HIGH COURT OF MADHYA PRADESH : JABALPUR.

Miscellaneous Criminal Case No.11936/2014

Satya Prakash Verma
vs.
State of M.P. and another

CORAM :
Hon'ble Shri Justice Shantanu Kemkar, J
Hon'ble Shri Justice K.K. Trivedi, J.

Shri Anil Khare, learned senior counsel assisted by Shri H.S. Chhabra, for the applicant.

Shri S.K. Kashyap, learned counsel for the respondent No.1.

Shri Ajay Ojha, learned counsel for the respondent No.2.

(O R D E R)
20.08.2015

Per : K.K. Trivedi, J.

This Miscellaneous Criminal Case (M.Cr.C.) under Section 482 of the Code of Criminal Procedure seeks to invoke the jurisdiction of this Court for the quashment of the charge sheet filed by respondent No.1 against the applicant in respect of Crime No.4/2001 said to be registered by State Economic Offences Bureau, Raipur, Chhattisgarh on the grounds that at the relevant time when the alleged offence was said to be committed by the applicant he was in the service of State of M.P., was posted as Assistant Labour Commissioner and further holding the charge of Welfare Commissioner, M.P. Labour Welfare Board, M.P. Bhopal. However, on reorganization of the State of Madhya Pradesh in the year 2000 and constitution of the State of Chhattisgarh, the

services of the applicant were allocated to the State of Chhattisgarh where at present he is working.

2. It is contended by the applicant that on or about 8.11.2001 some complaint was made against the applicant that while he was working in the State of M.P. he has committed the offence by illegally drawing the amount of travelling allowance bills at Bhopal. It was alleged that the applicant was required to travel on official duties while he was in the State of M.P. and for the said travelling the applicant has claimed the bills amounting to Rs. 48,327/-. According to the complaint, it was found that the applicant has not travelled in the relevant class of the railway, but, instead charged for the same by manipulating the record. On receipt of such a complaint Crime No.4/2001 was said to be registered by the Economic Offence Bureau at Chhattisgarh and some sort of enquiry was conducted.

3. The case of the applicant is that since the offence was alleged to have been committed at Bhopal where at the relevant time he was posted, the amount of travelling allowance was drawn at Bhopal from the accounts of the State of M.P., no crime could have been registered against the applicant in the State of Chhattisgarh as that authority was having no jurisdiction to do so. For the purposes of quashing of such proceedings, he approached the High Court of Chhattisgarh by filing M.Cr.C. No.67/2003 under Section 482 of the Code of Criminal Procedure. In the said proceedings, a statement was filed by the respondent-State of Chhattisgarh contending that they were not intending to prosecute the applicant for any such offence, as the same was not within the jurisdiction of the said State. The said M.Cr.C. was thus disposed of with a direction to the respondent to consider the entire material

available on record before reaching to any conclusion and thereafter to proceed in accordance to law.

4. It is the case of the applicant that since cognizance of any such offence was not to be taken by the State of Chhattisgarh, after conducting enquiry, which, at the best, can be said to be preliminary enquiry, the matter was required to be referred to the State of M.P. and, if necessary, the State of M.P. was required to get the crime investigated and then to file the charge sheet against the applicant, if any prima-facie case was made out. Instead of conducting any investigation, only on the basis of whatever investigation conducted by the Economic Offence Bureau, Chhattisgarh, the impugned charge sheet has been filed before the Special Court on 16.2.2010. Therefore, the same is liable to be quashed.

5. This Court has entertained this application, directed the supply of the copy of the same to the standing counsel of the respondent. At a later stage, the respondent No.2 was added as a party and the notice of this M.Cr.C. was issued to the said authority. Time was granted to file the reply.

