

HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE

BEFORE HON. SHRI JUSTICE ALOK VERMA,J

M.Cr.C. No.10001/2013

Mahendra Dixit S/o Late Shri Ramniwas Dixit

Vs.

State of M.P. and another

M.Cr.C. No.10002/2013

Ambrish Vaidya S/o Late Shri S.D. Vaidya

Vs.

State of M.P. and another

M.Cr.C. No.10003/2013

Rajkumar S/o Dwarka Prasad Sharma

Vs.

State of M.P. and another

Shri A.K. Sethi, learned Senior Counsel with Shri Harish Joshi,
learned counsel for the applicants.

Shri R.S. Parmar, learned P.L. for the respondent/State.

Shri Piyush Shrivastava, learned counsel for the complainant.

ORDER

(Passed on 11/02/2015)

This common order shall govern the disposal of

M.Cr.C. Nos.10001, 10002 & 10003 of 2013.

2. These three separate applications under section 482 Cr.P.C. are filed by applicants who were Deputy Registrar Co-operative Societies, Indore, in succession. Rajkumar S/o Dwarka Prasad Sharma, applicant in M.Cr.C. No.10003/2013 was posted at Indore as Deputy Registrar Co-operative Societies from 01.01.2002 to 11.07.2005, applicant Ambrish Vaidya S/o Late Shri S.D. Vaidya in M.Cr.C. No.10002/2013 was posted after applicant Rajkumar on the same post from 11.07.2005 to 25.08.2009 and finally, Mahendra Dixit, applicant in M.Cr.C. No.10001/2013 was posted from 29.09.2009 till filing of the application in 2013.

3. Facts relevant for disposal of these applications common to all the three matters are that a complaint was lodged at Malharganj Police Station at Indore on 09.06.2011, on which the crime No.257/2011 under sections 406 and 420/34 was registered by Police Station at Malharganj. The FIR was lodged by one Mohansingh S/o Hastimalji Lalan who is respondent No.2. In these petitions, accused No. 5 to 7 are present applicants who were working as Deputy Registrar Co-operative Societies. The allegations in FIR against the present

applicants are as follows :-

“19.....

20. प्रार्थी द्वारा शिकायतों के उपरांत सहकारिता न्यायालय में दावे भी प्रस्तुत किये जहां पर भी मनमानी तरीके से कई अनियमितताएं व अवैधताएं की जा रही है जो लगातार जारी है। सन 2005 से उपायुक्त श्री आर. के. शर्मा पश्चात में उपायुक्त श्री अमरीश वैद्य एवं श्री महेन्द्र दीक्षित के द्वारा आवेदनों पर कई बार बहस सुन लेने के पश्चात भी आज दिनांक तक कोई आदेश नहीं दिया है इतना ही नहीं मात्र एक प्रकरण में प्रोसेडिंग आदेश लिखवाये जाकर शेष अन्य 26 प्रकरण में कोई प्रोसेडिंग आदेश अलग से नहीं लिखवाये गये है। अलग अलग कार्यवारियों पर भी बिना आवेदनों के ही आदेश भी दिये।

21.....”

4. Accordingly, the allegation against the present applicants were that even after hearing arguments many times, no order was passed, separate orders were not passed on 26th proceedings and in different cases without any application, orders were passed.

5. The genesis of dispute goes back to year 1985, when, 27 persons obtained membership of Maharana Pratap Nagar Co-operative Ltd. Society, Indore and deposited Rs.5000/- each for purchase of plots to be developed by the society. The colony was named as Vindhyachal Nagar Indore. It was conditioned of the allotment that remaining part of purchase money Rs.6000/- shall be paid in monthly installment of Rs.200/- per month. As per the agreement, duty was caste on

the society to obtain necessary permissions and clearances from various government departments. It was later on discovered that the land which was to be allotted to the aforesaid 27 members were part of green belt area of the town. The society took necessary steps to get this area converted into residential area. This permission was granted on 03.02.2000 and the land comprised in green belt area was converted into residential area. No permission under Urban Ceiling Act was required as the Act was already repealed. Therefore, it was said that with such conversion from green belt area to residential area, the society was in position to allot the plots to above 27 members. When the members insisted for allotment of the plots, the society refused to allot plot, therefore, a dispute arose and the 27 members filed dispute cases before the Deputy Registrar Co-operative Society. Along with dispute cases, applications under order 39 rules 1 & 2 CPC were also filed which were dismissed by Deputy Registrar Public Societies Act. The appeal was filed before the Joint Registrar and second appeal was filed before Co-operative Tribunal and matter finally travelled to this Court in Writ Petition No.814/2002 which was dismissed on 04.09.2002. After this, the present applicants approached Deputy Registrar, Co-

operative Societies where the matter remained pending till the complaint was lodged and therefore, the above mentioned allegations were levelled against them and on the basis of such allegations the above crime was registered.

