IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 17th OF AUGUST, 2023

WRIT PETITION No. 18548 of 2021

BETWEEN:-

KRISHNA KUMAR SINGH S/O SHRI DAL PRATAP SINGH, AGED ABOUT 50 YEARS, OCCUPATION: SALESMAN GOVT. FAIR PRICE SHOP AT VILLAGE VARIGAWA (1502148) DISTT. SIDHI VILLAGE LAKODA TEHSIL CHURHAT DISTT. SIDHI (MADHYA PRADESH)

.....PETITIONER

(BY SHRI ANUP SINGH – ADVOCATE FOR PETITIONER)

AND

1. **THE STATE OF MADHYA PRADESH THR. SECRETARY FOOD CIVIL SUPPLIES AND CONSUMER PROTECTION DEPARTMENT MANTRALAYA VALLABH BHAWAN BHOPAL (MADHYA PRADESH)**
2. **COLLECTOR SIDHI DISTT. SIDHI (MADHYA PRADESH)**
3. **ADDITIONAL COLLECTOR (UPPER COLLECTOR) SIDHI DISTT. SIDHI (MADHYA PRADESH)**
4. **SUB DIVISIONAL OFFICER CHURHAT DISTT. SIDHI (MADHYA PRADESH)**
5. **DISTRICT SUPPLY OFFICER**

SIDHI DISTT. SIDHI (MADHYA PRADESH)

6. JUNIOR SUPPLY OFFICER CHURHAT, SIDHI DISTT. SIDHI (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI ANUBHAV JAIN – GOVERNMENT ADVOCATE FOR RESPONDENTS/STATE)

This petition coming on for admission this day, the court passed the following:

ORDER

This petition under Article 226 of the Constitution of India has been filed seeking the following reliefs:

> *"(i) Hon'ble Court may kindly be pleased to quash impugned order dt.2.6.2021 (Ann.P/1) issued by the respondent no.4- S.D.O. Churhat as well as impugned order dt.24.8.2021 (Ann.P/2) issued by respondent no.3 - Additional Collector, Sidhi and allow the petitioner to run Fair Price Shop Barigawa No.1 (15021148), District Sidhi as usual, in the interest of justice.*
>
> *(ii) Any other relief which this Hon'ble Court may deem just and proper in the facts and circumstances of the case may kindly be issued in favour of the petitioner"*

2. It is submitted by Shri Singh that petitioner is running the Government Fair Price Shop at village Barigawa allotted under the M.P. Public Distribution System (Control) Order 2015. An inspection was carried out in the Fair Price Shop, Barigawa No.1 on 18.03.2021 and it was found that stock of goods was less and it was presumed that petitioner was involved in black marketing. Accordingly, order dated 02.06.2021

was passed and a direction was given to recover the loss as well as the Fair Price Shop, Barigawa No.1 was suspended.

3. Being aggrieved by the said order, the petitioner preferred an appeal before Collector who vide order dated 04.08.2021 came to a conclusion that no opportunity of hearing was given to petitioner and accordingly, the matter was remanded back to the SDO with a direction that petitioner may be given full opportunity of hearing. Thereafter, by order dated 24.08.2021, the Additional Collector passed another order thereby directing for prosecution of petitioner under M.P. Public System (Control) Order, 2015.

4. Challenging the order dated 24.08.2021, it is submitted by counsel for petitioner that respondents cannot blow hot and cold. On one hand, the Collector, Sidhi by order dated 04.08.2021 has remanded the matter back to SDO for rehearing of the case whereas on second hand, the additional Collector had passed impugned order dated 24.08.2021 granting permission to prosecute the petitioner under M.P. Public System (Control) Order, 2015.

5. Accordingly, this Court by interim order dated 10.11.2021 stayed the effect and operation of order dated 24.08.2021.

6. The respondents have filed their return and it is submitted that petitioner has not approached this Court with clean hands.

