

HIGH COURT OF MADHYA PRADESH AT JABALPUR**CRR No. 928/2017****Smt. Shobha Jain****Vs.****State of Madhya Pradesh****Present : Hon'ble Shri Justice S.K.Seth, Judge
Hon'ble Smt. Justice Anjali Palo, Judge**

Mrs. Ruchika Gohil, counsel for the appellant.
Shri Pankaj Dubey, Standing counsel for the respondent/SPE
Lokayukt

Whether approved for reporting : **Yes / No**

ORDER
(08/08/2017)

Per : Smt. Anjali Palo, J :-

1. This criminal revision has been filed by the petitioner under Section 397 read with Section 401 of the Code of Criminal Procedure for revising and setting aside the order dated 26.08.2016 passed by the Learned Special Judge (Prevention of Corruption Act, 1988), Chhindwara in Special Case No. 04/2016.
2. Heard learned counsel for the parties at length. Perused the record.
3. The main contention of learned counsel for the petitioner

is that the prosecution could not establish as to how the petitioner was involved in the crime under Section 8 and 12 of the Prevention of Corruption Act, 1988 (hereafter referred to as the "Act 1988").

4. As per the prosecution story, the complainant Sumran Markam was posted as Secretary Gram Panchayat, Jogimuar, Tamia. Main accused Mahavir Prasad Jain (husband of the petitioner) was posted as Chief Executive Officer in the Janpad Panchayat, Tamia, District Chhindwara. He issued a notice to the complainant with regard to inspection of records of the gram panchayat. After receiving the report from the officer, Mahavir Prasad Jain demanded a bribe of Rs. 50,000/- from the complainant to protect him. It is alleged that due to the inability shown by the complainant Sumran to pay Rs. 50,000/-, Mahavir Prasad Jain agreed to receive Rs. 20,000/-.

5. On the basis of complaint of Sumran Markam, the co-accused Mahavir Prasad was trapped by the Lokayukt police on 03.12.2014. After receiving the bribe of Rs. 20,000/-, accused Mahavir Prasad Jain handed over the bribe money to his wife petitioner Shobha Jain on the spot. It is further alleged that the sodium carbonate test was found positive for both the accused persons i.e. the petitioner and her husband Mahavir Prasad Jain. The bribe money was recovered from petitioner, hence, case was

registered under Section 8 and 12 of the “Act 1988” against the petitioner.

6. Learned counsel for the petitioner contended that, in the FIR it is not mentioned that the petitioner was demanding money. In the negotiation with regard to bribe money by Mahavir Prasad, nowhere the petitioner was involved in the alleged crime. She was just present on the spot at the time of trap and she merely collected the money from her husband. There was no conspiracy between the petitioner and the co-accused Mahavir Prasad Jain in the alleged crime. Hence, it is contended that the charges framed by the learned Trial Court under Section 8 and 12 of the “Act 1988” against the petitioner is baseless and the same be quashed.

7. Respondent counsel vehemently opposed the contention of the learned counsel for the petitioner. He supported the order passed by the Trial Court.

8. In this regard, firstly we shall see the ingredients of Section 8 and 12 of the “Act 1988”.

Section 8: Taking gratification, in order, by corrupt or illegal means, to influence public servant.—Whoever accepts or obtains, or agrees to accept, or attempts to obtain, from any person, for himself or for any other person, any gratification whatever as a motive or reward for inducing, by corrupt or illegal means, any

public servant, whether named or otherwise, to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.

Section 12 : Punishment for abetment of offences defined in section 7 or 11.—Whoever abets any offence punishable under section 7 or section 11 whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.

9. Learned counsel for the applicant contended that the mandatory requirement to establish 'abetment' so as to constitute offence under Section 7 of the Act 1988 (*public servant taking gratification other than 'legal remuneration' in respect of an official act*) and under Section 11 of the Act 1988 (*public servant obtaining valuable things without consideration from person concerned in proceeding or business transacted by such public servant*) is *prima facie* not made out by the prosecution and neither has there been any substantial material

available in this regard.

