

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

BEFORE

**HON'BLE SHRI JUSTICE RAVI MALIMATH,
CHIEF JUSTICE**

&

HON'BLE SHRI JUSTICE VIJAY KUMAR SHUKLA

ON THE 5th OF DECEMBER, 2022

MISCELLANEOUS CRIMINAL CASE No. 46422 of 2020

BETWEEN:-

**DR. MAYANK JAIN S/O DR. SHEEL CHANDRA
JAIN, AGED ABOUT 53 YEARS, OCCUPATION:
SERVICE, R/O. HOUSE NO. 294, SECTOR - B, IN
FRONT OF BANSAL HOSPITAL, SHAHPURA,
BHOPAL (MADHYA PRADESH)**

.....PETITIONER

(BY SHRI SHANTANU SHARMA - ADVOCATE)

AND

**SPECIAL POLICE ESTABLISHMENT LOKAYUKT
SUPERINTENDENT OF POLICE LOKAYUKT
OFFICE, UJJAIN (MADHYA PRADESH)**

.....RESPONDENT

(BY SHRI VAIBHAV JAIN – ADVOCATE)

.....
*This application coming on for admission this day, Hon'ble Shri
Justice Ravi Malimath, Chief Justice passed the following:*

ORDER

Office objection regarding non-filing of legible copies is overruled.

This petition has been filed seeking the following reliefs:

*“1. That, the impugned order dt. 13.10.2020
passed in MJC No.14/2018 (Annexure P/10)*

passed by Special Judge (Prevention of Corruption Act), Ujjain be quashed in the interest of justice and/OR further the closure report be accepted or in alternate the learned Special Judge be directed to do so.

2. That, the entire proceeding pending before the Ld. Special Judge in MJC No. 14/2018 arising out of the FIR dated 15.05.2014 (Annexure P/4) be quashed.

3. That, the FIR dated 15.5.2014 (Annexure P/4) be quashed in the interest of justice.”

2. However, learned counsel submits that he does not press the petition so far as quashing of the FIR is concerned. That he restricts his submission insofar as impugned order dated 13.10.2020 is concerned.

3. The case of the petitioner is that a complaint was lodged against him with respect to obtaining disproportional assets. The Lokayukt registered a case in Crime No.188 of 2014 under Section 13(1)(E) read with Section 13(2) of the Prevention of Corruption Act, 1988. The investigation was taken up. Thereafter, the Lokayukt submitted a closure report before the Magistrate. By the impugned order, the trial Court while declining to accept the closure report, held as follows:-

^vr% HkzVkpki fuokj.k vf/kfu; e 1988 dh /kkjk 19 ds i ko/kku dks n"Vxr j [krs gq vfire ifronu l elr vfhky[k ds l kfk] fu; ekuq kj vkxs dh dk; bkgb grq vuq akku vf/kdkjh fo'ksk ifyl LFkki uk ykdk; pr mTt& dksoki l fd; k tk, A

vfire ifronu ds l kfk vknsk dh ifr Hksth tkoA

vknsk dh ifr ekuuh; ykdk; pr Hkki ky e/; insk dks l pukFkz Hksth tkoA

vfire ifronu dh ifr idj.k ea l yXu dh tkoA

idj.k dk ifj.kke iath ea ntZ dj idj.k nkf[ky vfhky[kxkj gkA^

4. It is this portion of the order by which the petitioner is aggrieved. He submits that if this Court does not accept the closure report then necessarily the direction as issued by the Hon'ble Supreme Court in the case of Vasanti Dubey v. State of M.P. reported in (2012) 2 SCC 731 vide para-20 requires to be followed. Those are the only options available to the Magistrate. However, the Magistrate has gone beyond his jurisdiction and directed for obtaining sanction for seeking prosecution. Hence, he pleads that this portion of the order is contrary to law and is liable to be set aside. The same is defended by the learned counsel for the respondent.

5. On hearing the learned counsels, we are of the view that appropriate interference is called for. Whether the closure report is acceptable or not is the exclusive jurisdiction of the trial Court. However, in case, if he decides to reject the closure report, the options available to him are as held by the Hon'ble Supreme Court in the case of Vasanti Dubey (supra) vide para-20 of the judgment, which reads as follows:-

“20. This position has been further reiterated and reinforced in a recent judgment of this Court delivered in Ram Naresh Prasad v. State of Jharkhand (2009) 3 SCC (Cri) 1336, wherein it has been held that when the police submitted a final report of the investigation of the case which in colloquial term is called "closure report", the Magistrate cannot direct the police to submit the charge-sheet. However, on the basis of the material in the charge-sheet, he may take cognizance or direct further investigation. In fact, this position is clearly laid down under Sections 190 read with Section 156 CrPC itself and the legal position has been time and again clarified by this Court in several pronouncements viz. in H.S. Bains v. State (UT of Chandigarh) AIR 1980 SC

1883 wherein Their Lordships have summarised the position as follows:

"1. When a Magistrate receives a complaint, he may, instead of taking cognizance at once under Section 190(1)(a) direct a police investigation under Section 156(3) ante:

2. Where, after completion of the investigation, the police sends an adverse report under Section 173(1), the Magistrate may take any of the following steps:

(i) If he agrees with police report, and finds that there is no sufficient ground for proceeding further, he may drop the proceeding and dismiss the complaint.

(ii) He may not agree with the police report and may take cognizance of the offence on the basis of the original complaint, under Section 190(1)(a) and proceed to examine the complainant under Section 200.

*(iii) Even if he disagrees with the police report, he may either take cognizance at once upon the complaint, direct an enquiry under Section 202 and after such enquiry take action under Section 203. However, when the police submits a final report or closure report in regard to a case which has been lodged by the informant or complainant, the Magistrate cannot direct the police to straightaway submit the charge-sheet as was the view expressed in *Abhinandan Jha (1967) 3 SCR 668* which was relied upon in *Ram Naresh Prasad (2009) 3 SCC (Cri) 1336.*"*

6. The Magistrate, on the other hand, has proceeded to direct for obtaining sanction for prosecution against the petitioner. It is this portion of the order, in our considered view, that becomes unsustainable. Hence,

for all these reasons, the petition is allowed. The order dated 13.10.2022 (Annexure P/10) passed by the Special Judge, Ujjain to the extent of directing for obtaining of the sanction is set aside. The matter is remitted to the Magistrate for reconsideration insofar as the said portion of the order is concerned by considering the judgment of Hon'ble Supreme Court as aforesaid.

7. The petition is disposed off.

(RAVI MALIMATH)
CHIEF JUSTICE

(VIJAY KUMAR SHUKLA)
JUDGE

SOUMYA