7. It is submitted that an inspection was conducted on 18.03.2021 by Junior Supply Officer and it was found that stock was less and therefore, petitioner is indulged in black marketing. A show cause notice was issued to petitioner but he did not appear before the competent authority, therefore an *ex-parte* order was passed. The order of SDO was set aside

by Collector, Sidhi by order dated 04.08.2021 and the matter was remitted back to SDO with a direction to give full opportunity of hearing to petitioner.

8. It is submitted by counsel for respondents that petitioner has tried to mislead the Court by mixing two different inspections in one writ petition. The impugned order dated 24.08.2021 has been passed on the basis of different inspection report, which was carried out on 26.07.2021 whereas the order dated 02.06.2021 was passed on the basis of an inspection carried out by Junior Supply Officer on 18.03.2021. In the inspection which was carried out on 18.03.2021, 2678 Kg of Wheat, 5516.5 Kg of Rice, 72 Kg. of Sugar, 303 Kg. of Salt and 1248 liters of Kerosene were found short whereas in the inspection, which was carried out on 26.07.2021, 14,487 Kg. of wheat, 5376 Kg. of Rice, 19 Kg. of Sugar and 250 Kg. of Salt was found short. Therefore, the impugned order dated 24.08.2021 by which a permission was granted to lodge FIR was based on the subsequent inspection carried out on 26.07.2021 and it has nothing to do with the earlier inspection, which was carried out on 18.03.2021.

9. Furthermore, it is submitted that after the matter was remanded back by Collector by his order dated 04.08.2021, final order was passed by SDO on 30.08.2021 in Case No.11/other Miscellaneous/2021 and it was directed that suspension of petitioner may be revoked but he should be posted in some other Fair Price Shop and the loss be recovered from the petitioner within a period of one month.

10. It is further submitted that petitioner has filed another Writ Petition No.6597/2023. The petitioner was well aware of the fact that the

impugned order has been passed in a different case but still he tried to mislead the Court by mixing two facts with each other.

11. In reply, it is submitted by counsel for petitioner that it is clear from inspection report dated 27.07.2021 (Annexure R-I) that duty to operate the Fair Price Shop, Barigawa was given to Ranjeet Singh by order dated 20.06.2021. Therefore, it is clear that petitioner was not having the charge of the said shop and therefore if any shortage was found, then it was Ranjeet Singh who was responsible for the same and not the petitioner.

12. Heard the learned counsel for the parties.

13. On 16.08.2023, a prayer was made by the State counsel to list this case along with W.P.No.6597/2023 and accordingly the said writ petition was also listed at Serial No.104.1. However, as none appeared for the petitioner in the said case, therefore the said case was adjourned for a period of eight weeks. However, it is clear from W.P.No.6597/2023 that the said writ petition has been filed against the charge, which was handed over to Ranjeet Singh on 06.01.2023. As per the said charge only 64 Kg of Wheat and 18 Kg of Rice was found and there was no other food grain. Although, the petitioner by referring to the report dated 27.07.2021 (Annexure R/1) tried to develop his argument by submitting that by order dated 20.06.2021, the duty to operate the Fair Price Shop, Barigawa was handed over to one Ranjeet Singh but it is not his case that charge was ever handed over by the petitioner to Ranjeet Singh.

14. On the contrary, from the W.P.No.6597/2023, it is clear that charge of the Fair Price Shop was given for the first time to Ranjeet Singh on 06.01.2023. From inspection report dated 27.07.2021, which was in respect of inspection carried out on 26.07.2021, it is clear that the main

door of the building was found broken and no food grains i.e. Wheat, Rice, Sugar, Salt and Kerosene were found whereas as per Stock Register in POS Machine, 14,487 Kg. of Wheat, 5376 Kg. of Rice, 19 Kg. of Sugar and 250 Kg. of Salt should have been there. Thus, on 26.07.2021, it was found that the aforesaid quantity of food grain was missing and was embezzled by the petitioner. The present petition was filed on 07.09.2021 and as per order sheets of the Court of SDO, written in the case after remand by Collector, it is clear that notices were issued on 15.09.2021 and petitioner entered his appearance on 20.09.2021. Although, the present petition was filed prior to that but it was expected from the petitioner that he should have amended the petition by clarifying the situation but that was not done. Although, the petitioner had entered appearance on 20.09.2021 before SDO but that fact was not brought to the notice of this Court and on 29.09.2021, an interim order was obtained.

