

**IN THE HIGH COURT OF MADHYA PRADESH AT
JABALPUR
BEFORE
HON'BLE SHRI JUSTICE SHEEL NAGU
&
HON'BLE SHRI JUSTICE PURUSHAINDRA KUMAR KAURAV
MISC. CRIMINAL CASE No. 10053 of 2021**

Between:-

**NARENDRA MISHRA S/O SHRI R.P. MISHRA , AGED ABOUT 39 YEARS,
OCCUPATION: GOVT. SERVANT, PERMANENT R/O B-33 SUKHSAGAR
VALLEY JABALPUR, PRESENTLY RESIDING AT FLAT NO.205 SHILPI
UPVAN REWA, DISTRICT REWA (M.P.)**

.....PETITIONER

**(BY SHRI ANIL KHARE, LEARNED SENIOR COUNSEL WITH SHRI
ABHINAV SHRIVASTAVA, ADVOCATE)**

AND

- 1. THE STATE OF MADHYA PRADESH THROUGH P.S. SPECIAL
POLICE ESTABLISHMENT LOKAYUKT JABALPUR (M.P.)**
- 2. J.P.S. DUBEY S/O SHRI N.P.S. DUBEY , AGED ABOUT 38 YEARS,
OCCUPATION: DIRECTOR SMART ELECTRICAL SOLUTION NEAR
SHAKTIBHAWAN, JABALPUR, (M.P.)**

.....RESPONDENTS

(BY SHRI SATYAM AGRAWAL, ADVOCATE FOR RESPONDENT NO.1)

Reserved on : 02.12.2021

Passed on : 23.02.2022

Per : Sheel Nagu, J.

ORDER

1. A short but interesting question is involved in the present petition filed under Section 482 of Code of Criminal Procedure, 1973 ("Cr.P.C.")

for brevity) invoking the inherent powers of this Court seeking quashment of charge-sheet bearing Crime No.154/2019 registered at Police Station Special Police Establishment Lokayukt, Jabalpur and the consequential proceedings in shape of Special Case (Lokayukt) No.1/2021 pending before the Court of Special Judge (Lokayukt) Jabalpur.

2. The question is whether the quashment of impugned charge-sheet is permissible in law when the only evidence collected during investigation is as follows:

“(i) The written complaint dated 22.07.2019 of the complainant.

(ii) The conversation in the Digital Voice Recorder (“DVR” for brevity) which when matched with the sample voice of the petitioner resulted into the following information of the Regional Forensic Laboratory, Bhopal:

From the poorly recorded questioned voice recording marked Q-1 (A)/Q-1(B) and the specimen voice recording marked S-1(A)/S-2(B), sufficient common words/sentences having sufficient amount of speech data for auditory and spectrographic analysis could not be detected. Hence, opinion cannot be given as to whether the voice marked exhibit Q-1(A)/Q-1(B) is the probable voice of the person whose specimen voice is marked exhibit S-1(A)/S-2(B).

(iii) The statement of the shadow witness Constable – Dinesh Dubey who merely saw the complainant and the petitioner sitting in a Car, from a distance but did not hear the conversation between them.”

3. Learned senior counsel for petitioner submits that with the aforesaid available evidence collected by prosecution during investigation, even if the same is accepted on its face value cannot led to commission of an offence punishable u/S. 7 of the Prevention of Corruption Act, 1988 (“PC Act” for brevity) as alleged.

3.1 It is also urged that there are certain other undisputed facts which reveal patent improbability of the incident and the foundational complaint being malicious and vexacious. These alleged undisputed facts are as follows:

“(i) Letter dated 23.09.2019 of Senior Accounts Officer MPPKVVCL, Jabalpur, reveals that till 11.07.2019 (the date of the incident), the final bills put up by the complainant were pending in the Office of Sr. Accounts Officer and not before the petitioner.

