

**HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE**

**BEFORE HON. SHRI JUSTICE ALOK VERMA,J**

**M.Cr.C. No.3714/2010**

**Vishwa Jagriti Mission (Regd) & Others**

**Vs.**

**M.P. Mansinghka Charities & Another**

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Shri S.C. Bagadiya, learned Senior Counsel with Shri Ramesh Kumar, learned counsel for the applicants.

Shri Manohar Dalal, learned counsel for the respondents.

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**ORDER**

**(Passed on 15/06/2015)**

This application under section 482 Cr.P.C. is filed for quashment of criminal complaint No.741/2010 pending in the Court of Judicial Magistrate First Class, Shajapur and proceedings arising therefrom.

2. Brief facts bereft of unnecessary details are as follows:-

According to the applicants, applicant No.1 is a charitable organization. It is registered under the Societies Act w.e.f. 10.05.1993. Registration certificate of the society is Ann.-P/3. The applicants are engaged in running various charitable activities like running of orphanages, old age

homes, hospitals, blood donation camps, Goshala etc. These activities are carried out by the applicants with help of funds that the societies received by way of donations. The applicants avert that between 1993-2005, one A.K. Sikri was appointed as treasurer of the society and at that time one Radhelal Gupta was the president. According to the applicants, A.K. Sikri informed the governing body of applicant No.1 that director of income tax granted the society registration under section 12-A of Income Tax Act, and also granted certificate under section 80-G of Income Tax Act certifying that the society is carrying out charitable activities and the donors are entitled for exemption under section 80-G of Income Tax Act. Subsequently, the members of the society received various complaints from donors alleging that the certificate issued under section 80-G of Income Tax Act was not genuine. Meanwhile, the society also received donations from respondent by cheque issued from Bombay and also drawn at Bombay. In the year 2005, it came to the knowledge of the governing body and also in the knowledge of the Income Tax Authorities that the certificate purported to have been issued under section 80-G of Income Tax Act was not genuine and the respondents sent two letters dated 06.12.2005 and

14.12.2005 and thereafter the respondents sent one legal notice to the members of the governing body on 24.12.2005 including the said Radhelal Gupta and A.K. Sikri stating therein that it would take action under sections 468, 471/34 and 120-B IPC.

3. A meeting of the governing body of the society was called on 28.12.2005 wherein the said A.K. Sikri admitted all his misleads and informed the society that he assigned the job of obtaining registration under section 12-A and exemption certificate under section 80-G of Income Tax Act to one Vishnu Prasad who forged the documents and, therefore, he is not responsible for such forgery. He also filed an FIR at Police Station Motinagar, New Delhi against Vishnu Prasad. Subsequently, it was also revealed that A.K. Sikri did not file Income Tax Return and did not obtain PAN number for the society.

4. Said A.K. Sikri also filed a criminal complaint before the concerning Additional Chief Metropolitan Magistrate at Rohini, New Delhi and an application under section 156 (3) IPC for issuing direction to the concerning police to register FIR and investigate the matter. Similarly, the applicant No.1

also filed one criminal complaint and an application under section 156 (3) IPC against A.K. Sikri. According to applicants, on this application the concerning Court issued direction to Police Station Nangloi and FIR No.366/2007 under sections 465, 467, 468 and 471 IPC was registered against A.K. Sikri.

5. Meanwhile, two separate FIRs were lodged by Income Tax Authorities for production of forged and fabricated certificate under section 12-A and 80-G of Income Tax Act. According to the applicants, in these two FIRs filed by Income Tax Authorities, closure reports were accepted by the concerning Magistrate on the ground that as when charge-sheet has already been filed on similar set of facts against A.K. Sikri, no action is required on these FIRs. The FIRs lodged by A.K. Sikri against his employee Vishnu Prasad was also resulted in a closure report. Thus, out of four FIRs lodged in the matter only one lodged against A.K. Sikri is found basis of criminal trial which is pending against said A.K. Sikri.

