
(2015) 03 MP CK 0136
In the Madhya Pradesh High Court
Case No : Writ Petition No. 3201 of 2015

Jagdish Baheti

APPELLANT

Vs

High Court of M.P. and Others

RESPONDENT

Date of Decision : 18-03-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 32

Citation : (2015) LabIC 2286 : (2015) 2 MPHT 382 : (2015) 3 MPLJ 172

Hon'ble Judges : R.S. Jha, J;K.K. Trivedi, J

Bench : Division Bench

Advocate : Rajendra Tiwari, Senior Advocate and Manoj Sharma, for the Appellant

Final Decision : Dismissed

Judgement

R.S. Jha, J.—The petitioner has filed this petition praying for quashing the charge sheet dated 8-9-2014 issued by the High Court with a further prayer for protecting the petitioner's right for elevation as a High Court Judge. In addition, the petitioner has also prayed that the recommendation of the Collegium of the Madhya Pradesh High Court, whereby the petitioner's juniors have been recommended and have been considered for appointment as High Court Judges, be stayed and may be directed not to be finalised till disposal of the petition/departmental enquiry ordered against the petitioner. The learned Senior Counsel appearing for the petitioner submits that the brief facts necessary for adjudication of the petition are that the petitioner, at the relevant time, was working as District and Sessions Judge, Gwalior and is at present posted as Principal Judge, Family Court, Singrauli. It is stated that the petitioner, while performing his duties as District Judge, had granted anticipatory bail to several applicants.

2. It is asserted that a false complaint (Annexure P-25), was filed by a fictitious person Anvesh Singh before the High Court of M.P. pursuant to which a preliminary fact finding enquiry was conducted against the petitioner and

thereafter the impugned charge sheet (Annexure P-1), dated 8-9-2014 has been issued to the petitioner wherein it has been alleged that in spite of the fact that the State has opposed the applications for grant of anticipatory bail, the petitioner, by wrongly recording the concession of one Shri Jor Singh Bhadoriya, Investigating Officer, behind his back granted anticipatory bail to the applicants. It is submitted that the petitioner has been charged of recording a wrong undertaking of the said Investigating Officer in his absence after he was asked to leave the Court whereas the Investigating Officer has later on stated that he had not given any such undertaking.

3. The learned Senior Counsel appearing for the petitioner submits that the departmental enquiry has been initiated against the petitioner under the provisions of the M.P. Civil Services (Conduct) Rules, 1965 and the M.P. Civil Services (Classification, Control and Appeal) Rules, 1966 (hereinafter referred to as "the Rules of 1966"), on the basis of the judicial orders passed by him by alleging that the petitioner knowingly and intentionally mentioned incorrect facts in the bail orders with an ulterior or corrupt motive or for extraneous consideration and thereby extended favour and undue benefit to the applicants in granting anticipatory bail to them. It is further stated that the petitioner had in fact directly approached the Supreme Court against the charge sheet by filing a petition under Article 32 of the Constitution of India, but the same was withdrawn with liberty to approach the High Court by way of a writ petition, hence this petition.

4. It is contended by the learned Senior Counsel for the petitioner that no enquiry could have been initiated against the petitioner in respect of the statement recorded by the petitioner in the order sheet with regard to what transpired in the Court proceedings as matters of judicial record cannot be questioned nor can they be made the basis for initiating a departmental enquiry. The learned Senior Counsel, in support of his submission, has relied upon the decision of the Supreme Court rendered in the case of State of Maharashtra Vs. Ramdas Shrinivas Nayak and Another, AIR 1982 SC 1249 : (1982) CriLJ 1581 : (1983) 1 Crimes 335 : (1982) 1 SCALE 545 : (1982) 2 SCC 463 : (1983) 1 SCR 8 . The learned Senior Counsel, relying on the aforesaid decision of the Supreme Court, has further submitted that in case the State or the Investigating Officer felt that the statement recorded in the order sheet was incorrect, the only course open to them was to seek clarification or recall of the order but no departmental proceedings in respect of judicial orders can be initiated against the petitioner.