(ii) Letter dated 23.09.2019 further reveals that these bills of the complainant reached the Office of Sr. Accounts Officer after being routed through Shri Ranjeet Kumar Maravi, Jr. Engineer, Shri Vivek Jaisele, Assistant Engineer and Shri Naveen Pandey, Executive Engineer and not through the petitioner.

(iii) On 11.07.2019, this letter dated 23.09.2019 reveals that the petitioner’s posting was in the Office of the Executive Engineer, Sub Division and not in the STC Division.

(iv) During the period from 11.07.2019 to 22.07.2019, none of the other similarly placed persons as that of the complainant was made any payment against their bills under Soubhagya Yojana.

(v) This letter also reveals that there were stop payment instructions in regard to the bills of the complainant from the Office of Superior Authority and, therefore, question of petitioner making any payment did not arise.

(vi) Lastly, in this letter, the Sr. Accounts Officer submitted that as against the pending bills of the complainant, an amount of Rs.5,06,970/- was released which included the amount demanded under the Soubhagya Yojana but since the said amount had not been sanctioned yet, the complainant was informed about this inadvertent mistake and was made to refund the said amount.”

3.2. In the aforesaid background and the alleged implicative material collected during the investigation, learned senior counsel for petitioner submits that when the voice sample in the DVR did not match with the voice sample collected from petitioner, there was no occasion for the prosecution to proceed with the matter as the so-called implicative material collected as aforesaid fell desperately short of even the minimum required standard necessary for taking cognizance.

3.3. It is submitted that the statement of shadow witness is of no avail to the prosecution as the shadow witness - Constable Dinesh Dubey is

said to have only seen from a distance the petitioner and the complainant sitting together in a Car. The said shadow witness admittedly did not hear the conversation between the petitioner and the complainant and, therefore, merely by seeing two persons' conversing, it cannot be presumed that demand for bribe was made by the petitioner.

3.4. It is further submitted that the other piece of evidence is the report of the Regional Forensic Science Laboratory which is non-implicative in nature. The said report dated 12.05.2020 is merely to the effect that sufficient words/sentences in the recorded conversation could not be detected for auditory and spectographic analysis. The expert's opinion thus is no evidence in the eyes of law.

3.5. Shri Anil Khare, learned senior counsel for petitioner in this factual background submits that the evidence collected by the prosecution during investigation did not even raise an iota of suspicion much less a reasonable or serious suspicion to enable Investigating Agency to file charge-sheet in the Court of competent criminal jurisdiction.

3.6. It is submitted that in the backdrop of absence of any implicative expert opinion, the only material available with the prosecution is the written complaint, and the statement of shadow witness - Constable Dinesh Dubey, who had not even heard the conversation between petitioner and complainant. In these circumstances, it is urged that the only recourse available to the prosecution was to go in for a fresh laying of trap and recording of conversation followed by subjecting the recording to FSL analysis.

3.7. In view of above, Shri Khare, learned senior counsel prays for quashing the charge-sheet since the case squarely falls within the parameters of para 103 & 104 laid down by the Apex Court in the case of *State of Haryana and others Vs. Bhajanlal and others*, 1992 Supp.1 SCC 335.

Further reliance is placed by senior counsel for petitioner on **1979 (4) SCC 526 (Panalal Damodar Rathi Vs. State of Maharashtra)** (Para 8 & 9), **2002 (2) SCC 135 (Dilawar Balu Kurane Vs. State of Maharashtra)** (Para 12, 13 & 14), **2011 (6) SCC 450 (State of Kerala and another Vs. C.P. Rao)** (Para 7) and **2015 (3) SCC 123 (Sanjaysinh Ramrao Chavan Vs. Dattatray Gulabrao Phalke and others)** (Para 16 & 17).

4. *Per contra*, learned counsel for prosecution relying upon the decision of Apex Court in **State of Rajasthan Vs. Ashok Kumar Kashyap, 2021 SCC Online 314** (para 24 onwards) emphasizing the limited jurisdiction of this Court while exercising inherent powers u/S. 482 of Cr.P.C. submits that the case for attempt to obtain undue advantage is squarely made out by the evidence collected during investigation. The written complaint of the complainant, the statement of the shadow witness are urged to be enough to constitute the basic ingredients of the offence punishable u/S. 7 of PC Act, notwithstanding absence of the expert report.

