

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

BEFORE

JUSTICE SUJOY PAUL

&

JUSTICE AMAR NATH (KESHARWANI)

ON THE 16th OF MARCH, 2023.

WRIT APPEAL No. 316 OF 2023

BETWEEN :-

**SMT. SANDHYA SHARMA W/O
LATE SATISH SHARMA; AGED:
32 YEARS; OCCUPATION;
HOUSE WIFE; R/O VILLAGE
JAMTAL, TEHSIL MAIHAR,
DISTRICT SATNA (MADHYA
PRADESH)**

(BY SHRI AJAY PAL SINGH - ADVOCATE)

....APPELLANT

AND

**1. STATE OF MADHYA
PRADESH THROUGH
PRINCIPAL SECRETARY,
DEPARTMENT OF PANCHAYAT
AND SOCIAL WELFARE,
VALLABH
BHAWAN, BHOPAL (MADHYA
PRADESH)**

**2. COLLECTOR SATNA
DISTRICT SATNA (MADHYA
PRADESH)**

**3. CHIEF EXECUTIVE OFFICER,
DISTRICT PANCHAYAT SATNA,
DISTRICT SATNA (MADHYA
PRADESH)**

**4. CHIEF EXECUTIVE OFFICER,
JANPAD PANCHAYAT MAIHAR
DISTRICT SATNA (MADHYA
PRADESH)**

.....RESPONDENTS

(BY SHRI ANKIT AGRAWAL- GOVERNMENT ADVOCATE)

*This appeal coming on for admission this day, JUSTICE
SUJOY PAUL passed the following :*

ORDER

With the consent, finally heard.

This intra Court appeal takes exception to order dated 01.02.2023 passed in W.P. No. 2268 of 2023 whereby learned Single Judge has issued notices to the respondents and granted limited conditional interim protection to the appellant.

2. The appellant is aggrieved to the extent learned Single Judge has declined to grant interim protection against the direction to register the first information report (FIR).

3. The relevant facts are that appellant/petitioner was a Surpanch till 2020. The specified authority/CEO, Jila Panchayat Satna (respondent No.3) passed an order dated 02.01.2023 whereby a recovery was imposed on the petitioner and in addition, the CEO Janpad Panchayat Maihar was directed to lodge a FIR against the petitioner and the other persons concerned.

4. Shri Ajay Pal Singh, learned counsel for the petitioner submits that impugned order was passed in exercise of power under Section 92 of the Panchayat Raj and Gram Swaraj Adhiniyam, 1993 (Adhiniyam). Sub Section 4 of Section 92 makes it clear that principles of natural justice are codified in the shape of Sub Section 4 of Section 92.

5. The two folds submissions raised are that -

i) under Section 92 of the Adhiniyam, the specified authority has no authority, jurisdiction and competence to order registration of FIR.

ii) As per Sub Section 4 of Section 92, an opportunity of hearing should have been granted to the petitioner before issuing any direction for registration of FIR.

6. The learned Single Judge has mechanically followed the Division Bench order passed in W.A. No. 1259/2021 (**Sheshdhar Badgaiya vs. State of Madhya Pradesh and others**). In absence of any power under Section 92 of Adhiniyam, the learned Single Judge ought to have protected the petitioner from registration of FIR. At the end, he placed reliance on a Single Bench order passed in **W.P. No. 16424 of 2021 (Bhupendra Singh Vs. State of M.P. and Ors.)** decided on 17.09.2021.

7. Shri Ankit Agrawal, G.A. opposed the prayer, and supported the order of learned Single Judge and has taken assistance of order passed in W.A. No. 1259 of 2021 (**Sheshdhar Badgaiya vs. State of Madhya Pradesh and others**).

8. No other point is pressed by the learned counsel for the parties.

9. We have heard the parties at length and perused the record.

10. So far *first* point is concerned, in our opinion, whether or not Section 92 gives the power to issue direction to register a FIR, fact remains that FIR can be registered in accordance with the provisions of Cr.P.C. It is for the competent authority to decide whether FIR can be reduced in writing/registered or not. The wrong quoting of a provision or non-quoting of a provision will not deprive an authority to issue necessary directions for lodging the FIR. The Supreme Court has considered this aspect in catena of judgments.