15. Be that whatever it may.

16. One thing is clear that petitioner has not come to this Court with clean hands. The Supreme Court in the case of **Arunima Baruah v. Union of India** reported in **(2007) 6 SCC 120** has held as under:-

> **10.** On the one hand, judicial review is a basic feature of the Constitution, on the other, it provides for a discretionary remedy. Access to justice is a human right. (See *Dwarka Prasad Agarwal* v. *B.D. Agarwal* [(2003) 6 SCC 230] and *Bhagubhai Dhanabhai Khalasi* v. *State of Gujarat* [(2007) 4 SCC 241 : (2007) 2 SCC (Cri) 260 : (2007) 5 Scale 357] .) A person who has a grievance against a State, a forum must be provided for redressal thereof. (See *Hatton* v. *United Kingdom* [15 BHRC 259] .

> For reference see also *Zee Telefilms Ltd.* v. *Union of India* [(2005) 4 SCC 649] .)
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> **11.** The court's jurisdiction to determine the lis between the parties, therefore, may be viewed from the human rights concept of access to justice. The same, however, would not mean that the court will have no jurisdiction to deny equitable relief when the complainant does not approach the court with a pair of clean hands; but to what extent such relief should be denied is the question.
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> **12.** It is trite law that so as to enable the court to refuse to exercise its discretionary jurisdiction suppression must be of material fact. What would be a material fact, suppression whereof would disentitle the appellant to obtain a discretionary relief, would depend upon the facts and circumstances of each case. Material fact would mean material for the purpose of determination of the lis, the logical corollary whereof would be that whether the same was material for grant or denial of the relief. If the fact suppressed is not material for determination of the lis between the parties, the court may not refuse to exercise its discretionary jurisdiction. It is also trite that a person invoking the discretionary jurisdiction of the court cannot be allowed to approach it with a pair of dirty hands. But even if the said dirt is removed and the hands become clean, whether the relief would still be denied is the question.

17. The Supreme Court in the case of **K.D. Sharma v. SAIL** reported in **(2008) 12 SCC 481** has held as under:

> **38.** The above principles have been accepted in our legal system also. As per settled law, the party who invokes the extraordinary jurisdiction of this Court under Article 32 or of a High Court

under Article 226 of the Constitution is supposed to be truthful, frank and open. He must disclose all material facts without any reservation even if they are against him. He cannot be allowed to play "hide and seek" or to "pick and choose" the facts he likes to disclose and to suppress (keep back) or not to disclose (conceal) other facts. The very basis of the writ jurisdiction rests in disclosure of true and complete (correct) facts. If material facts are suppressed or distorted, the very functioning of writ courts and exercise would become impossible. The petitioner must disclose all the facts having a bearing on the relief sought without any qualification. This is because "the court knows law but not facts".

39. If the primary object as highlighted in *Kensington Income Tax Commrs.* [(1917) 1 KB 486 : 86 LJKB 257 : 116 LT 136 (CA)] is kept in mind, an applicant who does not come with candid facts and "clean breast" cannot hold a writ of the court with "soiled hands". Suppression or concealment of material facts is not an advocacy. It is a jugglery, manipulation, manoeuvring or misrepresentation, which has no place in equitable and prerogative jurisdiction. If the applicant does not disclose all the material facts fairly and truly but states them in a distorted manner and misleads the court, the court has inherent power in order to protect itself and to prevent an abuse of its process to discharge the rule nisi and refuse to proceed further with the examination of the case on merits. If the court does not reject the petition on that ground, the court would be failing in its duty. In fact, such an applicant requires to be dealt with for contempt of court for abusing the process of the court.