6. Meanwhile, when the matter came to the knowledge of Income Tax Authorities, the respondent was slapped with fine of rupees 35 lacs against which the respondent filed an appeal

before the Income Tax Appellate Tribunal and finally the order imposing said penalty was set aside on the ground that though at the relevant time applicant No.1 was not having valid and effective certificate under section 80-G of Income Tax Act, however, the activities undertaken by applicant No.1 was of charitable nature and the donations given by respondents were utilized by applicant No.1 for charitable purposes and on this premise the order imposing penalty of rupees 35 lacs was set aside.

7. Similarly, the assessment order passed against the applicant No.1 also resulted in grant of registration under section 12-A and certificate under section 80-G effective from the year 1993.

8. After all these developments, the respondent filed a criminal complaint against the applicants before the Court of Judicial Magistrate First Class, Shajapur under sections 406, 420, 418, 467, 468, 471/34 and 120-B IPC. The learned Magistrate after recording evidence under section 200 Cr.P.C. registered complaint under aforementioned sections of IPC and issued arrest warrant against the applicants.

9. For quashment of this criminal complaint registered by

Judicial Magistrate First Class at Shajapur this application under section 482 Cr.P.C. is filed, inter-alia, on the following grounds :-

(i) That the payment of donations was done at Bombay by the cheques which were drawn at Bombay. The Cheques were encashed at Delhi. The said forged documents of registration under section 12-A and certificate under section 80-G of Income Tax Act were purported to have been issued at Delhi. The receipts of donations were also issued from Delhi. The complainant was assessed by Income Tax Authorities at Mumbai and, therefore, the Court at Shajapur has no jurisdiction to try this complaint.

(ii) There are no ingredients present to register a complaint under section 464 IPC and documents were not executed by the present applicants. It was known to everybody that said A.K. Sikri created the false documents and therefore, the present applicants are not liable.

(iii) On the similar grounds it is pleaded that there is no forgery as defined under section 463 IPC, therefore, no case is made out against the present applicants.

(iv) Similarly, it is also pleaded that no case is made out under sections 467, 406 and 420 IPC.

(v) The complainant deliberately left out those persons like A.K. Sikri and Radhelal Gupta who were responsible for such forgery and falsehood and made the other trustees as accused in the case.

(vi) There are suppression of material facts from the court by the complainant like lodging of FIR against A.K. Sikri, dismissal of case filed by A.K. Sikri against Vishnu Prasad, orders passed by Income Tax Appellate Tribunal and setting aside of orders imposing fine of rupees 35 lacs against the respondent/complainant. The complaint was filed in the year 2010 only after the order passed by the Income Tax Appellate Tribunal in 2009 granting registration under section 12-A of Income Tax Act and certificate under section 80-G of Income Tax Act to the present applicants.

(vii) That the learned Judicial Magistrate First Class erred in issuing warrant of arrest in first instance.

**10.** On these grounds the applicants prays that proceedings in criminal case No.741/2010 M.P Mansinghka Vs. Vishwa Jagriti Mission & Others pending in the Court of Judicial Magistrate First Class, Shajapur and proceedings arising therefrom be quashed.

11. In its reply, the respondent avers that though the registered office of the respondent is situated at Bombay, the Administrative office is located at Maksi and the main function of the trust is carried out from administrative office at Maksi, therefore, the jurisdiction vests in the Magistrate at Shajapur.

(ii) The respondent also avers that complaint is filed only against those persons who are responsible for such forgery, however, the respondent also admits that if, some persons are left out they can be implicated during the course of hearing.

(iii) At the time of commission of the alleging offence all the applicants were office bearers of governing body and therefore, they are responsible for the acts and omissions of the society. Denying the averments of the applicants that only A.K. Sikri was responsible for forging the documents. The respondent avers that this was only to escape liability by the other members of the governing body. It is also said that said A.K. Sikri was not beneficiaries and by fabricating the documents, he appears to be not gained any personal benefit out of it and therefore, it cannot be believed



that without any personal gain he forged the documents and subjected himself to the risk of facing a criminal proceedings.