5. Before we consider the contentions of the learned Senior Counsel for the petitioner it would be appropriate to consider the scope and extent of judicial review and interference in charge sheets permissible under Article 226 of the Constitution of India, as specified and laid down by the Supreme Court in a series of decisions. In the case of Union of India (UOI) and Another Vs. Kunisetty Satyanarayana, AIR 2007 SC 906 : (2007) 112 FLR 325 : (2006) 12 SCALE 262 : (2006) 12 SCC 28 : (2007) 2 SCC(L&S) 304 : (2006) 10 SCR 257 Supp : (2007)

3 SLJ 338 , the Supreme Court has held as under:--

"13. It is well-settled by a series of decisions of this Court that ordinarily no writ lies against a charge sheet or show-cause notice vide Executive Engineer, Bihar State Housing Board Vs. Ramesh Kumar Singh and others, AIR 1996 SC 691 : AIR 1995 SC 691 : (1995) 8 JT 331 : (1995) 6 SCALE 625 : (1996) 1 SCC 327 : (1995) 5 SCR 543 Supp , The Special Director and Another Vs. Mohd. Ghulam Ghouse and Another, AIR 2004 SC 1467 : (2004) 120 CompCas 467 : (2004) 91 ECC 299 : (2004) 112 ECR 501 : (2004) 164 ELT 141 : (2004) 1 JT 206 : (2004) 1 SCALE 330 : (2004) 3 SCC 440 : (2004) 50 SCL 93 : (2004) 2 SCR 399 : (2004) 1 UJ 744 : (2004) AIRSCW 416 : (2004) 1 Supreme 431 , Ulagappa and Others Vs. Divn. Commr. and Others, AIR 2000 SC 3603(1) : (2000) 10 JT 206 : (1999) AIRSCW 4915 , State of Uttar Pradesh Vs. Brahm Datt Sharma and Another, AIR 1987 SC 943 : (1987) 54 FLR 524 : (1987) 1 JT 571 : (1987) LabIC 689 : (1987) 1 SCALE 457 : (1987) 2 SCC 179 : (1987) 2 SCR 444 : (1987) 2 UJ 55 , etc.

14. The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge sheet is that at that stage the writ petition may be held to be premature. A mere charge sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order, which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well-settled that a writ lies when some right of any party is infringed. A mere show-cause notice or charge sheet does not infringe the right of any one. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.

15. Writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge sheet.

16. No doubt, in some very rare and exceptional cases the High Court can quash a charge sheet or show-cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter."

6. In the case of The Secretary, Min. of Defence and Others Vs. Prabhask Chandra Mirdha, AIR 2012 SC 2250 : (2012) 134 FLR 1 : (2012) 5 SCALE 734 : (2012) 11 SCC 565 : (2013) 1 SCC(L&S) 121 : (2012) AIRSCW 3470 , the Supreme Court has held that ordinarily a writ petition does not lie against the charge sheet or a show cause notice as it does not give rise to any cause of action unless the same has been issued by an authority not competent to initiate departmental proceedings. The Supreme Court has laid down the law in this

