(2018) 05 MP CK 0110

In the Madhya Pradesh High Court

Case No : M.CR.C NO.27256 OF 2017

Ghanshyam Karma S/O Kalu Ram Karma — APPELLANT

Vs

State Of M.P — RESPONDENT

Date of Decision : 16-05-2018

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 482
Indian Penal Code — Section 120B, 409, 420, 467, 468, 471
Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2), 17

Citation : (2018) 05 MP CK 0110

Hon'ble Judges : S.C. SHARMA, J;S.K. AWASTHI, J

Bench : Division Bench

Advocate : C.B. Pandey, Pankaj Wadhwani

Judgement

S.K.Awasthi, J

This petition is filed under Section 482 Cr.P.C. for quashment of FIR and the charge-sheet arising out of Crime No.741/2013 registered at Police

Station- Jhabua, District- Jhabua registered against the applicant.

2. According to the applicant, a charge-sheet was filed by the Police Station Jhabua under Sections 409, 420, 467, 468, 471 r/w Section 120-B IPC and

Section 13(1)(d) r/w Section 13(2) of Prevention of Corruption Act arising out of aforesaid crime number.

3. Brief facts of the case are that as per M.P. Government National Rural Health Mission, a manual was created to provide for the use of Janani

Mobility Express for the purpose of providing primary care to women during their pre and post delivery stage and also for weak, sick and

malnourished children. The rates were provided for engaging vehicles from service providers.

4. To engage vehicles as such the CMHO, Jhabua published an advertisement in the newspaper on 03.12.2011, tenders were invited and after

completing the necessary formalities, the service providers were engaged to provide vehicles to function as Janani Mobility Express.

5. On 28.06.2013, an inspection was conducted by Dr. M. Geeta, who was Head of the Divisional Health Mission. She expressed her displeasure over

the working of District Accounts Officer, and thereafter, the Mission Director requested the Collector, Jhabua to inspect the account of the scheme.

The Collector formed a committee on 03.07.2013. The committee inspected the accounts and found Accounts Officer Ghanshyam Karma, Dr. Smt.

Rajani Dabar and the present applicant Dr.Kunwar Singh Dodava responsible for excess payment of Rs.1,72,768/-. It was also alleged that some

furniture was purchased, however, no entry was made in the stock register and payment for a sum of Rs.49,400/- was doubtful. Similarly, purchase of

stationery items for Rs.56,942/- was also found doubtful.

6. This petition is filed on the ground that (i) the investigating agency did not collect any material against the present applicant and by this way or that

way, they tried to implicate the present applicant. (ii) The applicant is a public servant and in view of the provisions of M.P. Police Establishment Act

1947, the Special Police Establishement has power and authority to investigate specified offences against the applicant. (iii) The applicant was not

responsible for maintaining the account. The Accountant Ghanshyam Karma used to look after the accounts and the applicant has only appended his

signature to the cheque and the proposal made by the Accountant was approved by Dr.Rajani Dabar.Â It is also pertinent to mention that at the given

point of time the applicant was in-charge of all the health schemes run by the State and Central Govt.Â Â There is no evidence to show that the

applicant conspired with the other co-accused persons, therefore, the trial under sections 409, 420, 467, 468, 471 r/w Section 120-B IPC and Section

13(1)(d) r/w Section 13(2) of Prevention of Corruption Act of the IPC cannot be sustained..

7. Learned counsel for the applicant placing reliance on the judgment passed by the Hon'ble Apex Court in the case of C.B.I vs. Ramesh Galli

reported in 2016 (3) SCC 788 and the order dated 08.07.2016 passed by this Court in the case of Ravindra Kumar Dubey vs. State of M.P in

M.Cr.C.No.9915/2015 argued that the local Police has no jurisdiction to register a crime and investigate the offence under the provisions of the

Prevention of Corruption Act.Â Under these circumstances, he prayed for quashment of the FIR as well as charge sheet against the applicant.

8. Learned counsel for the respondent/State placing reliance on an order dated 26.10.2017 passed by the Full Bench of this Court in case of Arvind

Jain vs. State of M.P. in Cr.A. No.544/2016 argued that the full Bench of this Court held that the local police has the jurisdiction to investigate the

offence under the provisions of Prevention of Corruption Act, and therefore, no case is made out for quashment of FIR and the charge-sheet.

9. We have heard the rival contentions of the parties and perused the record.

10. First contention of the learned counsel for the applicant is with respect to investigation byÂ local police is concerned, the present case was

investigated by Rachna Mukati Bhadoria, Sub Divisional Officer Police, who is in the rank of Deputy Superintendent of Police. The only lapse on the

part of the investigating agency appears to be that no prior sanction from the Judicial Magistrate First Class as provided for under Section 17 of

Prevention of Corruption Act was obtained, however, such lapse on the part of investigating agency in the investigation as a whole is not found

vitiated.Â As such there appears to be no force in the argument that the investigation in this case is vitiated because the local police had no

jurisdiction to investigate the offence.

