

HIGH COURT OF MADHYA PRADESH: BENCH AT INDOREBEFORE
D.B : HON. MR. JUSTICE S.C. SHARMA AND HON.MR. JUSTICE
ALOK VERMA, JUDGE

Criminal Revision No.1512/2016

Rakesh Singh Rathore

Vs.

State of Madhya Pradesh

Criminal Revision No.1513/2016

Rakesh Singh Rathore

Vs.

State of Madhya Pradesh

CORAM

Hon'ble Shri Justice S.C. Sharma

Hon'ble Shri Justice Alok Verma

Whether approved for reporting ?

Shri S.C. Bagadiya, learned senior counsel with Ms. Sudha Shrivastava,
learned counsel for the applicant.

Shri Pushyamitra Bhargava, learned counsel for the respondent/State.

Order

26 .09.2017

Per : Alok Verma, Justice:

This common order shall govern disposal of Cr.R.

Nos.1512/2016 and 1513/2016. The facts in both the cases are common except the work involved.

2. These revisions are filed under Section 397/401 r/w section 482 of Cr.P.C. and is directed against the order passed by learned Special Judge under Prevention of Corruption Act, Barwa in Special Session Trial No.2/2016 dated 27.08.2016, by which, the learned Special Judge framed charges against the present applicant and Cr.R. No.1513/2016 is an application under the same provisions of law is filed challenging the order passed by the Special Judge dated 27.08.2017 in Session Trial No.1/2016 pending before him. The learned Special judge also dismissed an application under Section 227 filed by the present applicant in both the cases.

3. In both the cases charges were framed under Sections 409, 420, 120-B of IPC and Section 13(1)(D) of Prevention of Corruption Act.

4. According to prosecution story, the present applicant was posted as Executive Engineer in Rural Engineering Service Division, Barwani under 'MANREGA' Scheme. A complaint was received in the year 2009 regarding poor quality of construction of some of the works constructed by the aforesaid division during the incumbency of the present applicant as Executive Engineer. A team of engineers was formed and the works were inspected by the team.

5. In Cr.R. No.1512/2016, construction of GSB road from

Badgaon to Malfalya was involved. It was alleged that administrative sanction for Rs.24.73 lacs was issued by the Collector, Barwani and construction of the work was started on 31.07.2006 which continued up to 23.12.2006. Total expenditure incurred on the construction was said to be Rs.21,73,000/-. Total length sanction was 3.25 Km but only 3.00 Km work was done. Allegations were that sub-standard work was done and no proper supervision was maintained during the construction. Total valuation of work done was found to be Rs.11,21,379/- and it was less than Rs.21,73,000/- from the actual amount paid, and therefore, it was alleged that there was a misappropriation of Government fund. The co-accused persons made false entries in the measurement books, and therefore, the crime was registered, investigation was done and charges were framed under Sections 409 & 420, of IPC and Section 13(1)(d) of Prevention of Corruption Act.

6. In Cr.R. No.1513/2016 construction work of GSB Road from Jaahur to Bhadgone was involved. The total amount paid on this construction was 39,59,583/-/. As per the measurement books, 4 Km road was constructed, however, on physical check, only 3.30 Km road was found on the site. The same allegations of sub-standard of construction work and misappropriation of Rs.8,45,006/- was alleged against the present applicant.

7. In the backdrop of aforesaid factual position, these revisions

against the impugned order are filed on the ground that (i) responsibility of maintaining proper standard was on the co-accused and not on the applicant, who was posted as Executive Engineer in the Division. The actual payment was not made by him. There was no unlawful gain on his part, and therefore, no criminal charge is made out against him (ii) the inspection of the work was done by such officers, who were below the rank of the present applicant. They were not properly and technically qualified (iii) the present applicant only issued technical sanction of the work and no specific role was assigned in the charge-sheet against him (iv) during the construction work, the work was not properly supervised by the co-accused persons and after completion of the construction, the road was not properly maintained, and therefore, after length of total constructed road was found less than what was mentioned in the measurement books, was due to the fact that due to non-maintenance, the mark of construction of road, which was temporary road constructed to provide employment to rural people vanished (v) age of the GSB Road was assessed to be three years in a memo issued by Development Commissioner, Bhopal and the memo is annexed with the application as Annexure-P/4 (vi) it is also a ground taken by the present applicant that as per the circular dated 21.01.2006, there is a specific procedure prescribed for dealing with complaints received in respect of construction of work