(iv) According to the respondent, when he was inspired by the applicant No.2 to donate certain amount he was made to believe that the society had exemption under section 80-G and whatever amount he would pay to the society as donation he would get necessary exemption under section 80-G of the Income Tax Act, however, it is admitted that the documents were found false and fabricated and, therefore, only after recording of evidence it can be ascertained whether the applicants were responsible or not for creation of such false, forged and fabricated documents.

**12.** In the rejoinder, the applicants filed the appeal, order passed by the commission of Income Tax who observed in para 2.2, 2.3 and 2.4 as below :-

“2.2. I.d. A.R. Drew my attention to the details filed before A.O. During the course of assessment proceedings. It is stated that during the course of assessment proceedings assessee has filed letters written to M/s. Vishwa Jagruti Mission enclosing the donation cheques and copies of receipts issued by the said Mission. Recipient trust has also indicated number and date of the Exemption Certificate issued to it u/s.80G. All such details filed for A.Y. 2002-03 are placed at page 4 to 8 of the

compilation and details for A.Y. 2003-04 are placed at page 13 to 18. My attention was also drawn to the letter dated 27/11/2007 filed before the A.O. during the assessment proceedings stating that the donations given by the assessee trust are being utilized for charitable objects. Alongwith the said letter a confirmation of donations received by the recipient trust, M/s. Vishwa Jagruit Mission (reg.) and the purpose for which it is being utilized vide letter dated 14/03/2007 as well as a copy of the objects of the said recipient trust certificate of registration of the said trust and a certificate from their Chartered Accountants. M/s. Kathpalia Associates dated 26/03/2007 certifying that the donation has been received by the recipient trust and has been utilised for the objects stated therein has been filed. The I.d. A.R. Argued that even if the recipient trust is not registered u/s.12A or not having 80G certificate, none-the-less donations given by the assessee are being utilized for charitable objects, which is for hospital and goshala. In view of the objects of the recipient trust being charitable, receipt of the donations as well as its utilisation being certified by the recipient trust and also by its chartered accountants, it was submitted by the A.R. That donations given is application of income for charitable purpose and there is no cause for any disallowance in this regard.

2.3. I have considered the submissions made by I.d. A.R. I have perused the objects of the recipient trust, M/s. Vishwa Jagruti Mission (Reg.), which are charitable in nature as per copy of objects filed in compilations at Page 23. Under letter dated 14/03/2007 recipient trust has acknowledged receipt of donations from the assessee trust and the purpose for which the donation is received and its utilization. The recipient trust has also forwarded a certificate from their chartered accountants to certify receipt of the donation by the recipient trust and its utilisation. A

remand report was called for from the A.O. under my letter dated 05/09/2008. The A.O. has furnished his remand report vide letter dated 08/10/2008 stating that disallowance made by the A.O is in order because donee trust is not registered u/s 12A of the Act. He however stated that he has no objection to admission of additional evidence if any. The counter comments of appellant's A.R. were sought by giving him a copy of remand report. He has vide order sheet entry dated 14/10/08 (appeal folder for A.Y-2003-04) stated that the objection of the A.O. is not relevant because the donation has been spent by the donee trust towards charitable objects which are also the objects of the appellant trust.

2.4. I have considered the issue in the light of material available on record. It is seen that donation given by the assessee trust have been utilised for Hospital and for Goshala. Both these objects are charitable in nature. Receipt of donations by the recipient trust is not disputed. I have duly considered the argument put forward by the I.d. A.R. that even if the recipient trust is not registered u/s. 12A or is not exempt u/s.80G, donations having been given for charitable objects and having been spent for charitable objects by the recipient trust as certified by their chartered accountant, tantamounts to application of income of the assessee trust for charitable purposes and hence allowable u/s. 11. The fact of donation being given is not disputed by the A.O. Accordingly I direct the A.O. to allow necessary deduction u/s 11 of the Act, in respect of donations given by the assessee trust to M/s. Vishwa Jagruti Mission (Regd.) and hold that such donation given is application of income u/s. 11 of the Act for charitable purposes.”