11. On coming to the merit of the case, the report prepared by the committee, who was given the task to examine the accounts and prepared a

detailed report, in which it was mentioned that there were irregularities in payment in respect of vehicles which were engaged as Janani Mobility

Express. The charge-sheet shows that the statements of service providers were recorded. Statements of Yugal Kishore Naik is available in the case

diary, who was running transport agency in the name of Naik Bandhu Transport Company. He said that he received money by cheque, however, it

was not mentioned in the cheque or the cover letter for which vehicle the payment was made, and according to him, complete payment was not

received by the agency. However, he did not say that any amount given to him was taken back by the present applicant for his own use. Similarly,

statements of Ramanlal Naik, Uday Singh, Jayes Kumar Parihar, Persingh and

Gopal Krishna from whom furnitures were purchased were also on

record and they did not say that the payment made to them was taken back by any of the officers involved in this matter, rather they said that the

payment was not accompanied by details showing against which vehicle or against which item, the payment was being made. In this situation, it is

apparent that so far as the present applicant is concerned, who has only appended his signature to the cheque and the proposal made by the

Accountant was approved by Dr.Rajani Dabar had no mens-ria to gain illegally. There was also no prima-facie evidence of unlawful gain.

12. This Court is well aware that there is presumption in case of financial irregularity and there is also heavy duty on the person approving financial

proposal to be more cautious, however, any negligence in performing their duty would not incur any criminal liability and for criminal liability specific

unlawful gain has to be indicated.

13. In this view of the matter, looking to the role assigned to the present applicant in the whole matter, no case is made out under Sections 409/120-B,

420/120-B, 467, 468, 471/120-B of IPC and Sections 13(1)(d) r/w Section 13(2) of the Prevention of Corruption Act. Accordingly, this application is

allowed.Â The First Information Report bearing Crime Number 741/2013 registered at Police Station- Jhabua, District- Jhabua registered against the

applicant-Dr. Kunwar Singh for the offences under Sections 409/120-B, 420/120-B, 467, 468, 471/120-B of IPC and Sections 13(1)(d) r/w Section

13(2) of the Prevention of Corruption Act and all the consequential proceedings flowing out of the said FIR stands quashed.

8. So far as the investigation by local police is concerned, the present case was investigated by Rachna Mukati Bhadoria, Sub Divisional Officer

Police, who is in the rank of Deputy Superintendent of Police. The only lapse on the part of the investigating agency appears to be that no prior

sanction from the Judicial Magistrate First Class as provided for under Section 17 of Prevention of Corruption Act was obtained, however, such lapse

on the part of investigating agency in the investigation as a whole is found vitiated. As such there appears to be no force in the argument that the

investigation in this case is vitiated because the local police had no jurisdiction to investigate the offence.

9. Coming to the merit of the case, the report prepared by the committee, who

was given the task to examine the accounts and prepared a detailed

report, in which it was mentioned that there were irregularities in payment in respect of vehicles which were engaged as Janani Mobility Express. The

charge-sheet shows that the statements of service providers were recorded. Statements of Yugal Kishore Naik is available in the case diary, who was

running transport agency in the name of Naik Bandhu Transport Company. He said that he received money by cheque, however, it was not mentioned

in the cheque or the cover letter for which vehicle the payment was made, and according to him, complete payment was not received by the agency.

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Naik, Uday Singh, Jayes Kumar Parihar, Persingh and Gopal Krishna from whom furnitures were purchased were also on record and they did not say

that the payment made to them was taken back by any of the officers involved in this matter, rather they said that the payment was not accompanied

by details showing against which vehicle or against which item, the payment was being made. In this situation, it is apparent that so far as the present

applicant is concerned, who onlyÂ approved the payment after the file was scrutinized by two persons below had no mens-ria to gain illegally. There

was also no primafacie evidence of unlawful gain.

10. This Court is well aware that there is presumption in case of financial irregularity and there is also heavy duty on the person approving financial

proposal to be more cautious, however, any negligence in performing their duty would not incur any criminal liability and for criminal liability specific

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420/120-B, 467, 468, 471/120-B of IPC and Sections 13(1)(d) r/w Section 13(2) of the Prevention of Corruption Act. Accordingly, this application is

allowed. The order framing charges is set aside. The present applicant is discharged from charges under Sections 409/120-B, 420/120-B, 467, 468,

471/120-B of IPC and Sections 13(1)(d) r/w Section 13(2) of the Prevention of Corruption Act.

