

(2015) 01 MP CK 0091

In the Madhya Pradesh High Court

Case No : M.Cr.C. Nos. 7970, 7973, 7975, 7976, 7980, 7981, 7982, 7989, 7992, 7994, 7995, 7999, 8123, 8124, 8126 and 8135 of 2014

Nityanand Pande

APPELLANT

Vs

Special Police Establishment Lokayukt

RESPONDENT

Date of Decision : 07-01-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Judges (Protection) Act, 1985 — Section 2, 3, 3(1), 3(2)
Madhya Pradesh Land Revenue Code, 1959 — Section 169, 190, 31, 44, 50
Penal Code, 1860 (IPC) — Section 120B, 19, 40, 77
Prevention of Corruption Act, 1988 — Section 13(1), 13(1)(d), 13(2)

Citation : (2015) 01 MP CK 0091

Hon'ble Judges : P.K. Jaiswal, J;S.C. Sharma, J

Bench : Division Bench

Advocate : A.K. Sethi, Learned Senior Counsel and Rishab Sethi, Learned Counsel, for the Appellant; Arvind Ghokhale, Learned Counsel, Advocates for the Respondent

Final Decision : Dismissed

Judgement

They are heard.

1. This order shall govern the disposal of M.Cr.C. No. 7970/2014, M.Cr.C. No. 7973/14, M.Cr.C. No. 7975/14, M.Cr.C. No. 7976/14, M.Cr.C. No. 7980/14, M.Cr.C. No. 7981/14, M.Cr.C. No. 7982/14, M.Cr.C. No. 7989/14, M.Cr.C. No. 7992/14, M.Cr.C. No. 7994/14, M.Cr.C. No. 7995/14, M.Cr.C. No. 7999/14, M.Cr.C. No. 8123/14, M.Cr.C. No. 8124/14, M.Cr.C. No. 8126/14, and M.Cr.C. No. 8135/14 as the common questions are involved in all the matters they are heard together and are being decided by this common order. For the purpose of this order, the facts are taken from M.Cr.C. No. 7970/2014.

2. By this application under Section 482 of Code of Criminal Procedure, the applicant is praying for quashment of FIR registered against him on 11/08/2014 as Crime No. 366/14 for the offence under Section 13(1)(d) and 13(2) of

Prevention of Corruption Act, 1988 read with Section 120B of IPC.

3. Brief facts of the case are that at the relevant point of time the applicant was posted as Tehsiladar in Tehsil and District Ujjain. One Indesha son of Kunwarji filed an application for mutation of his name and declaring him as Bhumiswami. The said case was registered vide Revenue Case No. 85/A6/0607. The applicant considering the fact that Indesha son of Kunwarji Mali is in possession of Survey No. 1236, area 2.81 Hectare of Patwari Halka No. 29 of Village Tajpur, Tehsil and District Ujjain whereas registered Bhumiswami is Iqbal, he orally handed over the possession of the aforesaid land to Indesha and he is allowed to retain the land for a period executing one year during consecutive three years, therefore, by reasons of provisions of 169 of M.P. Land Revenue Code, 1959(In short "M.P.L.R.C.") the lessee had acquired the right of Bhumiswami and allowed the application for mutation and directed the Patwari to mutate the name of Indesha Mali.

4. Section 190 of the M.P.L.R. Code, 1959 deals with two types of cases viz.(1) those were persons in occupation of the land became entitled to Bhumiswami rights from the date of commencement of the Code. This specifically provided under Subsection (2A) and, (2) those cases where occupancy tenants get the Bhumiswami rights by virtue of something happening in their favour after the commencement of the Code. As far as the first category is concerned, the conferral Bhumiswami rights appears to be automatic and it is the obligation of the persons so acquiring the rights to pay compensation, under subsection (3) of the said section.

5. Order dated 27/09/2007 passed by the applicant is relevant which reads as under:

6. The Lokayukta Organization conducted a preliminary enquiry and during enquiry it was found that the applicant for the period from 2006-2012 in connivance with so called lessee's and Bhumiswami's mutated the name of lessee under Section 190 of the M.P.L.R. Code, 1959 and caused loss to the exchequer. It is also found that he passed number of orders in connivance with the Bhumiswami and BhuMafia and landowners to evade the stamp duty. In preliminary enquiry prima facie material has been found against the present applicant and total 18 cases were registered against him. On the basis of the aforesaid preliminary enquiry FIR No. 366/2014 was registered against him on 11/08/2014 on the ground that the applicant in exercise of the quasi-judicial powers conferred under M.P. Land revenue Code, 1959 has mutated by order dated 27/09/2007 the name of Smt. Premlata Bai W/o Late Shri Vishnu Ji with respect to certain lands by registering case No. 85/A6/ 0607, which was illegal and because of this the State was put to loss of stamp duty to the tune of Rs.2,53,551/.

