

(2014) 07 MP CK 0140
In the Madhya Pradesh High Court
Case No : M. Cr. C. No. 9201/2014

Jitendra Singh Tomar

APPELLANT

Vs

Special Establishment of The Lokayukt Bhopal

RESPONDENT

Date of Decision : 02-07-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 311, 482, 91
Prevention of Corruption Act, 1988 — Section 13(1)(e), 13(2)

Citation : (2014) 07 MP CK 0140

Hon'ble Judges : Rajendra Menon, J;Alok Verma, J

Bench : Division Bench

Advocate : Anil Khare, learned Senior Advocate and Harjas Singh Chhabra, Learned Counsel, Advocate for the Appellant; Aditya Adhikari, Learned Counsel, Advocate for the Respondent

Judgement

1. This is a petition under section 482 of the Cr.P.C., calling in question the tenability of the order dated 17.5.2014 passed by the Special Judge, Sehore, whereby an application filed under section 311 read with section 91 of Cr.P.C., has been rejected.

2. The petitioner is facing prosecution before the Special Judge, Sehore for offence punishable under section 13(1)(e) read with section 13(2) of the Prevention of Corruption Act, 1988. During the course of trial one witness namely P.W.34 Shri Shankarlal Dharse, the Investigating Officer has been examined. In para 84 of his cross examination this witness referred to a report submitted by him on 21.8.2003 and he made the following assertion in para 84 :-

(Emphasis supplied)

3. Based on the same an application in question was filed and it was the case of the petitioner that this report is necessary for effectively defending himself as onus for showing that he does not possess any assets disproportionate to his income is also on him, however the Court below rejected the application, against

which this petition has been filed under section 482 of Cr.P.C.

4. Learned counsel for petitioner argued that merely because the report was not taken cognizance of by the prosecution or the office of the prosecution or that the prosecution is not using it in trial as it is not part of the charge sheet that can not be a ground to reject the prayer as it would deny right of the petitioner to effectively defend his case. It is argued by Shri Khare that if any document has been submitted by the I.O. and by the same if the accused person can make his defence stronger, then he is entitled to get the benefit of the same. It was emphasized by the learned counsel that if such irregular procedure is permitted to continue, it would cause serious prejudice to the defence of the accused, therefore interference be made in this petition filed under section 482 of Cr.P.C.

5. Shri Aditya Adhikari vehemently opposed the aforesaid prayer and argued that only such documents can be produced in trial on which prosecution relies upon for establishing its case. The applicant cannot have any right to summon the witness on the basis of document which is not relied upon by the prosecution.

6. Having considered the rival contentions, we are of the considered view that the objections raised by the prosecution and the reasons stated by the trial Court in rejecting the application filed under section 311 read with section 91 of Cr.P.C., is wholly unsustainable. The question as to how for the document is relevant and helpful in the trial either to the prosecution or defence is not a question which has to be considered at this stage. At this stage it is sufficient for the Court to examine the statement given in para 84 by the Investigating Officer and to decide as to whether the document referred to at the stage of investigation is to be proceed in the trial or not. The Investigating Officer has clearly stated that in the matter of assets disproportionate to income a report was submitted by the Investigating Officer on 21.8.2003 and he has inducted the report that no assets were acquired by the petitioner after the submission of report on 21.8.2003.

7. Once during the course of investigation, the Investigating Officer has prepared a report based on the material collected by him and when the said report formed part of the case diary, merely because the prosecution does not want to rely on the document, the right of the accused to summon the report which was a part of the investigating process cannot be denied. The report may be helpful to the accused or not or may not be relevant at all but once it has come on record that such report was available, in the case diary and was part of the investigation proceeding, the prosecution cannot say that they do not want to file the same when contents of the report from the statement of witnesses who is author of the document and the IO, it seems to be relevant for adjudicating the dispute in the Tribunal. Further when the accused feels that it would be helpful to him in establishing his defence, right of the accused in the matter cannot be denied, particularly when the document is something, which was part of the investigating process and was available in the case diary. The Investigating Officer has clearly stated that he had prepared the report and it was part of the case diary. That being so, merely because the prosecution does not want to rely the document

that by itself cannot be a ground for denying the rightful claim of the accused to have access to that document and in the trial in support of his defense.

8. In view of aforesaid it is our considered view that in rejecting the application in question filed under section 311 read with section 91 of Cr.P.C., an error has been committed by the trial Court, which warrants correction.

9. Accordingly, this petition is allowed. The order impugned dated 17.5.2014, so far as it relates to rejecting the application filed under section 311 read with section 91 of Cr.P.C., is quashed. The said application is allowed. The document in question namely the report dated 21.8.2003 referred by P.W.34 Shankarlal Dharse in his submission in para 84 of his statement, be produced and thereafter the witness be also summoned for his re-examination with regard to the said document.

10. With the aforesaid, the petition stands allowed.

11. C.C., as per rules.