6. The respondent No.1 in its reply has contended that the application is premature, as no cognizance whatsoever has been taken by the Court as yet, where the charge sheet has been filed and applicant still can raise objection with respect to the jurisdiction of the said Court or its competence to take cognizance in the matter. Instead of filing such an objection, straightway this Court has been approached by way of filing the present M.Cr.C. and, therefore, at the stage of framing of the charge, such proceedings cannot be quashed. The facts further have been mentioned in the reply that complaint was made by one of the Member of Legislative

Assembly of Chhattisgarh and on the said complaint an enquiry was conducted by the officials of the State of Chhattisgarh. The Crime No.4/2001 was registered for commission of offences under Section 420, 461 and 471 of the Indian Penal Code read with Sections 13 (1)(d) and 13(2) of the Prevention of Corruption Act, 1988. Since the petitioner at the relevant time, when the offence was committed, was posted in State of Madhya Pradesh, after the enquiry, the case was made over to the State of M.P. for prosecution of the applicant in accordance to law. After receiving the relevant paper and sanction to prosecute the applicant from the competent authority, the investigating officer examined, scrutinized and analyzed the material on record and thus has filed the challan before the trial court on 16.2.2010. Accordingly, it is contended that the allegations, as made by the applicant, are misconceived.

7. The respondent No.2 has also filed the reply contending inter-alia that the period of alleged offence committed by the petitioner was between 14th August, 1999 to 12th September, 2000, when even the State of Chhattisgarh was not established. However, since at the relevant time when the complaint was received the applicant was working in the State of Chhattisgarh, the crime was registered and investigation was done. After the investigation the entire material was handed over to the Economic Offence Wing, Madhya Pradesh, Bhopal. From the competent authority of the Madhya Pradesh, the matter was handed over to the Economic Offence Bureau, Madhya Pradesh Bhopal and the said Bureau has taken further steps against the applicant. It being so, according to the respondents, no illegality whatsoever has been committed and as such the relief, as claimed in the present application, cannot be granted.

8. We have heard learned counsel for the parties and perused the record.

9. The mute question to be decided in the present proceedings is whether the investigation done by the authorities of the respondent No.2 at Chhattisgarh would constitute an investigation done by the competent authority for the purposes of filing of the charge sheet against the applicant before the court of law in the **State of Madhya Pradesh**.

10. To answer the aforesaid question, we are required to examine the provisions relating to the investigation to be done by the competent authority under the provisions of Prevention of Corruption Act, 1988 (hereinafter referred to as the Act for brevity). The definitions given in Section 2 of the Act are very few and even the investigating officer is not defined. Precisely because the provisions are made in that respect under the Act. In Chapter-IV, under Section 17 of the Act, persons authorized to investigate are indicated. For the purpose of appreciating the said provisions, the same are reproduced, which reads thus:-

> "17. Persons authorised to investigate.—Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no police officer below the rank,—
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> (a) in the case of the Delhi Special Police Establishment, of an Inspector of Police;
>
> (b) in the metropolitan areas of Bombay, Calcutta, Madras and Ahmedabad and in any other metropolitan area notified as such under sub-section (1) of section 8 of the Code of Criminal Procedure, 1973 (2 of 1974), of an Assistant Commissioner of Police;
>
> (c) elsewhere, of a Deputy Superintendent of Police or a police officer of equivalent rank,
>
> shall investigate any offence punishable under this Act without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make any arrest therefor without a warrant:
>
> Provided that if a police officer not below the rank of an Inspector of Police is authorised by the State Government in this behalf by general or special order, he may also investigate

> any such offence without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make arrest therefor without a warrant:
>
> Provided further that an offence referred to in clause (e) of sub-section (1) of section 13 shall not be investigated without the order of a police officer not below the rank of a Superintendent of Police."

The *non-obstante* clause with which the provisions of Section 17 of the Act starts, in none other than the specific words, states that the provisions with respect to the investigating authorities enumerated under the Code would not be strictly applicable. This further makes it clear that the investigation is to be done by an authorized person in terms of the aforesaid provisions. Precisely, this is the aspect which has to be kept in mind.

