(2015) 10 MP CK 0031

In the Madhya Pradesh High Court

Case No : Criminal Rev. Nos. 644, 649, 652 and 671 of 2014

Mohan Lal Joshi and Others APPELLANT

Vs

State of M.P. and Others RESPONDENT

Date of Decision : 13-10-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 173, 197, 2, 227, 277
Madhya Pradesh Special Police Establishment Act, 1947 — Section 2, 3, 4
Penal Code, 1860 (IPC) — Section 120B, 120-B, 409, 420
Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2), 19

Citation : (2015) 10 MP CK 0031

Hon'ble Judges : P.K. Jaiswal, J;J.K. Jain, J

Bench : Division Bench

Advocate : Santosh Kumar and S.S. Chouhan, Learned Counsel, for the Appellant; Arvind Gokhale, Advocates for the Respondent

Final Decision : Allowed

Judgement

P.K. Jaiswal, J—Since the common question of law is involved in these revisions, therefore, they are heard together analogously and disposed of by this common order. For the sake of convenience the facts are borrowed from Criminal Revision No. 644/2014.

2. By these criminal revisions under Section 397/401 read with Section 482 of Cr.P.C., the petitioners namely ? Mohanlal Joshi, B.D. Tiwari and M/s. Palannatti construction company, through its partners are challenging the order dated 11.3.2014, passed by Special Judge, Indore in Special Case No. 25/04, and also praying for setting aside of charges under Section 13(1)(d) read with Section 13(2) of Prevention of Corruption Act, 1988 and under Section 120-B, IPC.

3. Brief facts of the case are that Special Police Establishment (SPE) lodged an FIR and registered a case in the year 1995 vide Crime No. 20/1995, under Sections 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 and

Sections 420 and 120-B of IPC against seven Government employees, namely (I) Late P.K. Monda the then Chief Engineer, (ii) Petitioner B.D. Tiwari the then Superintending Engineer, (iii) Petitioner A.K. Sojatiya the then Executive Engineer, (iv) respondent - V.K. Talsera the then Assistant Engineer in Criminal Revision No. 671 of 2014, (v) P.D. Gupta Sub Engineer (vi) M.L. Joshi the then Superintending Engineer and fours partners of M/s. Pallanattil Construction Company, Kerala, namely P.P. Thomas, P.P. Polus, Kurian Paul and P.P. George. The case was registered on the directions of Dy. Inspector General, Special Police Establishment, Lokayukt, Bhopal against the present petitioners and others and it was alleged in the FIR that a contract was awarded for construction of dam which is commonly known as ''Man Project'' by order No. 115/17/MNM/90 dated 25.8.1990 to M/s. Pallanattil Construction Company, Kerala and the company was directed to complete the work within 29 months i.e. by 29.2.1993. As per the term No. 3.23.2 of the contract, the contractor was to be paid an advance for the purpose of bringing and purchasing machinery to be used for the purpose of construction as per letter dated 13.9.1990. Accordingly Superintending Engineer NVDA, Circular No. 10, Manawar by his letter dated 22.9.1990 ordered the payment of Rs. 110.95 lakhs to the contractor for purchasing the machines. The machines were purchased by the contractor and a chart was annexed with the tender dated 20.9.1990. On 23.9.1994, the Executive Engineer, Narmada Development Authority (NVDA), Division No. 10, Manawar informed the Director, Rehabilitation, Bhopal that the contractor company has removed the machines from the site on 10.6.1991 and on preliminary inquiry as stated in the FIR, it was disclosed that-

"(a) The contractor removed the machines on 10.6.1991 from the site, still the payments towards advance for machinery were made on 25.10.1991 of Rs. 6.38 Lakhs and of Rs. 7.07 Lakhs on 6.4.1992, which could have been stopped.

(b) The machines were hypothecated with the department by the contractor and, therefore, the possession over the machines should have been continued by the department, but it was not done so.

(c) Though the contractor failed to complete the work of construction in the specified period, as per the Term No. 4.32, even then the period was extended."

