
(2011) 04 MP CK 0025
In the Madhya Pradesh High Court
Case No : M.Cr.C. No. 4363 of 2010

Dr. Smt. Shobhna Chouksey

APPELLANT

Vs

State of Madhya Pradesh and Another

RESPONDENT

Date of Decision : 29-04-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 197, 482
Penal Code, 1860 (IPC) — Section 409, 420, 467, 468, 471

Citation : (2011) 04 MP CK 0025

Hon'ble Judges : M.A Siddiqui, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

M.A. Siddiqui, J.—This petition has been filed u/s 482 of Code of Criminal Procedure to invoke the extra ordinary jurisdiction of this Court to quash the FIR of Crime No. 15/09 dated 9.1.09 registered by PS-Babai, District-Hoshangabad for alleged offence punishable under Sections 420, 467, 468, 471 and 409 of IPC for which ST No. 243/09 is pending in the Court of Ist Addl. Sessions Judge, Hoshangabad.

2. In brief, the case of Petitioner is that Petitioner was a Government Officer posted as Block Medical Officer at Community Health Centre, Babai. At that time, Respondent No. 2 Dr. Rajendra Singh was posted as CMOH in District-Hoshangabad and he was having malice and was prejudiced with the Petitioner, so he has involved the Petitioner in the aforesaid criminal case on the ground that under "Janani Suraksha Yojna" some cheques were issued and on enquiry it was found that the beneficiaries were fake persons, wrong entries were recorded that benefits were given to the ladies. As per FIR, some amounts were given to the ladies who gave birth in the hospital, more amount was given to the ladies of rural inhabitants rather than the urban inhabitants, complaints were made that by mentioning fake names of some persons cheques were issued and on the enquiry it was found that names were fake and actually no amount was given to

them, so on this the enquiry was conducted by Revenue Officer and FIR was registered against the present Petitioner as well as Jyoti Joshi and Rajkumari, employees of Babai hospital. The matter was investigated and it was found that out of 10 names which were mentioned in the register and against whom cheques were issued, 4 ladies to whom the payment was made on the basis of residents of rural areas were not the residents of concerned village.

3. After investigation, charge sheet was filed and the matter was committed for trial to the Court of Sessions and ST No. 243/09 has been registered against the Petitioner as well as against two other officials of Babai hospital.

4. With the consent of learned Counsel for the parties, I have heard the matter finally at the motion stage.

5. Learned Counsel for Petitioner submitted that no sanction u/s 197 of Code of Criminal Procedure has been taken as the act was done in the official capacity.

6. Learned PL for State submitted that doing forgery and embezzlement do not come under the ambit of official duty, no official is permitted to do such type of offences, so protection of Section 197 Code of Criminal Procedure cannot be taken.

7. I do not wish to make any comment on the merits of the case whether sanction is required or not, that question may be agitated before the trial Court at the appropriate stage.

8. Learned Counsel for Petitioner has brought so many documents about the malice of Respondent No. 2 who happened to be the officer of Petitioner. Learned Counsel for State submitted that report was not initiated on behalf of Respondent No. 2, but it was initiated on the complaint made to the Lokayukta, and firstly matter was enquired into by the Revenue Officer at the direction of Collector, Hoshangabad, and on enquiry it was found that offence has been committed, so Respondent No. 2 has to do nothing with the prosecution of the case.

9. In State of Haryana and others Vs. Ch. Bhajan Lal and others, the Apex Court held that if the allegations in the complaint clearly constitute cognizable offence, quashing of FIR was not justified. The Apex Court further held that powers u/s 482 Code of Criminal Procedure have to be exercised sparingly and that too in the rarest of rare cases.

10. As far as exercise of powers u/s 482 Code of Criminal Procedure are concerned, according to Zandu Pharmaceutical Works Ltd. and Others Vs. Md. Sharaful Haque and Others, the Apex Court held that inherent jurisdiction, though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in Section 482 Code of Criminal Procedure Power to be exercised ex debito justitiae to prevent abuse of process of Court, but should not be exercised to stifle legitimate prosecution. If on consideration of the allegations, it appears that the ingredients of the offence or offences are disclosed and there is no material to show that the

complaint is mala fide, frivolous or vexatious, the proceedings cannot be quashed as they are to be enquired into by the trial Court.

11. In the present case, prima facie evidence is there against the Petitioner, hence, I don't find any ground to invoke the extra ordinary jurisdiction of this Court u/s 482 Code of Criminal Procedure Petition being devoid of merits is hereby dismissed.