and the record of the Court below was perused and the case was reserved for orders. As it was projected that the police has already filed the closure report, therefore, on the administrative side, the District and Sessions Judge, Morena was directed to send the record pertaining to the proceedings of Closure report, however, by letter dated 22-11-2019, it was

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informed that the police has never filed the closure report due to non-service of notice on the complainant. The case diary was also sent by the J.M.F.C. Morena on administrative side on 21-11-2019.

3. This Court is conscious of the fact that after the dismissal of the complaint, if the order is challenged by the complainant, then the persons arrayed as accused are required to be heard. The Supreme Court in the case of **Manharibhai Muljibhai Kakadia Vs. Shaileshbhai Mohanbhai Patel** reported in (2012) 10 SCC 517 has held as under :-

**46.** The legal position is fairly well-settled that in the proceedings under Section 202 of the Code the accused/suspect is not entitled to be heard on the question whether the process should be issued against him or not. As a matter of law, up to the stage of issuance of process, the accused cannot claim any right of hearing. Section 202 contemplates postponement of issue of process where the Magistrate is of an opinion that further inquiry into the complaint either by himself is required and he proceeds with the further inquiry or directs an investigation to be made by a police officer or by such other person as he thinks fit for the purpose of deciding whether or not there is sufficient ground for proceeding. If the Magistrate finds that there is no sufficient ground for proceeding with the complaint and dismisses the complaint under Section 203 of the Code, the question is whether a person accused of crime in the complaint can claim right of hearing in a revision application preferred by the complainant against the order of the dismissal of the complaint. Parliament being alive to the legal position that the accused/suspects are not entitled to be heard at any stage of the proceedings until issuance of process under Section 204, yet in Section 401(2) of the Code provided that no order in exercise of the power of the revision shall be made by the Sessions Judge or the High Court, as the case may be, to the prejudice of the accused or the other person unless he had an opportunity of being heard either personally or by pleader in his own defence.

**47.** Three expressions: “prejudice”, “other person” and

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“in his own defence” in Section 401(2) are significant for understanding their true scope, ambit and width:

**47.1.** *Black’s Law Dictionary* (8th Edn.) explains “prejudice” to mean damage or detriment to one’s legal rights or claims. *Concise Oxford English Dictionary* [10th Edn., Revised] defines “prejudice” as under:

“*Prejudice.*— n. (1) preconceived opinion that is not based on reason or actual experience. □â unjust behaviour formed on such a basis. (2) chiefly Law harm or injury that results or may result from some action or judgment. □â v. (1) give rise to prejudice in (someone); make biased. (2) cause harm to (a state of affairs).”

**47.2.** *Webster Comprehensive Dictionary* (International Edn.) explains “prejudice” to mean (i) a judgment or opinion, favourable or unfavourable, formed beforehand or without due examination ... detriment arising from a hasty and unfair judgment; injury; harm.

**47.3.** *P. Ramanatha Aiyar; the Law Lexicon (The Encyclopaedic Law Dictionary)* explains “prejudice” to mean injurious effect, injury to or impairment of a right, claim, statement, etc.

**47.4.** “Prejudice” is generally defined as meaning “to the harm, to the injury, to the disadvantage of someone”. It also means injury or loss.

**47.5.** The expression “other person” in the context of Section 401(2) means a person other than the accused. It includes suspects or the persons alleged in the complaint to have been involved in an offence although they may not be termed as accused at a stage before issuance of process.

**47.6.** The expression “in his own defence” comprehends, inter alia, for the purposes of Section 401(2), in defence of the order which is under challenge in revision before the Sessions Judge or the High Court.