4. It was also found that the contractor was already having machines and he was shown purchase of those old machines and recovered money from the Government in the name of such purchase. Present petitioners and other officers failed to correctly assess the value of those machines, at the time of payment of bills of purchase and thereby caused a loss to the government and financial benefit to the contractor. It was also found that though an advance of R. 1.10 crores was given to the contractor and as per the terms of the contractor, recovery of 10% of the total amount of advance should have been made from the running bills. The recovery of Rs. 5 lakhs was only made against advance of Rs. 38.12 lakhs. Thereafter, the contractor stopped the work and thus the present petitioners and other officers financially benefited the contractor and

caused a loss to the government. It was also found that the contractor did not complete the work within the prescribed period from September, 1990 to February 1993 as per the terms of the contract and he did work of only Rs. 1.32 Crores out of 13.18 Crores within this period. But no action was taken by the concerning officers against the contractor and they allowed him to take the machines out of the project area and unnecessary extended the period of contract. No information regarding these facts was given to the higher officers in time and thereby present petitioners illegally benefited the contractor and caused a loss to the Government and, therefore, misused their office and committed the offences punishable under Sections 13(1)(d) and 13(2) of the Prevention of Corruption Act and Sections 420 and 120-B of IPC.

5. After registration of the case investigation was conducted by the Special Police Establishment and a report was sent to the State Government and permission for prosecution of the present petitioners was sought. That permission was refused by the Government in the meeting of Permanent Sub Committee of the Council of Ministers dated 13.7.2002. Special Police Establishment, Lakayukt again made a request to the Government to reconsider its decision by way of letter dated 21.7.2004, then again a meeting of Cabinet was held on 26.10.2005 and again sanction was refused and the Special Police Establishment, Lokayukt was informed by the Water Resources Department, to close the matter again six officers including the present petitioners. But ultimately, after superannuation of the present petitioners charge sheets against them were filed before the Special Court and that is how they have come before this Court for quashment of the FIR of the crime and proceedings which are pending before Trial Court against them.

6. One of the petitioner ? B.D. Tiwari, filed petition under Section 482 of Cr.P.C., which was registered as M.Cr.C. No. 3871 of 2004 and on 23.11.2004, the same was finally disposed of by this Court with an observation that ''parties are directed to appear before the trial Court and submit their respective arguments on the question of taking cognizance by the Court below''. Thereafter, he was heard by the Special Judge before whom charge sheet was filed on the question of necessity of sanction of his prosecution even after his superannuation. When adverse order was passed by the Special Judge that B.D. Tiwari, filed Criminal Revision No. 1012/2004, before High Court, challenging the order of taking cognizance of the offence. In that criminal revision final arguments were advanced by both the parties and the case was reserved for orders on 13.3.2006, but on 23.3.2006, an application was moved for granting permission to withdraw that revision, that application was allowed and the revision was dismissed as withdrawn. In the year 2006, Shri B.D. Tiwari and co-accused A.V. Joshi, filed a petition under Section 482 of Cr.P.C., 1973 vide M.Cr.C. No. 1289 of 2006 for quashment of charge-sheet dated 6.10.2004 and further proceedings pending in the Special Court. This Court by order dated 8.5.2007, dismissed the petition by passing a detailed order, which runs into 45 pages. This Court also made certain remarks against the action of B.D. Tiwari and co-accused A.K. Sajotiya, regarding their conduct and also made an observation about their

conduct. Para 21, 22, 25, 28, 29, 30, 31, 32, 33, 34, 39, 40, 42, 49, 52, 53, 57, 60, 61 and 62 are relevant which reads as under:-

"21. In the present petition filed by Shri A.K. Sojatia there appears no reference of earlier writ petition filed by him, on the same ground before this Court under Articles 226 and 227 of the Constitution of India. In another petition which was filed by petitioners A.V. Joshi and B.D. Tiwari there is a reference of earlier criminal revision and it has been stated that, that criminal revision is still pending which shows that the second petition under Section 482 of Cr.P.C. has been filed while criminal revision on the same subject was already pending before this Court.

22. This state of affairs does not appear to be proper. Learned counsel for the respondent in this regard submitted that petitioners are trying to adopt the pick and chose method and knocking different doors of this High Court by way of different types of petitions, on the same subject. This argument so far as its factual aspect is concerned appears correct and as held earlier, all the reliefs which have been claimed in these petitions had already been claimed by the present petitioners in other petitions also. In earlier petitions without saving any right for filing another petition or without making any request to consider those petition under the provisions of Section 482 of Cr.P.C., those petitions were withdrawn. It shows that petitioners have not come with clean hands before this Court.

