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WA-2804-2024

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&

HON'BLE SHRI JUSTICE GAJENDRA SINGH

ON THE 8th OF JANUARY, 2025WRIT APPEAL No. 2804 of 2024*THE STATE OF MADHYA PRADESH**Versus**SUNIT@SUMIT SINGH*

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Appearance:

Shri Sudeep Bhargava, learned Deputy Advocate General for the appellants / State.

None for the respondent.

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ORDER

Per. Justice Vivek Rusia

Heard on the maintainability of the writ appeal.

02. The present writ appeal under Section 2(1) of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyaya Peeth Ko Appeal) Adhiniyam, 2005 (in short 'the Adhiniyam of 2005') has been filed against the order dated 22.08.2024 passed in M.Cr.C. No.28712 of 2024.

03. The respondent approached the Single Bench by way of sixth application under Section 483 of the Bhartiya Nagarik Suraksha Sanhita / 439 of the Code of Criminal Procedure, 1973 (old) seeking bail in connection with FIR / Crime No.270/2020 registered at Police Station - Industrial Area, District - Ratlam for commission of offence punishable



under Sections 302, 34, 450, 397, 398, 114, 120-B of the Indian Penal Code & Sections 25 and 27 of the Arms act.

04. During the arguments, the Court found lapses on the part of the Investigating Officer as he did not collect the chance fingerprint from the spot, where the robbery took place and a woman was murdered brutally. The explanation given by the Investigating Officer was not found satisfactory and the Court further held him negligent in discharging his duties.

05. In such circumstances learned Court has issued direction to the Director General of Police, Bhopal (M.P.) for formation of "Serious Crime Investigation Supervising Team" in each districts comprising of two member, in which one shall be senior level police officer, not below the rank of of experienced IPS Officer and other officer of the Police Department not below the rank of Sub Inspector of Police. The said team shall supervise the investigation and rule of Investigating Officer before submitting the charge-sheet before the concerned Court.

06. Being aggrieved by the aforesaid direction, the State of Madhya Pradesh has filed the writ appeal under Section 2(1) of the Adhiniyam of 2005. The Registry of this Court has raised objection about maintainability of the present writ appeal.

07. The State Government enacted the Adhiniyam of 2005 to provide for an appeal from a judgment or order passed by one Judge of the High Court in exercise of the original Jurisdiction, to the Division Bench of the same High Court. *Section 2(1) provides that an appeal shall lie from a Judgment or order passed by one Judge of the High Court in exercise of*



original jurisdiction under Article 226 of the Constitution of India, to a Division Bench comprising of two judges of the same High Court. As per proviso to the said section, no such appeal shall lie against an interlocutory order or against an order passed in exercise of supervisory jurisdiction under Article 227 of the Constitution of India.

08. Shri Sudeep Bhargava, learned Deputy Advocate General for the appellants / State submits that although the order has been passed in M.Cr.C. but the Hon'ble Judge has issued the direction like the Writ court, therefore, the present writ appeal has been filed. Shri Bhargava further submits that in similar facts and circumstances, the Division Bench at Principal Seat at Jabalpur had already entertained *Writ Appeal No.396 of 2023 (The State of Madhya Pradesh v/s Sanant Kumar Jaiswal Alias Sant Kumar)* filed against the order passed in M.Cr.C. No.24271 of 2022. The Division Bench has set aside the order in the writ appeal by observing that the learned Single Judge went beyond its jurisdiction in issuing such directions in bail matter.

8.1. Shri Bhargava, learned Deputy Advocate General further submits that in most of the Districts only one IPS Officer is posted as Superintendent of Police and if he is given this additional duty of supervising the investigation and examination of the charge-sheet, it would be extra burden on him. Therefore, the order be modified by appointing DSP or SDOP, as the case may be, the head member of the said Team.

09. In urban area, the CSP is already an Incharge of investigation and in rural area, the SDOP is already an Incharge of investigation in serious crime. Since they are not discharging their duties properly, therefore, this



Court has found it suitable to issue such direction to the Director General of Police for formation of Serious Crime Investigation Supervising Team headed by the senior IPS Officer.

10. The Apex Court in the case of *State of Gajarat v/s Kishanbhai & Others reported in (2014) 5 SCC 108* has seriously considered the serious effect of defective and illegal investigation in heinous cases. The Apex Court issued directions for the purposeful and decisive investigation, training programme within six months to ensure that those persons who handle sensitive matters concerning investigation/prosecution are fully trained to handle the same. The Apex Court directed the Home Department of every State to formulate a procedure for taking action against all erring investigating/prosecuting officials/officers. Paragraphs - 20, 21, 22 & 23 of the said judgment is reproduced below:-

