

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE

HON'BLE SHRI JUSTICE SUSHRUT ARVIND DHARMADHIKARI

&

HON'BLE SHRI JUSTICE PRAKASH CHANDRA GUPTA

ON THE 18th OF MAY, 2023

CRIMINAL REVISION No. 2212 of 2023

BETWEEN:-

**DHARMRAJ PRADHAN S/O RAJAJRAM PRADHAN,
AGED 66 YEARS, OCCUPATION: PENSIONER R/O
H.NO. 10 BALAI MOHALLA JUNI INDORE (MADHYA
PRADESH)**

.....APPLICANT

(BY SHRI AVINASH KUMAR KHARE - ADVOCATE)

AND

**THE STATE OF MADHYA PRADESH SPECIAL POLICE
ESTABLISHMENT LOKAYUKT UJJAIN THROUGH
POLICE STATION SPECIAL POLICE ESTABLISHMENT
LOKAYUKT UJJAIN (MADHYA PRADESH)**

.....RESPONDENT

(BY SHRI VAIBHAV JAIN – ADVOCATE)

This revision coming on for admission this day, JUSTICE PRAKASH

CHANDRA GUPTA passed the following:

JUDGEMENT**Per :- Prakash Chandra Gupta, J.**

This criminal revision under Section 397 r/w 401 of Code of Criminal Procedure, 1973, has been preferred by applicant/accused against the order dated 30/01/2023 passed by the Court of Special Judge (Prevention of Corruption Act, 1988), Ujjain in S.C.No.3/2022, whereby the charges for the offence punishable u/s 13(1)(D) r/w 13(2) of the Prevention Of Corruption Act, 1988, alongwith Section 420 r/w 120-B of the Indian Penal Code, 1860 have been framed against the applicant.

2. Brief facts giving rise to this petition are that on 01/07/1981, the disputed land, in village Nimanwasa, Tehsil Ujjain, survey No. 117/1/2, 126, 131/2, a total area of 3.797 hectares was declared as ceiling land under The Urban Land (Ceiling And Regulation) Act, 1976 and the same was taken up by the Government of Madhya Pradesh on 18/06/1982 vide order dated 09/06/1982. On 01/07/2000, order for compensation was passed by the Competent Authority. On 06/10/2011, land of total 4.738 hectares was allocated to district trade and industry center for its functioning which included the disputed land and the possession was delivered to the district trade and industry center on 05/11/2011. The former owner of the land, Badrilal S/o Bhairulal Mali on 11/01/2013 had filed an appeal u/s 12 r/w Section 33 of The Urban Land (Ceiling And Regulation) Act, against the order dated 09/06/1982 and the order for compensation dated 01/07/2000, approximately after 30.5 years, to Additional Commissioner. While the Additional Commissioner had no jurisdiction to hear and dispose such appeal under Section 33 of The Urban Land (Ceiling And Regulation) Act, 1976. Despite that Ramesh S. Thete

(the then Additional Commissioner), Dharmraj Pradhan (Additional Tehsildar), Shankarlal Korath (Halka Patwari), Badri Lal and Tej Narayan entered into a criminal conspiracy with an intent to cheat the Government of Madhya Pradesh. Additional Commissioner Ramesh S. Thete called for a report from Tehsildar. Shankarlal Korath (Halka Patwari) filed his report before the present applicant/accused. The present applicant without verifying the fact, had forwarded the same to the Additional Commissioner alongwith his letter dated 02/02/2013. On 28/02/2013, the Additional Commissioner had passed the order and allowed the appeal filed by Badri Lal and had ordered that disputed land be mutated in the name of Badri Lal. Thereby, the accused persons incurred loss to government of Madhya Pradesh of Rs.1,99,35,000 (Approx.).

