(2017) 02 MP CK 0248

In the Madhya Pradesh High Court

Case No : 11844 of 2016

M. P. Public Service Commission APPELLANT

Vs

Ashish Kumar Jain RESPONDENT

Date of Decision : 13-02-2017

Acts Referred:

Code of Criminal Procedure, 1973, Section 482 - Saving of inherent powers of High Court
Indian Penal Code, 1860, Section 120B - Punishment of criminal conspiracy
(C

Citation : (2017) 02 MP CK 0248

Hon'ble Judges : S C Sharma, Rajeev Kumar Dubey

Bench : Division Bench

Advocate : Vijay Asudani, Manoj Dwivedi

Final Decision : Dismissed

Judgement

1.] This petition has been filed under Section 482 of Cr.P.C. for quashing of FIR of Crime No.23/2010 registered at Special Police Establishment, State Economic Offence investigation Wing, Bhopal (hereinafter referred to as the EOW) for the offence under Section 120- B of IPC and under Section 13(1)(D), 13(1)(E) and 13(2) of Prevention of Corruption Act.

2.] Brief facts of the case are that on a complaint Crime No.23/2010 was registered at P.S. Economic Offence Wing, Bhopal against Vimal Kumar Gangwal, the then Executive Engineer, Indore Development Authority, Suresh Bhanwar, Sub Engineer, Indore Development Authority and Ashok Jain, Assistant Engineer, Indore Development Authority for the offences under section 13(1)(D), 13(1)(E) and 13(2) of Prevention of Corruption Act. During investigation of that crime it was found that Vimal Kumar Gangwal earned many immovable and movable properties by misusing his post by unfair means and deposited unaccounted money in the bank in his name and also in the name of his wife Meena Gangwal, son Nitin Gangwal and second wife present applicant Pratibha Parihar @ Pratibha

Gangwal. The legal income of Vimal Kumar Gangwal for the check period from 12.6.1980 to 7.10.2010 from his salary and other sources is Rs.1,25,74,906/- and expenditure is of Rs.1,00,70,012.00 during the same period. While properties worth Rs.1,48,56,008/- were found with them, which is 118% excess from his legal income. It was also inferred by the EOW that movable and immovable property and pecuniary resources found in the possession of his wife Meena Gangwal, son Nitin Gangwal and second wife present applicant Pratibha Parihar @ Pratibha Gangwal actually belong to Vimal Gangwal. So, EOW, Indore filed charge sheet against Vimal Kumar Gangwal, his wife Meena Gangwal, son Nitin Gangwal and second wife present applicant Pratibha Parihar @ Pratibha Gangwal. On that charge-sheet Special Case no.9/16 was registered against the applicant and other co-accused.

3.] Learned counsel for the applicant submitted that applicant is owner of Avishkar Analytical Laboratory, which was set up in the year 1984. petitioner earns profits since 1984 by the earnings of that Laboratory. Petitioner also filed Income-tax returns every year. She also owns agricultural land situated at Daheria, Tehsil Barwaha and earned income from that land. She has no connection with Vimal Kumar Gangwal. She produced all documents of her income before Special Police Establishment, Indore but they wrongly made the applicant an accused in the Crime No.23/2010 without paying attention on those documents.

4.] Learned counsel for the applicant further submitted that properties earned by applicant is from the income of laboratory and agricultural land. And Vimal Kumar Gangwal has no connection with it. So there is no question of conspiracy between applicant and Vimal Kumar Gangwal. There is no evidence on record that applicant had obtained income by corrupt practices or unfair means. Therefore, applicant cannot be held guilty for the offence under Section 120-B of IPC.

5.] Learned counsel for the applicant further submitted that the entire case of prosecution is based upon assumptions and presumptions without there being any evidence, because in the FIR applicant was not arrayed as an accused but subsequently her name was included in charge-sheet without any ground. It has been further contended that from the charge sheet prima facie it does not show that money was transferred or gifted to the applicant by Vimal Kumar Gangwal or any member of his family. So there is no prima facie evidence against the applicant to take cognizance for the offence under Section 120-B of IPC and under Prevention of Corruption Act.

