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HIGH COURT OF MADHYA PRADESH AT JABALPUR

Division Bench : **Hon'ble Shri Justice J.K. Maheshwari &**
Hon'ble Smt. Justice Anjali Palo

M.Cr.C. No. 27272/2019

Neeta Soni
-Versus-
State of M.P.

Shri Shreyas Pandit, Advocate for the applicant.

Shri Shashank Shekhar, Acting Advocate General assisted by Shri
Vivek Ranjan Pandey, Government Advocate for the State.

ORDER
(19.9.2019)

As Per : J.K. Maheshwari, J.

1. This reference case is arising out of the order of learned Single Judge passed in this petition at Jabalpur on 23.7.2019 and listed before the Bench as per the order of Hon'ble the Acting Chief Justice. Learned Single Judge at Gwalior vide order dated 21.1.2019 in M.Cr.C. No. 3037/2019 observed that the petitions under Section 482 of the Cr.P.C. challenging the FIR and consequential proceedings should not be accepted by the Registry without filing the charge-sheet. The Bench at Jabalpur is of the proposition that such direction is contrary to the High Court of Madhya Pradesh Rules, 2008 (hereinafter referred to as the Rules of 2008) and not justified. However, made the reference to

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Larger Bench to answer the following question:-

“Whether in every petition under Section 482 of the Cr.P.C. for quashment of FIR, the charge sheet should be filed and without it, the petition should not be accepted by the Registry”.

2. Learned counsel appearing for the applicant as well learned Advocate General are heard at length. During the course of hearing, the amendment made in Chapter XI of the Rules of 2008 after Rule 10, has been brought to our notice. The relevant Rule 10(A) is hereby quoted as under:-

“10(A)- (1) Where a petition is filed under Section 482 of the Code of Criminal Procedure, 1973 for quashing of F.I.R, it shall be accompanied with the declaration that no charge-sheet has been filed.

(2), In case, if charge sheet or charges are challenged, the Petition shall be accompanied with the copy of complete charge-sheet and documents, if any; along with the declaration that, complete charge-sheet and documents have been filed.”

3. On perusal, it is luculent that to present the petition under Section 482 of the Cr.P.C. seeking quashment of the FIR, a declaration is required to be accompanied with the petition, with respect to non filing of the charge sheet. It further indicates that in case the charge sheet or the order framing charges, are under challenge, petition shall accompany the complete charge sheet and documents along with the declaration that the documents produced with the petition are

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complete.

4. After going through the order dated 21.1.2019 passed by the Gwalior Bench in M.Cr.C. No. 3037/2019, it reveals that at the time of filing the petition seeking quashment of FIR, the charge sheet was already filed. However, in the facts of the case, the Court felt the necessity of filing the charge sheet, but in place of directing to file the same in the said particular case, general directions were issued to the registry for not accepting the petition under Section 482 of the Cr.P.C. without attaching the charge sheet with petition.

5. If we see the Rules of 2008, sub-rule (1) of Rule 10(A), deals the contingency to the cases of quashment of FIR; in case charge sheet not filed, declaration must be accompanied containing such fact. The said rule does not deal the situation in which the charge sheet already filed though quashment of FIR is prayed for. It is not clear in express words that what recourse may be opted at the time of presentation of the petition seeking quashment of FIR, in which charge sheet already filed. In a case covered by sub-section (2) of Section 10(A) of the Rules of 2008, if charge sheet or order framing charges are under challenge, filing of the complete charge sheet and documents with declaration is made essential. Thus, conjoint reading of sub-sections (1) and (2) of Section 10(A) of the Rules of 2008, makes it clear that

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the Rules of 2008 only deals two contingencies; first the requirement of presentation of the petition seeking quashment of the FIR and second requirement of presentation of petition for quashment of the charge sheet or the order framing charges. In previous case, petition may be filed with declaration of not filing the charge sheet and in latter case the complete charge sheet must be filed with documents and a declaration to that effect. Thus under the rules, the compliance for the presentation of the petition has been specified, but it does not specify the consequence of non compliance at the time of presentation of the petition.