5. Before venturing into the arena of adjudication, it would be appropriate to extract the relevant portion of the judgments laying down the contours, sweep and extent of inherent powers u/S. 482 of Cr.P.C.

5.1. In the instant case, the facts reveal that beside the written complaint of the complainant and the statement of the shadow witness - Constable Dinesh Dubey u/S. 161 of Cr.P.C., there is no other implicative piece of evidence collected by the prosecution. The analysis of the aforesaid two pieces of evidence reveals thus:

“(i) The written complaint of the complainant dated 11.07.2019 alleges that a final bill claiming Rs.24 lakh put up by the complainant is pending in the Divisional Office of MPPKVVCL, Jabalpur and for clearing the same, the Divisional Engineer Neelabh Shrivastava (not made accused) demanding Rs.4.5 lakhs and the petitioner demanded Rs.1.7 lakh as bribe. The complaint further alleges that the complainant does not wish to oblige Neelabh Shrivastava and petitioner and instead, wants to catch them red handed.

(ii) The aforesaid complaint is mere allegation which give a cause to the prosecution to lay a trap so as to collect implicative evidence in support of the complaint whereafter a cognizable offence u/S. 7 or 13 of PC Act, as the case may be, can be registered.

(iii) The complainant was explained the procedure to be followed for voice recording with the aid of DVR and the shadow witness – Dinesh Dubey Constable was directed to accompany the complainant. Thereafter, on 11.07.2019, the complainant along with the DVR entered into a conversation with the petitioner in a Car at 7.30 p.m. The conversation was recorded by the hidden DVR and when the conversation was going on, the shadow witness – Constable Dinesh Dubey is said to be sitting on his motorcycle at a distance from the Car watching the complainant and the petitioner conversing with each other. Importantly, the conversation between petitioner and complainant was not heard by the said shadow witness.

(iv) Thereafter, the complainant made a further written complaint on 22.07.2019 to the prosecuting agency handing over the DVR and detailing the events that took place on 11.07.2019 at 7.30 p.m.. This complaint dated 22.07.2019 expressed apprehension that in all probability, petitioner has become suspicious and, therefore, would not accept any bribe from the complainant.

(v) The voice sample was also collected from the petitioner to enable the expert to compare voice recorded in the DVR with the voice sample.

(vi) On 12.05.2020, the Regional Forensic Science Laboratory, Bhopal issued a report opining that the available voice recording in the DVR and the voice sample are insufficient for auditory and spectrographic analysis and thus no opinion can be given as to whether the two voice samples are of the same person or not.”

5.2. A close scrutiny of the aforesaid events which took place on 11.07.2019 and 12.05.2020 what comes out loud and clear is that the written complaint letter dated 11.07.2019 contains mere allegation against the petitioner which could have matured into registration of offence punishable u/S.7 of P.C. Act and filing of a charge-sheet only

when the voice in the DVR and the voice sample collected from petitioner had matched.

5.3. The voice recording and the voice sample provided by the prosecution were insufficient for the expert to give any opinion and, therefore, the allegation contained in the complaint dated 11.07.2019 remained mere allegation and thus could not have fructified into registration of offence or filing of a charge-sheet.

5.4. In an offence punishable u/S. 7 of the PC Act, the least that is required of the Investigating Agency is to collect implicative evidence/material to support the allegation contained in the written complaint. In absence of any such supportive implicative material/evidence, if an offence is registered, merely on the basis of written complaint of complainant, then disastrous consequence can befall upon all public servants thereby exposing them to registration of offence and filing of charge-sheet. A written complaint can be made by any person who nurses a grudge or prejudice against the public servant. The public servant would stand exposed to criminal prosecution on the mere making of a written complaint. This scenario would lead to chaos in the administration of service. The public servant shall not be able to discharge his official duties in a free and fair manner due to the ever present feeling of lurking fear in the mind that any act of discharge of official duties can trigger a criminal prosecution.

