

HIGH COURT OF MADHYA PRADESH : PRINCIPAL SEAT AT JABALPUR

1	Case Number	Cr.R.No.2187/2018 & M.Cr.C.No.5937/2020
2	Parties Name	State of M.P. Vs. Shivendra Singh & others; & Shankar Manchani Vs. State of M.P. & others.
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 & Shri Anil Khare, Senior counsel with Shri Priyank Agrawal, learned counsel for the respondents. Shri Manoj Sharma, learned counsel for the petitioner. Shri Satyam Agrawal, learned counsel for respondent no. 1 / Lokayukt. None for other respondents.
8	Law laid down & Significant paragraphs number	(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

		<p>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</u> para 35 to 38.</p> <p>(ii) 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>
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(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. 2187/2018

The State of M.P.

Vs.

Shivendra Singh and others

Shri Satyam Agrawal, learned counsel for the applicant /
Lokayukta Organization.

Shri Anil Khare, Senior Advocate with Shri Priyank Agrawal,
Advocate for the respondents.

M.Cr.C. No.5937/2020

Shankar Manchani

vs.

The State of M.P. & others

Shri Manoj Sharma, learned counsel for the petitioner.

Shri Satyam Agrawal, learned counsel for respondent no.1 /
Lokayukt.

None for other respondents.

Whether approved for reporting (Yes/No).

ORDER

(17.03.2021)

Per J.P. Gupta, J.

This order shall govern the disposal of both the
aforesaid cases which have been filed challenging the
common order dated 19.1.2018 passed by the Special Judge,
Lokayukt Jabalpur in Crime No. 115/2011 whereby the
closure report filed by the Special Police (Lokayukt) in respect

of the accused persons under Sections 13 (1) (d) read with Section 13 (2) of the Prevention of Corruption Act and under Sections 109 and 120-B of the IPC has been disallowed directing the Lokayukt police to place all the original documents / records and the material collected during the investigation before the Sanctioning authority for obtaining sanction for prosecution against the concerned governments employees / accused persons.

2. The facts of the case, in brief, are that the respondents namely Shivendra Singh, G. N. Singh, Tarun Kumar Anand, Shyam Mandal, S. C. Jain and Vishal Pachori (now dead) were posted at Jabalpur Development Authority, Jabalpur and were discharging their duties in their respective capacity and respondent S. K. Mahawar was posted at Town and Country Planning, District Jabalpur and was discharging his duty as Joint Director. Respondents Shankar Manchani (Also petitioner in M.Cr.C.No.5937/2020) and Manoj Kumar are the private party and were discharging their duties as Directors of M/s. Oasis Build Mart Private Ltd. and against them the allegations are that the Special Police (Lokayukt) made a search in the office and house of G. N. Singh, the then Executive Engineer / Land Acquisition officer posted in Jabalpur Development Authority (hereinafter referred to as the "JDA"), Jabalpur with regard to disproportionate assets and on the basis of the documents seized during the search and investigation, a preliminary inquiry was conducted and prima facie it was revealed that in the auction of the land of Jabalpur Development Authority, a company, namely, M/s. Oasis Build Mart Private Ltd. Participated and tender of the company was accepted, about which, it is alleged that the company was allowed to participate in the proceeding of the

auction despite of having no eligibility and the land was allotted to the company contrary to the rules and thereby terms of the contract were not followed and twisted to facilitate the company and extra land was also given without following the prescribed procedure with a view to provide undue benefit to the company. Apart from it, a land comprising service road was also made a part of the plot thereby increasing the area of the said plot, on which, the development was to be made and the documents requiring registration were not got registered and the company was wrongly provided aforesaid documents to avoid registration fees and M/s. Oasis Build Mart Private Ltd. inducted Shankar Manchani (Petitioner in M.Cr.C.No.5937/2020) as a Director of the company without paying transfer fees and stamp duty. Accordingly, all the aforesaid officers of Jabalpur Development Authority and the Municipal Corporation, Jabalpur and Directors of M/s. Oasis Build Mart Private Ltd. caused loss to the exchequer with the connivance of each other by misusing their position as government servants or Directors of the company concerned and the purchase money was not recovered in terms of the contract and too-much extra time was given to pay the consideration of the plot and thereby caused loss of interest to the J.D.A. and the Municipal Corporation.

3. Thereafter, a criminal case was registered and during investigation, first investigator was of the opinion that there is sufficient material to file charge sheet against the respondents / accused persons with regard to commission of the offence punishable under Section 13 (1) (d) read with Section 13 (2) of Prevention of Corruption Act read with Section 109 and 120-B of IPC. Contrary to it, in further

investigation, second Investigating Officer was of the opinion that there is no material to file charge sheet against the accused persons for commission of the aforesaid offence and accordingly, prima facie, no offence is made out against any of the accused persons. Therefore, the report in terms of closure report was filed before the Special Judge, under the Prevention of Corruption Act, Jabalpur and the learned Special Judge passed the impugned order rejecting the prayer for accepting the closure report, directing the police to place the material collected during the investigation before the sanctioning authority for consideration with regard to granting sanction for the prosecution.