done under 'MANREGA' Scheme. As per the procedure prescribed, a case has to be registered in the Court of Sub-Divisional Officer, and thereafter, inquiry should be made. If allegations were found true, a report has to be placed before the meeting of the Gram Panchayat. This procedure was not followed in the present cases (vii) the present applicant also referred to a letter written by H.A. Jadhav dated 26.08.2016 to Secretary of Panchayat and Gramin Vikas stating therein that the inquiry and inspection was done by the team of engineers was not in accordance with rules and regulations and was done in haste and due to the pressure exerted by senior officers of the department, a letter of similar nature was also written by Shri M.K. Jain (vii) other ground taken by him is that there are no ingredients of charges under Section 409 & 420 of IPC and Section 13(1)(d) of Prevention of Corruption Act.

8. By way of additional ground, the applicant filed applications I.A. No.1208/2017 in Cr.R. No.1512/2016 and I.A. No.1206/2017 in Cr.R. No.1513/2016. By these applications, additional ground was taken that the local police station had no jurisdiction to investigate the case and for this purpose reliance was placed on the order passed by Division Bench of this Court in case of ***Ravindra Kumar Dubey Vs. State of Madhya Pradesh*** in M.Cr.C. No.9915/2015 dated 08.07.2016, whereby the Division Bench of this Court observed that in view of the provision of Section 3 of

Madhya Pradesh Police Establishment Act, 1947, the local police had no jurisdiction to investigate and file charge-sheet under the provisions of Prevention of Corruption Act.

9. We have heard both the counsels in detail. Learned counsel for the State submits that the order passed by Division Bench of this Court in Ravindra Kumar Dubey (supra) was challenged before the Hon'ble Apex Court by filing a SLP No.6437/2016, which was disposed of by Hon'ble Apex Court by an order dated 03.05.2017. In Para-3 of its order, the Hon'ble Apex Court observed as under:-

“3. In our opinion, the High Court misadventured in quashing the proceeding in the manner in which the order has been passed. The High Court should have been little more careful while quashing the proceedings. Be that as it may, as agree to, the impugned order is set aside”.

Further the Hon'ble Apex Court in Para-4 of the order observed as under:-

“4. The respondents to raise the question about competency of the officer to investigate the matter before the trial Court as and when occasion arises during the course of trial”.

As such order passed by Division Bench of this Court has been set aside, and therefore, the ground raised against the competency of Investigating Officer has to be considered afresh.

10. So far as Special Police Establishment Act, 1947 is concerned, Section 3 of the Act only provides that The State Government may, by notifications, specify the offences or classes of

offences which are to be investigated by (Madhya Pradesh) Special Police Establishment, however, there is no provision in the Act to bar the judgment to investigate, vested in the local police. The investigation of the offence under the provisions of Corruption Act is governed by Section 17 of the Act, which provides as under:-

“17. Persons authorised to investigate.— Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no police officer below the rank,—

(a) in the case of the Delhi Special Police Establishment, of an Inspector of Police;

(b) in the metropolitan areas of Bombay, Calcutta, Madras and Ahmedabad and in any other metropolitan area notified as such under sub-section (1) of section 8 of the Code of Criminal Procedure, 1973 (2 of 1974), of an Assistant Commissioner of Police;

(c) elsewhere, of a Deputy Superintendent of Police or a police officer of equivalent rank, shall investigate any offence punishable under this Act without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make any arrest therefor without a warrant:

Provided that if a police officer not below the rank of an Inspector of Police is authorised by the State Government in this behalf by general or special order, he may also investigate any such offence without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make arrest therefor without a warrant:

Provided further that an offence referred to in clause (e) of sub-section (1) of section 13 shall not be investigated without the order of a police officer not below the rank of a Superintendent of Police”.

11. It is apparent that in this section Deputy Superintendent of

Police is empowered to investigate, however. He has to obtain an order from Judicial Magistrate First Class and also he has to obtain a warrant before arresting the accused, and therefore, taking relevant provisions of Police Establishment Act and provisions of Prevention of Corruption Act into consideration, it is apparent that the Deputy Superintendent of Police or an officer of equal rank is empowered to investigate the crime under the provisions of Section 17 of Prevention of Corruption Act after obtaining prior order from the concerning Judicial Magistrate and in view of the provisions of Section 17 of the Act, the ground taken by the present applicant has no force.

