

HIGH COURT OF MADHYA PRADESH:
MAIN SEAT AT JABALPUR

(DIVISION BENCH: HON. SHRI S.K. SETH
AND HON. SMT. ANJULI PALO, JJ)

Misc. Criminal Case No.16687/2017

Applicant : Manish Kumar Thakur

V E R S U S

Respondents: State of M.P. & Others

Shri Shriniwas Tiwari, Advocate
for the applicant.

Shri Ajay Tamrakar, Panel Lawyer
for the respondent No.1/State.

O R D E R
(11.10.2017)

Per Seth, J.

This petition under Section 482 of the Code of Criminal Procedure, 1973 has been filed for quashing the charge-sheet filed against the applicant for offences punishable under Sections 409, 420, 467, 468, 471, 120-B of IPC and under Section 13(1)(d) read with Section 13(2) of Prevention of Corruption Act, 1988 (for short, 'the Act').

2. The only contention raised by the applicant is that the matter has been investigated by the local police and the charge-sheet has also been filed by the

local police whereas it has no power or authority to investigate the matter punishable under Section 13 (1)(d) read with Section 13 (2) of the Prevention of Corruption Act, 1988. To buttress his submission, counsel for the applicant has relied on the order of this Court passed in M.Cr.C. No. 9915/2015 dated 08.07.2016 wherein it has been held that in view of Section 3 of the M.P. Special Police Establishment Act, 1947, the local police has no power and authority to investigate the matters in regard to special offences punishable under the Act. On that ground, the charge-sheet filed against the accused in that case was quashed.

3. It is an admitted fact that charge sheet has already been filed and the Special Judge has already taken cognizance in the case and trial has commenced. It would not be out of place to mention that the reliance placed on the order passed in M.Cr.C. No.9915/2015 has been overruled and set aside by the Supreme Court by order dated 03.05.2017 passed in SLP (Cr1.) No.6437 of 2016 (District Central Co-operative Bank Vs. Ravindra Kumar Dubey and anohter), which reads as under:-

"1. Heard the learned counsel for the parties.

2. Leave granted.

3. In our opinion, the High Court misadventured in quashing the proceedings in the manner in which the order has been passed. The High Court should have been little more careful while quashing the proceedings. Be that as it may, as agreed to, the impugned order is set aside.

4. The respondents to raise the question about the competency of the officer to investigate the matter before the Trial Court as and when the occasion arises, during the course of the trial.

5. Accordingly, the impugned judgment and order is set aside and the appeal is allowed."

4. That apart, under Section 3 of the M.P. Police Establishment Act, 1947, the State Government may, by notification, specify the offences or classes of offences which are to be investigated by (Madhya Pradesh) Special Police Establishment.

5. Learned counsel for the applicant could not point out any provision in the Act which debars/ousts the jurisdiction of local police to investigate the offences punishable under provisions of

the Act. There is no provision in the Act requiring that the offences punishable under this Act shall be investigated by the Special Police Establishment only and not by the local police.

6. Even otherwise, since the charge-sheet has already been filed in the present case, in the considered view of this Court, the charge-sheet cannot be quashed on the ground that the investigating agency was lacking jurisdiction. In this regard, we may profitably refer to the judgment of the Supreme Court in the case of **H.N. Rishbud and another Vs. State of Delhi AIR 1955 SC 196.** Paragraph 9 of the judgment is relevant, which reads as under:-

"9. The question then requires to be considered whether and to what extent the trial which follows such investigation is vitiated. Now, trial follows cognizance and cognizance is preceded by investigation. This is undoubtedly the basic scheme of the Code in respect of cognizable cases. But it does not necessarily follow that an invalid investigation nullifies the cognizance or trial based thereon. Here we are not concerned with the effect of the breach of a mandatory provision regulating the competence or procedure of the Court as

regards cognizance or trial. It is only with reference to such a breach that the question as to whether it constitutes an illegality vitiating the proceedings or a mere irregularity arises.

A defect or illegality in investigation, however serious, has no direct bearing on the competence or the procedure relating to cognizance or trial. No doubt a police report which results from an investigation is provided in section 190 of the Code of Criminal Procedure as the material on which cognizance is taken. But it cannot be maintained that a valid and legal police report is the foundation of the jurisdiction of the Court to take cognizance. Section 190 of the Code of Criminal Procedure is one out of a group of sections under the heading: "Conditions requisite for initiation of proceedings". The language of this section is in marked contrast with that of the other sections of the group under the same heading, i.e. sections 193 and 195 to 199.

These latter sections regulate the competence of the Court and bar its jurisdiction in certain cases excepting in compliance therewith. But section 190 does not. While no doubt, in one sense, clauses (a), (b) and (c) of section 190(1) are conditions requisite for taking of cognizance, it is not possible to say that cognizance on an invalid police

report is prohibited and is therefore a nullity. Such an invalid report may still fall either under clause (a) or (b) of section 190(1), (whether it is the one or the other we need not pause to consider) and in any case cognizance so taken is only in the nature of error in a proceeding antecedent to the trial. To such a situation section 537 of the Code of Criminal Procedure which is in the following terms is attracted:

'Subject to the provisions herein before contained, no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered on appeal or revision on account of any error, omission or irregularity in the complaint, summons, warrant, charge, proclamation, order, judgment or other proceedings before or during trial or in any enquiry or other proceedings under this Code, unless such error, omission or irregularity, has in fact occasioned a failure of justice'.

If, therefore, cognizance is in fact taken, on a police report vitiated by the breach of a mandatory provision relating to investigation, there can be no doubt that the result of the trial which follows it cannot be set aside unless the illegality in the investigation can be

shown to have brought about a miscarriage of justice. That an illegality committed in the course of investigation does not affect the competence and the jurisdiction of the Court for trial is well settled as appears from the cases in - *Prabhu v. Emperor*, AIR 1944 PC 73(C) and - *Lumbhardar Zutshi v. The King*, AIR 1950 PC 26(D).

These no doubt relate to the illegality of arrest in the course of investigation while we are concerned in the present case with the illegality with reference to the machinery for the collection of the evidence. This distinction may have a bearing on the question of prejudice or miscarriage of justice, but both the cases clearly show that invalidity of the investigation has no relation to the competence of the Court. We are, therefore, clearly, also, of the opinion that where the cognizance of the case has in fact been taken and the case has proceeded to termination, the invalidity of the precedent investigation does not vitiate the result, unless miscarriage of justice has been caused thereby."

7. The aforesaid judgment has been followed and relied upon by the Supreme Court in the case of **Union of India Vs. Prakash P. Hinduja and another**, AIR 2003 **SC 2612**. Thus, it is clear that once the charge-sheet is filed, merely because

the investigating agency had no jurisdiction to investigate the matter, the charge-sheet cannot be quashed as it is not possible to say that "cognizance on an invalid police report is prohibited and, is, therefore, a nullity".

8. In view of the foregoing discussions, we do not find any merit and substance in this petition. Petition is accordingly **dismissed** summarily.

9. Ordered accordingly.

(S.K. SETH)
J U D G E

(SMT. ANJULI PALO)
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