10. Since, the word 'abetment' has not been defined in the "Act 1988", hence, we may profitably refer to its exhaustive definition as provided under Section 107 of the Indian Penal Code. As per Section 107 of IPC, a person abets the doing of a thing when he does any of the acts mentioned in the following three clauses:

“(i) instigates any person to do that thing, or

(ii) engages with one or more other person or persons in any conspiracy for the doing of that thing.”

The first and second clauses are not germane in this context and third clause alone is required to be looked into which is reproduced hereunder:

“(iii) Intentionally aids, by any act or illegal omission, the doing of that thing.”

The word 'aids' has been clarified in Explanation-2 of Section 107 of IPC which reads as under :

“Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, thereby facilitates the commission thereof, is said to aid the doing of that act.”

11. The wordings of Section 109 of IPC also relates to commission of offence of the bribery in consequence of the

abetment and as such, it has been strenuously argued that when offence has not been committed, no question of abetment comes in. The abetment under the “Act 1988”, now is punishable even if the offence is not complete in consequence of such abetment. Keeping in view the Explanation-2 in Section 107 of IPC it is thus clear that under the 3rd Clause when a person abets by aiding, the act so aided should have been committed in order to make such aiding an offence.

12. In the case of **P.Nallammal Vs. State [1999 Cr.L.J. 3967 : AIR 1999 SC 2556]**, the Apex Court held as under:

“If a non-public servant has abetted any of the offences which the public servant commits, such non-public servant is also liable to be tried along with the public servant.”

13. It is not in dispute that merely giving help will not make the abetment of offence if the person who gave the help did not know that an offence was being committed or contemplated. The intention should be to help an offence or to facilitate the commission of crime. There is *prima facie* evidence on record for offence under Section 120-B of IPC of the meeting of minds for acceptance of money between Mahavir Prasad/husband and his wife/petitioner.

14. In the present case, the petitioner is, prior to or at the time of commission of act apparently support her husband the prime

accused in order to facilitate the commission of crime of taking bribe. Hence, she abet her husband for the commission of offence under Section 107 of IPC. As the wife of the accused Mahavir Prasad Jain it is presumed that she knows what is bribe and what is legal remuneration. Her husband Mahavir Prasad Jain is the main accused charged under Section 7 and 13(1)(d) of “Act 1988”. Section 7 of the “Act 1988” corresponds to Section 161 of IPC with some modification.

Section 161 of IPC reads as under :

“Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in Section 21 or with any public servant, or with any public servant, as such, shall be punishable with imprisonment of either description for a term which may extend to three years, or with fine, or with both.”

15. With regard to Section 7 of “Act 1988”, the term 'remuneration' would mean money paid for a work or a service. As per Section 7 of the “Act 1988”, the receipt of any

remuneration other than the legal remuneration alone is offence. It cannot be presumed that wife who merely acts as a channel between the bribe giver and the receiver public servant (husband) without any gain of herself. She accepted the bribe through her husband. Therefore, she is also liable for trial under Section 8 and 12 of the “Act 1988”.

16. In this revision the petitioner has challenged the charges framed against her. It is settled law that at the state of framing of charge the Court has to *prima-facie* consider whether there is sufficient ground for proceeding against the accused. The Court is not required to appreciate the evidence and arrived at the conclusion that the material produced are sufficient or not for conviction of the accused. If the Court is satisfied, *prima-facie* case is made out for proceeding further, then charge has to be framed, as held in the cases of **State of M.P. Vs. S.B. Johri and Ors. (AIR 2000 SC 665)**, **Union of India Vs. Prafulla Kumar Samal and Ors. (AIR 1979 SC 366)**.

17. In light of the above analysis of facts and the legal aspects, this criminal revision is liable to be dismissed. Accordingly, the same is dismissed.

(S.K.SETH)
JUDGE

(SMT. ANJULI PALO)
JUDGE