regard by relying on several previous decision, in the following terms:--

"10. Ordinarily, a writ application does not lie against a charge sheet or show-cause notice for the reason that it does not give rise to any cause of action. It does not amount to an adverse order, which affects the right of any party unless the same has been issued by a person having no jurisdiction/competence to do so. A writ lies when some right of a party is infringed. In fact, charge sheet does not infringe the right of a party. It is only when a final order imposing the punishment or otherwise adversely affecting a party is passed, it may have a grievance and cause of action. Thus, a charge sheet or show-cause notice in disciplinary proceedings should not ordinarily be quashed by the Court. [Vide: State of Uttar Pradesh Vs. Brahm Datt Sharma and Another, AIR 1987 SC 943 : (1987) 54 FLR 524 : (1987) 1 JT 571 : (1987) LabIC 689 : (1987) 1 SCALE 457 : (1987) 2 SCC 179 : (1987) 2 SCR 444 : (1987) 2 UJ 55 ; Executive Engineer, Bihar State Housing Board Vs. Ramesh Kumar Singh and others, AIR 1996 SC 691 : AIR 1995 SC 691 : (1995) 8 JT 331 : (1995) 6 SCALE 625 : (1996) 1 SCC 327 : (1995) 5 SCR 543 Supp ; Ulagappa and Others Vs. Divn. Commr. and Others, AIR 2000 SC 3603(1) : (2000) 10 JT 206 : (1999) AIRSCW 4915 ; The Special Director and Another Vs. Mohd. Ghulam Ghouse and Another, AIR 2004 SC 1467 : (2004) 120 CompCas 467 : (2004) 91 ECC 299 : (2004) 112 ECR 501 : (2004) 164 ELT 141 : (2004) 1 JT 206 : (2004) 1 SCALE 330 : (2004) 3 SCC 440 : (2004) 50 SCL 93 : (2004) 2 SCR 399 : (2004) 1 UJ 744 : (2004) AIRSCW 416 : (2004) 1 Supreme 431 ; and Union of India (UOI) and Another Vs. Kunisetty Satyanarayana, AIR 2007 SC 906 : (2007) 112 FLR 325 : (2006) 12 SCALE 262 : (2006) 12 SCC 28 : (2007) 2 SCC(L&S) 304 : (2006) 10 SCR 257 Supp : (2007) 3 SLJ 338] .

11. In State of Orissa and Another Vs. Sangram Keshari Misra and Another, (2010) 11 JT 221 : (2011) 1 LLJ 731 : (2010) 11 SCALE 90 : (2010) 13 SCC 311 : (2011) 1 SCC(L&S) 380 : (2010) 9 UJ 4775 : (2010) AIRSCW 6948 , this Court held that normally a charge sheet is not quashed prior to the conclusion of the enquiry on the ground that the facts stated in the charge are erroneous for the reason that correctness or truth of the charge is the function of the Disciplinary Authority. [See also: Union of India (UOI) and Others Vs. Upendra Singh, (1994) 68 FLR 762 : (1994) 207 ITR 782 : (1994) 1 JT 658 : (1994) 1 LLJ 808 : (1994) 1 SCALE 637 : (1994) 3 SCC 357 : (1994) 1 SCR 1070 : (1994) 2 SLJ 77 : (1994) 1 UJ 434 .

12. Thus, the law on the issue can be summarised to the effect that charge sheet cannot generally be a subject matter of challenge as it does not adversely affect the rights of the delinquent unless it is established that the same has been issued by an authority not competent to initiate the disciplinary proceedings. Neither the disciplinary proceedings nor the charge sheet be quashed at an initial stage as it would be a premature stage to deal with the issues. Proceedings are not liable to be quashed on the grounds that proceedings had been initiated at a belated stage or could not be concluded in a reasonable period unless the delay

creates prejudice to the delinquent employee. Gravity of alleged misconduct is a relevant factor to be taken into consideration while quashing the proceedings."

7. The law laid down by the Supreme Court in the above quoted decisions, therefore, makes it clear that generally and ordinarily a writ petition is not maintainable against a charge sheet as issuance of the same does not give rise to a cause of action on account of the fact that it does not adversely effect the rights of a party except in cases where the charge sheet has been issued by an authority not competent to do so. The Supreme Court has also held that neither disciplinary proceedings nor a charge sheet can be quashed at the initial stage on merits as it would be a pre-mature stage to deal with the merits of the case. The Supreme Court has also held that at the stage of issuance of charge sheet the correctness or veracity of the charges cannot be looked into in writ proceedings as that aspect is the domain of the Disciplinary Authority and not the High Court.

8. The contention of the petitioner needs to be examined in the light of the law laid down by the Supreme Court. In the instant case, as there is no contention or allegation on the part of the petitioner to the effect that the charge sheet has been issued by an Incompetent Authority or by an authority, which has no jurisdiction to do so and, therefore, no exceptional circumstances exist to ignore the general and ordinary rule of non-maintainability of the petition against a charge sheet, mere issuance of which does not give rise to any cause of action as has been held by the Supreme Court in the above cited decisions.