18. The Supreme Court in the case of **Bhaskar Laxman Jadhav and others v. Karamveer Kakasaheb Wagh Education Society and others** reported in **(2013) 11 SCC 531** has held as under:

> "**44.** It is not for a litigant to decide what fact is material for adjudicating a case and what is not material. It is the obligation of a litigant to disclose all the facts of a case and leave the decision-making to the court. True, there is a mention of the order dated 2-5-2003 in the order dated 24-7-2006 passed by the JCC, but that is not enough disclosure. The petitioners have not clearly disclosed the facts and circumstances in which the order dated 2-5-2003 was passed or that it has attained finality.
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> **45.** We may only refer to two cases on this subject. In Hari Narain v. Badri Das [AIR 1963 SC 1558] stress was laid on litigants eschewing inaccurate, untrue or misleading statements, otherwise leave granted to an appellant may be revoked. It was observed as follows: (AIR p. 1560, para 9)
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> > "9. … It is of utmost importance that in making material statements and setting forth grounds in applications for special leave care must be taken not to make any statements which are inaccurate, untrue or misleading. In dealing with applications for special leave, the Court naturally takes statements of fact and grounds of fact contained in the petitions at their face value and it would be unfair to betray the confidence of the Court by making statements which are untrue and misleading. That is why we have come to the conclusion that in the present case, special leave granted to the appellant ought to be revoked. Accordingly, special leave is revoked and the appeal is dismissed. The appellant will pay the costs of the respondent."
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> **46.** More recently, in Ramjas Foundation v. Union of India [(2010) 14 SCC 38 : (2011) 4 SCC (Civ) 889] the

case law on the subject was discussed. It was held that if a litigant does not come to the court with clean hands, he is not entitled to be heard and indeed, such a person is not entitled to any relief from any judicial forum. It was said: (SCC p. 51, para 21)

> "21. The principle that a person who does not come to the court with clean hands is not entitled to be heard on the merits of his grievance and, in any case, such person is not entitled to any relief is applicable not only to the petitions filed under Articles 32, 226 and 136 of the Constitution but also to the cases instituted in others courts and judicial forums. The object underlying the principle is that every court is not only entitled but is duty-bound to protect itself from unscrupulous litigants who do not have any respect for truth and who try to pollute the stream of justice by resorting to falsehood or by making misstatement or by suppressing facts which have a bearing on adjudication of the issue(s) arising in the case."

47. A mere reference to the order dated 2-5-2003, en passant, in the order dated 24-7-2006 does not serve the requirement of disclosure. It is not for the court to look into every word of the pleadings, documents and annexures to fish out a fact. It is for the litigant to come upfront and clean with all material facts and then, on the basis of the submissions made by the learned counsel, leave it to the court to determine whether or not a particular fact is relevant for arriving at a decision. Unfortunately, the petitioners have not done this and must suffer the consequence thereof."

19. The Supreme Court in the case of **Dalip Singh v. State of Uttar Pradesh and others** reported in **(2010) 2 SCC 114** has held as under:

> **1.** For many centuries Indian society cherished two basic values of life i.e. "satya" (truth) and "ahimsa" (non-

violence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of the justice-delivery system which was in vogue in the pre-Independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-Independence period has seen drastic changes in our value system. The materialism has overshadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings.

2. In the last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final.

3. In *Hari Narain v. Badri Das [AIR 1963 SC 1558]* this Court adverted to the aforesaid rule and revoked the leave granted to the appellant by making the following observations: (AIR p. 1558)

> "It is of utmost importance that in making material statements and setting forth grounds in applications for special leave made under Article 136 of the Constitution, care must be taken not to make any statements which are inaccurate, untrue or misleading. In dealing with applications for special leave, the Court naturally takes statements of fact and grounds of fact contained in the petitions at their face value and it would be unfair to betray the

> confidence of the Court by making statements which are untrue and misleading. Thus, if at the hearing of the appeal the Supreme Court is satisfied that the material statements made by the appellant in his application for special leave are inaccurate and misleading, and the respondent is entitled to contend that the appellant may have obtained special leave from the Supreme Court on the strength of what he characterises as misrepresentations of facts contained in the petition for special leave, the Supreme Court may come to the conclusion that in such a case special leave granted to the appellant ought to be revoked."

