

(2024) 07 MP CK 0023
In the Madhya Pradesh High Court
Case No : Writ Petition No.19672/2024

Anand Goyan and Another

APPELLANT

Vs

State of Madhya Pradesh And Others

RESPONDENT

Date of Decision : 18-07-2024

Acts Referred:

Constitution of India, 1950 — Article 226
Code of Criminal Procedure 1973 — Section 41, 164, 482

Citation : (2024) 07 MP CK 0023

Hon'ble Judges : Subodh Abhyankar, J

Bench : Single Bench

Advocate : Gagan Bajad, Mukesh Porwal

Final Decision : Dismissed

Judgement

Subodh Abhyankar, J

1. Heard on the question of admission.
2. This writ petition under Article 226 of the Constitution of India has been filed by the petitioners seeking the following relief:-
 - "a. The Hon'ble Court kindly issue any of the writ, order or direction
 - (a) To direct the respondents to immediately file final report before the Court.
 - (b) To direct the respondent no.1 to investigate the crime in regard to the forged notice.
 - b. In case the investigation officers don't file charge sheet in the duration and provides the benefits of default bail; the hon'ble Court kindly issue appropriate writ, order or direction to respondent no.1 to investigate respondent no.3 to 6 for appropriate punishment including but not limited to disciplinary and departmental proceedings.
 - c. The hon'ble Court kindly issue any of the writ, order or direction to transfer

the investigation from the respondent no.5 to any independent authority like CID or CBI.

d. Any other order this Hon'ble Court may deem fit to be passed in order to secure the ends of justice".

3. The grievance of the petitioners is that despite lodging of the FIR on 22/1/2024, the investigation is deliberately delayed, and the petitioners are apprehending that certain relevant offences would not be included in the charge sheet which also includes issuance of a forged legal notice in the name of the presiding officer, and the charge sheet may also not be filed on time so as to allow the accused to claim default bail.

4. Counsel for the petitioners has also argued at length to submit that the investigation itself is defective, and the investigating officer is hands in gloves with the accused persons, as a statement u/s.164 of Cr.P.C. is tried to be recorded despite the fact that he has already not supported the case of the prosecution.

5. Shri Mukesh Porwal, learned Govt. Advocate for the respondent/State has opposed the prayer, and it is submitted that the petitioners have no locus standi to file the petition as they are neither the aggrieved persons nor the complainants in the present case as the offence has been committed against the presiding officer of the Agar Court in which the petitioner no.2 is only a witness whereas the petitioner no.1 has absolutely no locus.

6. Counsel for the respondent/State has further submitted that the petition is also not maintainable as the petitioners are trying to interfere in an ongoing investigation, which is being carried out by the State Government, and thus, no interference is called for.

7. Counsel for the petitioners, in rebuttal has submitted that it is the petitioner no.1 only in whose case accused was also a party and had filed a vakalatnama forging signature of the Advocate.

8. Counsel appearing for the accused Shri Nitin Atal has opposed the prayer, and has submitted that he is not even made a party to this petition.

9. Heard learned counsel for the parties and perused the documents filed on record. This Court is of the considered opinion that even if the present petitioners are related to the genesis of the case in some way or the other, they cannot be said to be the interested parties, who can seek relief as sought by them in the present petition, when the offence has not been committed against them in any manner, thus, only on this ground the petition is liable to be dismissed. Merely if in earlier proceedings, they were also heard, it would not mean that they have the locus to seek the aforesaid relief in this petition which has the effect of interfering in the investigation.

10. In this regard, reference may be had to the decision rendered by the Apex

Court in the case of D.Venkatasumbramaniam Vs. M.K.Mohan Krishnamachari and another reported as (2009) 10 SCC 488 wherein in paragraphs no.25 to 28, it is held as under:-

"25. It is the statutory obligation and duty of the police to investigate into the crime and the courts normally ought not to interfere and guide the investigating agency as to in what manner the investigation has to proceed. In M.C. Abraham v. State of Maharashtra [(2003) 2 SCC 649 : 2003 SCC (Cri) 628] this Court observed : (SCC pp. 657-58, para 14)

"14. ... Section 41 of the Code of Criminal Procedure provides for arrest by a police officer without an order from a Magistrate and without a warrant. The section gives discretion to the police officer who may, without an order from a Magistrate and even without a warrant, arrest any person in the situations enumerated in that section. It is open to him, in the course of investigation, to arrest any person who has been concerned with any cognizable offence or against whom reasonable complaint has been made or credible information has been received, or a reasonable suspicion exists of his having been so concerned. Obviously, he is not expected to act in a mechanical manner and in all cases to arrest the accused as soon as the report is lodged. In appropriate cases, after some investigation, the investigating officer may make up his mind as to whether it is necessary to arrest the accused person. At that stage the court has no role to play. Since the power is discretionary, a police officer is not always bound to arrest an accused even if the allegation against him is of having committed a cognizable offence. Since an arrest is in the nature of an encroachment on the liberty of the subject and does affect the reputation and status of the citizen, the power has to be cautiously exercised. It depends inter alia upon the nature of the offence alleged and the type of persons who are accused of having committed the cognizable offence. Obviously, the power has to be exercised with caution and circumspection."

26. It is further observed: (M.C. Abraham case [(2003) 2 SCC 649 :

"17. The principle, therefore, is well settled that it is for the investigating agency to submit a report to the Magistrate after full and complete investigation. The investigating agency may submit a report finding the allegations substantiated. It is also open to the investigating agency to submit a report finding no material to support the allegations made in the first information report. It is open to the Magistrate concerned to accept the report or to order further enquiry. But what is clear is that the Magistrate cannot direct the investigating agency to submit a report that is in accord with his views. Even in a case where a report is submitted by the investigating agency finding that no case is made out for prosecution, it is open to the Magistrate to disagree with the report and to take cognizance, but what he cannot do is to direct the investigating agency to submit a report to the effect that the allegations have been supported by the material collected during the course of investigation."

27. This Court while observing that it was not appropriate for the High Court to issue a direction that the case should not only be investigated but a chargesheet must be submitted, held : (M.C. Abraham case [(2003) 2 SCC 649] :

"18. ... In our view the High Court exceeded its jurisdiction in making this direction which deserves to be set aside. While it is open to the High Court, in appropriate cases, to give directions for prompt investigation, etc. the High Court cannot direct the investigating agency to submit a report that is in accord with its views as that would amount to unwarranted interference with the investigation of the case by inhibiting the exercise of statutory power by the investigating agency."

(emphasis is ours)

It is worthwhile to notice that the directions in the said case were issued by the High Court of Bombay in a writ petition filed in public interest in which a grievance had been made that though the Provident Fund Commissioner has lodged a complaint against several Directors, the investigation has made no progress on account of the fact that the Directors were government servants and enjoying considerable influence. The High Court issued a series of directions which were challenged in this Court contending that the High Court was in error in exercising jurisdiction under Article 226 of the Constitution resulting in unjustified interference of the investigation of the case. It is, therefore, clear that if the High Court, in exercise of its power under Article 226 of the Constitution of India, cannot direct the investigating agency to investigate the case in accord with its views as that would amount to unwarranted interference, equally no such directions could be issued in exercise of inherent jurisdiction under Section 482 of the Code.

28. Tested in the light of the principles aforesaid, the impugned order, in our considered opinion, must be held to be an order passed overstepping the limits of judicial interference."

(emphasis supplied)

11. In view of the aforesaid, the petition fails on both the counts, viz., on the ground of locus, as also on merits. Accordingly, the admission is declined, and the petition is hereby dismissed.