IN THE HIGH COURT OF MADHYA PRADESH
AT J A B A L P U R

BEFORE

JUSTICE SHEEL NAGU

&

JUSTICE AVANINDRA KUMAR SINGH

ON THE _03rd_ OF AUGUST, 2023

CRIMINAL REVISION No.2257 of 2023

BETWEEN:-

1. ANUKUL MISHRA, SON OF SHRI ARVIND KUMAR MISHRA, AGED ABOUT 35 YEARS, OCCUPATION- CONSTABLE POSTED AT SDOP OFFICE SIHORA, JABALPUR, MP AT PRESENT POLICE LINE JABALPUR MP (SUSPENDED) RESIDENT OF HOUSE NO.214, WARD NO.35, RAMKRISHNA PARAMHANS WARD, MANGAL NAGAR, JABALPUR (MADHYA PRADESH)

..... APPLICANT

(BY SHRI PRANAY SHUKLA- ADVOCATE)

AND

1. STATE OF MADHYA PRADESH THROUGH THROUGH SPECIAL POLICE ESTABLISHMENT, LOKAYUKTA ORGANISATION, BHOPAL REGIONAL OFFICE, JABALPUR, (MADHYA PRADESH)

.....RESPONDENT

***(BY SHRI SATYAM AGRAWAL-ADVOCATE*)**

Reserved on : 14.07.2023

Pronounced on : 03.08.2023

This revision having been heard and reserved for orders, coming on for pronouncement this day, ***JUSTICE AVANINDRA KUMAR SINGH*** *passed the following:-*

O R D E R

This revision has been filed by the applicant under section 397 read with section 401 of the Code of Criminal Procedure (for short "Cr.P.C.") against order dated 06.5.2023 passed by the Special Judge (Lokayukt), Jabalpur in Special Case No.07/2022 whereby his application under section 227 of Cr.P.C. has been dismissed.

2. As per prosecution case the applicant/accused was caught in trap for accepting bribe of Rs.10,000/- on 13.5.2019 and a consequence thereof Crime No.93/2019 was registered against him. Charges for offences under sections 7(A), 13(1)(b) and 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as the "Act") have been framed against the applicant. It is further averred that case of the prosecution is false and it has carelessly and negligently investigated the matter. On on 13.9.2022 the applicant has filed an application (Annexure-A/2) under section 227 of the Cr.P.C. for being discharged of the charges under sections 13(1)(b) and 13(2) of the Act on the ground that mandatory procedure as prescribed

under the Cr.PC. has not been followed while submitting final charge-sheet. It is stated that as per section 173(2) of Cr.P.C. it the Officer Incharge of the Police Station who shall forward the charge-sheet in prescribed format to the concerned Magistrate who is empowered to take cognizance of the offence. But, in this case the Investigation Officer-Inspector Oscar Kindo has filed the charge-sheet. The second ground of objection in filing of charge-sheet is that challan has not been generated and submitted before the court through CCTNS (online mode). Accordingly, the applicant prayed that on aforesaid grounds he be discharged of above offences. The trial Court dismissed the aforesaid application under section 227 of Cr.P.C. by impugned order dated 06.5.2023.

3. Learned counsel for the applicant submitted that the trial Court has passed the impugned order mechanically and without properly appreciating the objections raised by the applicant. The mandatory provisions enshrined under section 173(2) of Cr.P.C. have not been complied with. The challan has been submitted manually without following the guidelines/circulars regarding CCTNS. The trial Court erroneously observed that challan can be submitted manually if there is any technical error or default in the CCTNS portal. Hence, prayer has been made to set aside the impugned order dated 06.5.2023 and direct the respondent to investigate and final report by complying with the mandatory provisions of law.

4. Learned counsel for the respondent/Lokayukt submits that revision is devoid of merit because on the technical grounds the charge-sheet cannot be returned and whatever legal objections are there, the same can be taken in cross-examination of the concerned witness, who can answer the said objections.

5. The question before this Court is whether the impugned order passed by the trial Court on 06.5.2023 is patently erroneous or perverse.

6. Heard the learned counsel for the rival parties and perused the record.

7. A perusal of the impugned order would reflect that the trial Court while rejecting the application under section 227 of Cr.P.C. has specifically mentioned in paragraphs 10, 11 & 12 that charge-sheet was submitted against the applicant/accused on 27.6.2022 and no objection was taken to the same; at that time no objection was taken that it was not filed through CCTNS .

8. As regards objection that challan has not been filed through on-line mode of CCTNS it is observed that learned counsel for the applicant has failed to demonstrate during the course of arguments that filing of challan through CCTNS mode is mandatory and if instead of same it is filed in hard-copy, then cognizance of challan cannot be taken. Therefore, this

ground is untenable and cannot be accepted. As far as the second ground which has been urged that Investigation Officer has submitted the charge-sheet, and not the Incharge of the Police Station, it can be said that answer of this question can also be elicited from the deposition of Investigating Officer during cross-examination in the trial. Besides this, learned counsel for the applicant has failed to point out that applicant has been prejudiced in any manner in his defence, if the charge-sheet is filed in hard-copy by the Investigating Officer.