4. In *Welcom Hotel* v. *State of A.P.* [(1983) 4 SCC 575 : 1983 SCC (Cri) 872 : AIR 1983 SC 1015] the Court held that a party which has misled the Court in passing an order in its favour is not entitled to be heard on the merits of the case.

5. In *G. Narayanaswamy Reddy v. Govt. of Karnataka [(1991) 3 SCC 261 : AIR 1991 SC 1726]* the Court denied relief to the appellant who had concealed the fact that the award was not made by the Land Acquisition Officer within the time specified in Section 11-A of the Land Acquisition Act because of the stay order passed by the High Court. While dismissing the special leave petition, the Court observed: (SCC p. 263, para 2)

> "2. … Curiously enough, there is no reference in the special leave petitions to any of the stay orders and we came to know about these orders only when the respondents appeared in response to the notice and filed their counter-affidavit. In our view, the said interim orders have a direct bearing on the question raised and the non-disclosure of the same certainly amounts to suppression of material facts. On

> this ground alone, the special leave petitions are liable to be rejected. It is well settled in law that the relief under Article 136 of the Constitution is discretionary and a petitioner who approaches this Court for such relief must come with frank and full disclosure of facts. If he fails to do so and suppresses material facts, his application is liable to be dismissed. We accordingly dismiss the special leave petitions."

6. In *S.P. Chengalvaraya Naidu* v. *Jagannath [(1994) 1 SCC 1 : JT (1993) 6 SC 331]* the Court held that where a preliminary decree was obtained by withholding an important document from the court, the party concerned deserves to be thrown out at any stage of the litigation.

7. In *Prestige Lights Ltd.* v. *SBI [(2007) 8 SCC 449]* it was held that in exercising power under Article 226 of the Constitution of India the High Court is not just a court of law, but is also a court of equity and a person who invokes the High Court's jurisdiction under Article 226 of the Constitution is duty-bound to place all the facts before the Court without any reservation. If there is suppression of material facts or twisted facts have been placed before the High Court then it will be fully justified in refusing to entertain a petition filed under Article 226 of the Constitution. This Court referred to the judgment of Scrutton, L.J. in *R.* v. *Kensington Income Tax Commissioners* [(1917) 1 KB 486 (CA)] , and observed: (*Prestige Lights Ltd. case* [(2007) 8 SCC 449] , SCC p. 462, para 35)

> In exercising jurisdiction under Article 226 of the Constitution, the High Court will always keep in mind the conduct of the party who is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the court, then the Court may dismiss the action

> without adjudicating the matter on merits. The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of court by deceiving it. The very basis of the writ jurisdiction rests in disclosure of true, complete and correct facts. If the material facts are not candidly stated or are suppressed or are distorted, the very functioning of the writ courts would become impossible.

20. The Supreme Court in the case of **Shri K. Jayaram and others Vs. Bangalore Development Authority and others** decided on **08.12.2021** in **Civil Appeal No.7550-7553 of 2021** has held as under:

> 15. In **K.D. Sharma v. Steel Authority of India Limited and Others**, it was held thus:
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> "34. The jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary. Prerogative writs mentioned therein are issued for doing substantial justice. It is, therefore, of utmost necessity that the petitioner approaching the writ court must come with clean hands, put forward all the facts before the court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the court, his petition may be dismissed at the threshold without considering the merits of the claim.
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> 35. The underlying object has been succinctly stated by Scrutton, L.J., in the leading case of R. v. Kensington Income Tax Commrs.- (1917) 1 KB 486 : 86 LJKB 257 : 116 LT 136 (CA) in the following words: (KB p. 514) "…
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> "…… it has been for many years the rule of the court, and one which it is of

> the greatest importance to maintain, that when an applicant comes to the court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts—it says facts, not law. He must not misstate the law if he can help it—the court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts; and the penalty by which the court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it, the court will set aside any action which it has taken on the faith of the imperfect statement."
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> (emphasis supplied)

36. A prerogative remedy is not a matter of course. While exercising extraordinary power a writ court would certainly bear in mind the conduct of the party who invokes the jurisdiction of the court. If the applicant makes a false statement or suppresses material fact or attempts to mislead the court, the court may dismiss the action on that ground alone and may refuse to enter into the merits of the case by stating, "We will not listen to your application because of what you have done." The rule has been evolved in the larger public interest to deter unscrupulous litigants from abusing the process of court by deceiving it.

