

**IN THE HIGH COURT OF JUDICATURE FOR MADHYA PRADESH**

**AT JABALPUR**

**BEFORE**

**HON'BLE SHRI JUSTICE RAVI MALIMATH,**

**CHIEF JUSTICE**

**&**

**HON'BLE SHRI JUSTICE PURUSHAINDR KUMAR KAURAV**

**ON THE 07<sup>th</sup> OF FEBRUARY, 2022**

**WRIT APPEAL No. 120 of 2022**

**Between:-**

**JAI NARAYAN SINGH S/O LATE SHRI  
MANMOHAN SINGH, AGED ABOUT 63  
YEARS, OCCUPATION RETIRED  
PANCHAYAT COORDINATOR OFFICER,  
JANPAD PANCHAYAT, KOTMA, DISTRICT  
ANUPPUR (M.P.) AT PRESENT R/O  
GANESHGANJ ASHOK WARD NO.27,  
INFRONT OF DEVANTA HOSPITAL,  
SINGHPUR ROAD, DISTRICT SHAHDOL  
(M.P.)**

**....APPELLANT**

***(BY SHRI RAMESH KUMAR TIWARI, ADVOCATE)***

**AND**

- 1. STATE OF M.P. THROUGH ITS PRINCIPAL  
SECRETARY, PANCHAYAT & RURAL  
DEVELOPMENT DEPARTMENT, VALLABH  
BHAWAN, BHOPAL (MADHYA PRADESH)**
- 2. THE COMMISSIONER, DIVISION SHAHDOL,  
DISTRICT SHAHDOL (MADHYA PRADESH)**
- 3. THE COLLECTOR, DISTRICT ANUPPUR  
(MADHYA PRADESH)**
- 4. THE CHIEF EXECUTIVE OFFICER &  
PRESCRIBED AUTHORITY, ZILA PANCHAYAT,  
DISTRICT ANUPPUR (MADHYA PRADESH)**
- 5. THE CHIEF EXECUTIVE OFFICER, JANPAD  
PANCHAYAT, KOTMA, DISTRICT ANUPPUR  
(MADHYA PRADESH)**

**....RESPONDENTS**

***(BY SHRI VIVEK SHARMA, DEPUTY ADVOCATE GENERAL)***

---

**(Heard through Video Conferencing)**

*This appeal coming on for orders this day, Hon'ble Shri Justice Purushaindra Kumar Kaurav, passed the following:*

**ORDER**

This *intra* Court appeal takes exception to order dated 28.01.2022, passed by the learned Single Judge in Writ Petition No. 1558 of 2022, whereby, petition filed by the appellant/petitioner has been dismissed.

2. The appellant/petitioner is a retired Panchayat Co-ordinator, Gram Panchayat, Pipariya and Bagaihatola, Janpad Panchayat, Kotma, District Anuppur, who has been superannuated with effect from 31.12.2021 on attaining superannuation age. It is seen that earlier the appellant/petitioner has preferred Writ Petition No.14704 of 2010 (s) against order dated 14.10.2010 and this Court vide order dated 10.11.2010, directed that no recovery shall be made from the appellant/petitioner, as per order dated 14.10.2010. Vide another communication dated 26.05.2012 (Annexure-P/3), the Collector again directed Chief Executive Officer that in compliance of the order passed by this Court in Writ Petition No.14704 of 2010 (s), recovery cannot be effected from the appellant/petitioner, however, the matter was directed to be reported to the police for appropriate enquiry in accordance with law, on account of his fraudulent act of cheating and misappropriating the amount of Panchayat fund.

3. The appellant/petitioner challenged the orders dated 14.10.2010 and 26.05.2012 under Rule 3 of the M.P. Panchayats (Appeal and Revision) Rules, 1995 framed under the Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 (hereinafter referred to as "Act of 1993"), before the Divisional Commissioner. The Divisional Commissioner, vide order dated 10.01.2020 found that in view of the interim order passed by this Court in Writ Petition No.14704 of 2010 (s) no recovery can be made from the appellant/petitioner till the said order remains in operation. However, the communication dated 26.05.2012

was not interfered with as the same was related to the directions of lodging the FIR against the appellant/petitioner and there was no stay against the communication dated 26.05.2012. Challenging the order dated 10.01.2022 (Annexure-P/1), the appellant/petitioner has approached this Court under Article 226 of Constitution.