7. It is submitted by the learned Senior Counsel for the applicant that the charges levelled against the applicant are related with respect to quasi-judicial

proceedings conducted by the applicant as Court of Tehsildar. There are no allegations against the applicant with respect to taking bribe or putting himself to any profit.

8. He also contended that all the orders passed by the applicant under the M.P.L.R. Code, 1959 are subject to appeal U/s 44 of the Code or subject to the Revision Petition u/s 50 of the Code or subject to Review U/s 51 of the Code of 1959. If there is any mistake of law or wrong interpretation of law or there is any mistake of facts, then it is liable to be corrected by the higher authorities either under the appellate or revisional or review jurisdiction, but such alleged mistake cannot be subject matter of criminal proceedings, as according to settled principle of law if any such quasi-judicial orders are subject matter of criminal proceedings, then the entire system of administrative jurisdiction in which quasi-judicial powers are conferred on the administrative authority would fall down into disvalued that such officer, performing such functions are inhabited in function in fear or favour because of constant threat of disciplinary proceedings any negligence in quasi-judicial adjudication cannot be said to be carelessness.

9. He further submitted that according to Sections 2 and 3 of Judges (Protection) Act, 1985 (In short "J.P. Act"), if judicial or quasi-judicial authority passes any order under any provisions of the Act, then he cannot be subjected to any Civil, Criminal or Departmental proceedings.

10. In support of the aforesaid arguments, learned Senior Counsel for the applicant has drawn our attention to the decision of the Single Bench of High Court of M.P., Indore Bench in the case of Om Prakash Vs. Surjan Singh, (2004) 1 MPJR 244 and Balram and another Vs. Aswani Kumar Yadav and another, (2001) 2 MPHT 330 : (2001) 3 MPLJ 363 and submitted that the applicant was exercising his judicial powers under "the Code" while passing the order of mutation. He was empowered to give a definite judgment in a legal proceeding, he is entitled to protection under Section 3(1) of Judges(Protection) Act, 1985 and no Court can entertain any civil or criminal proceeding against him nor he can be prosecuted. The F.I.R. registered against him is illegal , inoperative and without jurisdiction. It amounts to an abuse of process of law and is liable to be quashed.

11. According to the learned Senior Counsel the applicant being a Revenue Officer hold status of a Judge as defined in Section 2 of the Judges(Protection) Act, 1985 by virtue of Section 31 of the M.P.L.R. Code.

12. Shri A. Ghokhale, learned counsel for the non-applicant / Lokayukta, has drawn our attention to Section 3(2) of the Judges (Protection) Act, 1985 and submitted that subsection (2) of Section 3 of the Act apparently saves the powers of the (I) Central Government, (ii) State Government, (iii) Supreme Court of India, (iv) any High Court, (v) any other authority under any law for the time being in force to take such action inter alia by way of criminal proceedings against any person who is or was a Judge. Section 3 of the

Judges(Protection)Act, 1985 reads as under:-

3. Addition Protection to Judges -

(1) Notwithstanding anything contained in any other law for the time being in force and subject to the provision of subsection (2), no Court shall entertain or continue any civil or criminal proceeding against any person who is or was a Judge for any act, thing or word committed, done or spoken by him when, or in the course of acting or purporting to act in the discharge of his official or judicial duty or function.

(2) Not in subsection (1) shall debar or affect in any manner, the power of the Central Government or the State Government or the Supreme Court of India or any other authority under any law for the time being in force to take such action (whether by way of civil, criminal or departmental proceedings or otherwise) against any person who is or was a Judge.

13. It is also submitted by the learned counsel for the non-applicant that as per FIR, prima facie case is made out against the applicant and from the order it reflects that he constituted a conspiracy to cause wrongful loss to the State exchequer. According to him, by and large, it can easily be inferred that the applicant with an ill motive had acted upon Indesha Mali's application in collusion with each other.

14. Learned counsel for the non-applicant further submitted that by reasons of provisions of subsection (2) of Section 3, the applicant is not entitled for any protection under the Judges(Protection)Act, 1985 and prayed for dismissal of all the petitions.