3. Learned counsel for the applicant submits that the order passed by the learned trial Court and the charges framed by it is contrary to law and liable to be set aside. That, the learned trial Court has not considered the charge-sheet presented by the *Lokayukt* and neither has considered the evidences available on record. The learned trial Court has failed in not considering the material facts of the case. Further, the learned counsel has said that the real culprit is Additional Commissioner, Ramesh Thete who picked up a 20-22 years old case and took it into appeal without having jurisdiction. Being in-charge Tehsildar, the present applicant had only forwarded a report filed by Halka Patwari before him to the Additional Commissioner alongwith his letter dated 02/02/2013. Learned counsel has prayed that the charges framed against the applicant be set aside.

4. Learned counsel for the respondent/State has supported the

impugned order and the charges.

5. We have heard learned counsel for the parties and perused the records.

6. It is apposite to discuss Section 227 and 228 of the Cr.P.C., which reads as under:-

“227. Discharge- If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.

228. Framing of charge- (1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which—

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and there upon such Magistrate shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of sub-section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.”

7. Hon'ble the Supreme Court in the case of ***Ghulam Hassan Beigh Versus Mohammad Maqbool Magrey & Ors. [2022 Live Law (SC) 631]*** has reiterated and held as under in Paragraph 21 and 25:-

*“21. This Court in the case of **Union of India v. Prafulla Kumar Samal and another, (1979) 3 SCC 4**, considered the scope of inquiry a judge is required to make while considering the question of framing of charges. After an exhaustive survey of the case law on the point, this Court, in paragraph 10 of the judgment, laid down the following principles:-*

“(1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be, fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced Judge cannot act merely as a Post office or a mouth-piece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving inquiry into the pros and

cons of the matter and weigh the evidence as if he was conducting a trial.”

25. In the case of Asim Shariff v. National Investigation Agency, (2019) 7 SCC 148, this Court, to which one of us (A.M. Khanwilkar, J.) was a party, in so many words has expressed that the trial Court is not expected or supposed to hold a mini trial for the purpose of marshaling the evidence on record. We quote the relevant observations as under:- “18. Taking note of the exposition of law on the subject laid down by this Court, it is settled that the Judge while considering the question of framing charge under Section 227 Cr.P.C. in sessions cases (which is akin to Section 239 Cr.P.C. pertaining to warrant cases) has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out; where the material placed before the Court discloses grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing the charge; by and large if two views are possible and one of them giving rise to suspicion only, as distinguished from grave suspicion against the accused, 3 2018(13) SCC 455 4 2019(6) SCALE 794 the trial Judge will be justified in discharging him. It is thus clear that while examining the discharge application filed under Section 227 Cr.P.C., it is expected from the trial Judge to exercise its judicial mind to determine as to whether a case for trial has been made out or not. It is true that in such proceedings, the Court is not supposed to hold a mini trial by marshaling the evidence on record.” ”

8. In the instant case, Additional Commissioner Ramesh Thete, on 14/01/2013 called for a report from Tehsildar, Ujjain on the following points:-

“(i) By which officer the possession of the disputed land was taken on behalf of state government?

(ii) Who is currently the actual possession holder of the disputed

land? (Attach the copy of khasra of the disputed land)”.

9. It appears that Halka Patwari filed a report dated 02/02/2013 annexed with mouka panchnama and copy of khasra before the present applicant Dharmraj Pradhan, but the Patwari has not given any report in respect of point no.(i) as required by Additional Commissioner. He had only given report which was required in point no.(ii) letter of the Additional Commissioner. It also clears that the present applicant after receiving the report from Halka Patwari and without verifying the material fact as required by letter of Additional Commissioner, had sent his report on the same day i.e., 02/02/2013. The present applicant has not verified the spot or any record relating to ceiling proceeding. He has also not given any report in respect that, by which officer the possession of the disputed land was taken on behalf of State Government as required by the Additional Commissioner in the letter. Therefore, these circumstances create grave suspicion against the present applicant to commit the offence.

10. Considering the overall material produced on record, prima-facie it can be concluded that there is sufficient material available on record against the applicant to frame the charges. Hence, learned trial Court has not committed any error in framing charge against the applicant. Therefore, this revision petition being devoid of merits is hereby **dismissed**.

(S. A. DHARMADHIKARI)
V. JUDGE

(PRAKASH CHANDRA GUPTA)
V. JUDGE