

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

BEFORE

HON'BLE SHRI JUSTICE SANJAY DWIVEDI

ON THE 9th OF FEBRUARY, 2023

WRIT PETITION NO.5274 / 2021

BETWEEN:-

ARUN KUMAR MISHRA (STATE POLICE SERVICE) S/O. SHRI R.L. MISHRA, AGED ABOUT 48 YEARS, RESIDENT OF B-19, PHASE-II, SHRI GOLDEN CITY, JAATKHEDI, HOSHANGABAD ROAD, BHOPAL (M.P.)

.....PETITIONER

(BY SHRI SUMIT NEMA – SENIOR ADVOCATE WITH SHRI AYUSH GUPTA – ADVOCATE AND SHRI PIYUSH PARASHAR - ADVOCATE)

AND

- 1. STATE OF MADHYA PRADESH, THROUGH ITS ADDITIONAL CHIEF SECRETARY, HOME DEPARTMENT, GOVERNMENT OF MADHYA PRADESH, 3RD FLOOR, VALLABH BHAWAN-II, AND 4TH FLOOR MANTRALAYA, VALLABH BHAWAN-1, BHOPAL, MADHYA PRADESH.**
- 2. ECONOMIC OFFENCES WING (EOW), THROUGH ITS DIRECTOR GENERAL, GOVERNMENT OF MADHYA PRADESH, 'EOW BHAWAN', 42, ARERA HILLS, BHOPAL MADHYA PRADESH.**
- 3. UNDER SECRETARY, HOME DEPARTMENT 3RD FLOOR, VALLBH BHAWAN-II, AND 4TH FLOOR MANTRALAYA, VALLABH BHAWAN-1, BHOPAL, MADHYA PRADESH**

.....RESPONDENTS

(BY SHRI GIRISH KEKRE - GOVERNMENT ADVOCATE AND SHRI DEEPAK TIWARI – PANEL LAWYER)

Reserved on: 01.02.2023

Pronounced on: 09.02.2023

This petition having been heard and reserved for orders, coming on for pronouncement this day, the Court pronounced the following:

ORDER

The pleadings are complete. Pinpointing the urgency in the matter, learned senior counsel for the petitioner submitted that although an interim order was passed by this Court and pursuant thereto, proceedings of departmental enquiry were made standstill, but now DPC is to be convened for promotions and the case of petitioner for promotion will be deferred on the ground of pendency of disciplinary proceeding. Ergo, looking to the urgency and with the consent of learned counsel for the parties, matter has been finally heard.

2. This petition has been filed under Article 226 of the Constitution of India asking for solitary relief that the charge-sheet dated 24.02.2021 (Annexure-P/2) issued to the petitioner by the respondents be quashed.

3. *Mala fide* is made sole basis for issuance of charge-sheet, which has given rise to this petition assailing such charge-sheet. It is averred in the petition that on the fulcrum of fallacious and fictitious allegations, the charges framed are entirely based upon appraisal report of Central Board of Direct Taxes (CBDT) in the context of one Shri Prateek Joshi, who was subjected to search-operation under Section 132 of the Income Tax Act, 1961 whereas the petitioner is a police officer and he was never subjected to any such search. In the search drive of

the Income Tax Department against Shri Prateek Joshi, some loose papers containing alleged unaccounted cash transaction was found and only on the basis of such entries, an undue inference was drawn that the petitioner had handed over an amount of Rs.7.5 Crore to Shri Prateek Joshi and on that foundation, the respondents initiated disciplinary proceeding against the petitioner. A charge-sheet was issued on 24.02.2021 labeling a charge against that in the search against Shri Prateek Joshi some entries were detected in loose paper showing an amount of Rs.7.5 Crore and as such it was presumed that the petitioner paid Rs.7.5 Crore in cash and such conduct falls within the misconduct and is violative to the provisions of Section 3(1)(i), (iii) and 5(1) of Madhya Pradesh Civil Services (Conduct) Rules, 1968.

4. Learned senior counsel for the petitioner submitted that such entry runs short of any evidentiary value and nothing substantial can be inferred or brought out to the surface. He submitted that a bare look to those entries – there contains a name of one ‘Arun Mishra’ and another column i.e. of debit shows ‘750’ is written, therefore, it was presumed that it was nobody but the petitioner who had given Rs.7.5 Crore to Shri Prateek Joshi and that entry was made foundation for issuance of charge-sheet to the petitioner.