25. It hardly matters whether the petition has been drafted as petition under Articles 226 and 227 of the Constitution of India or an application filed under Section 482 of Cr.P.C., because nomenclature under which petition is filed is not quite relevant and that does not debar the court from exercising its extraordinary jurisdiction which otherwise it possesses. Therefore, on the analogy laid down by the Supreme Court in the case of Sarguja Transport Service (supra) it is held that once a petition under Articles 226 and 227 of the Constitution of India is filed for quashment of prosecution or any similar type of relief and such petition is withdrawn, then same petitioner cannot be permitted to invoke the inherent extraordinary jurisdiction of this High Court available under Section 482 of Cr.P.C., once again for the adjudication of the same question, unless a liberty is sought from the Court while withdrawing earlier petition to institute an application under Section 482 of Cr.P.C.

28. Learned counsel in this regard submitted that Respondent No/3 did not make proper enquiry from the department and overlooked the documents available with the department which shows that prompt action was taken by the officers concerned for taking back the machines from the contractor and recovery of the balance amount. Learned counsel in this regard drawn attention of this Court towards some documents which are available in the record of the department and have been filed as annexures with the petition. He submitted that a letter was written on 1.7.1991 by Executive Engineer A.K. Sojatia to the contractor by which it was reported that 10 dumpers have been sent outside the project area

by the contractor without permission and the J.C.B. machine has also been sent elsewhere and it was informed that the machines and dumpers should be brought back to the site immediately. He submitted that this letter shows a prompt action on the part of Petitioner No. 1. He also drawn attention of this Court towards contractor''s letter dated 23.6.1993, (Annexure P-3) and it is also on the same subject. With the help of these letters learned counsel for the petitioner tried to demonstrate that prompt action was taken, but the dates of both these letter are sufficient to show that the action was not quite prompt. Letter dated 1.7.1991 was responded by the contractor by letter dated 23.6.1993 and thereafter, machines were seized as per the seizure memo (Annexure A-4) on 12.8.1994 and the valuation report of the machines (Annexure P-5) was prepared on 19.10.1994. It has been argued by learned counsel for the applicant that advance was given by the department to the contractor for the purpose of smooth and proper working at the site so that the project can be completed.

29. The documents which have been filed by the petitioner alongwith the petition are yet to be considered by the trial Court and necessary inferences are yet to be drawn by that Court. It will be premature to express any opinion on this documentary evidence, at this stage. The admitted facts of the case shows that advance for machinery was provided by the department to the contractor. The machines were removed from the project site by the contractor. From the record it also appears that contractor completed only ten percent of the work valuing Rs. 132 lacs during the stipulated and extended period of the contract. Whereas the contract was for the costs of Rs. 1318.23 lacs and was to be completed within the specified period, as per the terms of the contract. There were also terms for making recovery of the advance given for purchase of machinery in the contract itself and there was a letter addressed by the contractor to the department, authorizing department to recover agreed amount which was given as an advance for purchase of machinery from the running bill. But record shows that the amount was not so deducted and deductions were made only as per original terms of the contract and not according to the authority given by the contractor. In the charge-sheet it has also been mentioned that even the recovery was not made as per the agreed terms and the advance was sanctioned from that machinery which was already belonging to the contractor. It has also been mentioned in the charge sheet that Rs. 1,10,62,971/- (Rs. One Crore Ten Lacs Sixty Two Thousands Nine Hundred Seventy One) were sanctioned as advance for plant and machinery, but even then in spite of authority of the contractor advance alongwith interest was not recovered from the running bill and further advance was sanctioned. It has also been alleged that the contractor moved the machinery outside, when the work was not even completed up to 10% and the progress of the construction work was very slow even then recommendations were made for extension of period of the contract, which was not at all justified and was for the purpose of providing unnecessary financial benefit to the contractor and loss to the Government.