9. In the case of ***Mukund Dewangan Vs. Oriental Insurance Company Limited***, (2017) 14 SCC 663 a three-Judge Bench of the Apex Court while dealing with an issue relating to motor vehicle accident case in paragraphs 31 & 32 observed as under:-

> *"31. It is a settled proposition of law that while interpreting a legislative provision, the intention of the legislature, motive and the philosophy of the relevant provisions, the goals to be achieved by enacting the same, have to be taken into consideration.*
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> *32. In Principles of Statutory Interpretation by Justice G.P. Singh, it has been observed that a statute is an edict of a legislature and the conventional way of interpreting or construing a statute is to seek the intention of its maker. The duty of the judicature is to act upon the true intention of the legislature — men's or sentential logic. If a statutory provision is open to more than one interpretation, the court has to choose that interpretation which furthers the intention of the legislature as laid down in R. Venkataswami Naidu v.*

Narasram Naraindas [R. Venkataswami Naidu v. Narasram Naraindas, AIR 1966 SC 361] and District Mining Officer v. Tisco [District Mining Officer v. Tisco, (2001) 7 SCC 358] . Lord Cranworth, L.C. in Boyse v. Rossborough [Boyse v. Rossborough, (1856-57) 6 HLC 2 : 10 ER 1192] has observed: (ER p. 1210)

"... There is no possibility of mistaking midnight for noon; but at what precise moment twilight becomes darkness is hard to determine."

As observed in Murray v. Foyle Meats Ltd. [Murray v. Foyle Meats Ltd., (2000) 1 AC 51 : (1999) 3 WLR 356 : (1999) 3 All ER 769 (HL)] , faced with such problems, the court is also conscious of a dividing line, but court has to be conscious not to divert its attention from the language used in the statutory provision and encourage an approach not intended by the legislature. The first and primary rule of construction is that the intention of the legislature must be found in the words used by the legislature itself, as held in Kanai Lal Sur v. Paramnidhi Sadhukhan [Kanai Lal Sur v. Paramnidhi Sadhukhan, AIR 1957 SC 907] . Each word, phrase or sentence is to be construed in the light of the general purpose of the Act itself as held in Poppatlal Shah v. State of Madras [Poppatlal Shah v. State of Madras, AIR 1953 SC 274 : 1953 Cri LJ 1105] , Girdhari Lal & Sons v. Balbir Nath Mathur [Girdhari Lal & Sons v. Balbir Nath Mathur, (1986) 2 SCC 237] and Atma Ram Mittal v. Ishwar Singh Punia [Atma Ram Mittal v. Ishwar Singh Punia, (1988) 4 SCC 284]"

10. The above judgment of the Apex Court clearly lays down the golden rule of interpretation of statute. The intent of Legislature has to be interpreted. It has to be seen why a particular provision was enacted and

the Court should try to interpret the law on those basis and in that context. If we see the present objection in this revision it is amply clear that provision to file the charge-sheet through CCTNS is only an enabling provision for accurate and fast delivery of challan and record, but if it is not done in any case, then unless shown, this Court fails to understand as to how it has prejudiced the defence of the accused/applicant.

11. In the case of ***Mohd. Hussain alias Zulfikar Ali Vs. State (Government of NCT of Delhi)***, (2012) 2 SCC 584 the Apex Court in paragraph 27 has referred to the decision reported in Rafiq Ahmad Vs. State of M.P., (2011) 8 SCC 300 wherein the Apex Court has held as under:-

> *"27. It is worth noticing the observations made by this Court in Rafiq Ahmad v. State of U.P. [(2011) 8 SCC 300 : (2011) 3 SCC (Cri) 498] wherein it is observed: (SCC pp. 320-21, paras 35-37)*
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> *"35. When we speak of prejudice to an accused, it has to be shown that the accused has suffered some disability or detriment in the protections available to him under the Indian criminal jurisprudence. It is also a settled canon of criminal law that this has occasioned the accused with failure of justice. One of the other cardinal principles of criminal justice administration is that the courts should make a close examination to ascertain whether there was really a failure of justice or whether it is only a camouflage, as this expression is perhaps too pliable. With the development of law, Indian courts have accepted the following protections*

to and rights of the accused during investigation and trial:

(a) the accused has the freedom to maintain silence during investigation as well as before the court. The accused may choose to maintain silence or make complete denial even when his statement under Section 313 of the Code of Criminal Procedure is being recorded, of course, the court would be entitled to draw an inference, including adverse inference, as may be permissible to it in accordance with law;

(b) right to fair trial;

(c) presumption of innocence (not guilty);

(d) prosecution must prove its case beyond reasonable doubt.