6. It is contended by learned Advocate General that while passing the order by the Gwalior Bench, in a case in which relief of quashment of the FIR was sought, the charge sheet was already filed. The Rule 10(A)(1) of the Rules of 2008 do not expressly contemplate the recourse for such situation. The said Rule do not contemplate for filing the charge sheet at the time of presentation with petition, if it is already filed. It is also urged that the direction issued to file the charge sheet in all the cases are not justified, that too directing its consequence by not accepting such petition. It is said some of the cases are decided without calling the charge sheet/case diary from the prosecution or in some cases it may be called by the Court. It is further said, in the cases of CBI, Lokayukta, EOW, Prevention of Corruption Act etc., the

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charge sheet is voluminous and bulky, however, issuance of general direction to file complete charge is not feasible in order to save paper in the era of digitization, therefore, urged that if necessary, charge sheet may be called in particular case through the office of the Advocate General or from the Government agencies where quashment of FIR is sought or otherwise directed by the Court. Simultaneously, if the petitioner is insisting for hearing the case urgently, filing of charge sheet may be obligatory on their part but not by way of compulsion. Therefore, issuance of general direction is not justified, that too directing registry to not to accept the petition by the Registry of the Court.

7. Learned counsel for the applicant has strenuously urged that the order of the Gwalior Bench puts a check on registry officers that on presentation of petition under Section 482 of the Cr.P.C. it should not be accepted. As per the rules, the petition may be filed even in defect, which may be rectified giving time by fixing another date by the Registrar or the Court affording an opportunity. However, due to not filing the charge sheet with the petition, the Registry cannot refuse to accept the petition filed under Section 482 of the Cr.P.C. Thus, the general direction of the Gwalior Bench is not in accordance with law.

8. After hearing learned counsel for the parties and on perusal of

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the first part of the question posed for answer, it relates to the necessity of filing the charge sheet in petition in which relief to quash the FIR is sought. In this regard existing Rule 10(A)(1) contemplates for filing of the declaration accompanying with the petition at the time of presentation filed for quashment of the FIR. Thus, declaration of non filing the charge sheet is the requirement for presentation. This Rule do not make incumbent for filing the charge sheet with the petition seeking quashment of the FIR. In contradistinction, by plain reading of the said Rule, filing of the charge sheet with the petition, is not obligatory. In the said situation on filing the petition, at the time of hearing, the Court may either decide it without calling the charge sheet or direct to file the charge sheet, but attachment of charge-sheet with the petition at the time of presentation in general, particularly when Rule do not contemplate so, is not justified even in the cases in which charge sheet is filed and quashment of FIR is prayed for. Thus, Gwalior Bench by the order has legislated the condition not specified in the Rules and put the check on the Registry to accept such petition, however, such observation is contrary to law. It is a trite law and observed that the Court can interpret the provision of the statute but cannot legislate it by judgments or orders. If we see the spirit of the Rules then it can safely be crystallized that at the time of presentation of petition for quashment of FIR, the declaration of not filing the charge sheet is the requirement but not of filing the charge sheet. Thus, as per Rules, filing of the

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charge sheet at the time of presentation of the petition seeking quashment of FIR, cannot be made necessary even in a case where the charge sheet has already been filed. Looking to the spirit of the Rules it is a discretion of the Court, which may direct for filing the charge sheet in the facts of the case, but not at the time of presentation. Therefore, putting the condition and directing the Registry to not to accept the petition without filing charge sheet, is unreasonable and contrary to the Rules.

9. Now reverting to deal the later part of the question posed, which states that the petition should not be accepted by the Registry if charge sheet is not filed with the petition challenging FIR. The provisions of Chapter X and Chapter XI of the Rules of 2008, specify the procedure for filing the petition either of civil or criminal nature. As per the Rules, if case is not presented with relevant particulars following the requirement of the Rules, it may be listed in default before the Registrar, thereafter before the Bench with intent to afford an opportunity for rectification. The Rule do not contemplate that at the time of presentation of petition, if normal defect is there and it has not been rectified, it may not be accepted by the Registry. It is to be noted here that the presentation of the case is not restricted even if there is default or non-observance of the Rule. Therefore, at the time of filing the case if default is pointed out by the Registry, its presentation

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cannot be stopped by general order of the Court directing the Registry to not to accept the petition. It is made clear here that, in case the compliance of the Rule is not made at the time of filing, it may be listed in default at first instance before the Registrar, thereafter before the Bench, with intent to afford an opportunity to rectify the defect, if any. In case of non-rectification of defect, it may be dismissed by the Court. Thus, it is the spirit of the rules that if any petition is filed in defect, its acceptance by the Registry cannot be stopped by an order of the Court.