**13.** The applicants also filed the order of Income Tax

Appellate Tribunal passed in favour of the respondent, para 5 of the order is relevant which may be quoted as below :-

“5. We have perused the records and considered the rival contentions carefully. The dispute is regarding allowability of exemption u/s 11 of the Income-tax Act. The Assessing Officer had disallowed the entire claim of exemption on the ground that the assessee had donated part of the income to a trust named M/s Vishwa Jagruti Mission, which was not registered u/s 12AA of the Act and not granted exemption certificate u/s 80G of the Income-tax Act. In so far as the registration u/s 12AA and grant of exemption u/s 80G to the donee trust is concerned, we find that the Assessing Officer had denied the registration as well as 80G certificate to the donation on the ground that the donee trust had collected donations on the basis of forged registration u/s 12AA as well as 80G certificate, accordingly, the charitable activities of the donee trust were not accepted as genuine. The assessee had disputed the order of the Assessing officer and ultimately the Tribunal vide order dated 6.5.2009, after detailed examination, accepted the claim of the assessee that it had depended on the Treasurer Shri A.K. Sikri, who had mislead the trust and obtained donations on the basis of forged certificates u/s. 12AA and 80G and there was no involvement of trust or other trustees. The Tribunal held that there was no material established that the trust or other trustees had acted in collusion with Shri A.K. Sikri and, therefore, the acts of the forgery of Shri Sikri was personal to him and same could not be attributed to the assessee. The Tribunal also observed that there was no allegation that the assessee trust was not engaged in the charitable objects. The Tribunal, accordingly, granted registration u/s 12AA and 80G from its inception. In view of the decision of the

Tribunal in case of the donee trust, the claim of the assessee could not be disallowed on the ground that the donee trust is not registered u/s 12AA or 80G of the Income-tax Act. As regards the argument of Learned Departmental Representative that it was not clear whether the donations had been made out of current year's income of the assessee society or out of accumulated income and the applicability of the Explanation to section 11(2), the Learned Authorized Representative of the assessee agreed for varification of this aspect by the Assessing Officer. We, therefore, set aside the order of the CIT (A) and restore the matter to the Assessing Officer for limited purpose of verification of the fact whether the donations had been made out of current year as income or out of accumulated income and whether the case of the assessee was hit by the explanation to section 11(2) of the Income Tax Act. In case, the case of the assessee is not covered by the said explanation, the Assessing Officer shall grant exemption under section 11 of the Income Tax Act.”

**14.** Therefore, what transpires in above orders of the Income Tax Authorities are that (i) they found that applicants are involved in charitable activities; (ii) though the certificate was found forged, the Income Tax Authorities proceeded to grant exemption under section 80-G to the society from 1993 and also the registration under section 12-A of Income Tax Act; (iii) the Income Tax Authorities also set aside the order imposing penalty on respondent.

**15.** The inferences drawn by the Income Tax Authorities

attained finality as the matter travelled upto Hon'ble Apex Court and Special Leave Petition filed by the revenue was dismissed.

**16.** Under the background of these facts and averments, it is argued by the counsel for the applicants that in light of orders passed by Income Tax Authorities, no loss was caused to the applicants. The present applicants were not responsible for creation of forged and fabricated documents. The persons responsible were A.K. Sikri and Radhelal Gupta. A case was filed against A.K. Sikri is pending and, therefore, the present applicants cannot be held responsible. He also argues that from the investigation done by the police on FIR lodged by the applicant No.1 and inferences drawn by the Income Tax Authorities, it is apparent that the present applicants are not responsible and, therefore, they are not responsible for any criminal proceedings before the Judicial Magistrate.