11. The further provision which is made under the Act is making application of the procedure as prescribed under the Code. Section 22 of the Act prescribes that the Code of Criminal Procedure, 1973 to apply subject to certain modification in the investigation and proceedings under the aforesaid Act. The same reads thus:-

> **22. The Code of Criminal Procedure, 1973 to apply subject to certain modifications.-**The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), shall in their application to any proceeding in relation to an offence punishable under this Act have effect as if,—
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> (a) in sub-section (1) of section 243, for the words "The accused shall then be called upon", the words "The accused shall then be required to give in writing at once or within such time as the court may allow, a list of the persons (if any) whom he proposes to examine as his witnesses and of the documents (if any) on which he proposes to rely and he shall then be called upon" had been substituted;
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> (b) in sub-section (2) of section 309, after the third proviso, the following proviso had been inserted, namely:— "Provided also that the proceeding shall not be adjourned or postponed merely on the ground that an application under section 397 has been made by a party to the proceeding.";
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> (c) after sub-section (2) of section 317, the following sub-section had been inserted, namely:— "(3)

> Notwithstanding anything contained in sub-section (1) or sub- section (2), the Judge may, if he thinks fit and for reasons to be recorded by him, proceed with enquiry or trial in the absence of the accused or his pleader and record the evidence of any witness subject to the right of the accused to recall the witness for cross-examination.";
> (d) in sub-section (1) of section 397, before the Explanation, the following proviso had been inserted, namely:— "Provided that where the powers under this section are exercised by a court on an application made by a party to such proceedings, the court shall not ordinarily call for the record of the proceedings,—
> (a) without giving the other party an opportunity of showing cause why the record should not be called for; or
> (b) if it is satisfied that an examination of the record of the proceedings may be made from the certified copies.".

12. The Apex Court in the case of ***Hemant Dhasmana vs. Central Bureau of Investigation and another***[1], had dealt with the aspect whether the provision of Chapter-XII of the Code would be attracted in the case of investigation to be done under the Act or not. Dealing with such an aspect in Para 13 of the report, it has been held by the Apex Court as under :

> "13.....Though the investigation was conducted by the CBI the provisions under Chapter XII of the Code would apply to such investigation. The police referred to in the Chapter, for the purpose of investigation, would apply to the officer/officers of the Delhi Police Establishment Act. On completion of the investigation the report has to be filed by CBI in the manner provided in Section 173(2) of the Code, with the exception that the Magistrate referred to in the section would be understood as a Special Judge when the offence involved is under the Prevention of Corruption Act, 1988."

13. This makes it clear that the procedure as laid down in the Criminal Procedure Code (hereinafter referred to as the Code for brevity) has to be followed. The procedure for investigation as

1 (2001) 7 SCC 536

prescribed is that on being informed about the commission of offence either cognizable or non-cognizable, investigation of such case has to be started by an authority competent to take cognizance or in case of non-cognizable offence with the permission of Court which has jurisdiction to try such offence. Chapter XIII of the Code prescribes jurisdiction of the criminal courts in enquiry and trials. Section 177 of the Code prescribes the ordinary place of enquiry and trial. The very opening provision of Chapter XIII of the Code as prescribed in Section 177 of the Code makes it clear that ordinary place of enquiry and trial shall be **where the offence is said to have been committed**.

14. As has been emerged from the record, the allegation made against the applicant was that he committed an offence at Bhopal while he was working in the State of Madhya Pradesh. If that was the situation, the entire matter was required to be transmitted to the State of M.P. and then the investigation was to be taken forward by the competent authority of the State of M.P.. At the best, on a preliminary enquiry if any material was collected, the same was to be transmitted to the investigating authority of the State of M.P.. True it is that since now the applicant is working in the State of Chhattisgarh and a competent authority to grant sanction to prosecute the applicant under Section 19 of the Act as also under Section 197 of the Code is the State of Chhattisgarh, if the State of Chhattisgarh was satisfied with the preliminary enquiry that the offence was to be registered against the applicant by the State of Madhya Pradesh, or that any prosecution of the applicant was necessary, it could have passed an order granting sanction under the aforesaid provisions and could have relegated the matter to the State of Madhya Pradesh for the purpose of taking forward the investigation and filing of the charge sheet. It is not the case that any such offence was committed by the applicant within the

jurisdiction of the State of Chhattisgarh and he was required to be prosecuted for that, within the jurisdiction of the State of Chhattisgarh. The offence was admittedly committed within the jurisdiction of State of M.P. and for which the investigation and prosecution was possible only and only in the State of Madhya Pradesh.