**48.** In a case where the complaint has been dismissed by the Magistrate under Section 203 of the Code either at the stage of Section 200 itself or on completion of inquiry by the Magistrate under Section 202 or on receipt of the report from the police or from any person to whom the direction was issued by the Magistrate to investigate into the allegations in the complaint, the effect of such dismissal is termination of complaint proceedings. On a plain reading of sub-section (2) of Section 401, it cannot be said that the person against

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whom the allegations of having committed the offence have been made in the complaint and the complaint has been dismissed by the Magistrate under Section 203, has no right to be heard because no process has been issued. The dismissal of complaint by the Magistrate under Section 203—although it is at preliminary stage—nevertheless results in termination of proceedings in a complaint against the persons who are alleged to have committed the crime. Once a challenge is laid to such order at the instance of the complainant in a revision petition before the High Court or the Sessions Judge, by virtue of Section 401(2) of the Code, the suspects get the right of hearing before the Revisional Court although such order was passed without their participation. The right given to “accused” or “the other person” under Section 401(2) of being heard before the Revisional Court to defend an order which operates in his favour should not be confused with the proceedings before a Magistrate under Sections 200, 202, 203 and 204. In the revision petition before the High Court or the Sessions Judge at the instance of the complainant challenging the order of dismissal of complaint, one of the things that could happen is reversal of the order of the Magistrate and revival of the complaint. It is in this view of the matter that the accused or other person cannot be deprived of hearing on the face of the express provision contained in Section 401(2) of the Code. The stage is not important whether it is pre-process stage or post process stage.

4. However, this application is being decided without issuing notice to the respondents no.2 to 6, as the Magistrate has dismissed the complaint in utter disregard to the directions issued by this Court by order dated 4-11-2016 passed in W.P. No.365/2016, order dated 9-9-2019 passed in M.Cr.C. No.36918 of 2019 and order dated 8-11-2016 passed in M.Cr.C. No.5544 of 2016. Since, the matter is not being decided on merits of the case, therefore, this Court is of the considered opinion, that it is not necessary to issue notices to the respondents no.2 to 6 because it would further delay the proceedings.

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5. This application under Section 482 of Cr.P.C. has been filed against the order dated 22-10-2019 passed by J.M.F.C., Sabalgarh, Distt. Morena in unregistered case No..... of 2016.

6. The necessary facts for disposal of the present case in short are that on 7-10-2015, the complainant, along with his father Ramroop Tyagi were returning back from Sabalgarh Court. One Marshal Car stopped the way and the respondents no.2 to 6 alighted from the said car and the respondent no.2 Dwarika, fired a gunshot with an intention to kill the deceased Ramroop Tyagi, as a result of which he fell down and became unconscious. It was alleged that thereafter, the F.I.R. at crime no.340/2015 was lodged in Police Station Kailaras, Distt. Morena for offence under Sections 147, 307 of I.P.C. and under Section 25/27 of Arms Act. During the course of investigation, it is alleged that the dying declaration of the injured Ramroop Tyagi was recorded and looking to his critical condition, he was referred to JAH Hospital, Gwalior and on 8-10-2015, the deceased Ramroop Tyagi expired and consequently, an offence under Section 302 of I.P.C. was also added.

7. It is alleged that due to political pressure, the police was not conducting the investigation in a free and fair manner, therefore, the applicant filed a petition which was registered as W.P. No.365 of 2016 and the State was directed to submit the status report. A statement was made by the Counsel for the State that the closure report has been filed, and accordingly, by order dated 4-11-2016, the writ petition filed by the petitioner was disposed of with the following observations :

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“Looking to the fact situation of this case, this writ petition is disposed of with a direction to petitioner to prefer objection before the concerned Magistrate challenging the final report and/or file private complaint challenging the said final report. Nothing survives in the writ petition at this stage to adjudicate. Thus, petition is disposed of as rendered infructuous. Petitioner is at liberty to resort to the remedies available in accordance with law and it is needless to say that on due steps taken by the petitioner, concerned Magistrate would act in accordance with law.”

8. From the record of the Court below, it is clear that since the police did not file the closure report, therefore, on 26-11-2016, the complainant/applicant filed a criminal complaint against the respondents no.2 to 6 for offence under Sections 302, 347, 149 of I.P.C. and under Section 25/27 of Arms Act. The case was fixed for examination of witnesses and accordingly on 27-1-2017, the statements of Vijay Singh and Vishambhar Tyagi were recorded and the case was adjourned to 25-2-2017 for examination of remaining witnesses. Thereafter, the case was adjourned for 25-4-2017 and on the said date, the report from the police was also requisitioned and then, the case was adjourned on 8-7-2017, 16-8-2017, 9-10-2017, 26-12-2017, 9-1-2018, 26-3-2018, 24-5-2018, 30-7-2018, 5-9-2018, 30-10-2018, and 21-1-2019. The enquiry report was received on 11-4-2019 and thereafter, the case was fixed on 5-5-2019 for further action. Thereafter, it was adjourned to 17-7-2019 and on 15-10-2019, the case diary was summoned from Police Station Kailaras and by order dated 16-10-2019, the case was fixed for 22-10-2019 for preliminary arguments and by order dated 22-10-2019, the complaint has been dismissed.

