
(2019) 07 MP CK 0043
In the Madhya Pradesh High Court
Case No : Writ Petition No. 7173 Of 2019

Jaldevi Lodhi

APPELLANT

Vs

State Of Madhya Pradesh

RESPONDENT

Date of Decision : 02-07-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 173(1), 482
Indian Penal Code, 1860 — Section 376(2)(chh), 506

Citation : (2019) 07 MP CK 0043

Hon'ble Judges : G.S. Ahluwalia, J

Bench : Single Bench

Advocate : S.S. Narvaria, Sankalp Sharma

Final Decision : Disposed Off

Judgement

This petition under Article 226 of the Constitution of India has been filed seeking following reliefs:-

â??(a) that, the respondents may kindly be directed to conduct fair and impartial investigation in the FIR bearing Crime No.427/2018 registered at

Police Station Maharajpura, District Gwalior (MP) for the offence punishable under Section 376(2)(chh), 506 of IPC and arrest the accused persons,

who are moving freely in the locality threatening the life, liberty and dignity of the petitioner.

(b) that, any other writ or order or direction which the Hon'ble Court deems fit in favour of the petitioner may kindly be issued in the interest of justice.

(c) that, costs of the petition may kindly be awarded.â??

The State has filed its return and submitted that the investigation is going on and the Investigating Officer for the reasons mentioned in the return and

has not reached to a final conclusion and therefore, the report of DNA is awaited

and accordingly, further steps would be taken immediately after receipt of DNA report.

Per contra, It is submitted by the counsel for the petitioner that the Police is not taking any action and therefore, a direction should be given to the Police to arrest the person named in the FIR.

Considered the submissions made by the learned counsel for the parties.

The Supreme Court has held in the case of D.Venkatasubramaniam v. M.K. Mohan Krishnamachari (2009) 10 SCC 488 as under:-

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.

29. It was observed by this Court on more than one occasion, that even in public interest litigation proceedings, appropriate directions may be issued

and the purpose in issuing such directions is essentially to ensure performance of statutory duty by the investigating agency. The duty of the court in

such proceedings is to ensure that the agencies do their duties in compliance with law. The inherent power of the High Court is saved to interfere with

the proceedings pending before a criminal court if such interference is required to secure the ends of justice or where the continuance of the

proceedings before a court amounts to abuse of the process of court. Such a power under Section 482 of the Code is always available to the High

Court in relation to a matter pending before a criminal court.

30. The High Court, in the instant case, did not even advert to the relevant facts. As stated in the order itself, it was more guided by the arguments

made across the Bar that the police has not taken any steps to arrest the persons and seize the amounts involved in this case from the appellants

though there is no such factual foundation as such laid in the petition. It has altogether ignored the counter filed by the police that the police had

already examined ten witnesses within a short span of time after the registration of crime and recorded their statements.

31. The High Court, without recording any reason whatsoever, directed the police that it is obligatory on their part to record statements from witness,

arrest, seizure of property and filing of charge-sheet. It is difficult to discern as to how such directions resulting in far-reaching consequences could

have been issued by the High Court in exercise of its jurisdiction under Section 482 of the Code. The High Court interfered with the investigation of crime which is within the exclusive domain of the police by virtually directing the police to investigate the case from a particular angle and take certain steps which the police, depending upon the evidence collected and host of other circumstances, may or may not have attempted to take any such steps in its discretion.

32. It is not necessary that every investigation should result in arrest, seizure of the property and ultimately in filing of the charge-sheet. The police, in exercise of its statutory power coupled with duty, upon investigation of a case, may find that a case is made out requiring it to file charge-sheet or may find that no case as such is made out. It needs no reiteration that the jurisdiction under Section 482 of the Code conferred on the High Court has to be exercised sparingly, carefully and with caution only where such exercise is justified by the test laid down in the provision itself.

33. Yet another aspect of the matter, the appellants have not been impleaded as party-respondents in the criminal petition in which the whole of the allegations are levelled against them. The High Court never thought it fit to put the appellants on notice before issuing appropriate directions to the police to arrest, seize the property and file charge-sheet. This Court in *Divine Retreat Centre V State of Kerala* observed: (SCC p.565 para 51)

“51... We are concerned with the question as to whether the High Court could have passed a judicial order directing investigation against the appellant and its activities without providing an opportunity of being heard to it. The case on hand is a case where the criminal law is directed to be set in motion on the basis of the allegations made in anonymous petition filed in the High Court. No judicial order can ever be passed by any court without providing a reasonable opportunity of being heard to the person likely to be affected by such order and particularly when such order results in drastic consequences of affecting one's own reputation.” (emphasis is ours)

34. The High Court in the present case, without realising the consequences, issued directions in a casual and mechanical manner without hearing the appellants. The impugned order is a nullity and liable to be set aside only on that score.”

Therefore, it is clear that in exercise of power under Article 226/227 of the

Constitution of India, this Court cannot monitor the investigation.

However, in view of section 173(1) of Cr.P.C., it is clear that the investigation has to be concluded without any unnecessary delay.

Accordingly, it is observed that the Investigating Officer shall keep in provision of Section 173(1) of Cr.P.C. in his mind and would conclude the investigation without any unnecessary delay.

With the aforesaid observation, the petition is finally disposed of.