15. Thus, if in the opinion of the officer of the respondent No.2 any prima-facie evidence was available to hold that the offence was committed by the applicant at Bhopal, the matter was to be transmitted to the State of Madhya Pradesh. A further investigation in the matter was required to be conducted. It is not that the place where the offence was committed was not ascertained. Further Section 179 of the Code makes it clear that the competence of the Court was only where the offence was said to have been committed. Therefore, after receipt of the investigation report from the State of Chhattisgarh, it was necessary on the part of the authorities of respondent No.1 to make an investigation and then to file a charge sheet against the applicant.

16. We find support in this respect from the law laid-down by the Apex Court in the case of ***State of Rajasthan vs. Shambhoogiri***[2]. Considering precisely in somewhat similar circumstances, though within the same State and with reference to the provisions of the Prevention of Corruption Act, 1947 (but since the provisions of Section 5-A of the Act of 1947 were similar to the provisions of Section 17 of the present Act) it was held that the investigation starts from that point of time when an authorized person under the Act, has alone took up the matter. It was held by the Apex Court that if somebody though not authorized gathers the information about the commission of any offence and informs the

2 (2004) 8 SCC 169

authorized officer under the Act and the said authorized officer took cognizance of such information and starts the investigation, it would mean that the investigation is done by the authorized officer and not by an officer who was not authorized. If this principle is made applicable, since the officers of the Economic Offence Bureau of State of Chhattisgarh are authorized to investigate within the State of Chhattisgarh only, they cannot be said to be authorized persons to investigate the crime said to have been committed in the State of Madhya Pradesh. At the best whatever investigation done by them could be said to be a preliminary report and not the investigation report, which is further required to be investigated by the authorized persons in the State of Madhya Pradesh on receipt of such preliminary report. This is necessary so because otherwise the very purpose of prescribing or conferral of power to investigate to any person by the State Government by a special or general order, in terms of proviso to Section 17 of the Act would become otiose. The authorized persons of the State of Madhya Pradesh cannot investigate in respect of a crime committed outside the State of Madhya Pradesh and likewise the persons of respondent No.2 were not authorized to investigate the offence said to be committed in the State of Madhya Pradesh.

17. Now we have to deal with the circumstances in which if the courts find that an investigation was defective, whether any conviction can be rest on that investigation or not? Though in somewhat different circumstances, but dealing with the procedure of investigation as envisaged in Chapter-XII of the Code, the Apex Court in the case of ***C. Muniappan and others vs. State of Tamil Nadu***[3] has held that the effect of the defective investigation is that the accused persons are benefited by such lapses on the part of the prosecution. This has to be kept in mind that in such

3 (2010) 9 SCC 567

circumstances a real culprit may get the benefit of getting out of the trial on account of the fault of the investigator. In those circumstances, whether at such a stage power can be exercised by this Court or not and whether a direction to that effect can be issued or not, has been considered by the Apex Court in the case of ***Babubhai vs. State of Gujarat and others***[4]. It has been specifically held that the Court should exercise its inherent power in such circumstances only in extraordinary or special circumstances and casually or ordinarily the inherent power should not be exercised, directing the prosecuting agency to reinvestigate.

18. It is not a case where allegations are made with respect to the tainted investigation by the competent investigating officer. The question raised before the Court is regarding authority of the investigating officer. It is also contended by the learned senior Counsel for the petitioner that the authorized investigating officer has not applied his mind before filing the charge-sheet. There are chances that after making investigation, the investigating officer may reach to another conclusion. Therefore, it is the case of the applicant that in such circumstances the inherent powers are required to be exercised by this Court.

19. It is necessary to point out certain more facts. It was well within the knowledge of the respondent No.2 that the said authority would not be competent to initiate the criminal prosecution of the applicant. In none other than specific words such a fact was stated in the reply filed before the High Court of Chhattisgarh by the said authority in M.Cr.C. No.67/2003 wherein in paragraph-2 this fact was categorically stated. The copy of the said reply has already been placed on record and is not disputed by the respondents. The specific statement made in paragraph-2 of the said reply reads thus:

4 (2010) 12 SCC 254

> "**2.** It is respectfully submitted that the Chhattisgarh State Bureau of Investigation of Economic Offences has registered the offence and collected some material, but never intended that the applicant should be prosecuted at Durg or any court of Chhattisgarh, but the intention is to provide material to the Madhya Pradesh Bureau of Investigation of Economic Offences, Bhopal. The simple reason is that the applicant neither submitted false Travelling Allowance Bills in Durg and also not withdrawn the money from Durg, but he did all these at Bhopal. Therefore the offence is taken place only in Bhopal and it is to be investigated and tried by an agency and court of State of MP. However, the services of the applicant has been allocated to the State of Chhattisgarh, and therefore, it is the State of Chhattisgarh, who will grant sanction, and that too if sanction is sought by the State of Madhya Pradesh State Bureau of Investigation of Economic Offences, Bhopal, since the State of Madhya Pradesh is not made party in this petition as well as whereas the respondent intended to transfer the investigation to its counter part in Bhopal, and therefore, this petition becomes infructuous. The decision to transfer the investigation, to Bhopal but it is deferred only because this petition is pending before this Hon'ble Court."

20. When there was no intention of the respondent No.2 to prosecute the applicant as it was having no jurisdiction to do so, it was rather not necessary for the respondent No.2 to make any enquiry on the complaint so received against the applicant. The same was required to be transmitted to the State of Madhya Pradesh. Precisely this was the reason while disposing of the aforesaid M.Cr.C. the High Court of Chhattisgarh has recorded the facts in the following manner, copy of which has already been placed on record as Annexure P/3, which reads thus:

> "This petition has been filed by the petitioner under Section 482 of the Code of Criminal Procedure. The prayer in this is as follows:
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> > "It is therefore prayed that this Hon'ble Court may kindly be pleased to quash the F.I.R. registered by the respondent as preliminary enquiry No.3/2001 or in alternative this Hon'ble Court be pleased to direct the respondent to consider entire material available on record submitted by the applicant before reaching

> a conclusion with regard to commission of offence in the interest of justice."
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> Learned counsel appearing for the State/respondent submitted that the respondent would consider the entire material available on record submitted by the petitioner before reaching a conclusion with regard to the commission of the offence.
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> In the circumstances, I am of the opinion that this petition has to be disposed of. The respondent is directed to consider the entire material available on record before reaching any conclusion and thereafter proceed in accordance with law.
>
> The petition stands disposed of.
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> Parties are entitled for certified copy of this order."

21. If rightfully the matter was considered by the respondent No.2 and the information in that respect was transmitted to the State of M.P., first of all it was necessary to register a crime against the applicant by the respondent No.1. From the impugned charge sheet placed on record as Annexure P/7 it appears that while submitting a report under Section 173 of the Code in the Court, the facts as were required to be recorded were not specifically mentioned. It was not said that the investigation of the crime was done by the respondent No.1 or any competent authority of respondent No.1 himself and he had reached to the final conclusion that prima-facie case for prosecution of the applicant was made out. What is recorded in the report is about the fact that the investigation was done by the State of Chhattisgarh. The information in that respect was received in the State of M.P. in General Administration Department of Government of Madhya Pradesh from where the same was referred to the Economic Offences Bureau of Madhya Pradesh, Bhopal with the records of Crime No.4/2001 for filing of a charge sheet. Thus, it is clear that no investigation whatsoever was done by the investigating officer of the respondent No.1 by himself. He simply relied on the statement of fact as stated by the investigating officer of the State of

Chhattisgarh. The satisfaction recorded by the said investigating officer of respondent No.1 reads thus:

> ''आरोपी सत्यप्रकाश वर्मा घटना के समय श्रम कल्याण आयुक्त भोपाल के पद पर कार्यरत था। इस प्रकार मुख्य घटना स्थल भोपाल म0प्र0 होने के कारण क्षेत्रिय अधिकारिता को देखते हुये अवर सचिव छत्तीसगढ शासन सामान्य प्रशासन विभाग द्व ारा पत्र क्रमांक 523/531/2009/1–7 रायपुर दिनांक 19.03.09 द्वारा सचिव म0प्र0 शासन, सामान्य प्रशासन विभाग म0प्र0 को प्रकरण में म0प्र0 राज्य आर्थिक अपराध अन्वेषण ब्यूरो भोपाल के माध्यम से अग्रिम कार्यवाही हेतु पत्र भेजा गया। तद्नुसार अपर सचिव मध्यप्रदेश, सामान्य प्रशासन विभाग, भोपाल द्वारा पत्र क्रमांक/एफ 22–8/09/1–10 भोपाल दिनांक 30.10.09 द्वारा राज्य आ0अ0अ0ब्यूरो, भोपाल को कार्यवाही हेतु आदेशित किया गया। पत्र के पालन में प्रकरण अपराध क्रमांक4/01 के मूल दस्तावेज राज्य आर्थिक अपराध अन्वेषण ब्यूरो छत्तीसगढ (रायपुर) से राज्य आ0अ0अ0ब्यूरो, भोपाल म0प्र0 को अभियोग पत्र प्रस्तुत करने हेतु प्राप्त हुये।
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> प्रकरण में म0प्र0 श्रम कल्याण मंडल भोपाल से प्राप्त दस्तावेजों के अवलोकन, सत्यापन तथा मंडल कार्यालय में पदस्थ श्री एल0पी0 पाठक कल्याण आयुक्त, श्री आर0पी0मिश्रा, सहा0 श्रमायुक्त, श्री मिलिन्द हलवे, लेखापाल, श्री भारत पाटीदार, लेखापाल, श्री प्रेमकिशोर चौहान, प्रबंधक स्टेट बैंक ऑफ इंदौर, टी0टी0नगर न्यू मार्केट शाखा भोपाल तथा वरिष्ठ मंडल वाणिज्य प्रबंधक भोपाल से उपलब्ध दस्तावेजों एवं कथनों के विश्लेषण से आरोपी श्री सत्यप्रकाश वर्मा, तत्कालीन श्रम कल्याण आयुक्त, म0प्र0 श्रम कल्याण मण्डल भोपाल हाल– छत्तीसगढ (रायपुर) के विरूद्ध अपराध धारा–420, 467, 471 भा0द0वि0 एवं सहपठित धारा 13(1)डी 13(2) भृष्टाचार निवारण अधिनियम 1988 के अंतर्गत अभियोजित किये जाने हेतु प्रकरण में साक्ष्य उपलब्ध है। आरोपी सत्यप्रकाश वर्मा के विरूद्ध भृष्टाचार निवारण अधिनियम 1988 की धारा–19(1) एवं द0प्र0सं0 की धारा 197 के तहत छत्तीसगढ शासन से सक्षम अभियोजन स्वीकृति प्राप्त हुई है। अतः आरोपी श्री सत्यप्रकाश वर्मा के विरूद्ध उक्त धाराओं के तहत अभियोग न्यायार्थ प्रेषित है।''

22. Now looking to the provisions of the Act, if an offence is said to be committed under the said Act by any public servant, the investigation of the same is to be done under the provisions of Chapter-IV of the Act. Section 17 of the Act enumerates the persons who are authorized to investigate the crime. However, as has been pointed out, the same provisions of investigation, as are enumerated in the Code are made applicable. The respondent No.1, on receipt of the record from the State of Chhattisgarh, was required to get the matter investigated through an authorized person and then only to file the charge sheet against the applicant.

23. Since this has not been done, it would be nothing but a procedural defect in presenting the charge sheet against the applicant. The satisfaction to be recorded in the report is not a mere formality, it has to be based on investigation and action taken

by the concerned authorized investigating authority. In view of the aforesaid, it cannot be said that the charge sheet was rightly filed against the applicant.

24. For the aforesaid reasons, the stand taken by the respondent No.1 cannot be countenance. As a result, this application is allowed. The charge sheet filed against the applicant by the respondent No.1 is hereby quashed. However, the respondent No.1 would be at liberty to investigate the crime and file a fresh charge sheet against the applicant, if prima-facie case for commission of alleged offence is made out. Since the State of Chhattisgarh has already granted sanction to prosecute the applicant, only a formal information in respect of such prosecution is required to be given to the State of Chhattisgarh, in case the charge sheet is required to be filed after investigation by the respondent No.1 against the applicant.

25. The application succeeds and allowed to the extent indicated hereinabove. No costs.

(Shantanu Kemkar)
Judge

(K.K. Trivedi)
Judge

shukla-