6. In backdrop of this factual background, these applications are filed on the ground that all 27 dispute cases were similar in nature and, therefore, a consolidated proceedings were being carried in all the cases as such, the main order was passed in one case which was made applicable in all other cases as all the applicants were similarly placed. As Deputy Registrar Co-operative Societies, the applicants were acting as Judges of quasi judicial body and, therefore, their actions are protected by section 3 of Judges (Protection) Act 1985 and section 77 of IPC.

7. To substantiate their arguments, the applicants filed judgment of this Court in **State of M.P. vs. Rajiv Jain, 2001 (4) MPHT 58**, in this case the Hon'ble Court held that the Collector stamp is a Judge under section 3 of Judges (Protection) Act 1985 and the Investigating Officer cannot be allowed to sit in judgment over the orders passed by quasi judicial authority acting in his judicial capacity. Any erroneous

order passed by such authority can be corrected in appeal or revision. The learned counsel for the applicants also relies on judgments of this Court in **Avdhesh Raghuwanshi vs. State of Madhya Pradesh** in M.Cr.C. No.2356/2013 dated 01.03.2013 and **Omprakash vs. Surjan Singh, 2004 RN 31**.

8. On the contrary, the learned counsel for respondent No.2 relies on judgment of Hon'ble Supreme Court in **State of Bihar vs. Murad Ali Khan and others, AIR 1989 SC 1** in which it was held that when taken on their face value the allegations in complaint amounting to offence against Wild Life Protection Act then quashing of proceeding by High Court on the ground that prima facie offence was not made out is impermissible. The learned counsel also relies on judgment of this Court in **Vivek Tripathi vs. Lokayukt Organisation and another, 2011 (5) MPHT 410 (DB)** and also on two judgments of Hon'ble Apex Court in **Central Bureau of Investigation vs. Ravi Shankar Shrivastava, (2006) 7 SCC 188** and **K. Ashoka vs. N.L. Chandrashekar and others, (2009) 5 SCC 199**.

9. In case of **Central Bureau Investigation (supra)**, the Hon'ble Apex Court held that power under section 482 Cr.P.C.

should not be exercised to stifle a legitimate prosecution. Power should be exercised with circumspection and to do real and substantial justice and to prevent abuse of process of Court. In case of **K. Ashoka (supra)**, the Hon'ble Apex Court held that when commission of cognizable offence is disclosed by allegation and complaint according to which the land, the Co-operative society illegally sold for higher price but showing lesser in records and conspiracy to cheat the society and members which is prima facie apparent and in such case the proceedings should not be quashed.

10. In this case, however, the facts are different, the dispute remained pending as the matter travelled upto the High Court and in September, 2002 when the matter was finally decided in respect of interim application under section 39 rules 1 & 2 of Cr.P.C., the proceedings before the present applicants again began. The only allegation against the present applicants are that they heard final arguments but did not pass final order in the matter. Such allegation is administrative in nature and do not constitute any offence under sections 406 and 420/34 of IPC. From 2002 to 2011 for almost 9 years, the complainant/respondent No.2 did not complaint against the slow progress

of the cases and suddenly the matter was reported to police and the offence was registered without going into the details of the case.

11. So far as, the case of **Vivek Tripathi (supra)** in which the Division Bench of this Court held that the matter requires investigation and the Court held that there is no compelling and justifiable reason to interfere therewith under section 482 Cr.P.C. The principle laid down by the Courts in all such cases are that when the allegation in the complaint or FIR are sufficient to constitute commission of a cognizable offence then no interference is called for. Only when no such offence is apparently made out then only interference be done using extraordinary jurisdiction vested on this Court.

12. In the present case, the allegations are reproduced above and as per the allegations no cognizable offence can be attributed to the present applicants. In such a situation, they deserve to be given benefit of the Judges (Protection) Act 1985 and in this view of the matter, I find that the case is made out under section 482 Cr.P.C. for quashment of proceedings against the present applicants.

13. Accordingly, the applications are allowed. The proceedings arising out of crime no.257/2011, Police Station Malharganj, District Indore under section 406 and 420/34 of IPC are quashed. The present applicants are discharged from offence under section 406 and 420/34 of IPC.

14. With that observations and directions these applications stand disposed of.

**(ALOK VERMA)
JUDGE**