4. The impugned order has been challenged by the Special Police Establishment, Lokayukt Organization by filing Criminal revision no.2187/18 on the ground that learned Special Judge exceeded its jurisdiction and passed impugned order without going through the material available on record and rejection of closure report amounts to direction to file the charge sheet and the direction to place the material before the sanctioning authority is also illegal. The Special Judge has no such power; hence, the order is contrary to law. Apart from it, the learned Special Judge has passed the order mechanically, without application of mind as the order is non-speaking and does not indicate consideration of the facts and material of the present case, as facts and name of Samdariya Builders has been reflected in the order which has no concern with the fact of this case. Accordingly, the order is against the judicial propriety. Hence, the order be set aside and the closure report be accepted.

5. The petitioner in M.Cr.C. No. 5937/20 has challenged the impugned order on the ground that he is a private party

and as per the prosecution story, he became Director of the M/s. Oasis Build Mart Private Ltd. after allotment and development of the relevant plots. Against him it is alleged that the fees and stamp duty payable for transfer were not paid by him and during investigation it was found that it was not transfer of the company and it was substitution of the Directors and due fees and stamp duties were paid and no loss was caused by the exchequer and he has no nexus with other allegations which are related before induction of him as Director in the Company. Therefore, prima facie, there is no material against him to constitute the offence and the closure report deserves to be accepted, while the learned Special Judge without considering the relevant facts and material of the case, in mechanical way, without application of mind has passed the impugned order. In the impugned order, the matter relating to Samdariya Builders has been considered while in this case, allegation related to M/s. Oasis Build Mart Private Ltd. is in question. Apart from it, the order has also jurisdictional error as no direction for filing charge sheet and obtaining sanction order can be given. Therefore, the order is unsustainable and deserves to be set-aside.

6. Having considered the facts of the case and contentions advanced by learned counsel for the parties, it appears that the impugned order has been challenged mainly on two grounds; first is that after rejection of the closure report, the learned Special Judge has no jurisdiction to direct the investigating agency to produce the material before the sanctioning authority for consideration to grant sanction for prosecution, as it amounts to direct to file charge sheet and compel the sanctioning authority to grant sanction for prosecution. Second ground is that the learned Sessions

Judge has passed the order mechanically without application of mind and without going through the relevant material on record.

7. It is settled law that when the closure report is not accepted, the Magistrate or the Special Judge has power to direct for further investigation or to take cognizance on the material produced before him, if he is of the opinion that the same is sufficient to prosecute the accused person, but if any sanction for prosecution by the competent authority is required in the law, then such cognizance cannot be taken unless and until the sanctioning authority after considering the material placed before him to grant sanction for the prosecution. In other cases, the Magistrate or the Judge despite of giving direction for further investigation may also direct the complainant to file protest petition and all material to support the allegations, if he desires so and, thereafter, may take cognizance, if the sanction is not required or if any sanction is needed, the cognizance will be taken after granting sanction for prosecution by the competent authority and in case of absence of the sanction, the Magistrate or the Special Judge cannot proceed further as he is left no other option in the matter.

8. 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 then looking to the facts and circumstances of the case further investigation is desirable to reach on a prudent conclusion. 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, the 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.

9. 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, the 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. So far as the present case is concerned, after rejection of 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".

10. 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.

11. 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.

12. 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.

13. In view of the circumstances, the impugned order is apparently erroneous, without application of mind and passed mechanically. Hence, the same is not sustainable. Therefore, the aforesaid contention of the applicant is accepted without expressing any opinion about availability of the material against accused persons to prosecute for the offence.

14. So far as the contentions advanced by learned counsel for the petitioner Shankar Manchani in M.Cr.C.No.5937/2020 is concerned, it is argued that against him no offence is made out, therefore, the closure report ought to have been accepted. In this regard, we are of the view that this contention is not required to be dealt with at this stage separately from the other accused persons who are the public servants and against whom sanction for prosecution is required before taking cognizance and at the stage of consideration of the closure report, the matter cannot be considered separately for the petitioner Shankar Manchani that the cognizance can be or cannot be taken against him as

the cognizance is taken against the offence and not against the accused person. Therefore, after taking cognizance of the offence, if the person is summoned then he has right to challenge the order on the ground that there is no material on the basis of which he is summoned.

15. Accordingly, the impugned order suffers from error of non-application of mind and does not disclose the consideration of the relevant facts and the material of the case and lack of indication of the reasoning for framing an opinion, contrary to the investigating officer and therefore, deserves to be set aside.

16. Undoubtedly, at the stage of consideration, 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.

17. 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.

18. 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."

19. In view of the aforesaid case law, we are of the 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.

20. Considering 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.

21. Accordingly, the criminal revision and M.Cr.C. are disposed of.

(ATUL SREEDHARAN)
JUDGE

(J.P. GUPTA)
JUDGE