

**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR**

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 14th OF NOVEMBER, 2022

MISCELLANEOUS CRIMINAL CASE NO. 48445 OF 2022

BETWEEN:-

**RAVINDRA SOLANKI S/O SHRI
RAMBABU SOLANKI, AGE 20 YEARS,
AGE 20 YEARS, OCCUPATION PRIVATE
SERVICE, R/O VILLAGE IMALIYA,
TAHSIL AND DISTRICT MORENA
(MADHYA PRADESH)**

.....APPLICANT

(BY SHRI MADHUKAR KULSHRESHTHA – ADVOCATE)

AND

**STATE OF MADHYA PRADESH
THROUGH POLICE STATION – STATION
ROAD, DISTRICT MORENA (MADHYA
PRADESH)**

.....RESPONDENTS

**(SHRI C.P. SINGH – PANEL LAWYER FOR STATE)
(SHRI PAWAN DEVNANI – ADVOCATE FOR COMPLAINANT)**

*This application coming on for hearing this day, the Court passed
the following:*

ORDER

Case diary is available.

This eighth application under Section 439 Cr.P.C. has been filed
for grant of bail. Seventh application was dismissed by order dated

13.05.2022 passed in M.Cr.C. No.21720/2022.

The applicant has been arrested on 22.01.2021 in connection with Crime No.78/2021 registered at Police Station – Station Road, District Morena for offence under Sections 376(2)(n) and 506 of IPC.

In compliance of order dated 11.11.2022, the S.P., Morena has filed his report along with the minutes of the meeting of crime control held in the months of August, September and October, 2022. From the minutes of the said crime control meeting, it is clear that except by directing the SDO(P) to forward the report, nothing was done.

When this Court by order dated 07.11.2022 directed the S.P., Morena to explain as to why the police witnesses are not appearing before the Trial Court, thereafter it appears that S.P. issued show cause notice to SDO(P) also as no report was ever given by him to S.P. Thus, it is clear that although S.P., Morena had given a direction to SDO(P) to submit his report in crime control meeting held in the month of September, 2022 and October, 2022 but did not take any action against SDO(P), Morena for not submitting any report. Thus, it appears that in the monthly crime control meeting, S.P., Morena was not actually monitoring the non-service of summons/bailable warrants/warrants of arrest issued against the police personnel, but was merely completing formality by writing letters to SDO(P) to submit the report and SDO(P) was in its turn was sitting idle and even the S.P., Morena did not take action against the concerning SDO(P). They woke up only after order dated 11.11.2022 was passed which reads as under:-

Shri Madhukar Kulshreshtha, Advocate for applicant.

Shri C.P. Singh, Panel Lawyer for State.

Shri Pawan Devnani, Advocate for complainant.

It is submitted by counsel for State that in compliance of order dated 07.11.2022, the Superintendent of Police, Morena has filed the response.

The same is not on record.

Office to verify and place it on record.

For the convenience of this Court, Counsel for State has provided a copy of the response submitted by the Superintendent of Police, Morena.

The reply submitted by the Superintendent of Police, Morena is not satisfactory. The reply is completely silent with regard to the steps taken by the Superintendent of Police, Morena to ensure the service of summons/bailable warrants/warrants as well as the appearance of police witnesses. The reply is completely silent about the instruction issued by the Superintendent of Police, Morena in monthly crime control meeting.

Accordingly, the Superintendent of Police, Morena is directed to file the minutes of the crime control meeting held in the month of August, September and October, 2022 to show that he had taken note of the issuance of summons/bailable warrants/warrants issued in this case or not.

List this case on 14.11.2022.