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9. In the meanwhile, the complainant filed M.Cr.C. No.36918 of 2019 seeking a direction to the J.M.F.C., Sabalgarh, Distt. Morena to decide the complaint as well as to take cognizance of the offence registered at crime no.340/2015. Once again an impression was given by the Counsel for the parties that the police has already filed the closure report. Thus, the following order was passed on 9-9-2019 :

“It appears from the documents of this petition that the State has filed the closure report, which according to the petitioner is still pending. It appears that the petitioner has also filed a complaint, which is also still pending. From the order dated 27/01/2017 passed by JMFC, Sabalgarh, District Morena. It appears that the statement of the complainant/petitioner and his witnesses were recorded and thereafter, the police report was summoned.

In the considered opinion of this Court, there is no need to seek a further police report for the simple reason that the closure report is already pending before the same Court. Therefore, in case, if an application is filed by the petitioner before the trial Magistrate for clubbing both these cases together, then, in order to avoid any conflicting decisions as well as the complaint filed by the petitioner can be treated as a protest petition to the closure report, the JMFC, Sabalgarh, District Morena, is directed that the closure report as well as the complaint should be clubbed together and should be decided as early as possible preferably within a period of two months from the date of the receipt of the certified copy of this order.

With the aforesaid direction, the petition is finally **disposed of.**”

10. From the record, it appears that an application for urgent hearing was filed before the Court below along with the certified copy of the above mentioned order. It also appears that the respondents no.2 to 6 had also filed an application under Section 482 of Cr.P.C. for quashment of the

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F.I.R. registered in crime No.340/2015 by police station Kailaras, Distt. Morena for offence under Sections 147, 307, 302 of I.P.C. and also under Section 25/27 of Arms Act and the said application was dismissed as withdrawn by order dated 8-11-2016.

11. From the record, it is clear that along with the complaint, the applicant had filed the copy of the order passed by this Court in W.P. No.365 of 2016, Photocopy of the closure report which was prepared by the police on 24-7-2016, Copy of F.I.R. as well as the copy of F.R.

12. It also appears from the record, the police had submitted its status report on 11-4-2019. The operative part of this report reads as under :

“प्रकरण मे अभी तक की सम्पूर्ण विवेचना से साक्षियों के कथनों एवं टावर लोकेशन एवं साक्ष्य के अभाव से पाया गया कि अपराध क्रमांक 494/12 धारा 307,302,147,148,149 ता.हि. के आरोपीगण मृतक रामरुप त्यागी द्वारा अपने पुत्र विजय सिंह त्यागी के न्यायालय सबलगढ़ से दिनांक 7.10.15 को अपने गांव वापस आते समय उपरोक्त प्रकरण मे सजा से बचने के लिये अपराध क्रमांक 494/12 धारा 307,307,147,148,149 ता.हि. के साक्षियों पूर्व उपरोक्त प्रकरणों के मृतकों के परिवारी जन बीरेन्द्र त्यागी, प्रवीण त्यागी, मनीष त्यागी निवासी गण नया गांव एवं द्वारिका त्यागी, मनोज त्यागी निवासी गण जौरा के विरुद्ध अपराध 340/15 धारा 147,302,307 ता.हि. 25-27 आर्म्स एक्ट का प्रकरण रजिशन दर्ज कराया जाना प्रतीत होता है। किसी अन्य व्यक्ति के द्वारा रामरुप त्यागी को गोली मारी गयी है। बक्त घटना दो ही व्यक्तियों विजयसिंह त्यागी, मृतक रामरुप त्यागी होना पाया गया है। गोली किसने मारी इसका अभी तक की विवेचना मे भरसक प्रयास के बावजूद कोई साक्ष्य नही मिला प्रकरण लंबे समय लंबित होने से श्रीमान पुलिस अधीक्षक महोदय मुरैना को प्रकरण में एफआए कता करने की अनुमति श्रीमान एसडीओपी महोदय कैलारस के माध्यम से प्राप्त कर प्रकरण मे एफआर क्रमांक 12/16 दिनांक 24.12.16 कता की गयी।

प्रतिवेदन श्रीमान के सेवा मे सादर प्रेषित है।”

13. Thus, in the status report also, it was specifically mentioned that the



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Closure report has been prepared.