30. It has also been mentioned that the Chairman of the Project NVDA, when inspected the project site, then he found that the progress of construction work was not at all satisfactory and gave advice for again calling tenders for the remaining work. But this advice was also overlooked by the petitioners and the contractor was permitted to move the machinery outside the project work. On the basis of these facts and some other facts prima facie it was found by the investigating officer that:-

1. Contractor had moved the machineries from the project site on 10.6.1991, even then advance of Rs. 6.38 lacs was sanctioned on 25.10.1991 and of Rs. 7.07 lacs were sanctioned on 6.4.1992.

2. Legal possession over the machineries which were hypothetic with the department was not obtained by retaining registration documents of the machineries and plants.

3. The project period was unnecessarily extended in contravention of terms of the tender.

4. No prompt action was taken against the contractor in spite of removal of machineries from the project site and no note of this fact was taken in the proposal for extending the period of contract.

5. Advance for machineries was not adjusted from the running bill of the contractor in spite of assurance.

31. Learned counsel for the petitioners submitted that present petitioners are honest and are sincere public officials. Man project was the big project and sincere efforts were made to complete the project at the earliest. In such type of big projects, such type of lapses are unavoidable and only, on the basis of these lapses it cannot be said that some misconducted has been committed by the present petitioners.

32. It has also been argued that the documents which have been annexed with the petition clearly shows that sincere efforts were made by the present petitioners for recovering the advance by seizing machines and thereafter, by addressing letters to different institutions. Letters were also written to many Government Officers in this regard. He submitted that in this way the dispute between the contractor and the State Government only remains a civil dispute for the recovery of dues of the Government. There is nothing on record to show that present petitioners committed any misconduct which can be said to be punishable under the provisions of Sections 13(1)(d) and 13(2) of Prevention of Corruption Act. He also submitted that the ingredients of cheating punishable under Section 420 of IPC and criminal conspiracy punishable under Section 120-B of IPC are also totally missing from the allegations levelled by the prosecution.

33. Per contra, learned counsel for the respondent Sr. Advocate Mr. Jai Singh submitted that at this stage meticulous scrutiny of the evidence and its documentation is totally unwarranted. He submitted that as per letter addressed

by the Chief Engineer, Narmada Project, an amount of Rs. 61 lacs is yet to be recovered from the contractor, as against advance on machineries given to him by the department. It has also been argued that in spite of settled norms of department, which was available, in the record books the same was deliberately neglected by the petitioners and in spite of consent of the contractor money was not recovered from him running bills and he was permitted to move out the machineries from the project site, without completing the work for which advance was granted by the Government. He further submitted that this fact clearly demonstrate the misconduct on the part of present petitioner, who were providing financial benefit to the contractor and thereby causing loss of lacs of rupees to the Government.

34. I have considered the rival contentious raised by learned Counsel for the parties and also perused the record of the case. From the admitted facts, it emerges that a large sum of money is still due against the contractor and he was permitted to move out the machineries from the project site. His contract was also extended on the recommendation of the present petitioners many times. Apart from these things other allegations which have been levelled by the investigating agency and have been carved out in the charge sheet filed by the Special Police Establishment in the Special Court when considered in the light of the guidelines by way of illustration formulated by Supreme court in the case of State of Haryana and others Vs. Ch. Bhajanlal and others, then it cannot be said that present case falls in the category of cases wherein powers could be exercised for quashment of the prosecution either to prevent the abuse of process of any Court or otherwise to secure the ends of justice. This is not a case where the reliability or genuineness or otherwise of the allegations made in the FIR or in the complaint can be inquired into by meticulous documentation of the evidence, by its appreciation.

39. Thus, it is settled that after superannuation of present petitioners sanction for prosecution under Section 19 of the Prevention of Corruption Act was not required and, therefore, the documents which have been filed by the State Government alongwith the reply can only be placed before learned trial Court during trial for consideration at appropriate stage. At present it is not necessary to give any finding on the facts of the case, on the basis of these documents and simply because sanction was earlier refused by the State Government, it cannot be held that present matter is purely a matter of civil nature, which has been given a cloak of crime. It is pertinent to mention here that apart from present petitioners other five persons are also facing same criminal prosecution and any expression of opinion on this subject may effect their case also.

40. It is clear that lacs of rupees are to be recovered from the concerning contractor. In view of this fact prima facie at this stage, in view of the detailed investigation conducted by Special Police Establishment, Lokayukt and after going through all the documents which have been filed alongwith charge sheet, it cannot be said that there is no ground for proceeding against present petitioners.

