IN THE HIGH COURT OF MADHYA PRADESH

AT INDORE

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 29th OF JULY, 2024

MISC. CRIMINAL CASE No. 3997 of 2024

PIYUSH

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri Vivek Singh and Shri Ashok Agrawal- Advocates for the petitioner.

Ms. Harshlata Soni- P.L./G.A. for the respondent No.1/State.

Shri Surendra Pal Singh Dhailwal- Advocate for the respondent Nos.2 to 4.

ORDER

1] Heard finally, with the consent of the parties.

2] This petition under Section 482 of Cr.P.C. has been filed by the petitioner against the order dated 16.01.2024, passed by the CJM, Indore in Case No.RCT 1116/2023, whereby, the learned CJM has allowed the application filed by the respondent Nos.2 to 4 under Section 156(3) of the Cr.P.C. wherein, it was prayed that the matter may be investigated through the STF (Special Task Force) of Police.

3] In brief, the facts of the case are that a dispute has arisen between the parties in respect of a Power of Attorney executed by one Bhagwan Choudhary on 19.05.1997, on the basis of which the land has been transferred in the name of the accused persons, whereas, the complainants' contention was that their father Bhagwan Choudhary had never executed any Power of Attorney and thus, the complainant's contention was that the aforesaid Power of Attorney is a forged document. In respect of the aforesaid transaction, an application under Section 156(3) of the Cr.P.C. was filed by the respondents before the CJM, Indore seeking the relief that the case may be investigated through the STF, Indore and the FIR may be registered. The application was filed through one Vivek Vishwakarma, the Power of Attorney holder of the complainants Indar, Santosh and Sunita, who are the sons and daughter of Bhagwan Choudhary. In support of the said application, the affidavit of Vivek Vishwakarma was also filed and the learned CJM has passed the impugned order on 16.01.2024, holding that since a *prima facie* case is made out, hence, the case be investigated by the STF Bhopal, through its Unit at Indore.

4] Counsel for the petitioner has submitted that the impugned order is liable to be set aside on the ground that the application under Section 156(3) itself was misconceived, as the same was filed through a Power of Attorney holder, who had no authority to file such an application. In support of his submissions, counsel has also relied upon the decision rendered by the Supreme Court in the case of ***Priyanka Srivastava and Another Vs. State of Uttar Pradesh and Others*** reported as ***(2015) 6 SCC 287,*** paras 30 and 31.

5] Counsel has also submitted that otherwise also, even the STF was not competent to investigate into such kind of offences which are purely personal in nature, which is also reflected from the communication dated 08.08.2023, sent by the STF to the Chief Judicial Magistrate. As on merits, it is submitted that the STF Indore had already enquired into the matter through Tilak Nagar Police Station, who has already given a clean chit to the petitioner, as the State Government has also filed a reply along with a notification dated 25.07.2014, in which it is clearly provided that the STF (Special Task Force) has been constituted and shall have territorial jurisdiction over the whole of the State of Madhya Pradesh, for the purposes of investigation into the offences relating to antinational, disruptive and unlawful activities of extremist, terrorists, anti-social elements and organized crime syndicate, and other cases of significant public importance entrusted by the State Government, and since the present case was purely private in nature, the jurisdiction of STF ought not to have been invoked by the Trial Court, and in fact, in the light of the aforesaid notification, the relief sought by the respondents/ complainants itself could not have been entertained. Thus, it is submitted that on both the counts, the petition deserves to be allowed and the impugned order deserves to be set aside.

6] Counsel for the respondent No.1/State has also drawn the attention of this Court to the notification dated 25.07.2014, to submit that the STF has no business to deal with such matters of private disputes between the parties and the learned Judge of the Trial Court ought not to have directed the STF to investigate into such offence.

7] On the other hand, counsel appearing for the respondent Nos.2 to 4 has opposed the prayer and it is submitted that no case for interference is made out as the Trial Court has taken note of all the aspects of the matter and has found that a case for interference is made out, hence, the STF has been directed to investigate the matter.