37. In Kensington Income Tax Commrs.(supra), Viscount Reading, C.J. observed: (KB pp. 495-96)

> "… Where an ex parte application has been made to this Court for a rule nisi or other process, if the Court comes to the

> conclusion that the affidavit in support of the application was not candid and did not fairly state the facts, but stated them in such a way as to mislead the Court as to the true facts, the Court ought, for its own protection and to prevent an abuse of its process, to refuse to proceed any further with the examination of the merits. This is a power inherent in the Court, but one which should only be used in cases which bring conviction to the mind of the Court that it has been deceived. Before coming to this conclusion a careful examination will be made of the facts as they are and as they have been stated in the applicant's affidavit, and everything will be heard that can be urged to influence the view of the Court when it reads the affidavit and knows the true facts. But if the result of this examination and hearing is to leave no doubt that the Court has been deceived, then it will refuse to hear anything further from the applicant in a proceeding which has only been set in motion by means of a misleading affidavit."
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> (emphasis supplied)

38. The above principles have been accepted in our legal system also. As per settled law, the party who invokes the extraordinary jurisdiction of this Court under Article 32 or of a High Court under Article 226 of the Constitution is supposed to be truthful, frank and open. He must disclose all material facts without any reservation even if they are against him. He cannot be allowed to play "hide and

> seek" or to "pick and choose" the facts he likes to disclose and to suppress (keep back) or not to disclose (conceal) other facts. The very basis of the writ jurisdiction rests in disclosure of true and complete (correct) facts. If material facts are suppressed or distorted, the very functioning of writ courts and exercise would become impossible. The petitioner must disclose all the facts having a bearing on the relief sought without any qualification. This is because "the court knows law but not facts".
>
> **39.** If the primary object as highlighted in *Kensington Income Tax Commrs. (supra)* is kept in mind, an applicant who does not come with candid facts and "clean breast" cannot hold a writ of the court with "soiled hands". Suppression or concealment of material facts is not an advocacy. It is a jugglery, manipulation, manoeuvring or misrepresentation, which has no place in equitable and prerogative jurisdiction. If the applicant does not disclose all the material facts fairly and truly but states them in a distorted manner and misleads the court, the court has inherent power in order to protect itself and to prevent an abuse of its process to discharge the rule nisi and refuse to proceed further with the examination of the case on merits. If the court does not reject the petition on that ground, the court would be failing in its duty. In fact, such an applicant requires to be dealt with for contempt of court for abusing the process of the court."

16. It is necessary for us to state here that in order to check multiplicity of proceedings pertaining to the same subject-matter and more importantly to stop the menace of soliciting inconsistent orders through different judicial forums by suppressing material facts either by remaining

> silent or by making misleading statements in the pleadings in order to escape the liability of making a false statement, we are of the view that the parties have to disclose the details of all legal proceedings and litigations either past or present concerning any part of the subject-matter of dispute which is within their knowledge. In case, according to the parties to the dispute, no legal proceedings or court litigations was or is pending, they have to mandatorily state so in their pleadings in order to resolve the dispute between the parties in accordance with law.

21. Thus, it is clear that in order to refuse to exercise the power, a Court must come to a conclusion as to whether the suppression was of a material fact or not. Suppression of material fact means that had it been disclosed at the earliest, then Court would not have exercised its discretion in favour of petitioner. From orders dated 15.09.2021 and 10.11.2021, the arguments advanced by the petitioner can be deciphered. Therefore, it is clear that every time it was projected by counsel for petitioner that once the matter was remanded back by the Collector by order dated 04.08.2021, then the impugned order dated 24.08.2021 should not have been passed by Additional Collector, District Sidhi.

