

HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE
SINGLE BENCH:HON'BLE SHRI JUSTICE ALOK VERMA
M.Cr.C No.10561 / 2016

Alok Maheshwari s/o Omprakash Maheshwari

Vs.

State of Madhya Pradesh and 2 others

Shri Sanjay Sharma, learned counsel for the applicant.

Shri Abhijit C. Thakur, learned counsel for respondent
Nos.2 & 3.

ORDER
(Passed on 20/03/2017)

This application is filed under Section 482 Cr.P.C. against order passed by learned Third Additional Sessions Judge, Ratlam in Criminal Revision No.141/2016 dated 01/10/2016, whereby, learned Additional Sessions Judge dismissed the criminal revision filed against the order passed by learned Judicial Magistrate First Class, Ratlam in an unregistered Criminal Complaint No.0/2016, whereby, learned Magistrate dismissed the complaint under Section 203 of Cr.P.C.

2) The relevant facts for disposal of this application are that the present applicant was working as Manager in Central Madhya Pradesh Gramin Bank, Branch Chandani Chowk, Ratlam from 01/06/2011 to 18/06/2015. He was transferred from the post and he filed a writ petition before this Court, in which, it was directed that representation filed by the respondent should be considered and disposed of within the

time specified by this Court. A contempt petition was also filed when the order of this Court was not obeyed and due to these reasons, respondent Nos.2 & 3 nurtured a grudge against the present applicant and they initiated departmental inquiry against him and issued charge-sheet. According to the applicant, charge-sheet was issued entirely on a false ground and merely to harass the applicant and therefore, he filed a criminal complaint under Section 167, 177, 182, 199, 120-B and 500 IPC.

3) A report was called by learned Magistrate from the concerning police station, in which, it was opined by the concerning police personnel that *prima facie* there appears that offence under the aforementioned sections was committed. However, the Magistrate did not accept the report and proceeded to dismiss the complaint under Section 203 of Cr.P.C. Being aggrieved by this order, a revision was filed and the revision was also dismissed. Learned Additional Sessions Judge found that Sub - Inspector N.S. Ohariya, who was also examined by the Court of Magistrate under Section 202 Cr.P.C. stated that respondent Nos.2 & 3 committed offence under the aforementioned sections, however, Additional Sessions Judge observed that his inferences were based purely on the auditor report and the statements of the complainant himself. He did not proceed to verify the correctness of the allegations made in the auditor report and therefore, he proceeded to dismiss the application.

4) Learned counsel appearing for the petitioner relied on the judgment of Hon'ble Apex Court in the case of **S.K. Sinha, Chief Enforcement Officer** vs. **Videocon**

International Ltd. [(2008) 2 SCC 492], India Carat Private Limited vs. State of Karnataka passed in Criminal Appeal No.105/1989 dated 15/02/1989, in which, it was held that 'the Magistrate is not bound to accept the police report.' He also relied on the judgment of Hon'ble Apex Court in the case of Dhariwal Tobacco Products Ltd. vs. State of Maharashtra dated 17/12/2008 and Dr. Mrs. Nupur Talwar vs. CBI (Delhi) and another [2012 (1) CCSC 220 (SC)].

5) On the other hand, learned counsel for the respondents relied on judgment of Hon'ble Apex Court in the case of **Dharampal and others vs. Smt. Ramshri and others [1993 AIR 1361]**, in which, it was held that 'second revision in the garb of application under Section 482 Cr.P.C. is not permissible.'

6) This apart, learned counsel for the respondents raised a preliminary objection that this application is not maintainable in light of the principle laid down in the case of **Dharampal (Supra)**. However, this point is now well settled. The power granted to this Court under Section 482 Cr.P.C. is not governed by any other provision of the Code. When there is an abuse of process of Court, this Court is free to exercise the power granted under Section 482 Cr.P.C. and therefore, the preliminary objection raised by the respondents has no force.

7) Coming to the merit of the case, in this matter a departmental inquiry was ordered. The procedure for conducting departmental inquiry is *quasi judicial*, where principles of natural justice are followed. The present applicant would get ample opportunity to defend himself in the

departmental proceedings. This apart, the present applicant also filed a writ petition before this Court, which was dismissed by order dated 15/07/2016, passed in W.P. No.3234/2016. Co-ordinate Bench of this Court issued following directions :-

“(1) That within a period of 15 days from today respondent/bank shall appoint a new enquiry officer. (This Court has not recorded any finding against the present enquiry officer/Respondent No.3)

(2) That the newly appointed enquiry officer shall fix the date of appearance of the petitioner by giving him 15 days time.

(3) That the petitioner shall positively appear before the enquiry officer on the date fixed by the enquiry officer. It is made clear that if the petitioner fails to avail this opportunity no further opportunity would be given to him.

(4) That the enquiry shall conclude the enquiry within a period of three months and submit the report to the disciplinary authority and the petitioner shall co-operate in the enquiry.

With the above observations and directions this petition is disposed of. It is made clear that this order be not treated as a precedent as it has been passed with the consent of the parties in the given facts and circumstances of the case.

8) It is apparent that propriety of the departmental inquiry has already been examined by this Court in the aforesaid writ petition and therefore, merely because departmental inquiry was ordered against the present applicant, it can not be said that the Officers under whose subordination the present applicant was working, had committed any offence under the provisions of Indian Penal Code.

9) In this view of the matter, this application appears to be devoid of any force and is liable to be dismissed and **dismissed** accordingly.

Certified copy as per rules.

(Alok Verma)
Judge