6.] On the contrary learned counsel for the respondent No.1 EOW submitted that there is ample evidence on record to show that Vimal Kumar Gangwal acquired movable and immovable properties by illegal means and conspiring with his second wife deposited that money in her account and bought properties in her name. So prima facie there is sufficient evidence against the applicant. Learned trial Court has rightly took cognizance against the applicant under

Section 120-B of IPC and under Section 13(1)(D), 13(1)(E) and 13(2) of Prevention of Corruption Act.

7.] We have gone through the record and arguments put forth by the parties. Following facts were mentioned regarding applicant, in the charge sheet filed by the respondents :-

8.] The Charge-sheet and documents produced along with it, primafacie shows that applicant is the second wife of Co accused Vimal Kumar Gangwal and that he had Purchased agricultural land and other properties in the name of Pratibha Parihar @ Pratibha Gangwal and also deposited money in her bank account. A copy of Bhu Adhikar Pustika of agricultural land for the year 2005-06 filed by the prosecution mentions the name of present applicant as Pratibha W/o Vimal Ji Gangwal .Besides that there is ample evidence, which is showing applicant''s relation with Vimal Kumar Gangwal. So at this stage it cannot be said that there is no evidence against the applicant in the charge sheet.

9.] Although in this regard learned counsel of applicant placed reliance on the Apex Court judgment passed in the case of Umesh Kumar Vs. State of Andhra Pradesh, 2013 AIR(SCW) 6062, wherein apex court held that Law does not prohibit entertaining the petition under Section 482 Cr.P.C. for quashing the charge sheet even before the charges are framed or before the application of discharge is filed or even during its pendency of such application before the court concerned. The High Court cannot reject the application merely on the ground that the accused can argue legal and factual issues at the time of the framing of the charge. But apex court in the judgment also held that ,the inherent power of the court should not be exercised to stifle the legitimate prosecution.

10.] In State of Bihar v. P. P. Sharma & Anr., 1991 AIR(SC) 1260, the apex court Court dealt with an issue i.e. whether an application under Section 482 Cr.P.C. for quashing the charge sheet should be entertained before cognizance is taken by a criminal court and held as under:- "Quashing the charge-sheet even before cognizance is taken by a criminal Court amounts to killing a still-born child. Till the criminal Court takes cognizance of the offence there is no criminal proceedings pending. I am not allowing the appeals on the ground alternative remedies provided by the Code as a bar. It may be relevant in an appropriate case. My view is that entertaining the writ petitions against charge-sheet and considering the matter on merit on the guise of prima facie evidence to stand on accused for trial amounts to pre-trial of a criminal trial . It is not to suggest that under no circumstances a writ petition should be entertained .. The charge-sheet and the evidence placed in support thereof form the base to take or refuse to take cognizance by the competent Court.

11.] Hon''ble Apex Court also in the case of Vinod Raghuvanshi v. Ajay Arora, 2013 10 SCC 581 observed that it is a settled legal proposition that while considering the case for quashing of the criminal proceedings the court should not "kill a still born child", and appropriate prosecution should not be stifled

unless there are compelling circumstances to do so. An investigation should not be shut out at the threshold if the allegations have some substance. When prosecution at the initial stage is to be quashed, the test to be applied by the Court is whether the uncontroverted. allegations as made, prima facie establish the offence or not. At this stage neither the court can embark upon an inquiry, whether the allegations in the complaint are likely to be established by evidence or nor the court should judge the probability, reliability or genuineness of the allegations made therein.

12.] In the case of Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd., 2000 3 SCC 269 , the Supreme Court held as under: "Needless to record however and it being a settled principle of law that to exercise powers under Section 482 of the Code, the complaint in its entirety shall have to be examined on the basis of the allegation made in the complaint and the High Court at that stage has no authority or jurisdiction to go into the matter or examine its correctness. Whatever appears on the face of the complaint shall be taken into consideration without any critical examination of the same. But the offence ought to appear ex facie on the complaint.

13.] Hon''ble Apex Court in the case of State of Haryana and others V/s. Bhajan Lal and others, 1992 Supp1 SCC 335 laid down the guideline in which circumstances charge-sheet can be quashed. Hon''ble Apex Court held as under:- "The power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases. The extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice. The court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint."

The following categories of cases can be stated by way of illustration wherein the extraordinary power under Article 226 or the inherent powers under Section 482 Cr.P.C. can be exercised by the High Court either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised :

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Sections 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any

offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge." which show that where from the charge sheet prima facie offence is made out against accused FIR can not be quashed."