Whether the material collected by the Special Police Establishment is sufficient for their conviction or not is to be seen by the concerning trial Court. The FIR and the prosecution against present petitioners can of course be quashed, if the allegations made in the First Information Report or the complaint even if they are take at their face value and accepted in their entirety do no prima facie constitute any offence or make out a case against the accused persons. In the present case the evidence is not of that nature. At present stage this Court is only required to evaluate the material and documents available on record with a view to finding out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. This Court may for this limited purpose sift the evidence at it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case, as held by Supreme Court in the case of Niranjan Singh Karam Singh Punjabi and Others Vs. Jitendra Bhimraj Bijja and others, AIR 1990 SC 1962 : (1990) CriLJ 1869 : (1990) 3 JT 408 : (1990) 2 SCALE 193 : (1990) 4 SCC 76 : (1990) 3 SCR 633 .

42. I have anxiously gone through the all terms of the contract and satisfied that, even if the terms of the contract are read as they are, then also it cannot be said that the conclusion drawn by the investigating agency are totally absurd. With the risk of repetition, it can be said that terms of the contract and all other documents filed by petitioners are yet to be proved before Trial Court and then necessary inferences according to law are to be drawn, after recording evidence during trial and it would be premature to express any opinion only on the basis of terms of the contract, overlooking to the other facts, which have been disclosed in the charge sheet.

49. But it is clear that the charge sheet has been filed by Special Police Establishment, constituted under the provisions of M.P. Special Police Establishment Act, 1947 and the superintendence of this Establishment as per Section 4 of this Act vests in the Lokayukt appointed under the provisions of M.P. Lokayukt Adhiniyam, 1981. Section 3 provides the category of the offence which can be investigated by the Special Police Establishment and Section 2 provides that the investigation conducted by Special Police Establishment shall have the same meaning as per definition given in Section 2 of Cr.P.C. If we see the whole scheme of M.P. Lokayukt and Up Lokayukt Adhiniyam, 1981, then it become crystal clear that the Special Police Establishment, under Lokayukt is empowered to conduct investigation with the necessary result of filing a final report after completion of such investigation under the provisions of Section 173 of the Cr.P.C., and, therefore, at this stage, this Court does not find any error in the charge sheet filed by the Special Police Establishment, under Lokayukt.

52. The arguments advanced by learned counsel for the petitioners is not very much convincing. Whether it is Delhi Special Police or M.P. Special Police established under these two acts the position remains the same, because both

these type of police are given power to investigate and after completion of investigation a report under Section 173 of Cr.P.C. is required to be filed under the statutory provisions. In case of government servant who cannot be prosecuted without the sanction of the Government, sanction is a prerequisite condition for filing such charge sheet. On the moment such requirement for taking prior sanction from the State Government becomes not necessary, then charge sheet can very well be filed even by the Special Police established under M.P. Special Police Establishment Act who work under the supervision of the Lokayukt and administrative control of Inspector General of police.

53. Section 2 of M.P. Special Police Establishment Act, 1947 makes provision for constitution and power of Special Police Establishment and the section itself says that the establishment has got power of investigation. Notification issued under Section 3 of the Act shows that the establishment has got power to investigate offences punishable under Sections 409 and 420 of IPC and conspiracies in respect of offences relating to Prevention of Corruption Act. Section 420 provides for superintendence and administration of the Special Police Establishment. The general power of superintendence over this police establishment vests in Lokayukt, bu the administration of the said police establishment vests in Inspector General of Police, Madhya Pradesh, who exercise such of the powers exercisable by him in respect of the police force in the State as the State Government may specify in this behalf. These provisions clearly shows that the power of administration of the said police establishment is to be exercised by the Inspector General of Police under the general power of the superintendence of the Lokayukt and such powers also includes the power of filing final report under Section 173 of Cr.P.C. as and when needed.

57. He submitted that in absence of any evidence to prove that the accused obtained any valuable thing or pecuniary advantage by either corrupt or illegal means or by abusing his position as a public servant, the prosecution is not sustainable.

60. When we consider the present case in the light of both the above referred judgments then there does not appear any reason to say that there is no material against the present petitioners to show a prima facie case, as alleged in the charge sheet.