36. Prejudice to an accused or failure of justice, thus, has to be examined with reference to these aspects. That alone, probably, is the method to determine with some element of certainty and discernment whether there has been actual failure of justice. 'Prejudice' is incapable of being interpreted in its generic sense and applied to criminal jurisprudence. The plea of prejudice has to be in relation to investigation or trial and not matters falling beyond their scope. Once the accused is able to show that there is serious prejudice to either of these aspects and that the same has defeated the rights available to him under the criminal jurisprudence, then the accused can seek benefit under the orders of the court.

37. Right to fair trial, presumption of innocence until pronouncement of guilt and the standards of proof i.e. the prosecution must prove its case beyond reasonable doubt are the basic and crucial tenets of our criminal jurisprudence. The courts are required to examine both the contents of the allegation of prejudice as well as its extent in relation to these aspects of the case of the accused. It will neither be possible nor

appropriate to state such principle with exactitude as it will always depend on the facts and circumstances of a given case. Therefore, the court has to ensure that the ends of justice are met as that alone is the goal of criminal adjudication."

12. In the case ***Mohan Singh and others Vs. International Airport Authority of India and others***, (1997) 9 SCC 132 the Apex Court in paragraphs 17 to 19 observed thus:-

"17. The distinction of mandatory compliance or directory effect of the language depends upon the language couched in the statute under consideration and its object, purpose and effect. The distinction reflected in the use of the word 'shall' or 'may' depends on conferment of power. In the present context, 'may' does not always mean may. May is a must for enabling compliance of provision but there are cases in which, for various reasons, as soon as a person who is within the statute is entrusted with the power, it becomes duty to exercise. Where the language of statute creates a duty, the special remedy is prescribed for non-performance of the duty. In Craies on Statute Law (7th Edn.), it is stated that the court will, as a general rule, presume that the appropriate remedy by common law or mandamus for action was intended to apply. General rule of law is that where a general obligation is created by statute and statutory remedy is provided for violation, statutory remedy is mandatory. The scope and language of the statute and consideration of policy at times may, however, create exception showing that the legislature did not intend a remedy (generality) to be exclusive. Words are the skin of the language. The language is the medium of expressing the intention and the object that particular provision or the Act seeks to

achieve. Therefore, it is necessary to ascertain the intention. The word 'shall' is not always decisive. Regard must be had to the context, subject-matter and object of the statutory provision in question in determining whether the same is mandatory or directory. No universal principle of law could be laid in that behalf as to whether a particular provision or enactment shall be considered mandatory or directory. It is the duty of the court to try to get at the real intention of the legislature by carefully analysing the whole scope of the statute or section or a phrase under consideration. As stated earlier, the question as to whether the statute is mandatory or directory depends upon the intent of the legislature and not always upon the language in which the intent is couched. The meaning and intention of the legislature would govern design and purpose the Act seeks to achieve. In Sutherland's Statutory Construction, (3rd Edn.) Vol. 1 at p. 81 in para 316, it is stated that although the problem of mandatory and directory legislation is a hazard to all governmental activity, it is peculiarly hazardous to administrative agencies because the validity of their action depends upon exercise of authority in accordance with their charter of existence — the statute. If the directions of the statute are mandatory, then strict compliance with the statutory terms is essential to the validity of administrative action. But if the language of the statute is directory only, then variation from its direction does not invalidate the administrative action. Conversely, if the statutory direction is discretionary only, it may not provide an adequate standard for legislative action and the delegation. In Crawford on the Construction of Statutes, at p. 516, it is stated that:

"The question as to whether a statute is mandatory or directory depends upon the intent of the

legislature and not upon the language in which the intent is clothed. The meaning and intention of the legislature must govern, and these are to be ascertained, not only from the phraseology of the provision, but also by considering its nature, its design, and the consequences which would follow from construing it the one way or the other…."

18. In Maxwell on the Interpretation of Statutes, 10th Edn. at p. 381, it is stated thus:

"On the other hand, where the prescriptions of a statute relate to the performance of a public duty and where the invalidation of acts done in neglect of them would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty without promoting the essential aims of the legislature, such prescriptions seem to be generally understood as mere instructions for the guidance and government of those on whom the duty is imposed, or, in other words, as directory only. The neglect of them may be penal, indeed, but it does not affect the validity of the act done in disregard of them."