It is really surprising that first status report was filed on 10.11.2022 and in the said compliance report, there is no mention about the negligence shown by the SDO(P) or about his conduct of directing the SDO(P) to scrutinize the cases on individual basis. Only when the S.P., Morena was directed to explain about the steps which he had taken in the crime control meeting, the officers woke up and immediately on 12.11.2022 the SDO(P) submitted his report to the S.P., Morena. This conduct of S.P., Morena is not appreciable. The police must realize that filing of the charge-sheet is not an end of their duty. The police must realize that the charge-sheet is nothing but is a mere opinion formed by

the Investigating Officer and unless and until the charges are proved by the prosecution by examining the witnesses, the duty of the Investigating Agency would not come to an end. This Court in the case of **Shambhu @ Shimbhu Lodhi Vs. State of Madhya Pradesh decided on 28.09.2022 passed in M.Cr.C. No.45036/2022** has held as under:-

Before considering the prayer of the counsel for the applicant, this Court would like to observe that the role of the Court is not merely a mute spectator. Its duty is to seek truth. The Court should be alert during criminal trial. An offence is against the society and the Court cannot sit idle and cannot act merely at the pleasure of the Public Prosecutor. It is true that the Sessions Trial is to be conducted by the Public Prosecutor but the Court must be vigilant enough to issue instructions to the Public Prosecutor in case if it is found that the Public Prosecutor is not acting in accordance with law.

Eyewitnesses are the ears and eyes of the Court. Nowadays it is being observed that the examination of eyewitnesses are being delayed for certain reasons. The delay in examination of eyewitness is not in the interest of criminal justice dispensation system. This Court was unable to understand as to why the Public Prosecutor adopted the method of withholding eyewitnesses and why he gave preference to those witnesses whose evidence can at the most be said to be corroborative in nature.

The Supreme Court in the case of **Mina Lalita Baruwa vs. State of Orissa and others** reported in **(2013) 16 SCC 173** has held as under:

18. We are convinced that the grievances as projected by the appellant as a victim, who was a victim of an offence of such a grotesque nature, in our considered view, the trial court as well as the High Court instead of rejecting the application of the appellant by simply making a reference to Section 301 CrPC in a blindfolded manner, ought to have examined as to how the oral evidence of

PW 18 which did not tally with Ext. 8, the author of whom was PW 18 himself, to be appropriately set right by either calling upon the Special Public Prosecutor himself to take necessary steps or for that matter there was nothing lacking in the court to have remedied the situation by recalling the said witness and by putting appropriate court question. It is well settled that any crime is against the society and, therefore, if any witness and in the case on hand a statutory witness happened to make a blatantly wrong statement not borne out from the records of his own, we fail to understand why at all the trial court, as well as the High Court, should have hesitated or adopted a casual approach instead of taking appropriate measures to keep the record straight and clear any ambiguity insofar as the evidence part was concerned and also ensure that no prejudice was caused to anyone. In our considered view, the courts below should have made an attempt to reconcile Sections 301 and 311 CrPC in such peculiar situations and ensured that the trial proceeded in the right direction.

19. In criminal jurisprudence, while the offence is against the society, it is the unfortunate victim who is the actual sufferer and therefore, it is imperative for the State and the prosecution to ensure that no stone is left unturned. It is also the equal, if not more, duty and responsibility of the court to be alive and alert in the course of trial of a criminal case and ensure that the evidence recorded in accordance with law reflect upon every bit of vital information placed before it. It can also be said that in that process the court should be conscious of its responsibility and at times when the prosecution either deliberately or inadvertently omit to bring forth a notable piece of evidence or a conspicuous statement of any witness with a view to either support or prejudice

the case of any party, should not hesitate to interject and prompt the prosecution side to clarify the position or act on its own and get the record of proceedings straight. Neither the prosecution nor the court should remain a silent spectator in such situations. Like in the present case where there is a wrong statement made by a witness contrary to his own record and the prosecution failed to note the situation at that moment or later when it was brought to light and whereafter also the prosecution remained silent, the court should have acted promptly and taken necessary steps to rectify the situation appropriately. The whole scheme of the Code of Criminal Procedure envisages foolproof system in dealing with a crime alleged against the accused and thereby ensure that the guilty does not escape and the innocent is not punished. It is with the above background, we feel that the present issue involved in the case on hand should be dealt with.