10. In view of the foregoing, we are of the considered opinion that in terms of the provision of Rules, as discussed hereinabove, the direction issued by the Gwalior Bench on 21.1.2019 in M.Cr.C. No. 3037/2019 to not to accept the petition filed under Section 482 of the Cr.P.C challenging the F.I.R and consequential proceedings without filing the charge sheet is not in consonance to the provisions of the Rules of 2008. Accordingly, this reference is answered.

11. While parting this order, in the cases of Section 10(A(2) of the Rules of 2008, where the charge sheet and the order framing charges are under challenge, the requirement of filing of the charge sheet with complete documents must be continued or not, in view of the argument of learned Advocate General, which may have some substance, may

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be looked into by Hon'ble the Chief Justice. If Hon'ble the Chief Justice deems it proper, may place the same before appropriate committee to examine Rule 10(A) in broader perspective in the context to file the charge sheet at the time of presentation either asking relief of quashment of FIR or quashment of charge sheet and order framing the charges, which may examine it and if required reformulation of the Rules may be made by such Committee and be notified in Gazette.

12. With the aforesaid observations, this petition stands disposed of.

(J.K. Maheshwari)
Judge

(Smt. Anjali Palo)
Judge

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M.Cr.C. No. : 27272/2019

Parties Name : Neeta Soni -Versus- State of M.P.

Bench Constituted : Hon'ble Shri Justice J.K.Maheshwari &
Hon'ble Smt. Justice Anjuli Palo

Judgment delivered by : Hon'ble Shri Justice J.K.Maheshwari

Whether approved for reporting : Yes

Name of counsel for the parties

Counsel For the applicant : Shri Shreyas Pandit, Advocate.

Counsel For the State : Shri Shashank Shekhar, Advocate General
assisted by Shri Vivek Ranjan Pandey,
Government Advocate.

Law laid down:

- This reference case is arising out of the order of learned Single Judge passed in this petition at Jabalpur on 23.7.2019 and listed before the Bench as per the order of Hon'ble the Acting Chief Justice to answer the following question:-

“Whether in every petition under Section 482 of the Cr.P.C. for quashment of FIR, the charge sheet should be filed and without it, the petition should not be accepted by the Registry”.

- As per Rule 10(A)(1) of the High Court of Madhya Pradesh Rules, 2008 filing of the charge sheet with the petition, is not obligatory. In the said situation on filing the petition, at the time of hearing, the Court may either decide it without calling the charge sheet or direct to file the charge sheet, but attachment of charge-sheet with the petition at the time of presentation in general, particularly when Rule do not contemplate so, is not justified even in the cases in which charge sheet is filed and quashment of FIR is prayed for.

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- As per Rules, filing of the charge sheet at the time of presentation of the petition seeking quashment of FIR, cannot be made necessary even in a case where the charge sheet has already been filed. Looking to the spirit of the Rules it is a discretion of the Court, which may direct for filing the charge sheet in the facts of the case, but not at the time of presentation. Therefore, putting the condition and directing the Registry to not to accept the petition without filing charge sheet, is unreasonable and contrary to the Rules.
- This Court observed that at the time of filing the case if default is pointed out by the Registry, its presentation cannot be stopped by general order of the Court directing the Registry to not to accept the petition. It is made clear here that, in case the compliance of the Rule is not made at the time of filing, it may be listed in default at first instance before the Registrar, thereafter before the Bench, with intent to afford an opportunity to rectify the defect, if any. In case of non-rectification of defect, it may be dismissed by the Court. Thus, it is the spirit of the rules that if any petition is filed in defect, its acceptance by the Registry cannot be stopped by an order of the Court.
- The reference is answered accordingly.

Significant Paragraphs: 8 to 11.