5.5 In somewhat similar circumstances before the Apex Court in the case of ***Sanjaysinh Ramrao Chavan Vs. Dattatray Gulabrao Phalke and others, 2015 (3) SCC 123*** where the forensic report found the sample supplied insufficient to come to any conclusion, Supreme Court found it to be a wasteful exercise to proceed with the prosecution. The relevant extract of the said judgment is reproduced below for ready reference and convenience:-

16. It is to be noted that in the first complaint filed by the second respondent, the de facto complainant, there is no allegation for any demand for bribe by the appellant. The allegation of demand is

specifically against accused 2 only. That allegation against the appellant is raised only subsequently. Be that as it may, the only basis for supporting the allegation is the conversation that is said to be recorded by the voice recorder. The Directorate of Forensic Science Laboratories, State of Maharashtra vide Annexure-B report has stated that the conversation is not in audible condition and, hence, the same is not considered for spectrographic analysis. Learned Counsel for the respondents submit that the conversation has been translated and the same has been verified by the panch witnesses. Admittedly, the panch witnesses have not heard the conversation, since they were not present in the room. As the voice recorder is itself not subjected to analysis, there is no point in placing reliance on the translated version. Without source, there is no authenticity for the translation. Source and authenticity are the two key factors for an electronic evidence, as held by this Court in Anvar P.V. v. P.K. Basheer.

17. *The Magistrate, having seen the records and having heard the parties, has come to the conclusion that no offence is made out against the appellant under the provisions of the PC Act so as to prosecute him. Even according to the High Court, "the crux of the matter is the conversation between the complainant and the accused 1 of 22.11.2010". That conversation is inaudible and the same is not to be taken in evidence. Therefore, once the 'crux' goes, the superstructure also falls, lacking in legs. Hence, prosecution becomes a futile exercise as the materials available do not show that an offence is made out as against the appellant. This part, unfortunately, the High Court missed.*

"28 Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course."

(Pepsi Foods Limited v. Special Judicial Magistrate Para 28). The process of the criminal court shall not be permitted to be used as a weapon of harassment.

Once it is found that there is no material on record to connect an accused with the crime, there is no meaning in prosecuting him. It would be a sheer waste of public time and money to permit such proceedings to continue against such a person.

(See State of Karnataka v. L. Muniswamy)

18. Unmerited and undeserved prosecution is an infringement of the guarantee under Article 21 of the Constitution of India.

"60..... Article 21 assures every person right to life and personal liberty. The word personal liberty is of the widest amplitude covering variety of rights which goes to constitute personal liberty of a citizen. Its deprivation shall be only as per procedure prescribed in the Code and the Evidence Act conformable to the mandate of the Supreme law, the Constitution. ...

(State of Bihar v. P.P. Sharma)"

5.6 The Apex Court in the case of ***Subramanian Swamy Vs. Manmohan Singh and another, 2012 (3) SCC 64*** (Para 73 and 74) realizing this special status admissible to public servants has held in regard to the protection given to them. The relevant extract of the said judgment is reproduced below for ready reference and convenience:-

"73. It was pointed out by the Constitution Bench of this Court in Sheonandan Paswan Vs. State of Bihar; (1987) 1 SCC 288:

"14.....It is now settled law that a criminal proceeding is not a proceeding for vindication of a private grievance but it is a proceeding initiated for the purpose of punishment to the offender in the interest of the society. It is for maintaining stability and orderliness in the society that certain acts are constituted offences and the right is given to any citizen to set the machinery of the criminal law in motion for the purpose of bringing the offender to book. It is for this reason that in A.R. Antulay V. R.S.Nayak, 1984 (2) SCC 500, this Court pointed out that (SCC p. 509, para 6)..