**17.** Replying the arguments raised by the counsel for the applicants, the counsel for respondent submits that whether the present applicants had knowledge that the documents were false and fabricated is a matter of evidence. At the time, when respondent first donated the amount to the applicant No.1, the

certificate under section 80-G was a forged document, as admitted by the applicants and, therefore, only after recording of evidence, inference can be drawn whether the present applicants were responsible for such acts or not. The counsel also argues that whether there was an intention to deceit from the very inception may also be ascertained only after recording evidence, at this stage, it cannot be said that the applicants are not responsible.

**18.** I have gone through the whole record of the case including the orders passed by the Income Tax Authorities, in my considered opinion, the inference drawn by the Income Tax Authorities cannot form basis for allowing an application under section 482 Cr.P.C. The Income Tax Authorities are not 'Court' in the real sense of the term. They are more like administrative tribunal, their main purpose is to ascertain amount of revenue and, therefore, their inferences cannot be utilized for the purpose of a criminal proceedings.

**19.** So far as the jurisdiction of the Shajapur Court is concerned, this issue is to be decided by the Court itself on the basis of material on record. This Court under section 482 Cr.P.C. cannot substitute itself for the trial court to decide

point of jurisdiction and, therefore, in my opinion, no comments can be made at this stage in respect of jurisdiction of the Court.

**20.** Under section 482 Cr.P.C. it is to be seen whether there is an abuse of process of Court the whole case of the applicants is based on the premise that the Income Tax Authorities and investigating authorities at Delhi found that only A.K. Sikri was responsible for the forgery and, therefore, if, the criminal complaint is allowed to continue, this will be an abuse of process of Court. In my opinion, this argument cannot be accepted any subsequent development in criminal proceedings cannot absolve a person for his criminal liability and his act and omission forming part of the criminal liability can be seen only at the relevant time when the offence was allowed to have been committed. This apart, as a said earlier the inferences by the investigating officer and income Tax Authorities cannot be taken as final and on the basis of such inferences the complaint filed cannot be quashed.

**21.** This apart, under section 106 Evidence Act which provides as follows :-

“106. Burden of proving fact especially within knowledge.-When any fact is especially within



the knowledge of any person, the burden of proving that fact is upon him.

Illustrations

(a) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.

(b) A is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is on him.”

**22.** It is apparent that when certain facts are 'especially' within the knowledge of any person, burden of proving that fact is upon him. In this case therefore burden to prove that they had no knowledge that the documents were forged lies on the present applicants. The statements given by A.K. Sikri and other documents relied by the investigating officer and Income Tax Authorities should be proved strictly according to provision of Evidence Act and then only a Magistrate can draw any inference whether the present applicants had knowledge of forgery at the time of commission of the alleged offence or not. Unless this is proved, no inference can be drawn and in this view of the matter, at this stage, it cannot be said that the present applicants had no knowledge of such forgery. Such knowledge can be presumed prima facie and the burden lies on them to rebut the same and as such I find that no ground is made out for interference in this matter under

section 482 Cr.P.C.

23. Accordingly, taking all the legal position as stated above into consideration, in my considered opinion, no grounds exist for interference in this matter under section 482 Cr.P.C. The application is devoid of merit and liable to be dismissed.

24. The application is dismissed accordingly.

25. The stay granted by this Court on 07.06.2010 is vacated.

26. The record of the lower court be transmitted back to the concerned court immediately.

27. The applicants are directed to appear before the court concerned on 30.07.2015. Meanwhile, they are at liberty to file an application for grant of bail under appropriate provision of law. If, such application is filed, the concerning court is directed to decide the application expeditiously as per law without being influenced by observations made in this order. The complainant is also directed to appear before the court concerned on aforementioned date.

**( ALOK VERMA )**  
**JUDGE**