9. It is also relevant to note from a perusal of the record specifically Annexure P-1, which is the impugned charge sheet dated 8-9-2014, that the charges levelled against the petitioner are in respect of his conduct in the Court proceedings and is based on the allegations that he had extended favour and undue benefit to the applicants by deliberately mentioning wrong facts in the bail orders for granting anticipatory bail to the applicants with an ulterior motive or for extraneous considerations and, therefore, he has failed to maintain absolute integrity and devotion to his duty and his conduct is unbecoming that of a Judicial Officer and amounts to a gross misconduct under the provisions of the Rules governing his services.

10. A perusal of the charge sheet, wherein the contents of the order sheets of the petitioner are reproduced, indicate that the allegation against the petitioner is that while passing the order he has recorded that the Investigating Officer, Shri Jor Singh Bhadoriya has stated that the matter is under investigation and material evidence is being collected and till then the applicant will not be arrested in connection with the case, whereas a perusal of Annexures P-10 and P-11, filed by the petitioner alongwith the petition, indicate that the Investigating Officer has in fact opposed the application for anticipatory bail in writing and while stating that evidence is being collected and investigation is under progress, has specifically prayed for rejecting and dismissing the application for anticipatory bail. Significantly, the charge sheet also states that the fact that the anticipatory bail was opposed is also supported by the Public Prosecutor, Shri J.P.

Sharma and the Additional Public Prosecutor, Shri A.S. Tomar, who were representing the State and were present in the Court. It is this and other factual allegations, which have formed the prima facie basis for initiation of the departmental enquiry against the petitioner. If the charges levelled against the petitioner in the impugned charge sheet are read as they are, they prima facie disclose the alleged misconduct and, therefore, the contention of the learned Counsel for the petitioner that no misconduct is made out on the basis of charges levelled against the petitioner, is incorrect and misconceived.

11. We have taken note of the aforesaid facts only because of the contention of the learned Senior Counsel for the petitioner, which we have already rejected, that there is no prima facie material on record to justify issuance of a charge sheet and that the charge sheet has been issued by challenging the correctness of the judicial order passed by the petitioner, which is not permissible. However, in view of the law laid down by the Supreme Court, this Court cannot look into the correctness or veracity of the charges at this stage in writ proceedings under Article 226 of the Constitution of India, which even otherwise involve highly disputed questions of fact, which can only be decided in the departmental proceedings.

12. At the cost of repetition, we make it further clear that we have not expressed any opinion on the correctness or otherwise of the charges levelled against the petitioner as that is the exclusive domain of the departmental enquiry but we have taken note of the aforesaid aspect only because of the contention of the petitioner in this regard and anything mentioned by us in this order shall not be treated as an opinion expressed on the correctness or otherwise of the charges nor would the Departmental Authorities be in any way influenced by the same.

13. The reliance placed by the learned Senior Counsel for the petitioner on the decision of the Supreme Court rendered in the case of Ramdas Shrinivas Nayak (supra), specially in Paras 4 to 8, is totally misconceived inasmuch as the said decision relates to proceedings before the High Court whereas the present case deals with the question of serious misconduct and conduct unbecoming of a Judicial Officer of the State Higher Judicial Services who is governed by the provisions of the M.P. Civil Services (Conduct) Rules, 1965 and the M.P. Civil Services (Classification, Control and Appeal) Rules, 1966 and, therefore, the parity and comparison claimed by the petitioner on the basis of the aforesaid judgment is misplaced. Moreso, as there are allegations against the petitioner based on the relevant service rules by which he is governed regarding his motives and integrity and his conduct, which, it is alleged, amounts to a misconduct under the Rules specifically mentioned in the charge sheet itself. We are of the considered opinion that the aforesaid judgment relied upon by the petitioner does not grant him immunity from being charged departmentally for misconducts prescribed under the Rules.

14. The learned Senior counsel for the petitioner has also contended that the enquiry initiated against the petitioner deserves to be quashed as it has been

initiated on the basis of a frivolous complaint filed in the name of a fictitious person by contending that such complaint should have in fact been filed without taking any further steps thereon in view of the circular dated 20-11-2014, copy of which has been filed alongwith the petition as Annexure P-24. It is also contended that the departmental proceedings could not have been initiated against the petitioner without first giving him an opportunity to give an explanation in the preliminary enquiry conducted by the authorities.