61. Considering the facts of the case from all angles and also taking into consideration the material collected by the Special Police Establishment during investigation against present petitioners, I do not find any ground for quashment of the prosecution of the petitioners particularly considering the admitted facts and the facts that earlier also petitioners have filed different types of petitions before this High Court challenging the same prosecution. This is always to be kept in mind that, while considering petition filed under Section 482 of Cr.P.C., this Court cannot treat whole matter as if it is an appeal against order of conviction. The jurisdiction of this Court under Section 482 of Cr.P.C. is to be exercised very sparingly in rare cases, where the court feels it necessary to pass

any order in the interest of justice or to prevent abuse of process of law. The material collected by the Special Police Establishment during the course of investigation makes out a case for at least filing a charge sheet and initiating the prosecution against the petitioners.

62. Thus, both these petitions are devoid of merit and are hereby dismissed.

7. After dismissal of the M.Cr.C. No. 1289 of 2006, an application under Sections 277 and 278 of Cr.P.C. was filed by the petitioners on the ground that charge sheet does not indicate any complicity and prosecution would be an exercise in futility and prayed for their discharge. Learned counsel for the petitioners has drawn our attention to various clauses of the agreement and documents, which were considered in the earlier round of litigation and submitted that, so far as charge under Section 120B of IPC is concerned, the prosecution agency has not procured any sanction whereas, the same is essential in the light of provisions contained under Section 197 of Cr.P.C. and in absence of any sanction, the petitioners cannot be force to face a trial for an offence for which no sanction is procured. It is also submitted that not a single material is available against Mohan Lal Joshi, who was at that relevant point of time posted as Superintendent of Engineer, Narmada Valley from June 1993. The charge-sheet against him and also against co-accused persons was filed on 21.9.2004. Shri Joshi, got retired only on 31.1.2001. He submitted that, there is no material against Shri Joshi, except recommendation of extension of time. The letter by which recommendation was made by Shri Joshi vide Annexure A/6, para 6, 7 and 8 of the recommendation is relevant which reads as under:-

"6. It is observed that the activity of the contractor seems to be in line for completion of work.

7. It can be mentioned here that if fresh tenders are called for whole of the balance work, the rates may come quite high, (may be quoted rate of 60% to 80% higher than the present agency).

Moreover, the invitation of the fresh tender of whole balance work, would mean loss of next working season (Nov. 93 to June 94). Fixing of fresh agency may takes one year or so.

8. On circumstances explained above, it is recommended to grant permission:-

(a) To permit present contractor ie., M/s. P.C.C. To continue work initially up to 6/94 and further extension may be decided of performance of the contractor during the above period.

(b) Inviting the tenders simultaneously for part of balance work in 2 or 3 groups each below Rs. 25 lacs or so to bring pressure on the contractor.

In case, contractor achieves the proper progress than the N.I.T. Will be withdrawn. If he failed to do so, other alternative agency will be fixed and the loss of working season will be saved.

It is therefore requested that the necessary order on 8(b) above from your good self may kindly be issued in this regard as it comes under your compliance so the further action in this matter may be taken.

The copy of the E.E.''s letter No. 1620/SAC Dtd. 27.7.93 alongwith its enclosure is enclosed herewith."

8. It is not in dispute that Rs. 110.63 lacs towards mobilization advanced against machinery was given to the contractor. The contractor after purchasing of equipments and vehicles hypothecated the same to the Government and as per Clause 1 of hypothetical deed, it will not be dispossessed by the contractor till the said advance is fully repaid. It has also come on record that the contractor was permitted to use equipment and vehicle for some other contract and for that they were permitted to remove from the site for carrying out the work of some other contractor. This was with the knowledge of the petitioner and another co-accused persons, but they have not taken any action against the contractor nor intimated the same to the higher authorities. It was the duty of Mr. Joshi, to go through the record and then recommend the case, for extension of time to the Chief Engineer. The learned Special Judge considering each and every aspect of the matter raised before them by order dated 11.3.2014, rejected the application filed for their discharge. Relevant part of the order passed by the learned Special Judge reads as under:-

