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**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

**BEFORE
HON'BLE SHRI JUSTICE SHEEL NAGU
&
HON'BLE SHRI JUSTICE AVANINDRA KUMAR SINGH
ON THE 13th OF JULY, 2023**

MISC. CRIMINAL CASE No. 42558 of 2020

BETWEEN:-

1. YOGESH NAYYAR S/O SHRI KRISHAN LAL NAYYAR, AGED ABOUT 62 YEARS, OCCUPATION: RETIRED AE, PWD. R/O WARD NO. 15 PRATAPPURA, MALVIYAGANJ, ITARSI, DISTT. HOSHANGABAD (M.P.) (MADHYA PRADESH)
2. RAMBHAROS CHOUHAN S/O SHRI ANTRAM CHOUHAN, AGED ABOUT 51 YEARS, OCCUPATION: SUB ENGINEER O/O SUPERINTENDING ENGINEER, HOSHANGABAD DIVISION HOSHANGABAD (MADHYA PRADESH)

.....PETITIONERS

(BY SHRI SANJAY K. AGRAWAL - ADVOCATE)

AND

1. THE STATE OF MADHYA PRADESH THROUGH THE ECONOMIC OFFENCES WING DISTT. BHOPAL M.P. (MADHYA PRADESH)
2. SHRI U.S. RAGHUVANSHI THROUGH DIRECTOR M/S SURYAN INFRASTRUCTURE (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI MADHUR SHUKLA - ADVOCATE)

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*This application coming on for admission this day, JUSTICE SHEEL
NAGU passed the following:*

ORDER

Petitioners, who are two in number and are one of the two accused

among four accused in Crime No.37/2018 alleging offences punishable u/S 420, 120-B of IPC and Sec. 7(C), 13(1)A, 13(2) of Prevention of Corruption Act, 1988 (Amended Act 2018) (for brevity "PC Act") registered at Police Station - E.O.W., Bhopal, assail the FIR primarily on the ground that the prior approval as contemplated by Section 17-A of Prevention of Corruption Act, 1988 (Amended Act 2018) was not obtained before conducting investigation.

2. Learned counsel for rival parties are heard on the short question as to whether the investigation triggered by the impugned FIR offends Sec. 17-A of PC Act.

3. Learned counsel for rival parties both rely upon the decision of the Apex Court in the case of **State of Rajasthan Vs. Tejmal Choudhary (Criminal Appeal No.1649 of 2021)**. Before the Apex Court in Tejmal (supra), final order of Rajasthan High Court was under challenge whereby, the High Court had quashed an FIR registered in January, 2018, by invoking the provision of Section 17-A of PC Act. The Apex Court in Tejmal (supra) allowed the appeal of State of Rajasthan by setting aside the order of High Court of Rajasthan by *inter alia* holding thus :

"10. In State of Telangana v. Managipet alias Managipet Sarveshwar Reddy reported (2019) 19 SCC 87, this Court rejected the arguments that amended provisions of the PC Act would be applicable to an FIR, registered before the said amendment came into force and found that the High Court had rightly held that no grounds had made out for quashing the proceedings.

11. It is a well settled principle of interpretation that the legislative intent in the enactment of a statute is to be gathered from the express words used in the statute unless the plain words literally construed give rise to absurd results. This Court has to go by the plain

words of the statute to construe the legislative intent, as very rightly argued by Mr. Roy. It could not possibly have been the intent of the legislature that all pending investigations upto July, 2018 should be rendered infructuous. Such an interpretation could not possibly have been intended.

12. In his usual fairness, learned Senior Counsel appearing on behalf of the respondent does not seriously dispute the proposition of law that Section 17A does not have retrospective operation. Learned Senior Counsel, however, argues that the Court might have looked into the merits and, in particular, the fact that investigation had ultimately been closed. We need not go into that aspect since the High Court has quashed the proceedings only on the ground of permission not having been obtained under Section 17A of the PC Act.

13. The appeals are, accordingly, allowed and the impugned judgment and order is accordingly set aside."

4. Learned counsel for prosecution also submits that an inquiry was conducted vide Preliminary Enquiry 257/15 since 04.11.2015 as mentioned in the impugned FIR and, therefore, it cannot be said that the bar contained in Section 17-A can come in way of Prosecuting Agency to investigate.

4.1 In regard to the aforesaid contention of learned counsel for prosecution, it is profitable to refer to the expressions used in Section 17-A which not only bars an enquiry/inquiry but also investigation in regard to offence alleging allegations of recommendations made or decision taken without prior approval of competent authority. Thus, even if enquiry or inquiry was pending since prior to coming into effect of Section 17-A, investigation could not have been conducted pursuant to FIR which was lodged subsequent to coming into effect of Section 17-A. Thus, the contention of counsel for

Prosecuting Agency deserves to be and is therefore rejected.

6. A bare perusal of Section 17-A reveals that prior to insertion of said provision in PC Act, the only provision giving protection of prior sanction to prosecution was Section 19 which is applicable at the stage of taking cognizance of offence, but not from any prior date. On 26.07.2018, the Prevention of Corruption Act, 1988 (Amended Act 2018) underwent wide spread amendments including the insertion of Section 17-A which gave an added umbrella of protection to the public servant at the stage of enquiry / inquiry / investigation. The police officer was prohibited from conducting enquiry / inquiry / investigation into any offence alleged under the PC Act when allegations related to recommendation made or decision taken are as follows :

6.1 In the instant case, learned counsel for prosecution does not dispute that the allegations relate to decision taken or/and recommendation made by petitioners in their capacity as Assistant Engineer and Sub-Engineer. Thus, by the very nature of allegation, the bar contained in Section 17-A gets attracted.

6.2 The prohibition for a police officer is to conduct inquiry or investigation. An investigation is conducted only after an FIR is lodged and since in the instant case, the FIR was lodged on 10.12.2018 which was after Section 17-A of Prevention of Corruption Act, 1988 (Amended Act 2018) came on the statute book w.e.f. 26.07.2018, police was prohibited from conducting investigation pursuant to the impugned FIR, in the absence of any previous approval of authority competent to remove the petitioners from office at the time when offence was alleged to have been committed.

6.3 Learned counsel for prosecution however, submits that Section

17-A does not prohibit registration of offence / lodging of FIR but only investigation enquiry / inquiry.

7. Learned counsel for the Prosecuting Agency may be correct in his submission that lodging of an FIR in absence of approval is not expressly barred by Section 17-A of PC Act. However, what has been prohibited is conduction of investigation by a Police Officer and since lodging of an FIR is the triggering point of investigation, it is obvious that even if an FIR is lodged, investigation cannot take place without approval of competent authority.

8. In the instant case, after registration of impugned FIR, the investigation is being conducted but no charge-sheet has been filed yet and it is not disputed by learned counsel for prosecution that no prior approval of competent authority has been taken before initiating and conducting investigation.

9. Therefore, the investigation conducted pursuant to impugned FIR stands vitiated on the anvil of Section 17-A of PC Act.

10. Accordingly, the petition stands **allowed** to the following extent :

1. The investigation conducted subsequent to filing of FIR stands vitiated and is set aside.

2. Liberty, however, is extended to Prosecuting Agency to obtain prior approval or conducting investigation from the competent authority in terms of Section 17-A of PC Act.

3. It is made clear that this Court has left the FIR bearing Crime No.37/2018 at Police Station E.O.W. Bhopal intact.

(SHEEL NAGU)
JUDGE

Shub

(AVANINDRA KUMAR SINGH)
JUDGE

