

HIGH COURT OF MADHYA PRADESH : PRINCIPAL SEAT AT JABALPUR

1	Case Number	Cr.R.No. 2263/2018
2	Parties Name	State of M.P. Vs. Shri Shrikant Dandekar
3	Date of Order	17/03/2021
4	Bench Constituted of	Hon. Shri Justice Atul Sreedharan & Hon. Shri Justice J.P. Gupta
5	Judgment delivered by	Hon. Shri Justice J.P. Gupta
6	Whether approved for reporting	YES
7	Name of the counsel for the parties	Shri Satyam Agrawal, learned counsel for the applicant/ Lokayukta. None for the respondent.
8	Law laid down & Significant paragraphs number	<p>(i) If Investigation Agency files the closure report, the Magistrate or the Special Judge has jurisdiction to accept it or reject it and if the material is not sufficient and looking to the facts and circumstances of the case further investigation is desirable to reach on a prudent conclusion then the investigating agency can be directed to make further investigation or the complainant may be directed to produce material in support of the complaint. In a case when the Magistrate / the Special Judge is of the opinion that the cognizance can be taken but if there is need of the sanction order for prosecution then cognizance cannot be taken and the matter would be left on the investigation agency to take action in accordance with law for the purpose of getting sanction for prosecution. In the present case, having rejected the prayer with regard to acceptance of the closure report, the learned Special Judge has observed that in this matter sanction for prosecution will be required, therefore, the material be placed before the sanctioning authority for consideration. Hence, there is no mandate or command to the sanctioning authority to grant sanction for prosecution and it is only <i>obiter dicta</i>. It does not amount to direction to sanction authority or to file the charge sheet. This aspect has been considered by Hon'ble the Apex Court in the case of <u>Arun Kumar Aggrawal vs. State of M.P., and ors (2014) 13 SCC 707 para 35 to 38.</u></p> <p>(ii) The income from known sources is not equivalent to information submitted by the accused to the department. The information with regard to acquiring of the property along with source of the fund is further required to be examined whether the disclosed information about the source of income is correct or fictitious. Unless this exercise is done, no public servant can be held guilty for collecting the</p>

	<p>assets by adopting undue means. In other words, mere giving information to the department is not sufficient.</p> <p>(iii) Undoubtedly, at the stage of consideration, the prayer for acceptance of the closure report, very lengthy and analytic order is not required but if the matter is sent back with the direction for further investigation or rejection of the prayer for acceptance of closure report, the order must have such contents which indicate shortcoming of the investigation including suggestions and guidelines with regard to further investigation, if needed, when the further investigation is not required and the closure report is not acceptable and the prayer is rejected, the order must indicate in brief the material, available with the report, supporting the allegations and the reasons with regard to contrary opinion to the Investigating officer. Merely saying that prima facie there is suspicion of the commission of the crime is not sufficient to reject the prayer for the closure report filed by the investigating agency. Brief, indicative and speaking order is required to strike balance and to ensure justice with the investigating agency and accused persons. The requirement of reasoning in judicial order has been emphasised by Hon'ble the Apex Court in the case of <u>Assistant Commissioner, Commercial Tax Department, Works Contract and Leasing, Kota Vs. Shukla and brothers, (2010) 4 SCC 785.</u></p>
--	---

(ATUL SREEDHARAN)

JUDGE

(J.P. GUPTA)

JUDGE

HIGH COURT OF MADHYA PRADESH : JABALPUR.**(DB: Hon'ble Shri Justice Atul Sreedharan
Hon'ble Shri Justice J.P. Gupta)****Criminal Revision No. 2263/2018**

The State of M.P.

Vs.

Shri Shrikant Dandekar

Shri Satyam Agrawal, learned counsel for the applicant /
Lokayukta Organization.
None for the respondent.

Whether approved for reporting (Yes/No).

ORDER**(17.03.2021)****Per J.P. Gupta, J**

This criminal revision under Section 397/401 of the Code of Criminal Procedure has been preferred by the applicant Special Police Establishment Lokayukt Organization, Jabalpur against the order dated 29.1.2018 passed by the trial Court / Special Judge, Lokayukt, Jabalpur, under the Prevention of Corruption Act, whereby the prayer for acceptance of the closure report filed after completion of the investigation in connection with Crime No. 54/10 registered against the respondent under Sections 13 (1) (e) read with Section 13 (2) of the Prevention of Corruption Act, 1988 by the Special Police Establishment, Lokayukt Organization, Jabalpur, has been disallowed and Special Police Establishment Lokayukt has been directed to place all the original documents / records and the material collected during the investigation before the Sanctioning authority for granting sanction for prosecution of the respondent the then

Executive Engineer in Upper Narmada Zone, under the Water Resources Department, Jabalpur as public servant.