9. It is this action, which has been impugned in these revision petitions. The Code of Criminal Procedure, 1973, contemplates discharge of the accused by the Court of sessions under Section 227 of the Cr.P.C., the trial Court is required to discharge the accused if it "considers that there is not sufficient ground for proceeding against the accused". True it is that at the time of consideration of the applications for discharge, the court cannot act as a mouthpiece of the prosecution or act as post-office and may sift evidence in order to find out that whether allegations made are groundless so as to pass order of discharge. It is trite that at the stage of consideration of an application of discharge, the court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At this stage, probative value of the materials has to be gone into and the Court is not expected to go deep into the matter and hold the materials would not warrant a conviction. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame charge; though for conviction, the court has to come to the conclusion that the accused has committed the offences. The law does not permit mini trial at this stage. Further, defect in investigation itself cannot be a ground for discharge.

10. In the present case, while rejecting the application for discharge, the learned Special Judge has considered each and every aspect of the matter and thereafter, rejected the application and framed the charges against the persons. Learned counsel for the petitioners has also drawn our attention to the decisions of the Apex court in the case of S.P. Bhatnagar Vs. State of Maharashtra, AIR 1979 SC 826 : (1979) CriLJ 566 : (1979) 1 SCC 535 : (1979) SCC(Cri) 323 : (1979) 2 SCR 875 , in the case of C. Chenga Reddy and Others Vs. State of Andhra Pradesh, (1996) 5 AD 445 : AIR 1996 SC 3390 : (1996) CriLJ 3461 : (1996) 3 Crimes 119 : (1996) 6 JT 739 : (1996) 5 SCALE 318 : (1996) 10 SCC 193 : (1996) 3 SCR 479 Supp , in the case of Harshendra Kumar D. Vs. Rebatilata Koley Etc., AIR 2011 SC 1090 : (2010) 1 BC 685 : (2011) 101 CLA 330 : (2011) 162 CompCas 247 : (2011) CriLJ 1626 : (2011) 1 Crimes 280 : (2011) 1 JCC 42 : (2011) 1 RCR(Criminal) 887 : (2011) 2 SCALE 278 : (2011) 3 SCC 351 : (2011) 1 SCC(Cri) 1139 : (2011) 106 SCL 159 : (2011) 2 SCR 670 : (2011) AIRSCW 1199 : (2012) AIRSCW 323 : (2011) 1 Supreme 742 : (2011) 8 Supreme 523 and in the case of State of Madhya Pradesh Vs. Sheetla Sahai and Others, (2009) CriLJ 4436 : (2009) 10 JT 388 : (2009) 10 SCALE 632 : (2009) 8 SCC 617 : (2009) 13 SCR 1048 : (2009) AIRSCW 5514 .

11. In respect of grant of sanction under Section 197 of Cr.P.C., he submits that at that relevant point of time petitioners were on official duty and, therefore, sanction under Section 197 of Cr.P.C. is must.

12. Per contra, Shri Arvind Gokhale, learned counsel for the SPE Lokayukt has submitted that in view of the law laid down by the Apex Court in the case of State of H.P. Vs. M.P. Gupta, (2003) 10 JT 32 : (2003) 10 SCALE 522 : (2004) 2 SCC 349 : (2003) 6 SCR 541 Supp wherein, the Apex Court held that, it is no part of the duty of a public servant, while discharging his official duties, to enter into the criminal conspiracy or to indulge into the criminal misconduct. Want of sanction under Section 197 of Cr.P.C. is, therefore, no bar.

13. Petitioner ? Mohan Lal Joshi, during his posting as Superintendent of Engineer, from a period between 20.9.1990 to year 1994, misused his position as Superintendent of Engineer and caused wrongful gain to the co-accused contractor namely M/s. Palannatti Construction Company. The employees of the contractor company violated the terms and conditions of the contract and did not execute the work and despite this Mr. Joshi, made a payment as advances and allowed the contractors to remove the machinery from the site of work when the same were hypothecated with the Government of Madhya Pradesh. Mr. Joshi, did not take any steps to recover the amount of machinery hypothecated under the contract from the running bills of the contractor company and did not take steps to recover the machines, as a result of which, huge financial loss was caused to the State Government. Mr. Joshi, being the Superintending Engineer was under the obligation to see to it that the contractor company strictly adheres to the terms and condition of the contract, but he derelicted his duty and caused wrongful gain to the contractor company. Mr. Joshi, deliberately did not mention