74. Keeping those principles in mind, as we must, if we look at Section 19 of the P.C. Act which bars a Court from taking cognizance of cases of corruption against a public servant under Sections 7, 10, 11, 13 and 15 of the Act, unless the Central or the State Government, as the case may be, has accorded sanction, virtually imposes fetters on private citizens and also on prosecutors from approaching Court against corrupt public servants. These protections are not available

- (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

[Emphasis Supplied]

5.8 For an allegation to mature into an FIR, least that is required is that the allegation/first information discloses commission of cognizable offence. Whereas for an FIR to mature into a charge-sheet/final report u/S.173(2) Cr.P.C., it has to undergo the arduous journey from Sec.154 to Sec. 176 (Chapter XII) Cr.P.C. where implicative evidence if any is collected in support of the FIR in a unilateral process called investigation.

5.9 Investigation is a unilateral process, being out of bounds for the accused. The investigating agency is thus expected to act in a free, fair and impartial manner with no element of prejudice coming into play for or against the accused or victim. Investigation as is well known is a probe in the dark starting from the known to the unknown moving backwards in time, in search of truth.

5.10 The task of investigating agency is rendered all the more difficult in face of the accused being entitled to remain silent. Ironically the accused despite knowing the truth cannot be compelled to disclose the same.

5.11 Investigating agency is thus obliged while discharging its statutory duty under Chapter XII of Cr.P.C. to ensure that the final report u/S. 173(1) Cr.P.C. if prepared and filed in the Court is accompanied with such supportive/corroborative evidence which gives rise to serious and strong suspicion of involvement of accused in the offence alleged. Another test of a valid and lawful charge-sheet/final report is that if the evidence/material contained therein is left uncontroverted then the same can sustain a conviction.

5.12 Let us visualize the situation which may arise if the prosecution with available evidence is permitted to proceed with the trial :-

- (a) *The written complaint dated 22.07.2019 alleging demand of bribe will be supported by complainant in his examination-in-chief.*
- (b) *However, the petitioner/accused in cross-examination would contradict the averments of complainant in examination-in-chief.*
- (c) *That would leave the testimony of complainant uncorroborated.*
- (d) *The other evidence collected by prosecution are :-*
 - (i) *Statement u/S. 161 Cr.P.C. of shadow witness - Constable Dinesh Dubey and*
 - (ii) *FSL report dated 12.05.2020.*
- (e) *The Sec.161 Cr.P.C. statement of shadow witness has zero corroborative value since this witness admittedly did not hear the conversation between petitioner/accused and the complainant. Moreso, when the shadow witness is not a lip-reader.*
- (f) *The other corroborative piece of evidence is the FSL report dated 12.05.2020 which is not implicative.*

Thus to allow the trial to proceed on the basis of an uncorroborated complaint would be an exercise in futility leading to no fruitful result except wasting the precious time of the trial Court.

5.13 Therefore, a charge-sheet/final report can fructify into taking of cognizance of offence alleged only when the implicative evidence in charge-sheet gives rise to a triable case where foundational ingredients of offence alleged are prima facie palpable.

6. In a recent decision, the Apex Court while noticing absence of supporting material to the FIR held that the jurisdiction under Section 482 of Cr.P.C. can very well be exercised on the anvil of the law laid down in the case of ***State of Haryana and others Vs. Bhajanlal (supra)*** and the recent decision in the case of ***Neeharika Infrastructure Pvt.Ltd. Vs. State of Maharashtra and others, AIR 2021 SC 1918***. The relevant extract of the said judgment reproduced below for ready reference and convenience:-

“15. As observed hereinabove, there may be some cases where the initiation of criminal proceedings may be an abuse of process of law.