Thus, the zeal to find out the truth should continue till the end of Trial by protecting the rights of the victim also. The Supreme Court in the case of **Mahendra Chawla & Ors. Vs. Union of India** reported in **(2018) 15 SCALE 497**, has formulated a witness protection scheme and it was submitted by the counsel for the State that in the compliance of the direction given by the Supreme Court, the State Government has also formulated witness protection scheme. Whether the State Agencies are providing protection to the witnesses or not, is not the subject matter of this case, but the expeditious examination of the witnesses and expeditious disposal of the trial are two important facets of the law which cannot be ignored. Even otherwise, expeditious disposal of trial is a fundamental right of an accused as well as the complainant. The police must realize that by showing lethargy in executing the summons/bailable

warrants/warrants of arrest issued against the witnesses, they are indirectly assisting one party to the litigation to gain time to pressurize the witnesses which is contrary to the Witness Protection Scheme formulated by the Supreme Court in the case of **Mahendra Chawla (supra)** as well as the State Government by itself. Furthermore, no one can compel an under-trial to remain in jail just at his mercy. Non-service of notice/bailable warrants/warrants of arrest issued against the police witnesses and non-appearance of police witnesses for no reason, is a serious matter which is required to be considered by the police and it is a high time where the police must introspect that any lethargy shown by any of its employee in this regard must be viewed very seriously and must be treated as an undue interference in the criminal justice dispensation system. Although the Director General of Police, State of Madhya Pradesh had filed several affidavits in the case of **State of M.P. Vs. Smt. Bhuri Bai** reported in **2022 (3) ILR S.N. 32**, but unfortunately all those affidavits and circulars filed along with those affidavits have actually fallen on the deaf ears of the subordinate officers and they are not ready to improve themselves. The most unfortunate part is that the conduct of the District police of Morena was in question in the case of **Smt. Bhuri Bai (supra)** and still the District Police, Morena is not interested to improve itself.

Be that whatever it may.

It is for the DGP to look into the matter and to consider as to whether the paper formality which was being done by the S.P., Morena is as per his affidavit / circular filed in the case of **Smt. Bhuri Bai (supra)** and whether the silence maintained by S.P., Morena about non-

submission of report by SDO(P), Morena is also in accordance with his affidavit and circulars or not? The affidavit of DGP as well as circulars filed along with the affidavit were considered in the case of **Smt. Bhuri Bai (supra)** and the said case was disposed of on an undertaking given by the Advocate General as well as with hope and belief that the situation would improve. However, the things have not improved and even the working of the officers has not improved at all.

Be that whatever it may.

Holding of an enquiry only after the matter is taken up by the High Court cannot be said to be a proper working of S.P., Morena or SDO(P), Morena.

Furthermore, the S.P., Morena in its report dated 10.11.2022 had relied upon the letter dated 09.11.2022 thereby calling his explanation for not responding to the instructions given by the S.P., Morena, however, in the reply dated 12.11.2022 the S.P., Morena is completely silent with regard to the action taken or proposed against CSP/SDO(P).

So far as the merits of the case are concerned, it is submitted by the counsel for the State that the witnesses would appear regularly without any default and summons/bailable warrants/warrants of arrest which shall be issued against the witnesses shall be executed without any default.

In view of the statement made by the counsel for the respondents, nothing survives in the application so far as merits of the application is concerned.

Accordingly, the application fails and is hereby **dismissed**.

Let a copy of this order be supplied to the Public Prosecutor for communicating the same to S.P., Morena who in his turn shall forward

the same to the DGP for necessary information and compliance.

The DGP, State of Madhya Pradesh is directed to look into the matter and to take necessary action against the erring officers as well as to ensure that fundamental right of an accused as well as the complainant is not violated at the mercy of the police witnesses.

The report be submitted before the Principal Registrar within a period of two months from today **latest by 15.01.2023.**

(G.S. AHLUWALIA)
JUDGE

Abhi