

(1997) 01 MP CK 0004
In the Madhya Pradesh High Court
Case No : L.P.A. No. 170 of 1996

Laxman Singh Gaur and Another

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 28-01-1997

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 154
Penal Code, 1860 (IPC) — Section 409, 420, 468, 469, 471
Prevention of Corruption Act, 1988 — Section 2

Citation : (1997) 2 JLJ 61

Hon'ble Judges : R.D. Shukla, J; Jayant Govind Chitre, J

Bench : Division Bench

Advocate : K.G. Maheshwari and Ajit Chhabra, for the Appellant; S. Bhargava, A.A.G. for Respondent Nos. 1 and 4 to 15, for the Respondent

Final Decision : Dismissed

Judgement

J.G. Chitre, J.—Heard Shri K.G. Maheshwari with Shri Ajit Chhabra for the Appellants and Shri S. Bhargava, Additional Advocate General for Respondent Nos. 1 and 4 to 15. Other Respondents are absent. None present for them.

2. The Appellants are making a prayer vide this appeal for (1) setting and quashing the FIR/complaint mentioned in Annexure A-1; (2) for issuance of a writ for setting aside the investigation of the offences registered against them on complaint of Omprakash Jhanvar being investigated into by State Bureau of Investigation for Economical Offences; (3) for a writ directing the State Bureau of Investigation for Economical Offences to return the seized papers; (4) for a writ declaring the investigation concluded by State Bureau of Investigation for Economical Offences as void being conducted without approval of General Administration Department; (5) for a writ directing Respondent No. 14 to register offence against Respondents pursuant to FIR dated 10.8.1996 (Annexure A-3) lodged by the Appellants and to investigate into the offence indicated by the said complaint and to put-up challan against them before appropriate Court for

prosecution: (6) for setting aside and quashing the impugned order indicated by Annex. A-5 which has been passed by learned Single Judge of this Court dated 22.8.96 in Writ Petition No. 1099/96.

3. Shri K.G. Maheshwari prayed for time to file some notifications for arguing this appeal on admission. Shri Bhargava, Additional Advocate General objected to it by submitting that time was granted to the Appellants for doing so. However, no such notifications have been filed. The order-sheet dated 18.12.96 shows that after Shri Bhargava filed reply to the application for stay, time was granted to learned Counsel for the Appellants for making further submissions in respect of the said reply.

4. The appeal has been filed by the Appellants on 29.8.96 and it was placed before this Court for hearing on admission on 29.11.96. The Appellants have filed a zerox copy of notification dated 18.8.88 on the day when this appeal was filed. Thereafter the hearing was adjourned to 5.12.96, 16.12.96, 18.12.96 and to 10.1.97. Thus, there was sufficient time available to the Appellants to file the copies of notifications on which they intended to place reliance. Besides that, when the appeal was prepared, the Appellants should have been ready with all the documents on which they were basing their contentions raised by this appeal. We dismiss the prayer for adjournment on this count made by Shri K.G. Maheshwari.

5. Shri Maheshwari by making reference to the notification of M.P. Government dated 18.8.88 (Annexure P-7) submitted that State Bureau of Investigation for Economical Offences does not have any power to do investigation into the crimes indicated against the Appellants. He pointed out that page No. 2 of the said annexure was sufficient enough to show that the offences which have been alleged against the Appellants were not under the jurisdiction of State Bureau of Investigation for Economical Offences. He submitted that in view of that, the investigation started by the Bureau against the Appellants was without jurisdiction and authority. He submitted that keeping in view this aspect of the matter, the learned Single Judge should have allowed the writ petition of the Appellants bearing No. 1099 of 1996. He prayed that in view of this, the order which has been passed by learned Single Judge on 22.8.96 in the said writ petition needs to be quashed, set aside and the writs prayed for by the Appellants be granted in their favour as mentioned in prayer clause of the appeal.

6. Shri Bhargava, learned Additional Advocate General submitted that further portion of Annexure P-7 (page No. 4 of the notification) shows that clause Nos. 4 and 5 were indicating that the State Bureau of Investigation for Economical Offences was competent to make the investigation into the offences indicated in Appendix A. Shri Bhargava further submitted that the said notification is made for giving guidance to the officers of various departments and the said notification does not prevent the State Bureau of Investigation for Economical Offences to investigate into the offences which are indicated against the Appellants in view of the complaint made by Omprakash Jhanvar.