In such cases, and only in exceptional cases and where it is found that non interference would result into miscarriage of justice, the High Court, in exercise of its inherent powers Under Section 482 Code of Criminal Procedure and/or Article 226 of the Constitution of India, may quash the FIR/complaint/criminal proceedings and even may stay the further investigation. However, the High Court should be slow in interfering the criminal proceedings at the initial stage, i.e. quashing petition filed immediately after lodging the FIR/complaint and no sufficient time is given to the police to investigate into the allegations of the FIR/complaint, which is the statutory right/duty of the police under the provisions of the Code of Criminal Procedure. There is no denial of the fact that power Under Section 482 Code of Criminal Procedure is very wide, but as observed by this Court in catena of decisions, referred to hereinabove, conferment of wide power requires the court to be more cautious and it casts an onerous and more diligent duty on the court. Therefore, in exceptional cases, when the High Court deems it fit, regard being had to the parameters of quashing and the self-restraint imposed by law, may pass appropriate interim orders, as thought apposite in law, however, the High Court has to give brief reasons which will reflect the application of mind by the court to the relevant facts.”

7. In the conspectus of above discussion, the material collected by the prosecution falls desperately short of the minimum required standard necessary for filing a final report u/S. 173 of Cr.P.C. and taking cognizance.

7.1 Pertinently when the Investigating Agency was faced with a non-implicative Forensic Report then the only option available to the Investigating Agency was to go in for a fresh exercise of recording of statement of petitioner by laying of another trap. Instead, the Investigating Agency decided to proceed with the half baked material in shape of written complaint and the statement of shadow witness – Constable Dinesh Dubey, who had not even heard the conversation between petitioner and the complainant. This kind of an exercise by Investigating Agency amounts to utter abuse of process of Court. The charge-sheet filed is thus a waste of precious time of the Court which

would be involved in a trial where discharge is inevitable and *fait accompli*.

8. Regard being had to the above, this case is one of those rarest of rare cases where without entering into the reliability, genuineness or veracity of the evidence collected, this Court is compelled to invoke its inherent powers u/S.482 Cr.P.C. to truncate the prosecution which in turn is based on premature investigation.

9. Consequently, this Court is left with no option but to hold that the filing of the charge-sheet in Crime No.154/2019 and the consequential proceeding in Special Case (Lokayukt) No.1/2021 pending before Court of Special Judge (Lokayukt) Jabalpur are abuse of process of the Court.

10. Accordingly, the charge-sheet in respect of FIR/Crime No.154/2019 registered at Police Station Special Police Establishment (Lokayukt), Jabalpur and the consequential proceeding in respect of Special Case (Lokayukt) No.1/2021 pending before the Court of Special Judge (Lokayukt) Jabalpur stand quashed.

(SHEEL NAGU)
JUDGE

(PURUSHAINDR KUMAR KAURAV)
JUDGE

**HIGH COURT OF MADHYA PRADESH, PRINCIPAL SEAT AT
JABALPUR**

MCRC. No.10053/2021

Narendra Mishra
vs.
State of M.P. & Another

Present :-

Shri Anil Khare, learned Senior Counsel with Shri Abhinav Shrivastava, learned counsel for the petitioner.

Shri Satyam Agrawal, learned counsel for the respondent No.1.

Whether Approved for Reporting : Yes

Law Laid Down:

- (1) FIR lodged in connection with offence punishable u/S.7 of P.C. Act cannot fructify into a charge sheet when the only evidence collected by the Investigating Agency is the written complaint, the statement of shadow witness, who has only seen the accused with the complainant from a distance, but has not heard the conversation of demand of bribe and the F.S.L. report which opines that voice sample collected does not match the recorded voice.
- (2) Proceeding with trial with the aforesaid piece of evidence is a futile exercise which shall achieve no object except wasting the precious time of the Court and vexing accused, victim and as well as the justice dispensation system.
- (3) If the voice sample had not matched with the voice recording then it was the bounded duty of Investigating Agency to have conducted another trap instead of filing a charge sheet with half baked evidence, which is inherently improbable to lead to any logical conclusion.

Significant Paragraph No.5, 6 & 7

Order passed in separate sheets on 23.02.2022.

(Sheel Nagu)
Judge

(Purushaindra Kumar Kaurav)
Judge