4. The learned Single Judge vide impugned order did not find any substance and has dismissed the writ petition holding that if the cognizable offence is made out, the pendency of the recovery proceedings will not create a bar for prosecution of the appellant/petitioner. Hence, the appellant/petitioner is in present *intra* Court appeal.

5. The learned counsel appearing for the appellant/petitioner has taken us to Sections 89 and 92 of the Act of 1993 and contended that both these Sections are interconnected. As per Section 89 of the Act of 1993, the office bearers can be held to be responsible for loss, waste or misappropriation of any money or other property of the Panchayat or Gram Nirman Samiti and Gram Vikas Samiti or Committee of Gram Sabha to which he has been a party or which has been caused by him by misconduct or gross negligence of his duties. However, as per submission of the appellant/petitioner, no recovery can be made unless a reasonable opportunity of being heard is given. According to him, Section 92 of the Act of 1993 also empowers the prescribed Authority to recover records, articles and money while taking recourse to the provisions of the said Act. However, neither Section 89 nor Section 92 of the Act of 1993 can be invoked against the appellant/petitioner when there is already stay against recovery. He places reliance on the decision of the Division Bench of this Court in the case of *Narendra Pandey Vs. State of M.P. and others*<sup>1</sup> and decision of learned Single Judge in the case of *Kadam Singh Vs. CEO and others*<sup>2</sup>.

---

1 2017 (3) M.P.L.J. 384.

2 2019 (1) M.P.L.J. 420.

6. On the strength of the aforesaid submissions, he prays that the directions of lodging an FIR are completely uncalled for and, therefore, this Court must interfere.

7. We are not impressed with the submissions put forth by the appellant/petitioner. A perusal of Section 89 of the Act of 1993 shows that the prescribed authority is empowered to recover the amount reimbursing loss, waste or misappropriation caused at the behest of any office bearer of the Panchayat as mentioned therein. Section 92 of the Act of 1993 applies in a case where the prescribed authority is of the opinion that any person has unauthorisedly in his custody any record or article or money belonging to the Panchayat or any Committee of the Panchayat, as mentioned therein. Neither Section 89 nor Section 92 of the Act of 1993 deals with the situation where any criminal act is found to have been committed by the Office bearer of Panchayat such as cheating, forgery, misappropriation etc. of Government Fund. The judgments relied upon by the appellant/petitioner also do not deal with such a situation.

8. This Court in the matter of *Sheshdhar Badgaiya Vs. State of Madhya Pradesh and others*<sup>3</sup> has considered aspects of disciplinary proceedings as well as criminal proceedings being initiated by the Cooperative Department against the salesman. In that case, a plea was taken that since the amount was paid, therefore, the criminal action should not be taken place. This Court has held that the payment or non-payment of money is of no consequence and the Court cannot direct the authorities not to register an FIR against the accused and it is only when an FIR is registered against the accused then its validity may be questioned. Lodging of FIR cannot be preempted and the authorities are expected to function under statute and interference in the statutory duties was found to be highly uncalled for. The Court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the complaint.

---

3 W.A.No.1259 of 2021, dated 07.01.2022.

9. The criminal proceedings ought not to be scattered at the initial stage. Withholding or quashing of a complaint/FIR should be an exceptional rather than an ordinary Rule. Ordinarily, the Courts are barred from usurping jurisdiction of the police.

10. In view of the aforesaid, we are not inclined to interfere into the order passed by the learned Single Judge and hence, the instant writ appeal is dismissed.

**(RAVI MALIMATH)**  
**CHIEF JUSTICE**

**(PURUSHAINDRA KUMAR KAURAV)**  
**JUDGE**

Nitesh