7. The Appellant No. 1 is sitting M.L.A. It has been alleged in the complaint that he has committed some activities which could be prima facie treated as the activities committed by him by using his office. Shri Maheshwari argued that Appellant No. 1 is not a public servant answering to the argument which has been advanced by Shri Bhargava, perhaps for the purpose of keeping away the Appellant from provisions of Prevention of Corruption Act. In the matter of Habibulla Khan v. State of Orissa and Anr. 1995 CrILJ 3604 it has been held by Division Bench of Orissa High Court that "M.L.A. does hold office, which is one of the two necessary requirements to attract the definition of "public servant" as given in Clause (viii) of Section 2(c) of the Act. Another requirement, as already mentioned, is "performance of public duty as holder of such office."

8. Keeping in view the Constitution of India, M.L.A. is entrusted with performance of public duty. He does the duty for the public either directed by the Government or for the Government. He participates in legislating various enactments. He participates in various functions of Government as a matter of right in view of Constitution of India. He happens to be a person elected by the public of his constituency and does the public duty as member of the Legislative Assembly of the Government. He is not aloof from the functions of Government. The M.L.A. cannot thus, be permitted to say that he is not a "public servant".

9. Shri Maheshwari has referred to the notification issued by Government of M.P. on 18.8.1988, Annexure A-1. By referring to that Shri Maheshwari argued that the Bureau is not competent to investigate into offences which have been indicated against the present Petitioners. He specially pointed out to Clause 3.1 of the notification. Those are the cases which need not be taken-up or referred - to the Bureau. However Clause 3.2 indicates the cases which may be taken-up by or referred to the Bureau. Sub-clause (a) of Clause 3.2 provides that cases in which abuse of official position by public servants resulting in heavy loss to the public exchequer/public undertaking, corporations can be taken-up by the Bureau for investigation. Clause 3.2 (e) provides that cases of exploitation of public at large by organized white-collared criminals can be taken-up by the Bureau for investigation. Therefore, Petitioners cannot take the advantage of this notification in their favour. On the contrary it indicates that the cases which are under the pervue of this petition are one which can be taken up for investigation by the Bureau. Clause 4 of the notification provides that the Bureau has been empowered by the State Government to take-up cases of offences mentioned in Appendix A which indicate the offences under Prevention of Corruption Act, 1947, Sections 468, 469, 471, 409, 420 of Indian Penal Code. The word "taken-up" indicates that the officers of Bureau are empowered to take the cognizance of the offences and do the investigation as if they are S.H.O. of police station.

10. The complaint of Shri Omprakash Jhanvar indicates that it may lead towards some offences indicated by provisions of Prevention of Corruption Act, 1988 also. The notification Annexure P-1 if read as a whole and in correct spirit is, according to us, meant for giving guidelines to the officers of various departments of the

Government. It is for the purpose of avoiding the confusion of the reference by various officers to General Administration Department for moving the State Bureau of Investigation for Economical Offences in respect of various activities of Government Officers, public servants and others which come under the category. It is for the purpose of channelising, disciplining flow of the complaints. That does not prohibit the State Bureau of Investigation for Economical Offences from investigating into the crimes which are indicated by the complaint which has been filed by Omprakash Jhanvar, prima facie, because the officers of State Bureau of Investigation for Economical Offences are "police" within the meaning of Section 154 of Code of Criminal Procedure.

11. The learned Single Judge has dealt with this aspect in detail and after expressing his opinion that the grievances which were being agitated before the learned Single Judge can be agitated-raised by the Appellants before the competent Court. The learned Single Judge has held that he does not find it proper to interfere in the process of investigation which is initiated against the Appellants, under Article 226 of Constitution of India. The learned Single Judge has also opined that the Appellants were entitled to move the S.P. for taking cognizance of the complaint filed on 19.8.96 from their side.

12. We do not find any need of interfering with the decision of the learned Single Judge of not interfering, with the process of investigation, as it is correct, proper and legal. The points which the Appellants want to urge in respect of illegality of the prosecution which is likely to be initiated against them can be raised before the competent Court. We do not find any need of interfering in the order which has been passed by learned Single Judge which is being assailed by the present appeal. We do not find any propriety and need of issuing the writs as prayed for by the Appellants by the prayer clause of the appeal.

13. Thus, the appeal stands dismissed. No order as to costs.