

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

**Criminal Revision No.1578/2016**

Rishi Prakash Gautam . . . Applicant  
Versus  
State of Madhya Pradesh . . . Respondent

**Criminal Revision No.227/2017**

Suresh Kumar Jain . . . Applicant  
Versus  
State of Madhya Pradesh . . . Respondent

**Criminal Revision No.238/2017**

Jagdish Dagaonkar . . . Applicant  
Versus  
State of Madhya Pradesh . . . Respondent

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**CORAM**

Hon'ble Shri Justice S.C. Sharma  
Hon'ble Shri Justice Alok Verma

Whether approved for reporting ?

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Shri Deepak Rawal, learned counsel for the applicant in Cr.R No.1578/2016.

Shri A.S. Garg, learned senior counsel with Shir M.A. Mansoori, learned counsel for the applicant in Cr.R. No.227/2017.

Shri S.M. Dagaonkar, learned counsel for the applicant in Cr.R No.238/2014.

Shri Anand Soni, learned counsel for the respondent/Lokayukt

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**Order**  
**28.07.2017**

**Per : Alok Verma, Justice:**

This common order shall govern disposal of Cr.R. Nos.1578/2016, 227/2017 and 238/2017.

2. These criminal revisions under Section 397 of Cr.P.C. has been preferred against the order dated 23.11.2016 passed by Special Judge (under the Prevention of Corruption Act, 1988 – for short 'the Act of 1988') Indore, in Special Case No.08/2015, whereby the learned trial Court has rejected the application preferred by the applicants under Section 227, 197 of Cr.P.C.

3. The applicants Jagdish Dagaonkar and Rishi Prakash Gautam filed these revisions mainly on the grounds *inter alia* that there was no *prima facie* case to frame charges against them under various sections, and therefore, the impugned order should be set aside and they should be discharged from offence for which, they were charged by the trial Court. It was also submitted by them that no valid sanction was obtained to prosecute them under various provisions of IPC as the sanction was given by Law and Legislative Department of Government of Madhya Pradesh while their parent department is different. No sanction was obtained from their parent department.

4. The applicant Suresh Kumar Jain challenged the

impugned order on the ground that no sanction was obtained under Section 197 of Cr.P.C. and also under Section 19 of 'the Act of 1988', and therefore, for want of sanction for the prosecution, the impugned order is bad in law.

5. The relevant facts are that the applicant were charge-sheeted by the respondent for offence under Section 13(1)(d) r/w section 13(2) of ' the Act of 1988' and Section 218. 466, 471, 474 and 120-B of IPC. On the basis of allegation that during 2000 to 2003 in the capacity of officers of Indore Municipal Corporation, the present applicant misused their official position and caused wrongful loss of Rs.33,60,322/- to the Municipal Corporation Indore by conferring undue advantage to Meghdoot Corporation in whose favour contract for maintenance and development of Meghdoot Upvan was granted by resolution No.263 dated 29.03.2001. Allegedly, an amount of Rs.5,66,771/- was not recovered from this firm and an amount of Rs.27,93,551 was wrongly paid to it and that a forged working plan was prepared in order to justify the act and omissions by showing that meeting was held on 21.11.2002, though the working plant was described on a paper printed in 2003..

6. In this matter, the applicant Jagdish Dagaonkar was attributed the following acts and omissions on his part which

from basis of the charges framed against him:-

“1. श्री जगदीश डगांवकर तत्कालीन नगर शिल्पज्ञ एवं सदस्य निविदा मूल्यांकन समिति नगर निगम इन्दौर :-