"20. Numerous petitions are filed before this Court, praying for anticipatory bail (under Section 438 of the Code of Criminal Procedure) at the behest of persons apprehending arrest, or for bail (under Section 439 of the Code of Criminal Procedure) at the behest of persons already under detention. In a large number of such petitions, the main contention is of false implication. Likewise, many petitions seeking quashing of criminal proceeding (filed under Section 482 of the Code of Criminal Procedure) come up for hearing day after day, wherein also, the main contention is of fraudulent entanglement/involvement. In matters where prayers for anticipatory bail or for bail made under Sections 438 and 439 are denied, or where a quashing petition filed under Section 482 of the Code of Criminal Procedure is declined, the person concerned may have to suffer periods of incarceration for different lengths of time. They suffer captivity and confinement most of the times (at least where they are accused of serious offences), till the culmination of their trial. In case of their conviction, they would continue in confinement during the appellate stages also, and in matters which reach the Supreme Court, till the disposal of their appeals by this Court. By the time they are acquitted at the



appellate stage, they may have undergone long years of custody. When acquitted by this Court, they may have suffered imprisonment of 10 years, or more. When they are acquitted (by the trial or the appellate court), no one returns to them; what was wrongfully taken away from them. The system responsible for the administration of justice, is responsible for having deprived them of their lives, equivalent to the period of their detention. It is not untrue, that for all the wrong reasons, innocent persons are subjected to suffer the ignominy of criminal prosecution and to suffer shame and humiliation. Just like it is the bounden duty of a court to serve the cause of justice to the victim, so also, it is the bounden duty of a court to ensure that an innocent person is not subjected to the rigours of criminal prosecution.

21. The situation referred to above needs to be remedied. For the said purpose, adherence to a simple procedure could serve the objective. We accordingly direct, that on the completion of the investigation in a criminal case, the prosecuting agency should apply its independent mind, and require all shortcomings to be rectified, if necessary by requiring further investigation. It should also be ensured, that the evidence gathered during investigation is truly and faithfully utilized, by confirming that all relevant witnesses and materials for proving the charges are conscientiously presented during the trial of a case. This would achieve two purposes. Only persons against whom there is sufficient evidence, will have to suffer the rigors of criminal prosecution. By following the above procedure, in most criminal prosecutions, the concerned agencies will be able to successfully establish the guilt of the accused.

22. Every acquittal should be understood as a failure of the justice delivery system, in serving the cause of justice. Likewise, every acquittal should ordinarily lead to the inference, that an innocent person was wrongfully prosecuted. It is therefore, essential that every State should put in place a procedural mechanism, which would ensure that the cause of justice is served, which would simultaneously ensure the safeguard of interest of those who are innocent. In furtherance of the above purpose, it is considered essential to direct the Home Department of every State, to examine all orders of acquittal and to record reasons for the failure of each prosecution case. A standing committee of senior officers of the police and prosecution departments, should be vested with aforesaid responsibility. The consideration at the hands of the above committee, should be utilized for crystalizing



mistakes committed during investigation, and/or prosecution, or both. The Home Department of every State Government will incorporate in its existing training programmes for junior investigation/prosecution officials course- content drawn from the above consideration. The same should also constitute course-content of refresher training programmes, for senior investigating/prosecuting officials. The above responsibility for preparing training programmes for officials, should be vested in the same committee of senior officers referred to above. Judgments like the one in hand (depicting more than 10 glaring lapses in the investigation/prosecution of the case), and similar other judgments, may also be added to the training programmes. The course content will be reviewed by the above committee annually, on the basis of fresh inputs, including emerging scientific tools of investigation, judgments of Courts, and on the basis of experiences gained by the standing committee while examining failures, in unsuccessful prosecution of cases. We further direct, that the above training programme be put in place within 6 months. This would ensure that those persons who handle sensitive matters concerning investigation/prosecution are fully trained to handle the same. Thereupon, if any lapses are committed by them, they would not be able to feign innocence, when they are made liable to suffer departmental action, for their lapses.

2 3 . On the culmination of a criminal case in acquittal, the concerned investigating/prosecuting official(s) responsible for such acquittal must necessarily be identified. A finding needs to be recorded in each case, whether the lapse was innocent or blameworthy. Each erring officer must suffer the consequences of his lapse, by appropriate departmental action, whenever called for. Taking into consideration the seriousness of the matter, the concerned official may be withdrawn from investigative responsibilities, permanently or temporarily, depending purely on his culpability. We also feel compelled to require the adoption of some indispensable measures, which may reduce the malady suffered by parties on both sides of criminal litigation. Accordingly we direct, the Home Department of every State Government, to formulate a procedure for taking action against all erring investigating/prosecuting officials/officers. All such erring officials/officers identified, as responsible for failure of a prosecution case, on account of sheer negligence or because of culpable lapses, must suffer departmental action. The above mechanism formulated would infuse seriousness in the



performance of investigating and prosecuting duties, and would ensure that investigation and prosecution are purposeful and decisive. The instant direction shall also be given effect to within 6 months."

[Emphasis Supplied]

11. Fair investigation is the right of victim as well as accused and if the investigation is not done in a proper manner under the provisions of Cr.P.C. or BNSS, then certainly the High Court can issue such direction to the police authorities in the interest of justice. While hearing the criminal appeals, many times we have noticed the serious lapses on part of Investigating Officer committed during the investigation which give benefits to the accused persons. Therefore, it is necessary that before filing the charge-sheet, senior police officer should examine the charge-sheet or monitor investigation, especially in serious crimes such as murder, dacoity, rape, crime against juvenile, POCSO, NDPS etc. In addition to above, we direct to the Director General of Police to comply the directions issued by the Apex Court in the case of *Kishanbhai (supra)*, if already not done.

12. In view of the above, Writ Appeal stands dismissed.

(VIVEK RUSIA)
JUDGE

(GAJENDRA SINGH)
JUDGE