8] In support of his submission that the complaint can be filed through a power of attorney, Shri Surendra Pal Singh Dhailwal, counsel for the respondent Nos.2 to 4 has also relied upon the decision rendered by the Supreme Court in the case of ***A.C. Narayanan Vs State of Maharashtra and Another*** reported as ***AIR 2014 Supreme Court 630.***

9] In rebuttal, Shri Vivek Singh, learned counsel for the petitioner has submitted that the aforesaid case relates to Negotiable Instruments Act only, and has no application in the facts and circumstances of the case where the complaint has been filed under Section 200 of Cr.P.C only.

10] Heard. On due consideration of submissions and on perusal of the documents filed on record, as also the reply filed by the State, it is found that so far as the relief sought by the respondent Nos.2 to 4 in their complaint filed under Section 156(3) of the Cr.P.C. is concerned, the same reads as under:-

> "अतः श्रीमान से विनम्र निवेदन है कि प्रार्थी 1 लगायत 3 के आम मुख्ततयार द्वारा प्रस्तुवत आवेदन स्वी कार करते हुए पुलिस एस.टी.एफ. शाखा इन्दौ र को प्रथम सूचना रिपोर्ट दर्ज किये जाने बाबद् महानुकम्पा करें। यही निवेदन है।"

11] So far as the notification issued by the State Government dated 25.07.2014 is concerned, it is apparent that the STF has no business to

investigate into such disputes between the private parties. The aforesaid notification reads as under:-

> "Bhopal, the 25th July 2014
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> F-2(K)-11-2008-B-3-II.—In exercise of the powers conferred by clause (s) of Section 2 of the Code of Criminal Procedure, 1973 (No. 2 of 1974) and in supersession of this Department's notification No. F. 2(k)-11- 2008-B-3-II, dated 26th December, 2008, the State Government, hereby, declares the office of Inspector General of Police, Special Task Force, Madhya Pradesh, Bhopal to be a police station by the name of Special Task Force, Police Station, Bhopal having territorial jurisdiction over the whole of the State of Madhya Pradesh, *for the purposes of investigation into the offences relating to antinational, disruptive and unlawful activities of extremist, terrorists, anti-social elements and organized crime syndicate and other cases of significant public importance entrusted by the State Government.*
>
> By order and in the name of the Governor of Madhya Pradesh,
> LAXMIKANT DWIVEDI, Dy. Secy."

(Emphasis Supplied)

12] It is also found that the aforesaid complaint has been filed by one Vivek Vishwakarma, who is the Power of Attorney holder of the respondent Nos.2 to 4. Thus, admittedly, the complaint has been filed through a Power of Attorney holder, supported by his affidavit only and not of the complainant's, whereas, the Supreme Court in the case of ***Priyanka Srivastava (Supra)*** in paras 30 and 31 has held as under:-

> **"30.** In our considered opinion, a stage has come in this country where Section 156(3) CrPC applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of the said Act or under Article 226 of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores.

> **31.** We have already indicated that there has to be prior applications under Sections 154(1) and 154(3) while filing a petition under Section 156(3). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. The warrant for giving a direction that an application under Section 156(3) be supported by an affidavit is so that the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with law. This will deter him to casually invoke the authority of the Magistrate under Section 156(3). That apart, we have already stated that the veracity of the same can also be verified by the learned Magistrate, regard being had to the nature of allegations of the case. We are compelled to say so as a number of cases pertaining to fiscal sphere, matrimonial dispute/family disputes, commercial offences, medical negligence cases, corruption cases and the cases where there is abnormal delay/laches in initiating criminal prosecution, as are illustrated in *Lalita Kumari* [(2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR."
>
> ***(Emphasis Supplied)***

13] Thus, tested on the anvil of the aforesaid dictum of the Supreme Court, it is found that the complaint itself has been filed through a Power of Attorney holder, who has also not deposed as to how he has come to know about the facts of the case, whereas, in the complaint itself, there is not a whisper as to how the power of attorney has got the knowledge about the facts of the case, thus, the same cannot be accepted to proceed further with the complaint.