श्री जगदीश डगांवकर द्वारा अपने पद का दुरुपयोग करते हुए आपराधिक षडयंत्र के तहत मेघदूत उद्यान के संचालन-संधारण का ठेका देने में उच्चतम निविदा प्रस्ताव स्वीकार करने की अनुशंसा नहीं की गई तथा मिथ्या कारणों के आधार पर द्वितीय उच्चतम निविदा प्रस्ताव स्वीकार करने की अनुशंसा की गई। इसके अतिरिक्त उद्यान के संचालन-संधारण के ठेके हेतु निविदा प्रारूप अनुमोदित नहीं कराया गया तथा न ही निविदा का प्राक्कलित मूल्य निर्धारित किया गया। इस संबंध में महापौर परिषद् अथवा निगम परिषद् के समक्ष निर्णय प्रस्तुत नहीं किये गये तथा न ही निगम के विधि अधिकारी के समक्ष निविदा प्रस्ताव की शर्तों में परिवर्तन करने संबंधी तथ्य लाया गया, यह कार्य बिना किसी अधिकारिता के आरोपी द्वारा, अपने स्तर पर किया गया। मेघदूत उद्यान के संचालन से निगम को 6 लाख रु. की मासिक आय का ज्ञान होते हुए भी ठेका इंदौर मेघदूत कॉर्पोरेशन को मात्र 1.60 लाख मासिक पर देने की अनुशंसा की गई। यही नहीं प्रायवेट ठेकेदार को लाभ पहुँचाने के दृष्टिकोण से अनुबंध में निविदा प्रारूप की शर्तों को विधि विरुद्ध परिवर्तित करते हुए निगम के हितों के विपरीत अनुबंध बेक डेट से लागू किया गया। अनुबंध समाप्ति के उपरांत अंतिम समायोजन में ठेकेदार से निगम को वसूली योग्य राशियों की लेनदारी का समायोजन नहीं किया गया। जबकि विभिन्न मदों में ठेकेदार इमेका की अवैध देनदारियाँ थी। अंतिम समायोजन में ठेकेदार के हित में देय राशियों की गलत गणना की तथा ऑडिट आपत्ति के निराकरण के बिना अवैध भुगतान पारित किया। आपराधिक प्रक्रिया से बचने के लिये अंतिम समायोजन समिति के द्वितीय व तृतीय कार्य विवरण की कूटरचना की ओर असल दस्तावेज के रूप में उसका उपयोग किया।”

7. In this matter, the applicant Rishi Prakash Gautam was attributed the following acts and omissions on his part which from basis of the charges framed against him:-

“8. श्री आर.पी.गौतम तत्कालीन सहायक संचालक, स्थानीय निधि संपरीक्षा, इंदौर हाल भोपाल :-

श्री गौतम द्वारा अपने पद का दुरुपयोग करते हुए आपराधिक षडयंत्र में संगमत् होकर आरोपी श्री ए.यू.खान एवं जगदीश डगांवकर द्वारा

अंतिम समायोजन के पश्चात् ठेकेदार इमेका, को भुगतान हेतु 21,54,598/- रु. का बिल ऑडिट हेतु प्रस्तुत किया, जिस पर आरोपी श्री विद्यानिधि श्रीवास्तव के साथ नोटशीट पर ऑडिट आपत्ति लेख की एवं नस्ती पुनः प्राप्त होने पर नोटशीट पर ऑडिट आपत्ति निराकरण संबंधी कोई टीप, हस्ताक्षर लेख न करते हुए भुगतान बिल पारित किये जाने हेतु बिल पर हस्ताक्षर किये और बिल पारित कर दिये। जबकि आपत्ति का पूर्ण निराकरण विभाग द्वारा नहीं किया गया था, तथा स्थानीय निधि संपरीक्षा अधिनियम की धारा-10 के अनुसार विभाग को आपत्ति का निराकरण एवं सहायक संचालक को विस्तृत अभिमत नोटशीट पर लेख करना था अन्यथा बिल को पे ऑर्डर नहीं करना था।”

8. In this matter, the applicant Suresh Kumar Jain was attributed the following acts and omissions on his part which from basis of the charges framed against him:-

“8. श्री आर.पी.गौतम तत्कालीन सहायक संचालक, स्थानीय निधि संपरीक्षा, इंदौर हाल भोपाल :-

श्री गौतम द्वारा अपने पद का दुरुपयोग करते हुए आपराधिक षड्यंत्र में संगमत होकर आरोपी श्री ए. यू.खान एवं जगदीश डगांवकर द्वारा अंतिम समायोजन के पश्चात् ठेकेदार इमेका, को भुगतान हेतु 21,54,598/- रु. का बिल ऑडिट हेतु प्रस्तुत किया, जिस पर आरोपी श्री विद्यानिधि श्रीवास्तव के साथ नोटशीट पर ऑडिट आपत्ति लेख की एवं नस्ती पुनः प्राप्त होने पर नोटशीट पर ऑडिट आपत्ति निराकरण संबंधी कोई टीप, हस्ताक्षर लेख न करते हुए भुगतान बिल पारित किये जाने हेतु बिल पर हस्ताक्षर किये और बिल पारित कर दिये। जबकि आपत्ति का पूर्ण निराकरण विभाग द्वारा नहीं किया गया था, तथा स्थानीय निधि संपरीक्षा अधिनियम की धारा-10 के अनुसार विभाग को आपत्ति का निराकरण एवं सहायक संचालक को विस्तृत अभिमत नोटशीट पर लेख करना था अन्यथा बिल को पे ऑर्डर नहीं करना था।”