22. Thus, it is clear that petitioner did not disclose that the order dated 24.08.2021 is based on subsequent inspection carried out on 27.06.2021 which has nothing to do with the earlier inspection carried out on 18.03.2021. The interim order was passed by this Court on account of misrepresentation by the petitioner that once the inspection dated 18.03.2021 is already pending consideration before SDO, then the impugned order dated 24.08.2021 should not have been passed. At the

cost of repetition, it is once again clarified that in fact two inspections were carried out i.e. on 18.03.2021 and 26.07.2021.

23. The order dated 02.06.2021 and 04.08.2021 passed by Collector were in respect of inspection carried out on 18.03.2021 whereas the impugned order dated 24.08.2021 was in respect of inspection carried out on 26.07.2021.

24. Although, petitioner was already facing proceedings on the allegation of embezzlement of food grains but it appears even thereafter, the petitioner did not improve himself and the entire food grains as mentioned in order dated 24.08.2021 were found missing in the shop and they were misappropriated. Furthermore, the petitioner handed over the charge of the shop to Ranjeet Singh only on 06.07.2023, which is subject matter of challenge in W.P.No.6597/2023.

25. Under these circumstances, this Court is of the considered opinion that petition suffers from suppression of material facts. Furthermore, it is well established principle of law that a suspect has no right of pre-audience before lodging of FIR.

26. The Supreme Court in the case of **Narender G. Goel v. State of Maharashtra, (2009) 6 SCC 65** has held as under :-

> **11.** It is well settled that the accused has no right to be heard at the stage of investigation. The prosecution will however have to prove its case at the trial when the accused will have full opportunity to rebut/question the validity and authenticity of the prosecution case. In *Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishwanandha Maharaj* v. *State of A.P.* [(1999) 5 SCC 740 : 1999 SCC (Cri) 1047] this Court observed : (SCC p. 743, para 11)

> "*11*. … There is nothing in Section 173(8) to suggest that the court is obliged to hear the accused before any such direction is made. Casting of any such obligation on the court would only result in encumbering the court with the burden of searching for all the potential accused to be afforded with the opportunity of being heard."

27. The Supreme Court in the case of **Samaj Parivartan Samudaya v. State of Karnataka, (2012) 7 SCC 407** has held as under :-

> **50.** There is no provision in CrPC where an investigating agency must provide a hearing to the affected party before registering an FIR or even before carrying on investigation prior to registration of case against the suspect. CBI, as already noticed, may even conduct pre-registration inquiry for which notice is not contemplated under the provisions of the Code, the Police Manual or even as per the precedents laid down by this Court. It is only in those cases where the Court directs initiation of investigation by a specialised agency or transfer investigation to such agency from another agency that the Court may, in its discretion, grant hearing to the suspect or affected parties. However, that also is not an absolute rule of law and is primarily a matter in the judicial discretion of the Court. This question is of no relevance to the present case as we have already heard the interveners.

28. The Supreme Court in the case of **Anju Chaudhary v. State of U.P., (2013) 6 SCC 384** has held as under :-

> **31.** The rule of audi alteram partem is subject to exceptions. Such exceptions may be provided by law or by such necessary implications where no other interpretation is possible. Thus rule of natural justice has an application, both under the civil and

criminal jurisprudence. The laws like detention and others, specifically provide for post-detention hearing and it is a settled principle of law that application of this doctrine can be excluded by exercise of legislative powers which shall withstand judicial scrutiny. The purpose of the Criminal Procedure Code and the Penal Code, 1860 is to effectively execute administration of the criminal justice system and protect society from perpetrators of crime. It has a twin purpose; firstly to adequately punish the offender in accordance with law and secondly, to ensure prevention of crime. On examination, the scheme of the Criminal Procedure Code does not provide for any right of hearing at the time of registration of the first information report. As already noticed, the registration forthwith of a cognizable offence is the statutory duty of a police officer-in-charge of the police station. The very purpose of fair and just investigation shall stand frustrated if pre-registration hearing is required to be granted to a suspect. It is not that the liberty of an individual is being taken away or is being adversely affected, except by the due process of law. Where the officer-in-charge of a police station is informed of a heinous or cognizable offence, it will completely destroy the purpose of proper and fair investigation if the suspect is required to be granted a hearing at that stage and is not subjected to custody in accordance with law. There would be predominant possibility of a suspect escaping the process of law. The entire scheme of the Code unambiguously supports the theory of exclusion of audi alteram partem pre-registration of an FIR. Upon registration of an FIR, a person is entitled to take recourse to the various provisions of bail and anticipatory bail to claim his liberty in accordance with law. It cannot be said to be a violation of the principles of natural justice for two different reasons