2. The facts of the case, in brief, are that this revision has been preferred by the investigating agency who initially started investigation against the respondent with regard to having possession of disproportionate assets in comparison to the known source of income and in this regard, check period was assigned from the year 1981 upto 30.7.2010 and after investigation, the income of the respondent was considered, which is quoted herein-below :-

आय का विवरण

क्रमांक	मदवार विवरण	राशि रूपये
1	वेतन से आय	32,41,222
2	हिमांशु दांडेकर को प्राप्त वेतन	66,000
3	अचल संपत्ति के विक्रय से आय	34,20,500
4	बैंक खातों के ब्याज से आय	87,210
5	सावधि जमा पर प्राप्त आय	8,93,272
6	बॉन्ड्स से आय	94,280
7	एन.एस.सी. से आय	68,510
8	शेयर्स से प्राप्त आय	14,75,722
9	यू.टी.आई. से आय	1,42,460
10	एल.आई.सी. से आय	2,32,000
11	कृषि से आय	28,27,190
12	कृषि हेतु लिया गया ऋण	3,00,000
13	ट्रेक्टर हेतु लिया गया ऋण	3,50,000
14	स्कालरशिप से प्राप्त आय	72,000
15	मकान निर्माण हेतु प्राप्त ऋण	1,19,000
16	जी.पी.एफ. पार्ट फायनल	52,000
17	कार हेतु लिया गया ऋण	2,50,000
18	पत्नी को प्राप्त वेतन	2,04,000
	कुल योग आय रूपये	1,38,95,366.00

and the expenditure was found in following terms :-

व्यय का विवरण

क्रमांक	मदवार विवरण	राशि रूपये
1	रहन सहन पर व्यय	12,96,488
2	अचल संपत्ति क्रय पर व्यय एवं गजानन एग्री फार्म्स पर व्यय	54,25,813
3	बैंक खातों में शेष	6,37,382
4	सावधि जमा पर व्यय	5,25,526
5	बॉन्ड्स पर व्यय	1,00,000
6	एन.एस.सी. पर व्यय	89,000
7	शेयर्स के क्रय पर व्यय	10,20,030
8	डिवेन्चर्स पर व्यय	21,600
9	म्युचुअल फंड पर व्यय	35,000
10	यू.टी.आई. पर व्यय	1,23,000
11	एल.आई.सी. प्रीमियम पर व्यय	10,21,217
12	वाहन क्रय पर व्यय	9,19,390
13	नगद सूची	32,600
14	इन्वेन्ट्री	4,70,160
15	सोने चांदी के जेवर पर व्यय	9,64,917
16	उच्च शिक्षा पर व्यय	3,07,600
17	टेलीफोन पर व्यय	1,20,770
18	दान पर व्यय	50,000
19	मकान किराये पर व्यय	83,200
20	अर्धनिर्मित मकान का मूल्यांकन	6,26,000
21	रोहित एवं दादी श्रीमती सत्यभामा के नाम रजिस्ट्री पर किया गया व्यय	89,400
	योग कुल व्यय रूपये	1,39,59,093

Accordingly, the investigating agency arrived at the conclusion that after taking consideration of saving of the period before the check period which was Rs.15,197/- and the income during the check period from known sources which was Rs.1,38,95,366/-, the total income of the respondent was considered Rs. 1,39,10,563/- and during this period expenditure was considered Rs.1,39,59,093/-.

Accordingly, difference of disproportionate property was found Rs.48,530/- in comparison to total income, which is less than 0.34%. While in view of the judgment of the Apex court in **V. C. Chaturvedi vs. Union of India, AIR 1996 SC 48**, 10% difference in comparison to disproportionate property may be ignored. Therefore, no case for prosecution of the respondent under Sections 13 (1) (e) read with Section 13 (2) of the Prevention of Corruption Act, 1988 is made out and the closure report was filed.

3. Learned trial court / Special Judge (Lokayukt) Jabalpur by the impugned order disallowed the prayer of the investigating agency for acceptance of the closure report and directed to submit material before the Sanctioning authority for granting sanction for prosecution of the respondent.

4. The applicant Lokayukt Organization has challenged the aforesaid order on the ground that learned trial court has exceeded its jurisdiction and has passed the order without going through the material available on record and the learned trial court indirectly directed the investigating agency to file charge sheet and direction to seek sanction for prosecution in the matter is also patently illegal and the reasoning given by the trial court for rejecting the prayer of the applicant is not relevant to the present case and learned trial court has not assigned any concrete reason. Therefore, the order is non-speaking and liable to be set-aside.

