

(2011) 07 MP CK 0063

In the Madhya Pradesh High Court

Case No : Criminal C. No. 10428 of 2009

Ajay Sharma

APPELLANT

Vs

State of Madhya Pradesh and Urmila Singh

RESPONDENT

Date of Decision : 05-07-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 155(2), 156(1), 482
Madhya Pradesh Gram Panchayat (Accounts) Rules, 1999 — Rule 18
Penal Code, 1860 (IPC) — Section 120B, 193, 218, 297, 406
Prevention of Corruption Act, 1988 — Section 13(1), 13(2), 15

Citation : (2011) ILR (MP) 2076

Hon'ble Judges : Rakesh Saksena, J;M.A Siddiqui, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Rakesh Saksena, J.—Petitioner, the Chief Executive Officer of District Panchayat, Rajgarh has moved this petition for quashing the First Information Report dated 12.1.2009 registered at Crime No. 3/2009, by Special Police Establishment Lokayukta, Bhopal against him and another accused u/s 13(1)(c)(d) read with Section 13(2) and Section 15 of the Prevention of Corruption Act, 1988 (for short 'the Act') and Sections 409, 218 and 120B of the Indian Penal Code.

2. According to complaint submitted by Urmila Singh to Lokayukta she was Sarpanch of Gram Panchayat Dhatrawada, Janpad Panchayat, Jeerapur. During her tenure, she got constructed a Panchayat Bhawan, in which she spent Rs. 8200/-from her pocket. After evaluation of her work, the aforesaid amount was deposited in the bank account of Panchayat for being paid to her. After her tenure, accused Raghuveer Singh was elected as Sarpanch. The said amount of Rs. 8200/-was to be paid to Urmila Singh by Raghuveer Singh after withdrawing the same from the bank. The amount was deposited in the bank on 8.2.2001. On 9.2.2001, Raghuveer Singh withdrew Rs. 8000/-from the bank, but did not pay the same to Urmila Singh. After about 8 months, on 22.11.2001, Raghuveer Singh redeposited the said amount in the bank. On 3-4 occasions, he withdrew

the amount from the bank and after using the same redeposited it. Thus, Raghuveer Singh retained and converted the said amount to his personal use for a period of two years and nine months.

3. It is alleged that in the year 2001, a question was raised in the Assembly about misappropriation of the said amount by the then Sarpanch Raghuveer Singh and non payment of the said amount to Urmila Singh. According to Urmila Singh the then Collector submitted false reports in the Assembly that she did not furnish bills and vouchers about the expenses incurred by her, in the Panchayat and that Sarpanch Raghuveer Singh committed no error. According to complaint, Sarpanch Raghuveer Singh committed misappropriation of Rs. 8200/-for about 2 years and nine months and Collector J.N Kansotiya gave a false report to Government with a view to save Raghuveer Singh from punishment. As such, J.N. Kansotiya committed offences under Sections 193, 420 and 297 of the Indian Penal Code and Section 13(1)(d) read with Section 13(2) of the Act. Raghuveer Singh committed offence u/s 406/409 of the Indian Penal Code.

4. The said complaint was made by Urmila Singh to Lokayukta on 21.11.2005. Legal Advisor of Lokayukta, Bhopal sent the copy of the report to the then Collector, Rajgarh seeking a factual report about the allegations made against Sarpanch and Collector. Chief Executive Officer of District Panchayat, Rajgarh was directed to hold an enquiry and submit a report in this regard.

5. On a complaint sent by Chief Executive Officer, Janpad Panchayat, Sub Divisional Officer Khilchipur District Rajgarh passed an order on 22.12.2004 (Annexure A/6) rejecting the complaint on the ground that it was not established that Sarpanch Dhatrawada took Rs. 8200/-in his personal use and that Urmila Singh deliberately avoided receiving of money due to which Raghuveer Singh redeposited the money in the bank. However, Urmila Singh had received the payment.