“A. **In *N. Mani v. Sangeetha Theatre* [(2004) 12 SCC 278]** it is stated: (SCC p. 280, para 9)

“9. It is well settled that if an authority has a power under the law merely because while exercising that power the source of power is not specifically referred to or a reference is made to a wrong provision of law, that by itself does not vitiate the exercise of power so long as the power does exist and can be traced to a source available in law.”

B. **28. In *Ram Sunder Ram v. Union of India* [(2007) 13 SCC 255 : (2008) 2 SCC (L&S) 603 : (2007) 9 Scale 197]** it was held: (SCC pp. 260-61, para 19)

“19. ... It appears that the competent authority has wrongly quoted Section 20 in the order of discharge whereas, in fact, the order of discharge has to be read having been passed under Section 22 of the Army Act.

‘9. It is well settled that if an authority has a power under the law merely because while exercising that power the source of power is not specifically referred to or a

reference is made to a wrong provision of law, that by itself does not vitiate the exercise of power so long as the power does exist and can be traced to a source available in law.' (See *N. Mani v. Sangeetha Theatre* [(2004) 12 SCC 278] , SCC p. 280, para 9.)

Thus, quoting of wrong provision of Section 20 in the order of discharge of the appellant by the competent authority does not take away the jurisdiction of the authority under Section 22 of the Army Act. Therefore, the order of discharge of the appellant from the army service cannot be vitiated on this sole ground as contended by the learned counsel for the appellant.” *C.1.P.K. Palanisamy v. N. Arumugham*, (2009) 9 SCC 173 : (2009) 3 SCC (Civ) 649 : 2009 SCC OnLine SC 1343 at page 182

27. Section 148 of the Code is a general provision and Section 149 thereof is special. The first application should have been filed in terms of Section 149 of the Code. Once the court granted time for payment of deficit court fee within the period specified therefor, it would have been possible to extend the same by the court in exercise of its power under Section 148 of the Code. Only because a wrong provision was mentioned by the appellant, the same, in our opinion, by itself would not be a ground to hold that the application was not maintainable or that the order passed thereon would be a nullity. **It is a well-settled principle of law that mentioning of a wrong provision or non-mentioning of a provision does not invalidate an order if the court and/or statutory authority had the requisite jurisdiction therefor.”**

(Emphasis Supplied)

11. In view of these judgments, it is clear that if in the order dated 02.01.2023 (Annexure P-4) Section 92 is relied upon, that does not deprive the authority to act in accordance with law beyond the power given in Section 92 of the Adhiniyam, if said exercise

does not violate any provision of law. *Secondly*, sub-Section 4 of Section 92 makes it clear that principles of natural justice are to be followed in relation to actions taken under sub-Section 1 or 2 or 3 of Section 92. The direction to lodge the FIR is not covered under sub-Section 1 or 2 or 3 of Section 92 of the Adhiniyam. Thus, sub-Section 4 of Section 92 is of no assistance to the petitioner. The order in **Bhupendra Singh (Supra)**, in our considered view, does not deal with the question of registration of FIR. Thus, this order is of no help to the appellant. The Division Bench of this Court in **W.A. No.1259 of 2021 (Sheshdhar Badgaiya vs. State of Madhya Pradesh and others)** has held as under:

“The authorities have a jurisdiction to proceed against the accused in a manner known to law. The payment or non-payment of the money is of no consequence. It is ultimately a matter of trial. Therefore, whether the amount is paid or not the offence has since been committed. Therefore, the Court cannot direct the authorities namely the police not to register an F.I.R. against the accused. It is only when an FIR is registered against the accused then it's validity may be questioned. The filing of the FIR cannot be preempted in this manner. The authorities are expected to function under statute and interference in the statutory duties in our considered view is highly uncalled for. Therefore, the order granted in the earlier writ petition according to us may not be appropriate. Under these circumstances, the finding recorded by the learned Single Judge herein is just and appropriate. There cannot be a direction not to register an FIR against the writ petitioner herein. However, the writ petitioner is always entitled to

challenge the FIR if and when it is filed against him.”

(Emphasis Supplied)

12. The impugned order of learned Single Judge is based on this Division Bench order. We do not see any infirmity or illegality in the impugned order which warrants interference.

13. Resultantly, this appeal fails and is hereby **dismissed**.

(SUJOY PAUL)
JUDGE

(AMAR NATH (KESHARWANI))
JUDGE