14. Thus, the Trial Magistrate, was well aware of the facts that the State had made a statement in W.P. No.365/2016 that closure report has been filed but in fact, the police had kept the said closure report with itself, and deliberately did not file the same. Thereafter, the applicant filed the complaint with the photocopy of the closure report, which was prepared by the police, but in spite of that the Trial Magistrate, did not direct the police authorities to submit their reply with regard to the closure report prepared by them. Thereafter, once again an impression was given to this Court, that the police has filed the closure report, therefore, this Court had directed the Court below to consider the closure report by treating the complaint as a protest petition. Surprisingly, all the orders passed by this Court, are on the record, but still the Trial Magistrate, has conveniently ignored the same, and in spite of the status report, that the closure report has been prepared, did not enquire from the police as to why the closure report is not being filed. The photocopy of the closure report prepared by the police was also on record, as the same was already filed by the complainant, but still the concerning Magistrate, did not take note of the same.

15. While considering the complaint filed by the Complainant/applicant, the Court below has taken note of a fact that the complainant party was already facing a criminal trial in crime no.494/2012 for offence under Sections 302, 307, 147, 148 and 149 of I.P.C. and the police has already prepared a closure report, on the ground that false

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allegations have been made out of enmity, but did not try to verify as to why the closure report has not been filed. The Magistrate also lost sight of fact that enmity is a double edged weapon. Even the case diary was carrying the copy of the closure report, however, the Magistrate lost sight of the fact, that the police cannot keep the closure report in the police station and should have filed the same before the Court of competent jurisdiction. The Magistrate has also ignored the dying declaration of the deceased. Thus, the procedure which was adopted by the Magistrate, is in utter disregard to the directions given by this Court as well as in utter disregard to the provisions of Cr.P.C.

16. The J.M.F.C., Sabalgarh, Distt. Morena by his communication dated 22-11-2019 has informed about the status of the Closure report which reads as under :

“माननीय महोदय उपरोक्त विषयांतर्गत यह भी लेख है कि संबंधित पीठासीन अधिकारी द्वारा अपंजीकृत परिवाद विजयसिंह विरुद्ध द्वारिका तथा अन्य में आदेश पारित करने से पहले थाना कैलारस के अप. क्रमांक 340 /2015 की केश डायरी अवलोकन हेतु बुलायी गयी थी, जो कि अपंजीकृत परिवाद में आदेश करने के बाद थाना कैलारस को वापस की गयी। **थाना कैलारस के अप. क्रमांक 340/ 2015 में न्यायालय द्वारा आज दिनांक तक क्लोजर रिपोर्ट (एफ आर) स्वीकृत नहीं की है।** उपरोक्त संबंध में थाना कैलारस से भी जानकारी प्राप्त की गयी तो थाना कैलारस द्वारा भी यही जानकारी दी गयी है कि फरियादी विजय सिंह के न्यायालय में उपस्थित न होने के कारण अप. क्रमांक 340/ 2015 की केश डायरी खात्मा हेतु न्यायालय में पेश नहीं की जा सकी है।”

17. Thus, it is clear that the Police Station, Kailaras, Distt. Morena, not only gave false information to this Court, at the time of hearing of W.P. No.365/2016, but also retained the closure report, without any reasonable reason. The only reason which has been assigned by the Police Station Kailaras for not filing the closure report is that since, the complainant was

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not appearing before the Court below, therefore, the Closure report was not filed. It is really surprising, that how the police can retain the closure report on the said ground. The Supreme Court in the case of **Jakia Nasim Ahesan Vs. State of Gujarat** reported in **(2011) 12 SCC 302** has held as under :