5. Here it is worth mentioning that the respondent has not challenged the aforesaid order. The investigating agency has assailed the impugned order.

6. Learned trial court in the impugned order has

mentioned that the investigating agency has kept the various income in the category of the income from known sources while with regard to the relevant income and expenditure no prior permission was taken in purchasing and selling of the property and no information was timely given to the department concerned, about which, it is contended on behalf of the applicant that in File-K relevant material is available to establish the fact that the respondent duly informed and got permission to sell and purchase of the property and the trial court without considering the aforesaid material arrived at erroneous conclusion. Therefore, the impugned order is not sustainable and it be set-aside.

7. In the present case, so far as the first contention is concerned, it has no substance. Neither the Special Judge has directed to file charge sheet nor has given mandate to the sanctioning authority to grant sanction for prosecution. If Investigation Agency files the closure report, the Magistrate or the Special Judge has jurisdiction to accept it or reject it and if the material is not sufficient and looking to the facts and circumstances of the case further investigation is desirable to reach on a prudent conclusion then the investigating agency can be directed to make further investigation or the complainant may be directed to produce material in support of the complaint. In a case when the Magistrate / the Special Judge is of the opinion that the cognizance can be taken but if there is need of the sanction order for prosecution then cognizance cannot be taken and the matter would be left on the investigation agency to take action in accordance with law for the purpose of getting sanction for prosecution.

8. In the present case, having rejected the prayer with regard to acceptance of the closure report, the learned Special

Judge has observed that in this matter sanction for prosecution will be required, therefore, the material be placed before the sanctioning authority for consideration. Hence, there is no mandate or command to the sanctioning authority to grant sanction for prosecution and it is only *obiter dicta*. It does not amount to direction to sanction authority or to file the charge sheet. This aspect has been considered by Hon'ble the Apex Court in the case of **Arun Kumar Aggrawal vs. State of M.P., and ors (2014) 13 SCC 707** para 35 to 38 is as under :-

35. In the facts and circumstances of the present case, we are of the opinion that the refusal of the learned Special Judge, vide his order dated 26-4-2005, to accept the final closure report submitted by Lokayukta Police is the only ratio decidendi of the Order. The other part of the Order which deals with the initiation of Challan proceedings cannot be treated as the direction issued by the learned Special Judge.

36. The relevant portion of the Order of the learned Special Judge dealing with Challan Proceeding reads as under :

"Therefore matter may be taken up seeking necessary sanction to prosecute the accused persons Raghav Chandra, Shri Ram Meshram and Shahjaad Khan to prosecute them under [Section 13](#) (1)(d), 13(2) of the Prevention of Corruption Act, 1988 and under [Section 120-B](#) I.P.C and for necessary further action, case be registered in the criminal case diary."

37. The wordings of this Order clearly suggest that it is not in the nature of the command or authoritative instruction. This Order is also not specific or clear in order to direct or address any authority or body to perform any act or duty. Therefore, by no stretch of imagination, this Order can be considered or treated as the direction issued by the learned Special Judge. The holistic reading of this order leads to only one conclusion, that is, it is in the nature of

'obiter dictum' or mere passing remark made by the learned Special Judge, which only amounts to expression of his personal view. Therefore, this portion of the order dealing with challan proceeding, is neither relevant, pertinent nor essential, while deciding the actual issues which were before the learned Special Judge and hence, cannot be treated as the part of the Judgment of the learned Special Judge.

38. In the light of the above discussion, we are of the opinion that, the portion of the order of the learned Special Judge which deals with the challan proceedings is a mere observation or remark made by way of aside. In view of this, the High Court had grossly erred in considering and treating this mere observation of the learned Special Judge as the direction of the Court. Therefore, there was no occasion for the High Court to interfere with the order of the learned Special Judge”.

9. The aforesaid judgment of Hon'ble the Apex Court squarely covers the first contention of the learned counsel for the applicant- Lokayukt. Therefore, it is held that learned Special Judge has not committed any jurisdictional error directing the investigating authority accordingly.

10. Here, it would be worth mentioning for guidance of the Magistrate / the Special Judge that in case they found that the material is sufficient to take cognizance, they reject the prayer for acceptance of the closure report without observing that the matter be placed before the sanctioning authority for granting sanction to prosecute the Government servant. They may observe that the investigating agency shall proceed further in accordance with law to avoid challenging the aforesaid observation. If the matter is dealt with in this manner, the order cannot be assailed on the ground that it curtails the power of investigating agency as well as sanctioning authority. On passing the order in such manner,

the impact will be that the investigating agency has to place the matter before the sanctioning authority in furtherance to the order of trial court / the Special Judge and the authority has to examine the matter independently without being influenced by any observation of the Special Judge.