14] So far as the decision relied upon by Shri Surendra Pal Singh Dhailwal, learned counsel for the respondent Nos.2 to 4, in the case of ***A.C. Narayanan (supra)*** is concerned, it has been held by the Supreme Court as under:-

> **29.** From a conjoint reading of Sections 138, 142 and 145 of the NI Act as well as Section 200 of the Code, it is clear that it is open to the Magistrate to issue process on the basis of the contents of the complaint, documents in support thereof and the affidavit submitted by the complainant in support of the complaint. Once

> the complainant files an affidavit in support of the complaint before issuance of the process under Section 200 of the Code, it is thereafter open to the Magistrate, if he thinks fit, to call upon the complainant to remain present and to examine him as to the facts contained in the affidavit submitted by the complainant in support of his complaint. However, it is a matter of discretion and the Magistrate is not bound to call upon the complainant to remain present before the court and to examine him upon oath for taking decision whether or not to issue process on the complaint under Section 138 of the NI Act. For the purpose of issuing process under Section 200 of the Code, it is open to the Magistrate to rely upon the verification in the form of affidavit filed by the complainant in support of the complaint under Section 138 of the NI Act. It is only if and where the Magistrate, after considering the complaint under Section 138 of the NI Act, documents produced in support thereof and the verification in the form of affidavit of the complainant, is of the view that examination of the complainant or his witness(s) is required, the Magistrate may call upon the complainant to remain present before the court and examine the complainant and/or his witness upon oath for taking a decision whether or not to issue process on the complaint under Section 138 of the NI Act.
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> **30.** In the light of the discussion, we are of the view that the power-of-attorney holder may be allowed to file, appear and depose for the purpose of issue of process for the offence punishable under Section 138 of the NI Act. *An exception to the above is when the power-of-attorney holder of the complainant does not have a personal knowledge about the transactions then he cannot be examined. However, where the attorney holder of the complainant is in charge of the business of the complainant payee and the attorney holder alone is personally aware of the transactions, there is no reason why the attorney holder cannot depose as a witness*. Nevertheless, an explicit assertion as to the knowledge of the power-of-attorney holder about the transaction in question must be specified in the complaint. On this count, the fourth question becomes infructuous."
>
> ***(Emphasis Supplied)***

15] It is apparent from the aforesaid decision in the case of ***A.C. Narayanan (supra)*** that the Supreme Court has not distinguished between a complaint under Section 138 and a complaint under Section 200 of Cr.P.C., because a complaint filed under Section 138 is

essentially a complaint under Section 200 of Cr.P.C. only, and the aforesaid dictum would be applicable to the complaints filed under either of the provisions. In the aforesaid decision also, the emphasis has been laid on the personal knowledge of the power of attorney holder about the contents of the complaint. Thus, the contention of shri Vivek Singh that the aforesaid decision is distinguishable is not tenable.

16] In such circumstances, looking to the prayer made by the complainants in their complaint that the matter be investigated through STF, and also that it was not supported by the proper averments and the affidavit, this Court is of the considered opinion that the complaint itself ought not to have been entertained by the Trial Court and thus, the impugned order is liable to be set aside.

17] Resultantly, the impugned order dated 16.01.2024 is hereby set aside, the complaint is quashed, and the petition stands ***allowed***.

18] Needless to say, in view of the aforesaid discussion, the respondent Nos.2 to 4 shall be at liberty to file a fresh complaint, afresh, if so advised, which shall be decided on its own merits, in accordance with law.

19] With the aforesaid, the petition stands ***allowed*** and ***disposed of.***

(SUBODH ABHYANKAR)
JUDGE

Bahar