11. However, at this juncture, we deem it necessary to emphasise that if for any stated reason SIT opines in its report, to be submitted in terms of this order, that there is no sufficient evidence or reasonable grounds for proceeding against any person named in the complaint dated 8-6-2006, before taking a final decision on such “closure” report, the court shall issue notice to the complainant and make available to her copies of the statements of the witnesses, other related documents and the investigation report strictly in accordance with law as enunciated by this Court in *Bhagwant Singh v. Commr. of Police*. For the sake of ready reference, we may note that in the said decision, it has been held that in a case where the Magistrate to whom a report is forwarded under Section 173(2)(i) of the Code, decides not to take cognizance of the offence and to drop the proceedings or takes a view that there is no sufficient ground for proceeding against some of the persons mentioned in the FIR, the Magistrate must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the report.

18. Thus, it is clear that after the closure report is filed, the Court shall issue notice to the complainant, therefore, it is clear that the police has retained the closure report on frivolous ground, with a solitary intention to give undue advantage to the respondents no.2 to 6. Furthermore, when the Trial Magistrate had already directed the police to submit the status report, then the police was aware of the fact, that the complainant is already before the Court, therefore, there was no impediment for the police to file

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the closure report.

19. Number of petitions under Section 482 of Cr.P.C. were being filed by various complainants, seeking a direction to the police authorities to conclude the investigation. Accordingly, in **M.Cr.C. No.37389/2019 (Virendra Singh Vs. The State of M.P.)**, this Court directed the Director General of Police, State of Madhya Pradesh, to file an affidavit as to why huge number of F.R.s and E.R.s are pending in the Police Stations, and accordingly, he had filed his affidavit and had stated that instructions have been issued to all the police stations to file the F.Rs. and E.Rs. In the District of Ashoknagar, more then 2300 E.Rs. and F.Rs. were found to be pending. Thus, it is clear that the S.H.O. and the investigating officer, Police Station Kailaras, Distt. Morena had deliberately retained the closure report, and did not file the same before the Court.

20. Therefore, the A.D.G.P., Chambal Range, Morena, is directed to hold an enquiry to find out that who are the police officials who have unauthorizedly retained the closure report, so that the undue advantage may be given to the accused persons. Let the enquiry be completed within a period of 1 month from today, and the A.D.G.P., Chambal Range, Morena is directed to submit its report to the Principal Registrar of this Court pointing out the action proposed against the guilty S.H.Os. and investigating officer.

21. So far as the procedure adopted by the Magistrate is concerned, the same cannot be approved. When the Magistrate was aware of the fact that the police has already prepared the closure report, and in the light of the

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order dated 4-11-2016 passed by this Court in W.P. No.365 of 2016 as well as order dated 9-9-2019 passed by this Court in M.Cr.C. No.36918 of 2019, should have considered the complaint along with the closure report. But the Magistrate did not direct the police to file the final report/closure report, which he could have done. Therefore, the order dated 22-10-2019 passed by J.M.F.C., Sabalgarh, Distt. Morena in unregistered complaint case..... of 2016 is **hereby set aside**. The matter is remanded back to the Court of J.M.F.C., Sabalgarh, Distt. Morena to decide the same in accordance with the directions given in W.P. No.365 of 2016 as well as order dated 9-9-2019 passed by this Court in M.Cr.C. No.36918 of 2019. The Police Station Kailaras, District Morena is directed to immediately file the Final Report **within three days** from today. While deciding the matter afresh, the J.M.F.C., Sabalgarh, Distt. Morena shall not get prejudiced by any of the observations made in order dated 22-10-2019. It is also directed that the J.M.F.C., Sabalgarh, Distt. Morena shall also consider the order dated 8-11-2016 passed by this Court in M.Cr.C. No.5544 of 2016. Let the entire exercise be done within a period of 2 months from today.

22. The complainant shall remain present before the Court below **on 06/12/2019**.

23. With aforesaid observations and directions, this application is **Allowed**.

24. A copy of this order be immediately sent to A.D.G. P., Chambal Range, Morena for necessary action.

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25. The Public Prosecutor is also directed to inform the A.D.G.P.,  
Chambal Range, Morena for necessary action.

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

mkb\*