9. So far as the applicants Rishi Prakash Gautam and Jagdish Dagaonkar are concerned, at this stage, detailed scrutiny of allegations and prima facie evidence available in the

charge-sheet need not be looked into. Going through the allegations against these applicants, it is apparent that *prima facie* case was made out which was sufficient to frame charges against these applicants, and therefore, so far as arguments of counsel for the applicants that no prima facie case was made out against them was not tenable. The argument of learned counsel for the applicants regarding sanction issued in respect of these two applicant by Law and Legislative Department of Government of Madhya Pradesh, which is on record, is also misconceived and not acceptable. Every department of government is a part of government and the government functions through such department. The authority of government vests in each and every department of the government. Orders issued by these departments are presumed to have been issued by the government. The allocation of work is governed by rules framed by General Administrative Department in this regard. If the applicants are of the opinion that the Department of Law and Legislative Affairs doesn't have authority to issue such government orders, they are free to challenge the order during trial. At this stage, presumption is in favour of the respondent.

10. So far as the applicant Suresh Kumar Jain is concerned, he had retired by the time when charge-sheet was filed against

him and no sanction was obtained either under Section 19 of 'the Act of 1988' or Section 197 of Cr.P.C., In this situation, he challenged the cognizance taken by the Special Court against him without any valid sanction of prosecution.

11. In this regard, the matter considered by co-ordinate Bench of this Court, in which, one of us was also a member, in Criminal Revision No.418/2016, which was disposed of on 08.11.2017. In this order, the co-ordinate bench of this Court made following observations in respect of plea taken in case of co-accused Suraj Kero. He was a corporator, and subsequently, his term as a corporator expired and he was re-elected and his fresh term commenced, and therefore, no sanction was obtained either under Section 19 of ' the Act of 1988' or under Section 197 of Cr.P.C. as the acts and omissions alleged pertains to his earlier term as corporator. The co-ordinate Bench of this Court observed as under:-

“09. As regards plea relating to absence of sanction under Section 197 of 'the Code' the learned trial Court referring to decisions of the apex Court in *Inspector of Police and another vs. Battenapatla Venkata Ratnam and another, 2015 Cri.L.J. 2942 (SC)* has rightly held that acts of cheating, fabrication of records or misappropriation of public money cannot be said to be a part of official duty of a public servant, therefore, in such matters sanction for prosecution is not required under Section 197 of 'the Code'.

10. In *Shambhoo Nath Misra v. State of U.P. and others*, (1997) 5 SCC 326, (para5) Honble the apex Court has held that:

“5. The question is when the public servant is alleged to have committed the offence of fabrication of record or misappropriation of public fund etc. can he be said to have acted in discharge of his official duties. It is not the official duty of the public servant to fabricate the false records and misappropriate the public funds etc. in furtherance of or in the discharge of his official duties. The official capacity only enables him to fabricate the record or misappropriate the public fund etc. It does not mean that it is integrally connected or inseparably interlinked with the crime committed in the course of the same transaction, as was believed by the learned Judge. Under these circumstances, we are of the opinion that the view expressed by the High Court as well as by the trial court on the question of sanction is clearly illegal and cannot be sustained.”

11. In *Rajib Ranjan and others v. R. Vijaykumar*, (2015) 1 SCC 513(para18) it has been held as under :

“even while discharging his official duties, if a public servant enters into a criminal conspiracy or indulges in criminal misconduct, such misdemeanour on his part is not to be treated as an act in discharge of his official duties and, therefore, provisions of Section 197 of the Code will not be attracted”.

12. The aforesaid observations made by co-ordinate Bench of this Court in case of the co-accused, are



squarely applicable on case of the present applicant.

In view of the aforesaid discussion, we do not find any infirmity, illegality and impropriety in the impugned order. These criminal revisions fail and deserve to be dismissed and dismissed accordingly.

**(S.C. Sharma)**  
**Judge**

**(Alok Verma)**  
**Judge**

**Ravi**