5. Shri Nema further submitted that issuance of charge-sheet on the basis of such casual entries in a loose paper, that too without making any final assessment of Shri Prateek Joshi is very early subject of the respondents-authorities. He also submitted that in view of Section 153C of Income Tax Act, unless assessment of income of a person (other than person in whose case search has been initiated) is called or noticed, such entry cannot be used against any person. The petitioner against whom said entry has been used and abrupt charge was made on

the basis of said entry, the petitioner was never noticed or heard neither by the Income Tax Department nor EOW. As such, it is also not clear as to on what basis, the figure '750' is considered to be an amount of Rs.7.5 Crore and that was a transaction made between the petitioner and Shri Prateek Joshi. Shri Nema further submitted that income of Shri Prateek Joshi has been assessed and in the said assessment, the respective entry was neither considered nor was taken note of showing Rs.7.5 Crore as the income of Shri Prateek Joshi and as such when the assessment has been done treating there being no income of Rs.7.5 Crore then such entry cannot be made basis for levelling a charge or considered it to be a misconduct on the part of the petitioner. Such charge, according to the petitioner, is vague, weak and also illegal because the numeric digit '3' is seen to be encircled, but nobody knows as to what it implies and refers to the 'number of bags of cash kept at his house', but the respondents after assuming without any foundation, issued the charge-sheet. As per learned senior counsel, the petitioner denied such scandalous hypothesis, based on surmises and conjectures because there was no evidence available that digit '750' denotes Rs.7.5 Crore and brought in 3 bags deposited by the petitioner to Shri Prateek Joshi. It is virtually impossible to prove such allegation, which is totally based on surmises and conjectures. To reinforce, he placed reliance on a decision of Supreme Court *in re Common Cause (A Registered Society) v. Union of India* reported in (2017) 77 taxmann.com 245 (SC) rendered in W.P. (Civil) No.505/2015 wherein it is held that "entries in loose papers/sheets are irrelevant and inadmissible as evidence. Such loose papers are not "book of account" and the entries therein are not sufficient to charge a person with liability. Even if books of account are regularly kept in the ordinary course of business, the

entries therein shall not alone be sufficient evidence to charge any person with liability. It is incumbent upon the person relying upon those entries to prove that they are in accordance with facts”. Moreso, Shri Nema relied on another decision of the Supreme Court *in re Central Bureau of Investigation v. V.C. Shukla and Others (1998) 3 SCC 410* wherein it has been held as under:-

“In the present case there is no evidence against the petitioners except the diaries, note books and the loose sheet with regard to the alleged payments. The said evidence is of such a nature which cannot be converted into legal evidence against the petitioners, in view of my above discussion. There is no evidence in the instant case with regard to the monies which are alleged to have been, received by Jains for the purpose of disbursement. There is no evidence with regard to the disbursement of the amount. Then there is no evidence with regard to the disbursement of the amount. Then there is no evidence with regard to the fact to prove prima facie that the petitioners i.e. Shri L.K. Advani and Shri V.C. Shukla accepted the alleged amounts as a motive or reward for showing favour or disfavour to any person and that the said favours and disfavours were shown in the discharge of their duties as public servants as contemplated by 5.7 of the Act {Prevention of Corruption Act, 1988}. Thus the court will have to presume all the above facts in the absence of any evidence in connection therewith to frame charges against the petitioners.”

6. As per Shri Nema, the actions only based upon loose sheets or diary entries or paper slips, in absence of strong and incriminating evidence/material are not valid and legal, as their truthfulness has to be corroborated by additional independent evidence and these figures cannot be a foundation of any punishment because nothing could be proved with those entries. He further submitted when other than entries

have not been taken note of by CBDT and did not include in the income of Shri Prateek Joshi, the charge-sheet itself becomes redundant and therefore can be quashed. Bolstering his contention, Shri Nema placed reliance on the decision of Supreme Court *in re Union of India v. Kunisetty Satyanrayana (2006) 12 SCC 28* wherein it has been held as under:-

“Writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge sheet. No doubt, in some very rare and exceptional cases the High Court can quash a charge-sheet or show cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter.”

(emphasis supplied)

7. According to Shri Nema, the Supreme Court *in re Union Bank of India v. Biswanath Bhattacharjee in Civil appeal No.8258/2009* has considered the scope of judicial interference in disciplinary proceeding and came to observe as under:-

“17. The departmental proceeding is a quasi-judicial one. Although the provisions of the Evidence Act are not applicable in the said proceeding, principles of natural justice are required to be complied with. The courts exercising power of judicial review are entitled to consider as to whether while inferring commission of misconduct on the part of a delinquent officer relevant piece of evidence has been taken into consideration and irrelevant facts have been excluded therefrom. Inference on facts must be based on evidence which meet the requirements of legal principles.....”