14.] From the above mentioned pronouncement of apex court it emerged that charge sheet can be quashed only wherein the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused and at this stage neither the court can embark upon an inquiry, whether the allegations in the complaint are likely to be established by evidence nor the court should judge the probability, reliability or genuineness of the allegations made therein.

15.] While from the Charge-sheet filed by the respondent No.1 and documents produced along with charge sheet, prima-facie it appears that applicant is second wife of Co accused Vimal Kumar Gangwal and he had Purchased agricultural land and other properties in her name and also money in her bank account belongs to Vimal Kumar.

16.] Although Learned counsel of the applicant placing reliance on the judgment of apex court passed in Ashok Tshering Bhutia Vs. State of Sikkim, 2011 AIR(SC) 1363 submitted that known income of both accused, public servant and his wife during the check period be taken into consideration, but in the present case the respondents have not considered the income of applicant. This argument has no force as it appears from the charge sheet that respondents had considered applicant''s income but it was found that applicant gave wrong information. In her income tax return she has shown the income worth Rs 20,91,155/- from only two Bigha of agricultural land within four years. While the revenue record reveals

that no crop was sown on the land during the said period. It is also mentioned in the final report that applicant showed that she took a loan of Rs.49,71,722/- from her father and other relatives but she did not produce any document in that regard.

17.] He also placed reliance on apex court judgment passed in Seeta Hemchandra Shashittal Vs. State of Maharashtra, 2001 AIR(SC) 1246, K. R. Purushothaman Vs. State of Kerala, 2006 AIR(SC) 35, Vijayn Vs State of Kerala, 1999 3 SCC 54, State (NCT of Delhi) Vs. Navjot Sandhu @ Afsan Guru, 2005 7 JT 1 and submitted that there is no material on record to prove that applicant intentionally abetted Vimal Gangwal in acquiring assets which are disproportionate to his known sources of income. But this arguments also has no force as respondents filled the sale deed and Bhu-Adhikar Pustika of the land in which applicant''s name is mentioned as Pratibha Gangwal w/o Vimal Gangwal and also produced evidence which shows that applicant deposited membership fee of Vimal Gangwal Rs.1,50,000/- by cheque in various clubs and also deposited Rs.34,79,500/- cash in her bank account between 12/03/07 to 11/06/10 which is enough to prima facie show the nexus between applicant and Vimal Gangwal.

18.] Learned counsel also placed reliance on Apex court judgment passed in D.S.P. Chennai Vs. K.Inbasagaran, 2006 AIR(SC) 552, however, the facts of that case are distinguishable as therein the public servant husband explained that the whole money which had been recovered from his house did not belong to him and belonged to his wife. However, in the instant case applicant is not husband but wife and from the charge sheet it appears that the source of income shown by the applicant is not trustworthy. the Hon''ble Supreme Court in the case of State of Tamil Nadu vs. N. Suresh Rajan, 2014 AIR(SCW) 942 has observed thus; "The property in the name of an income tax assessee itself cannot be a ground to hold that it actually belongs to such an assessee. In case this proposition is accepted, in our opinion, it will lead to disastrous consequences. It will give an opportunity to the corrupt public servant to amass property in the name of known persons, pay income tax on their behalf and then be out from the mischief of law.

19.] The charge sheet and documents filed alongwith charge sheet, prima-facie show that applicant is second wife of Co accused Vimal Kumar Gangwal and he purchased agricultural land and other properties in the name of Pratibha Parihar @ Pratibha Gangwal and the properties in her possession belong to vimal gangwal. So it cannot be said that respondent No.1 EOW, Indore has wrongly made applicant who is second wife of Vimal Kumar Gangwal as accused in the case . Whether the property owned by her is from her own income or not, is a matter of evidence, which can be decided only after recording of evidence. So the trial Court has rightly took cognizance against the applicant under Section 120-B of IPC read with offences under Prevention of Corruption Act.

20.] In view of the aforesaid the petition has no merits and the same is hereby

dismissed. The observations made by this Court in the present order will not come in the way of the accused persons and the trial Court shall be free to pass a judgment based upon the evidence produced by the parties.