19. The two quotations were approved by this Court in Babu Ram Upadhya case [(1961) 2 SCR 679 : AIR 1961 SC 751] and law was laid down thus:

"When a statute uses the word 'shall', prima facie, it is mandatory, but the court may ascertain the real intention of the legislature by carefully attending to the whole scope of the statute. For ascertaining the real intention of the legislature the court may consider, inter alia, the nature and the design of the statute, and the consequences which would follow from construing it the one way or the other, the impact of other provisions whereby the necessity of complying with the provisions in question is avoided, the circumstance, namely, that the statute provides for a contingency of the non-compliance with the provisions, the fact that the non-

> *compliance with the provisions is or is not visited by some penalty, the serious or trivial consequences that flow therefrom, and, above all, whether the object of the legislation will be defeated or furthered."*

13. In this regard it is worth referring to section 2(3) of the Madhya Pradesh Special Police Establishment Act, 1947 which stipulates as under:-

> *"(3) Any members of the said Police Establishment of or above the rank of Sub-Inspector may, subject to any orders which the State Government may make in this behalf, exercise any of the pwoers of an officer in charge of a police station in the area in which he is for the time being and when so exercising such powers shall, subject to any such orders as aforesaid be deemed to be an officer in-charge of a police station discharging the function of such officer within the limits of his station."*

A perusal of aforesaid provision makes it clear that any member of the Police Establishment above the rank of Sub Inspector can exercise powers of Officer Incharge of the Police Station in the area, in which, he is time being discharging his duties. Hence, on this ground also the objection raised in this revision is unsustainable.

14. Even otherwise, section 461 of the Cr.P.C. provides for irregularities which vitiate proceedings and the objections which have been raised by the revisionist in this case, as mentioned above, do not find place in the categories (a) to (q) of section 461. The Apex Court in the case of ***Paramjit Singh alias Mithu Singh Vs. State of Punjab through Secretary***, (2007) 13 SCC 530 while dealing with effect of sections 155 to 168 of Cr.P.C. held

that if there is defect in investigation it does not itself vitiate the trial based on such defective investigation.

15. In the case of ***State of Bihar and another Vs. Lallu Singh***, (2014) 1 SCC 663 the Apex Court has held that Officer Incharge of the Police Station and superior of Police Officer have authority to file the charge-sheet. Further more, in ***Lallu Singh (supra)*** the Inspector of CID after investigation had filed the charge-sheet, which was upheld by the Apex Court.

16. In the case of ***Willie (William) Slaney Vs. State of M.P.***, AIR 1956 SC 116 **Constitution Bench** of the Apex Court in paragraph 6 has observed thus:-

> *"6. Before we proceed to set out our answer and examine the provisions of the Code, we will pause to observe that the Code is a code of procedure and, like all procedural laws, is designed to further the ends of justice and not to frustrate them by the introduction of endless technicalities. The object of the Code is to ensure that an accused person gets a full and fair trial along certain well-established and well-understood lines that accord with our notions of natural justice. If he does, if he is tried by a competent court, if he is told and clearly understands the nature of the offence for which he is being tried, if the case against him is fully and fairly explained to him and he is afforded a full and fair opportunity of defending himself, then, provided there is substantial compliance with the outward forms of the law, mere mistakes in procedure, mere inconsequential errors and omissions in the trial are regarded as venal by the Code and the trial is not*

> *vitiated unless the accused can show substantial prejudice. That, broadly speaking, is the basic principle on which the Code is based."*

17. The Supreme Court in paragraph 8 of the decision rendered in the case of ***State represented by Inspector of Police, Central Bureau of Investigation Vs. M.Subrahmanyam***, (2019) 6 SCC 357 has observed as under:-

> *"8. The failure to bring the authorisation on record, as observed, was more a matter of procedure, which is but a handmaid of justice. Substantive justice must always prevail over procedural or technical justice. To hold that failure to explain delay in a procedural matter would operate as res judicata will be a travesty of justice considering that the present is a matter relating to corruption in public life by holder of a public post. The rights of an accused are undoubtedly important, but so is the rule of law and societal interest in ensuring that an alleged offender be subjected to the laws of the land in the larger public interest. To put the rights of an accused at a higher pedestal and to make the rule of law and societal interest in prevention of crime, subservient to the same cannot be considered as dispensation of justice. A balance therefore has to be struck. A procedural lapse cannot be placed on a par with what is or may be substantive violation of the law."*

18. Accordingly, after considering the factual as well as legal position, it is found that Lokayukt Inspector was not incompetent to file the charge-sheet being authorised as per Special Police Establishment and similarly filing of charge-sheet through off-line mode is not prohibited neither filing

of charge-sheet is mandatory by on-line mode through CCTNS, even though permission may not have been taken for filing charge-sheet in off-line mode as no prejudice has been shown to have been caused to the revisionist on this ground. Accordingly, the revision against impugned order dated 06.5.2023, being devoid of merit, stands dismissed.

(SHEEL NAGU)	(AVANINDRA KUMAR SINGH)
JUDGE	JUDGE

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