11. The second contention is that the learned trial court has passed non-speaking order by giving irrelevant reasons and without considering the relevant material. On perusal of the impugned order, it cannot be said that learned trial court has not given any reason and the reasons are irrelevant or the material has not been perused at all. However, the aforesaid exercise has been done in haphazard manner as in the File-K, there are material which reflects that some information was given to the department with regard to transaction of the property but mere information to the department is not an assurance that the property was acquired from the income of the known sources and it appears that explanation given by the respondent / government servant has been considered to be true by the Investigating Agency and similarly, in other items of income without investigation about the truthfulness of the information/explanation, it is considered that the same is correct and the relevant income was from known sources. Therefore, prima facie it does not appear that the trial court has committed any error in rejection of the closure report.

12. This court has reservation to express concrete opinion about every item of the income and expenditure as it would cause prejudice to the respondent. Therefore, it would be appropriate to direct trial court to consider this matter by passing afresh order and pass appropriate order with regard

to direction of further investigation, if required, or not or pass any other appropriate order. In view of this court, the impugned order to some extent suffers from non-application of mind as it does not disclose consideration of all relevant material to differ from the reasoning of the investigating agency.

13. Undoubtedly, at the stage of consideration of the prayer for acceptance of the closure report, very lengthy and analytical order is not required but if the matter is sent back with the direction for further investigation or rejection of the prayer for acceptance of closure report, the order must have such contents which indicate shortcoming of the investigation including suggestions and guidelines with regard to further investigation, if needed, when the further investigation is not required and the closure report is not acceptable and the prayer is rejected, the order must indicate in brief the material, available with the report supporting the allegations and the reasons with regard to contrary opinion to the Investigating officer. Merely saying that prima facie there is suspicion of the commission of the crime is not sufficient to reject the prayer for the closure report filed by the investigating agency. Brief, indicative and speaking order is required to strike balance and to ensure justice with the investigating agency and accused persons.

14. The requirement of reasoning in judicial order has been emphasised by Hon'ble the Apex Court in the case of **Assistant Commissioner, Commercial Tax Department, Works Contract and Leasing, Kota Vs. Shukla and brothers**, (2010)4 SCC 785 wherein in paragraph 13 it is observed as under :-

"13. At the cost of repetition, we may notice, that this Court has consistently taken the view that recording of reasons is an essential feature of dispensation of justice. A litigant who approaches the Court with any grievance in accordance with law is entitled to know the reasons for grant or rejection of his prayer. Reasons are the soul of orders. Non-recording of reasons could lead to dual infirmities; firstly, it may cause prejudice to the affected party and secondly, more particularly hamper the proper administration of justice. These principles are not only applicable to the administrative or executive actions, but they apply with equal force and, in fact, with a greater degree of precision to judicial pronouncements. A judgment without reasons causes prejudice to the person against whom it is pronounced, as they litigant is unable to know the ground which weighed with the court in rejecting his claim and also causes impediments in his taking adequate and appropriate grounds before the higher court in the event of challenge to that judgment.

15. In the case of **Secretary, Agricultural Produce Market Committee, Bailhongal Vs. Quasami Janab Ajmatalla Salamulla and another**, reported in (2009)9 SCC 219, the Hon'ble Apex Court in para 9 held as under :-

"9. Courts, whose judgments are subject to appeal have to remember that the functions of a reasoned judgment are :

- (i) to inform the litigant the reasons for the decision;
- (ii) to demonstrate fairness and correctness of the decision;
- (iii) to exclude arbitrariness and bias; and
- (iv) to enable the appellate/revisional court to pronounce upon the correctness of the decision."

16. In view of the aforesaid enunciation of law, we are of the considered view that the Magistrate and the Special Judge have right to differ from the opinion of the investigating agency but the judicial propriety is also required to indicate

the facts and material and reasons compelling the Magistrate or the Judge to arrive at different conclusion. It would also be beneficial for the investigating agency to improve its working and to take disciplinary action or direct for further training of the officer of the investigating wing by the superior officer and to protect people from unnecessary prosecution on the direction of the Magistrate and the Judge by passing such erroneous order.

17. Keeping in view of the aforesaid discussions, the impugned order is set-aside and the learned Special Judge is directed to go through, afresh, the material produced by the investigating agency with the closure report and pass speaking order without analyzing evidence and only indicate the facts, material available on record with regard to different opinion and rejecting the closure report.

18. Accordingly, the criminal revision stands disposed of.

(ATUL SREEDHARAN)
JUDGE

(J.P. GUPTA)
JUDGE

JP/-