

IN THE HIGH COURT OF MADHYA PRADESH
BENCH AT INDORE

(SB: Hon'ble Mr. Justice Alok Verma)

CRR No.55/2015

Ansaf Ansari

Vs.

Iftexhar Munna Ansari and State of MP

Shri Rizwan Khan, learned counsel for the applicant.
Shri Milind Phadke, learned counsel for the respondent/State.

MCRC No.6485/2014

Iftexhar Munna Ansari

Vs.

State of MP

Shri Rishi Tiwari, learned counsel for the applicant
Shri Milind Phadke, learned counsel for the respondent No.1/State.
Shri Vinay Saraf, learned counsel for the respondent No.2.

JUDGMENT

(Delivered on this 23th day of July, 2015)

This common order shall govern disposal of MCRC No.6485/2014 and CRR No.55/2015.

These two petitions arise out of the order passed by learned 5th Additional Sessions Judge, Indore in CRR No.551/2013 order dated 18.07.2014.

The facts relevant for disposal of these petitions are taken

from MCRC No.6485/2014. Applicant of MCRC No.6485/2014 Iftexhar Munna Ansari was a previous counselor from the same locality from which respondent no.1 Ansaf Ansari, applicant of CRR No.55/2015 is present corporator before election. Respondent no.1 obtained no dues certificate in respect of the property tax paid by him. However, respondent came to know on 31.03.2010 that a forged property tax return was filed in his name in which the area of his house was shown as 600 square feet instead of 357 square feet and also someone deposited Rs.900/- through demand draft in the State Bank of Indore, Sanyogitaganj Branch, Indore. On coming to know these facts, respondent no.2 filed a complaint before Municipal Corporation and on his complaint, the property tax return filed on his behalf was sent for examination by Government Hand Writing Expert, Bhopal. It was found that signature on the property tax return and the writing on the return are both forged and were not of respondent No.2. Thereafter, respondent no.2 also came to know that this return was filed on his behalf by the applicant in MCRC No.6485/2014 Iftexhar Munna Ansari with a view to showing him defaulter in payment of property tax in the Election

Petition that was pending against respondent no.2 and filed by the applicant.

Subsequent to this, respondent no.2 also filed a criminal complaint against applicant which was duly registered by learned JMFC, Indore by order dated 11.06.2013 under sections 420, 467, 468 and 471 of IPC against applicant of MCRC No.6485/2014.

Aggrieved by this order, the applicant filed a revision before the Sessions Court which was made over to 5th Additional Sessions Judge and which was disposed of by the impugned order. Learned Additional Sessions Judge observed in para 12 of the order as under:-

12 अभिलेख पर मूल दस्तावेज एवं फोटोप्रति दस्तावेज उपलब्ध न होने के कारण धारा 467, 471, 468 भा,दं,सं, का आरोप प्रथम दृष्टया निर्मित होना मान्य नहीं किया जा सकता है। इसलिये विद्वान न्यायिक मजिस्ट्रेट द्वारा पारित आदेश में विधि एवं प्रक्रिया संबंधी त्रुटि होना दर्शित होती है। अतः पुनरीक्षण याचिका स्वीकार की जाकर प्रश्नरत आदेश अपास्त किया जाता है और विचारण न्यायालय को निर्देशित किया जाता है कि धारा 202 दं,प्र,सं, के अंतर्गत प्रश्नगत विवरणी जिसे कूटरचित दस्तावेज होना कहा जा रहा है, को अभिलेख पर लिया जाकर अतिरिक्त साक्ष्य लेकर पुनः अपराध का संज्ञान लिये जाने के संबंध में आदेश पारित करें।

Aggrieved by this observation of learned Additional Sessions Judge, the applicant in MCRC No.6485/2014 filed an application under section 482 of Cr.P.C. and respondent no.2 filed CRR No.55/2015.

The question that arises for consideration before this Court is whether, the observation made by learned Additional Sessions Judge that without original document which was alleged to have been forged or its photocopy whether, taking cognizance by learned Magistrate is proper and whether, the Sessions Judge can direct the Magistrate to call the document and after making further enquiry under section 202 of Cr.P.C., proceeded further.

In this case, learned Judicial Magistrate observed that original document was examined by Hand Writing Expert Harman Singh Tuteja, who was examined before the Court during enquiry. Apart from that, employee of the bank Manoj Gupta and employees of Municipal Corporation were also examined. They all indicated in their statements that property tax return on behalf of respondent no.2 was filed by the applicant Iftekhar Munna Ansari. The document was available in the records of the Municipal Corporation and was examined by the Hand Writing Expert. It is nobody's case that the document is not traceable or lost so the observation made by learned Additional Sessions Judge that secondary evidence in respect of the document is to be filed, is totally baseless.

In the considered opinion of this Court, looking to the facts of the case, it is apparent that the document is available in the record of the Municipal Corporation. It was also examined by the Hand Writing Expert and, therefore, at the time of taking cognizance, presence of this document on the record of Magistrate is not necessary. This can be called exhibited during trial.

All the citations relied upon by learned Additional Sessions Judge are at different stages and based on the presumption that the document alleged to have been forged, was not available. However, in this case, the document is available and is in proper custody and, therefore, such observation was totally uncalled for.

In this view of the matter, it is apparent that learned Additional Sessions Judge erred while passing the impugned order and remanding the case back to the Magistrate. Such order cannot be allowed to remain in existence and ought to be set aside.

Accordingly, Cr.R. No.55/2015 is allowed. The impugned order is set aside and the order taking cognizance by the Magistrate is confirmed.

So far as MCRC No.6485/2014 is concerned, in the prayer clause, the only prayer made by the applicant is that the order remanding back to the trial court be set aside and direction to take the document on record should also be set aside.

In view of the fact that the whole order of learned Additional Sessions Judge has been set aside by this Court allowing CRR No.55/2015, there is no further order to be made in MCRC No.6485/2014. As such, the MCRC No.6485/2014 filed under section 482 of Cr.P.C. is dismissed.

Parties are directed to appear before learned JMFC on **24.09.2015**. Record of the lower court be transmitted back to the lower court immediately.

C.c as per rules.

(Alok Verma)
Judge

Kratika/-