

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

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 27th OF FEBRUARY, 2024

MISCELLANEOUS CRIMINAL CASE No. 8197 of 2024

BETWEEN:-

KEHAR SINGH KHANGAR S/O SHRI RAMESH PRASAD KHANGAR, AGED ABOUT 24 YEARS, OCCUPATION: ASSISTANT SALESMAN GOVERNMENT FAIR PRICE SHOP DARGAYKHURD R/O NEAR BUS STAND, DARGAYKHURD, POLICE STATION MOHANGARH DISTRICT TIKAMGARH (MADHYA PRADESH)

.....APPLICANT

(BY SHRI RAHUL KUMAR TRIPATHI - ADVOCATE)

AND

STATE OF MADHYA PRADESH THROUGH POLICE STATION MOHANGARH DISTRICT TIKAMGARH (MADHYA PRADESH)

.....RESPONDENT

(BY SHRI MOHAN SAUSARKAR - PUBLIC PROSECUTOR)

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

ORDER

This application under Section 482 of Cr.P.C. has been filed for quashment of FIR in Crime No.53/2021 registered at Police Station Mohangarh, District Tikamgarh for offence under Sections 3, 7 of Essential Commodities Act.

2. It is the case of applicant that he is working as Assistant Salesman in Government Fair Price Shop Dargaykhurd, District Tikamgarh. On

12/09/2020, Tehsildar Digora conducted a spot inspection and certain complaints were made of villagers that applicant is not distributing ration regularly and he does not open the shop on time. It was also found by the Tehsildar that the applicant had kept the ration of two months in another store and accordingly, the shop was sealed and report was sent to the SDO. On the report lodged by Junior Supply Officer on 27/02/2021, offence has been registered at Police Station Mohangarh, District Tikamgarh.

3. Challenging the said FIR, it is submitted by counsel for the applicant that FIR was lodged without giving any opportunity of hearing to the applicant. Although the applicant was shown to be the Assistant Salesman but there is no such post in the Society. Applicant is not involved in the said crime and FIR has been lodged on the false grounds.

4. Considered the submissions made by counsel for the applicant.

5. So far as the question of grant of opportunity prior to lodging of FIR is concerned, it is well established principle of law that suspect has no right of pre-audience before lodging of FIR.

6. The Supreme Court in the case of **Union of India and Another Vs. W.N. Chadha** reported in **1993 Supp (4) SCC 260** has held that 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 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.

7. The Supreme Court in the case of **Narender G. Goel Vs. State of Maharashtra and Another** reported in (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."

12. The accused can certainly avail himself of an opportunity to cross-examine and/or otherwise controvert the authenticity, admissibility or legal significance of material evidence gathered in the course of further investigations. Further in light of the views expressed by the investigating officer in his affidavit before the High Court, it is apparent that the investigating authorities would inevitably have conducted further investigation with the aid of CFS under Section 173(8) of the Code."

8. The Supreme Court in the case of **Anju Chaudhary Vs. State of Uttar Pradesh and Another** reported in **(2013) 6 SCC 384** has held as under:-

"**30.** Section 154 of the Code places an unequivocal duty upon the police officer-in-charge of a police station to register FIR upon receipt of the information that a cognizable offence has been committed. It hardly gives any discretion to the said police officer. The genesis of this provision in our country in this regard is that he must register the FIR and proceed with the investigation forthwith. While the position of law cannot be dispelled in view of the three-Judge Bench judgment of this Court in *State of U.P. v. Bhagwant Kishore Joshi* [AIR 1964 SC 221 : (1964) 1 Cri LJ 140], a limited discretion is vested in the investigating officer to conduct a preliminary inquiry pre-registration of an FIR as there is absence of any specific prohibition in the Code, express or implied. The subsequent judgments of this Court have clearly stated the proposition that such discretion hardly exists. In fact the view taken is that he is duty-bound to register an FIR. Then the question that arises is whether a suspect is entitled to any pre-registration hearing or any such right is vested in the suspect.

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.

34. Even in the cases where report under Section 173(2) of the Code is filed in the court and investigation records the name of a person in column (2), or even does not name the person as an accused at all, the court in exercise of its powers vested under Section 319 can summon the person as an accused and even at that stage of

summoning, no hearing is contemplated under the law."

9. The Supreme Court in the case of **E. Sivakumar Vs. Union of India and Others** reported in **(2018) 7 SCC 365** has held as under:-

"**11.** Our attention was invited to the observations made in para 73 in *State of Punjab v. Davinder Pal Singh Bhullar*, (2011) 14 SCC 770, which in turn adverts to the exposition in *D. Venkatasubramaniam v. M.K. Mohan Krishnamachari*, (2009) 10 SCC 488, wherein it has been held that an order passed behind the back of a party is a nullity and liable to be set aside only on this score. That may be so, if the order to be passed behind the back of the party was to entail in some civil consequence to that party. But a person who is named as an accused in the FIR, who otherwise has no right to be heard at the stage of investigation or to have an opportunity of hearing as a matter of course, cannot be heard to say that the direction issued to transfer the investigation to CBI is a nullity. This ground, in our opinion, is an argument of desperation and deserves to be rejected."

10. Thus, it is clear that an accused has no right of pre-audience before registration of FIR.

11. Furthermore, this Court in exercise of powers under Section 482 of Cr.P.C. can quash the proceedings only if uncontroverted allegations do not make out an offence. This Court cannot consider the defence of accused. This Court cannot conduct a detailed enquiry regarding correctness of evidence at this stage. The allegations must be accepted as true.

12. Under these circumstances, this Court is of considered opinion that no case is made out warranting quashment of FIR.

13. Accordingly, application fails and is hereby **dismissed**.

(G.S. AHLUWALIA)
JUDGE

S.M.