: firstly, the Code does not provide for any such right at that stage, secondly, the absence of such a provision clearly demonstrates the legislative intent to the contrary and thus necessarily implies exclusion of hearing at that stage. This Court in *Union of India* v. *W.N. Chadha* [1993 Supp (4) SCC 260 : 1993 SCC (Cri) 1171] clearly spelled out this principle in para 98 of the judgment that reads as under : (SCC p. 293)

"*98.* If prior notice and an opportunity of hearing are to be given to an accused in every criminal case before taking any action against him, such a procedure would frustrate the proceedings, obstruct the taking of prompt action as law demands, defeat the ends of justice and make the provisions of law relating to the investigation lifeless, absurd and self-defeating. Further, the scheme of the relevant statutory provisions relating to the procedure of investigation does not attract such a course in the absence of any statutory obligation to the contrary."

32. In *Samaj Parivartan Samudaya* v. *State of Karnataka* [(2012) 7 SCC 407 : (2012) 3 SCC (Cri) 365] , a three-Judge Bench of this Court while dealing with the right of hearing to a person termed as "suspect" or "likely offender" in the report of the CEC observed that there was no right of hearing. Though the suspects were already interveners in the writ petition, they were heard. Stating the law in regard to the right of hearing, the Court held as under : (SCC p. 426, para 50)

"*50.* There is no provision in CrPC where an investigating agency must provide a hearing to the affected party before registering an FIR or even before carrying on investigation prior to registration of case against the suspect. CBI, as already noticed, may even conduct pre-registration inquiry for which notice is not contemplated under the provisions of the Code, the Police Manual or even as per the

> precedents laid down by this Court. It is only in those cases where the court directs initiation of investigation by a specialised agency or transfer investigation to such agency from another agency that the court may, in its discretion, grant hearing to the suspect or affected parties. However, that also is not an absolute rule of law and is primarily a matter in the judicial discretion of the court. This question is of no relevance to the present case as we have already heard the interveners."
>
> **33.** While examining the abovestated principles in conjunction with the scheme of the Code, particularly Sections 154 and 156(3) of the Code, it is clear that the law does not contemplate grant of any personal hearing to a suspect who attains the status of an accused only when a case is registered for committing a particular offence or the report under Section 173 of the Code is filed terming the suspect an accused that his rights are affected in terms of the Code. Absence of specific provision requiring grant of hearing to a suspect and the fact that the very purpose and object of fair investigation is bound to be adversely affected if hearing is insisted upon at that stage, clearly supports the view that hearing is not any right of any suspect at that stage.

29. Furthermore, counsel for petitioner could not point out any provision of law, which ousts the application of provisions of IPC.

30. The Supreme Court in the case of **State of M.P. v. Rameshwar and others**, reported in **(2009) 11 SCC 424** and in the case of **Dhanraj N. Asawani v. Amarjeet Singh Mohinder Singh Basi and others** decided on **25.07.2023** in **Criminal Appeal No.2093/2023** has held that Cooperative Laws does not bar provisions of IPC.

31. Considering the totality of the facts and circumstances of the case, this Court is of the considered opinion that no case is made out warranting interference.

32. Accordingly, the petition is **dismissed** with cost of Rs.5,000/- to be deposited by the petitioner in the Registry of this Court within a period of one month from today, failing which the Registrar General shall not only start proceedings for recovery of cost but shall also register a case for Contempt of Court.

(G.S. AHLUWALIA)
JUDGE

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