in his recommendatory letters that the machinery has been removed from the site, but still recommended for extending of time for no adequate reason. As per order of the Special Judge, there is sufficient evidence to proceed with the trial and, therefore, has rightly framed the charges against the petitioner. In respect of Criminal Revisions No. 649/2014 and 644/2014, we are of the view that the grounds mentioned in the present criminal revision has been taken in the earlier round of litigation (M.Cr.C. No. 1289 of 2006) and the same was dismissed on merit by holding that the material concluded by the investigation agency makes out the case for prosecution against petitioner. The filing of the criminal revision by B.D. Tiwari, amounts to raising the same ground, which has been raised and decided by this court. The scope of revision jurisdiction is very limited. Only where material evidence is over looked by the trial Court, this Court in revision jurisdiction can interfere with the finding of learned trial Court.

14. From the aforesaid, we are of the view that the view taken by the Special Judge was neither unreasonable nor perverse, but was possible reasonable view based on material available on record. In these circumstances, we are of the view that the order passed by the learned Special Judge was neither perverse nor unreasonable. No case to interfere with impugned order and charges framed against the petitioners as prayed is made out.

15. Criminal Revision No. 644/2014, Criminal Revision No. 649/2014 and Criminal Revision No. 652/2014, have no merit and are liable to be dismissed.

16. So far as Cri. Rev. No. 671/2014, filed in respect of discharging of non-applicant ? V.K. Talesra, it is submitted that the learned Special Judge merely on the ground that no sanction has been obtained by the prosecution from prosecuting the non-applicant, ie., V.K. Talesra, whereas at the time of laying the charge-sheet against non-applicant V.K. Talesra, he has already superannuated and, therefore, no such sanction was required. It is also pointed out that, before laying the charge-sheet, the Special Police Establishment has written to the Law Department of the State Government for grant of sanction and right from 21.11.2000, kept on writing to Law Department for granting sanctions. The Law Department in its own capacity was required to grant sanction. He further submitted that according to business allocation Rules of Government of M.P., grant of sanction to prosecute under the Prevention of Corruption Act is a prerogative of the Law Department and in absence of such grant or refusal by the Law Department, it ought to have been held by the learned Special Judge that since the Council of Ministers has refused to grant sanction, the non-applicant can be prosecuted. This Court as well as the principal seat at Jabalpur, in number of matters has held that in prevention of corruption cases, it is probative to the Law Department to grant or refuse the sanction and only the Law and Legislative Affairs Department of the Government of M.P. is empowered to grant or refuse the sanction.

17. The Division Bench of this Court in the case of Omprakash Verma vs. State of M.P. (W.P. No. 5193, 5816, 5837/2009 and in W.P. No. 11977, 12001/2012 has

held that the refusal to grant of sanction by the parent Department is of no consequence and the competent authority for granting sanction is a Law and Legislative Affairs Department is not binding on Law Department while considering the grant of sanction.

18. The impugned order and documents relied upon by the learned Special Judge would go to show that the Council of Ministers though had taken a decision to not to initiate prosecution but the fact remained that the Council of Ministers were not empowered in the instant case to grant sanction or refuse the same, therefore, even if the Council of Ministers had refused to grant the sanction, it was for the Law Department to consider for grant of sanction independently and since no such independent decision has been taken by the Law Department it is a case in which there is neither refusal by the Law Department, nor the Law Department has passed any such orders independently.

19. Considering these facts, the impugned order dated 11.3.2014 passed by the Special Judge (P.C. Act), Indore in Special Case No. 25/2004, discharging non-applicant V.K. Talesra, is liable to be set aside and is accordingly, set aside with a direction to the learned Special Judge to reconsider the same and after hearing the learned counsel for the non-applicant pass an appropriate order, within a period of three months from the date of certified copy of the order.

20. Criminal Revision No. 671 of 2014 is allowed and disposed of.

21. Resultantly, Criminal Revision No. 644/2014, Criminal Revision No. 649/2014 and Criminal Revision No. 652/2014, have no merit and are accordingly, dismissed.

22. A copy of this order be retained in other connect matters also.