8. Shri Nema further submitted that the charges cannot be based upon assumption and suspicions. To reinforce, he relied upon a

decision *in re Paresh Chandas Datta v. Collector of Calcutta* 1978(2) CLJ 316 wherein it is held that mere suspicion should not be allowed to take the place of proof even in domestic inquiries and thus, a charge sheet based upon such mere suspicion is bad and liable to be set aside and quashed. Adding one more feather to his cap, Shri Nema submitted that similar is the view taken *in re Samarendra Narayan Ghose v. State of West Bengal and Others* 1983 SCC OnLine Cal 204.

9. Over and above, Shri Nema argued that the charge-sheet is bad in law as is infested with vagueness based only on certain loose papers and vaguely-scribbled diary-entries allegedly seized from a third and unknown person, have been maliciously given the effect of being admissible evidence against the petitioner in issuing the impugned charge-sheet and those entries are not qualified as evident under Section 34 of the Evidence Act as has been established in number of decisions of Supreme Court like - *in re Surath Chandra Chaakravarty v. State of West Bengal* AIR 1971 SC 752 wherein it has been held that vague and indefinite charges and failure to supply statement of allegations would render removal of Government servant void and inoperative. He further submitted that in a domestic enquiry, the charge must be clear, definite and specific as it would be difficult for any delinquent to meet the vague charges.

10. Relying upon the documents appendage to the petition, Shri Nema submitted that after the stage of framing of assessment of the searched individual i.e. Shri Prateek Joshi has been concluded by the Income Tax Department under Section 153A of the Income Tax Act for assessment years AY 2018-19, 2019-20 and 2020-21, neither of the following consequences have taken place with respect to the petitioner;-

- (i) Not even a passing reference about/of the petitioner has been made in any of such assessment orders of the assessee/searched individual; and
- (ii) No notice under Section 153C of the Act has been issued to the petitioner till date and no notice/communication relating to any addition to the income of the petitioner has been issued by the Income Tax Department.

The petitioner also filed a rejoinder on 08.05.2022 enclosing several documents, in that, the order of assessment dated 26.09.2021 passed by the Income Tax Department in respect of Shri Prateek Joshi, in whose house raid was conducted and in the said assessment order, the entries which were found basis of charge-sheet issued to the petitioner showing that Rs.7.5 Crore paid by him, has not been considered as income of Shri Prateek Joshi. Even in questionnaire, a specific query was asked by the Income Tax Department to the petitioner in respect of the receipt in which respective entry relating to charge-sheet of the petitioner and the petitioner refused to identify the name i.e. A.Mishra written in loose-sheet. The respective question asked to and answered by the petitioner are quoted hereinbelow:-

Q19	On perusal of Annexure A-1 and A-3, there exist receipt and payment in cash from various entities/parties such as J Arora (Som Arora), Jagpin (Jagdish Agrawal), RKM, Nitin, Offshore, Vindhyachal, GG, A Mishra, Chandresh, Taat, Wonder/wonder cement, LC, DVS, SSV, Aditya Tripathi, Dr. CS, NR, Sanjeev Singh MLA, Tribal MLA. Please explain in details the identity of these persons/entities and the nature of transactions undertaken by you with these entities/persons.
A19	To reiterate my statement as given in response to Q9, I have received/paid cash from all these entities/parties on instruction of Ashwin Sharma. Cash was received in office and then the same was brought to my home by me. Cash was brought to the office of Ashwin Sharma by various people concerned to the parties.

<p>Som Arora (J Arora); I don't know</p> <p>Jagpin (Jagdish Agrawal); it's a company owned by Jagdish Agrwal. I don't know where this company is located.</p> <p>RKM; I don't know.</p> <p>Sanjeev Singh MLA; he is friend of Ashwin Sharma who is MLA. I have given him cash on instruction of Ashwin Sharma.</p> <p>Tribal MLA: I don't know</p> <p>Offshore; this is one Indian company</p> <p>GG; Govind Goyal who is the treasurer in Congress party.</p> <p>A Mishra; I don't know</p> <p>Chandresh; same as Dr. CS. I don't know them personally. I have his number in my phone.</p> <p>Wonder/wonder cement; this is from Wonder Cement company. Different person come from this company.</p> <p>LC; Lalit Challani</p> <p>DVS: I don't know</p> <p>SSV: I don't know</p> <p>Aditya Tripathi: I don't know</p> <p>Vindhyachal/Khanna: it's a company. I don't know any other details of it.</p> <p>NR: Nitin Ramchandani</p>

As such, it is clear that the Income Tax Department even did not take cognizance of such loose sheet and also failed to identify A. Mishra; not issued any notice to the petitioner and even EOW did not give any notice to the petitioner – as has been submitted by the learned senior counsel for the petitioner. Thus, it is clear that when those entries were not specified by the Income Tax Department during the course of assessment of the income of Shri Prateek Joshi then as per the counsel for the petitioner making foundation of that loose sheet for initiating disciplinary proceeding against the petitioner is not justifiable.