6. Another enquiry report (Annexure A/12) dated 3.2.2007 was submitted by Panchayat Avam Samaj Shiksha Sanghatak, Janpad Panchayat, Jeerapur, wherein the Enquiry Officer found that Sarpanch Raghuveer Singh sent information to Urmila Singh to deposit voucher etc. after about 8-9 months of the withdrawal from the bank. On 7.6.2007 Petitioner submitted his opinion (Annexure A/13) to Collector, Rajgarh indicating that Sarpanch Raghuveer Singh had withdrawn Rs. 8000/-from the account of Janpad Panchayat on 9.2.2001, but since Urmila Singh did not make the concerned bills and vouchers available, the said amount was not paid to her and was redeposited in the bank on 22.11.2001. Thus, Raghuveer Singh retained the said amount with him for a period of 8 months and 12 days. He opined that the conclusion reached by Chief Executive Officer/ Janpad Panchayat Inspector that Sarpanch Raghuveer Singh converted the money for his personal use, had no basis. According to Panchayat sub Rule 18 of M.P. Gram Panchayat (Accounts) Rules, 1999 (for short 'the Rules'), Sarpanch/ Secretary was not entitled to retain cash in excess of Rs. 2500/-. The retention of more cash was an irregularity, but not necessarily a criminal act. In view of

the above, he opined that the complaint against Sarpanch was devoid of any substance. However, Petitioner mentioned in Annexure A/13 that on this subject, the opinion of Deputy Director Prosecution can be obtained.

7. On the basis of the complaint made by Smt. Urmila Singh and other material, Special Police Establishment, Bhopal registered First Information Report on 12.1.2009 against the then Sarpanch Raghuveer Singh and the Petitioner Chief Executive Officer/Additional Collector, Rajgarh u/s 13(1)(c)(d) read with Section 13(2) and Section 15 of the Act and Sections 409, 218 and 120-B of the Indian Penal Code.

8. Learned Counsel for the Petitioner submitted that the complaint filed by Urmila Singh on the basis of which, first information report was registered does not disclose commission of any offence by the Petitioner. The then Collector J.N. Kansotiya, against whom the complaint was made was not made accused in the first information report. Petitioner was not posted in District Rajgarh at the relevant time. The alleged incident took place between 9.2.2001 and 2.1.2004. Petitioner joined on the post of Chief Executive Officer Zila Panchayat Rajgarh in the month of January, 2007. He was unaware of any proceedings against Sarpanch Raghuveer Singh. Just on the letter issued by the then Collector and the memorandum/enquiry report dated 3.2.2007, being forwarded to him on 7.2.2007, he gave his opinion on 7.6. 2007 indicating that the act/conduct of Sarpanch Raghuveer Singh was contravention of provisions of Sub Rule 18 of the Rules, 1999. Since the Petitioner was not a party to the original occurrence and he appeared in the scene only on 7.6.2007 by giving his opinion, he was not liable to be prosecuted. There were absolutely no allegations against the Petitioner to make out ingredients of offences u/s 13(1)(c)(d) read with Section 13(2) and Section 15 of the Act as well as under Sections 409, 218 and 120-B of the Indian Penal Code. He placed reliance on the Apex Court decision in the case of State of Madhya Pradesh Vs. Sheetla Sahai and Others, and State of Haryana and others Vs. Ch. Bhajan Lal and others,

9. On the other hand learned Special Public Prosecutor submitted that there was specific allegation against the Petitioner that he deliberately conspired with accused Raghuveer Singh and tried to save him from legal punishment by giving his opinion/report dated 7.6.2007 knowing it to be incorrect. He deliberately ignored the report of the Panchayat Inspector dated 5.2.2007, wherein Raghuveer Singh was found guilty.

10. Undisputedly, Petitioner was made accused in the first information report on the basis of report/opinion which he tendered on 7.6.2007. Apart from it, no act connected with the alleged activity of Sarpanch Raghuveer Singh was alleged against him. The incident of alleged misappropriation had occurred between the years 2001-2004. It is true that an enquiry report by Panchayat Inspector was sent to him which indicated commission of criminal act by Raghuveer Singh, but Petitioner formed his opinion that the act of Raghuveer Singh was an administrative irregularity which deserved to be dealt with under the provision of

the Rules.

11. Before advertng to the accusation against the Petitioner u/s 13(1)(c) and 13(1)(d) read with Section 13(2) and Section 15 of the Act, is concerned, the reproduction of the said provisions are necessary:

Section 13. Criminal misconduct by a public servant.-(1) A public servant is said to commit the offence of criminal misconduct,-

(a)....

(b)....

(c) if he dishonestly or fradulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do; or

(d) if he,

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant, obtains for himself or for any person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or

(e)....

Section 15: Punishment for attempt.-Whoever attempts to commit an offence referred to in Clause (c) or Clause (d) of Sub-section (1) of Section 13 shall be punishable with imprisonment for a term which may extend to three years and with fine.