12. The only aspect appears to be that according to the charge-sheet filed by the applicant, there appears to be prior order taken from the Magistrate by the Investigating Officer, who is in the rank of Deputy Superintendent of Police. The provisions of Section 17 of Act of 1988 are analogous to the provisions of Section 5-A of the Act of 1947. The Hon'ble Apex Court had an occasion to consider whether any irregularities committed during the investigation, would vitiate the whole trial. In case of *Dr. M.C. Sulkunte Vs. State of Mysore A.I.R. 1971 SC 508*, the Hon'ble Apex Court observed that whether trap was conducted by Inspector of corruption after obtaining order from the Magistrate, and subsequently, the Special Judge ordering reinvestigation by Deputy

Superintendent would not vitiate investigation unless it would be shown that there had been miscarriage of justice as a result of irregular investigation. Similar view was taken in case of *Munnilal Vs. Delhi Administration A.I.R. 1971 SC 1525*. Accordingly, though, there appears an irregularity, this cannot be taken as such it would vitiate proceedings in this matter.

13. Coming to the merits of the case, the ingredient of Section 415 of IPC provides that basic ingredient is unlawful gain by inducement given by the present applicant to a person to do an act or commit an omission. There should be entrustment of amount at disposal of the application and under Section 13(1)(d) of Prevention of Corruption Act, the applicant should obtain pecuniary advantage abusing his position as a public Servant.

14. It is also apparent from the charge-sheet that there is departmental inquiry going on against the accused persons including the present applicant.

15. To prove a charge against the present applicant, there should be strong evidence to show that the present applicant wrongfully gained by (i) constructing the road of lessor length than the length shown in the measurement books (ii) standard was not properly maintained, and thereafter, the money was misappropriately/wrongfully gained by the applicant. Such strong evidence is totally missing in this case. The case is based totally on

the inspection report prepared by the team of engineers who themselves disowned the report subsequently. This apart, there is no independent investigation shown by the Investigating Officer. Taking statements and preparing proper memo to show that lessor length of road was constructed and wrong entries were made in the measurement books, the charge-sheet was mainly loaded with service books of all the accused persons, copy of measurement books etc. There is hardly any independent witness to show that road was not constructed up to the full length as shown in the measurement books.

16. The circular issued by the State Government dated 20.01.1996, which is annexed as Annexure-P/5 is also important. This circular provides procedure for complaints received against the work undertaken by REC. The charge-sheet does not show that the procedure prescribed by this circular was adopted by the inspection team.

17. When a crime was registered on the basis of inspection report conducted by team of Departmental Officer, it is the duty of the Investigating Officer to investigate the crime fully and to bring out all the relevant evidence to prove all the basic ingredients of all the alleged offences. In criminal case, strong proof is required while in departmental proceeding, the level of appreciation of evidence is on the basis of preponderance of probability.

18. On the basis of material available in the charge-sheet , it does not appear that Investigating Officer made proper endeavour to collect all the material to make out a case for framing charges under the aforesaid provisions of law.

19. So far as the sub-standard work is concerned, under the Provisions of P.W.D. Manual, the Executive Engineer is only under an obligation to conduct 10 % random measurements to check the measurements recorded in the measurement books. He is not under obligation to measure 100 % of work. This apart, there were hidden items, which cannot be measured subsequently, and therefore, as an Executive Engineer, he was not directly responsible for sub-standard work for which, immediate supervising authority vest in Assistant Engineer and Sub-Engineer.

20. The role assigned to the present applicant was that he prepared and issued technical sanction to the work. Technical sanction are as built estimate according to site conditions, the actual work done was measured in the measurement books, and thereafter, payment was made. If the technical sanction was not issued as per circular and instruction, present applicant was liable to face departmental action. For this, no criminal offence is made out against him. This apart, if it is alleged that the Government suffered any loss to sub-standard work or negligence on part of the present applicant, the same could be recovered from him or there could be

punishment of withholding pension in case of retired government servant.

21. In this view of the matter, after taking into consideration the material available on record, we are of the opinion that *prima facie* no case is made out against the present applicant for framing charges under Sections 409, 420, 120-B of IPC & Section 12(1)(d) of Prevention of Corruption Act.

Accordingly, these revisions are allowed. Impugned order so far as the present applicant is concerned, is set aside. The present applicant is discharged from offence under Sections 409, 420, 120-B of IPC and Section 13(1)(d) of Prevention of Corruption Act in Cr.R. No.1512/2016 and Cr.R. No.1513/2016. The trial Court shall continue for other accused.

(S.C. Sharma)
Judge

(Alok Verma)
Judge

Ravi