Even otherwise, from perusal of the charge levelled against the petitioner and foundation thereof, it is clear that the charge is not only vague but based upon a loose paper entry which also does not clear and

directly relatable to the petitioner. It is also difficult to comprehend as to on what basis it was assumed that name – ‘Arun Mishra’ is of petitioner only and nobody’s else, whereas the name of petitioner is Arun Kumar Mishra and numeric entry ‘3’ relates to three bags and ‘750’ indicates Rs.7.5 Crore. From the imputation of charges, it reveals that the same thing has been reiterated without there being any supportive evidence and this fact is also material for the reason that in the search-drive conducted against Shri Prateek Joshi, assessment has been made but there was no reference of said entry in the said assessment.

11. In contrast, Shri Kekre, learned Government Advocate opposed the submissions made on behalf of the petitioner and submitted that in the imputation of charge and the statement appended with the charge-sheet, it is specified that the petitioner has handed over Rs.7.5 Crore in cash contained in three bags to Shri Prateek Joshi and that imputation was essentially an elaborate interpretation of said loose paper entries. He submitted that at this stage quashing the charge-sheet by this Court while exercising the power under Article 226 of the Constitution of India would not be proper. Making referral to the return submitted by the respondents and stand taken therein, only because scope of interference in the matter of disciplinary proceeding exercising jurisdiction under Article 226 of the Constitution of India has been discussed and that the charge can only be ascertained to be correct or not when enquiry is conducted and material is placed before the enquiry officer, Shri Kekre propounded that the charge-sheet does not prejudice the petitioner and it cannot be quashed at this stage.

12. I have anxiously heard the submissions of learned counsel for rival parties and meticulously perused the documents available on

record. Further, I have deeply appreciated the legal position involved in the case at hand.

13. Indeed, from a bare look to the very foundation made for issuance of the charge-sheet, it emerges that there is insufficiency of gleaned material to show the nexus between the petitioner and the entries contained in a loose paper, nor does it imply the same meaning as has been presupposed by the respondents to bring home the charges against the petitioner. Not only this, but in the developed circumstances, it can also be seen that when assessment of income, consequential to search-drive made against Prateek Joshi has been done by not referring those entries, then dragging the petitioner in disciplinary proceeding unnecessarily would obviously tantamount to causing injustice with him and such exercise and the charge-sheet can be held purely illegal. I find it a fit case where this Court while exercising jurisdiction under Article 226 of the Constitution of India, can quash the charge-sheet. In my opinion, the charge-sheet (Annexure-P/2) is purely illegal, based on vague charge bereft of foundation and issued only on assumption and suspicion, therefore, is not sustainable. Obviously, the issuance of such charge-sheet causes prejudice to the petitioner because he being a young police officer, would be deprived from further promotion on mere pretext of pending disciplinary proceeding.

14. To strengthen my view, I deem it apposite to emphasize on the enunciation of law *in re V.C. Shukla* (supra), wherein the Supreme Court has categorically observed that if there is no evidence that the prosecution except the diaries, handbook and loose sheets with regard to alleged payments but on the basis of those evidence, nothing can be proved against the delinquent and therefore the Court has to see as to how the charges can be framed against the petitioner.

15. In the fact-situation, finding this case as one of the exceptional cases wherein the view formed by this Court can be materialized only by interfering in disciplinary proceeding while exercising power under Article 226 of Constitution of India, Indubitably, the view of this Court gets credence from the verdict of Apex Court *in re Kunisetty Satyanrayana* (supra) which elucidates that the High Court in very exceptional case can quash the charge-sheet or show cause notice if it is found to be wholly without jurisdiction or for other reason if it is wholly illegal.

16. In view of the above discourse, the writ petition is **allowed**. The impugned charge-sheet dated 24.02.2021 (Annexure-P/2) is hereby quashed.

**(SANJAY DWIVEDI)
JUDGE**