12. A bare perusal of the aforesaid provisions indicate that for a public servant being liable under the aforesaid provisions, it is necessary that he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or as a public servant allows any other person so to do or he by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage. Section 15 provides punishment for attempt to commit the offence referred to in Clause (c) or Clause (d) of Sub-section (1) Section 13.

13. On perusal of the accusation made against the Petitioner in the first information report, it is not revealed that the Petitioner committed any such act himself or conspired with Sarpanch Raghuveer Singh in the acts committed by him. On the same reasoning, commission of offence u/s 409 of the Indian Penal Code by him is not revealed.

14. Section 218 of the Indian Penal Code reads as under:

Section 218. Public servant framing incorrect record or writing with intent to save person from punishment or property from forfeiture.

Whoever, being a public servant, and being as such public servant, charged with the preparation of any record or other writing, frames that record or writing in a manner which he knows to be incorrect, with intent to cause, or knowing it to be likely that he will thereby cause, loss or injury to the public or to any person, or with intent thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment, or with intent to save, or knowing that he is likely thereby to save, any property from forfeiture or other charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

15. Perusal of the above provision indicates that if public servant prepares or frames any record or writing in a manner which he knows to be incorrect, with intent to save, or knowing it to be likely that he will thereby save any person from legal punishment, he shall liable to be punished. In the instant case, it seems that Petitioner gave his opinion that the act of Sarpanch Raghuveer Singh was contravention of the Rules and was an administrative irregularity instead of a criminal act. He further stated that the opinion of Deputy Director Prosecution could be obtained in this matter. From the said opinion, it cannot be held that Petitioner prepared any record or writing with intent to save Raghuveer Singh from legal punishment.

16. Apart from it, opinion of one may differ from the opinion of any other person. Merely on the basis of difference of opinion or error in an opinion or the error of judgment, in the absence of any malafide or criminal intention, a person cannot be made liable to be punished. In the case of Sheetla Sahai (supra), the Apex Court affirmed the acquittal of Respondent of the charge u/s 13(1)(d) read with Section 13(2) of the Act and Section 120-B of the Indian Penal Code on the ground that there might be an error of judgment, but no material was brought on record to show that Respondent did so for causing any wrongful gain to themselves or to a third party or for causing wrongful loss to the State.

17. There might be divergent opinions of different Officers, but the decision to prosecute the offender was to be taken by the State/Prosecuting Agency. The opinion of Petitioner could not have saved the offender if on investigation incriminating material was found against him. Admittedly Petitioner was not concerned with the act of Sarpanch, Raghuveer Singh committed by him in the past when Petitioner was no where in the picture.

18. In R.P. Kapur Vs. The State of Punjab, , Apex Court summarized some categories of cases where inherent power can and should be exercised to quash the proceedings:

(i) where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;

(ii) where the allegations in the first information report or complaint taken at its face value and accepted in their entirety do not constitute the offence alleged;

(iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

19. When exercising jurisdiction u/s 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained.

20. The scope of exercise of power u/s 482 of the Code of Criminal Procedure for quashing the First Information Report, complaint or a criminal proceeding was considered by the Apex Court in the decision *State of Haryana and others Vs. Ch. Bhajan Lal and others*, . The illustrative categories indicated by the Court are as follows:

102. (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers u/s 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated u/s 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with malafides and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

21. It is true that the aforesaid power should be exercised sparingly in rarest of rare cases, but it has to be seen that judicial process should not be an instrument of oppression, or needless harassment.

22. Taking into consideration all the relevant facts and circumstances into consideration in the light of proposition laid down by the Apex Court, we find that the allegations made in the FIR against the Petitioner, even they are taken at their face value and accepted in entirety do not prima facie constitute any offence or make out a case against him. Even the complaint made by Urmila Singh to Lokayukta did not disclose any criminal act on the part of Petitioner. He came into picture only when an opinion was sought by the Collector from him in respect of the conduct of Sarpanch, Raghuveer Singh. Thus, from the First Information Report dated 12.1.2009 registered at Crime No. 3/2009 by Special Police Establishment Lokayukta, Bhopal, no commission of the offence by the Petitioner is disclosed. As such, the said FIR so far as it relates to (13) M. Cr. C. No. 10428/2009 Petitioner only deserves to be and is hereby quashed. It is, however, made clear that in case, during investigation if any other incriminating evidence or material appears against the Petitioner, concerned police shall be at liberty to join the Petitioner as accused again.

23. Subject to liberty aforesaid, petition is allowed.