15. Having heard the learned Senior Counsel for the petitioner on this issue, we are of the considered opinion that the departmental enquiry has been initiated against the petitioner in accordance with the procedure prescribed under Rules 14 and 15 of the Rules of 1966, which do not contain any statutory mandatory provision for compulsorily holding a preliminary enquiry before initiating regular departmental proceedings or for giving any opportunity of hearing to the officer concerned during the preliminary enquiry. In fact, the preliminary enquiry is conducted by the department at its on level with a view to arrive at an opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehavior against an employee. Once an opinion is formed then the proceedings are initiated in accordance with the procedure prescribed under Rules 14 and 15 of the Rules of 1966.

16. In the circumstances, as the petitioner has failed to plead or establish any violation of the statutory procedure for conducting enquiry as prescribed in Rules 14 and 15 of the Rules of 1966, the contention of the petitioner, which are not based on any statutory provision or right, is hereby rejected. Moreso, as statutory proceedings initiated in accordance with the statutory provision of Rules 14 and 15 of the Rules of 1966, cannot be quashed merely on the asking, once it is established that the statutory procedure prescribed in the Rules has been followed and has not been violated and that there is no provision in the Rules statutorily requiring the authority to hold a preliminary fact finding enquiry by giving the petitioner an opportunity of hearing therein. It is, however, pertinent to note that the petitioner, when he came to know about the fact that a preliminary fact finding enquiry was being conducted, has on his own, filed a detailed representation and objections before the Registrar General of the High Court, copies of which have been annexed alongwith the petition as Annexures P-26 and P-27.

17. It is also pertinent to note that contrary to the contention of the petitioner, the basis for issuing the impugned charge sheet against the petitioner is not the preliminary fact finding enquiry as alleged by the petitioner as there is no mention about it in the impugned charge sheet. In fact, the list of documents supplied to the petitioner in support of the charge, which are at page 65 of the petition, makes it clear that the report has not been made the basis for the charges, but it is the statement of Shri Jor Singh Bhadoriya, the Investigating Officer, Shri A.S. Tomar, Additional Public Prosecutor in his Court and Shri J.P. Sharma, Public Prosecutor, who were present in the Court at the time of passing

of the orders, which have led to the formation of an opinion to initiate a departmental enquiry.

18. In view of the aforesaid facts, the contention of the petitioner that the opinion of the officer conducting the fact finding enquiry who is junior to him and the report submitted by him has led to initiation of the departmental proceeding is hereby rejected as the same prima facie appears to be factually incorrect as the report or opinion of the fact finding officer has not formed the basis for issuance of the charge sheet.

19. In addition to the above, it is pertinent to note that the High Court in M.Cr.C. No. 1754/2014 (Annexure P-21) took serious objection to the alleged concession of Shri Jor Singh Bhadoriya, Investigating Officer and directed the State and the police department to change the Investigating Officer and to take action against him and also to consider whether he was involved in the case.

20. We are of the considered opinion that in view of the aforesaid order of the High Court, no exception to the holding of the preliminary fact finding enquiry can be taken and, therefore, the contention of the petitioner based on the circular of the High Court dated 20-11-2014, which even otherwise has been issued after the issuance of the charge sheet on 8-9-2014, deserves to be and is hereby rejected.

21. The learned Senior Counsel for the petitioner has raised several grounds to contend that no misconduct has been committed by the petitioner.

22. We are of the considered opinion that in view of the law laid down by the Supreme Court in the cases referred to in the preceding paragraphs, this Court cannot go into the aforesaid contention of the petitioner, which are based on seriously disputed question of fact, which cannot be enquired into in proceedings under Article 226 of the Constitution of India. We, however, make it clear that the petitioner would be at liberty to raise all these objections and grounds in the departmental enquiry that is pending against him.

23. We are also of the considered opinion that in view of the aforesaid conclusions recorded by us, the other reliefs, which are consequential, also cannot be granted to the petitioner, which basically depend upon the final outcome of the departmental enquiry. In view of the aforesaid discussion and the law laid down by the Supreme Court, we do not find any merit in the petition. The petition, filed by the petitioner, being meritless is, accordingly, dismissed.