15. Learned Senior Counsel, while making reference to Section 2 of the JP Act, has submitted that definition of Judge, as given in Section 2 thereof, is wide enough to include revenue officers upon whom status of the Courts has been conferred by Section 31 of the MPLRC. He has further contended that each one of the petitioners, being empowered by law to give in any legal proceeding a definitive judgment, was entitled to additional protection under Section 3(1) of the JP Act. Extensive arguments addressed in support of the plea regarding the protection may be summarized as under -

It is no doubt correct that with the coming into force of Entry 11A of List III it is no more the exclusive power of the State Legislature to legislate under the said Entry but "administration of justice" and "constitution and organisation of all Courts" are the subjects on which the State Legislature can legislate (See. State of Tamil Nadu Vs. G.N. Venkataswamy and others etc. etc., AIR 1995 SC 21 : (1998) 4 JT 512 : (1994) 3 SCALE 261 : (1994) 5 SCC 314 : (1994) 1 SCR 322 Supp .

The word "Courts" is used to designate those tribunals, which are set up in an organised State for the administration of justice. By administration of justice is meant the exercise of judicial power of the State to maintain and uphold "rights"

and to punish "wrongs". Whenever there is an infringement of a right or an injury, the Courts are there to restore the *vinculum juris*, which is disturbed.... By "Courts" is meant Courts of civil Judicature and by "tribunals", those bodies of men who are appointed to decide controversies arising under certain special laws *Harinagar Sugar Mills Ltd. Vs. Shyam Sundar Jhunjunwala and Others*, AIR 1961 SC 1669 : (1961) 31 CompCas 387 : (1962) 2 SCR 339 .

Definition of "Courts" under the Evidence Act is not exhaustive, *The Empress Vs. Ashootosh Chuckerbutty and Others*, (1879) ILR (Cal) 483 , as approved in *State of M.P. and Another Vs. Anshuman Shukla*, AIR 2008 SC 2454 : (2008) 2 ARBLR 485 : (2008) 3 CLT 459 : (2008) 8 SCALE 425 : (2008) 7 SCC 487 : (2008) AIRSCW 3760 : (2008) 4 Supreme 335 . Further, in view of the definition of "Judge" in S.19 of Penal Code and that of "offence" in S. 40 of the Penal Code, the petitioners as the officers deciding matter under the MPLRC are fully protected under S.77 of the Penal Code as they had to perform judicial duties *State of Maharashtra Vs. Yeshwant Parasharam Sawant*, (1977) CriLJ 1477 . Mutation proceedings are judicial proceedings within the meaning of CrPC *Lachhman Prasad Joshi vs. Emperor* AIR 1930 58 (Oudh) . The petitioner who was exercising judicial powers under the Code while passing the orders in question in mutation proceedings, is entitled to protection under S.3(1)(supra) *Balram and another Vs. Aswani Kumar Yadav and another*, (2001) 2 MPHT 330 : (2001) 3 MPLJ 363 .

Tahsildar passing any order under the MPLRC acts as "Revenue Court" under Section 31 thereof and is, therefore, protected under Section 3 of JP Act being a Judge as defined under Section 2 thereof. Accordingly, F.I.R. registered against him is an abuse of the process of law and liable to be dismissed *Om Prakash Vs. Surjan Singh*, (2004) 1 MPJR 244 . While passing orders under the MPLRC, Revenue Officer could be considered as a Judge as defined in Section 2 of the JP Act *S.S. Trivedi Vs. State of M.P. and another*, (2008) 3 MPLJ 387 .

16. However, the question of protection has to be examined from two different angles. Provisions of Section 3(1) not only protects Judges as defined in Section 2 from civil or criminal proceedings for any act, thing or word committed, done or spoken by him when, or in the course of, acting in the discharge of his official or judicial duty or function but also extends the protection to them for any act, thing or word committed, done or spoken by him while purporting to act in the discharge of his official or judicial duty or function.

(Emphasis supplied)

17. Obviously, the protection does not extend to acts purely administrative/ministerial/extra judicial/alien to the judicial duty. Any act, which is not done in the discharge of his judicial duty, is therefore, not covered by the subSection.

18. There is yet another aspect of the matter. Section 3(1) of the JP Act neither creates any legal bar against investigation into the allegations levelled against a Judge nor contemplates sanction of any authority therefor. In the cases of

Balram and another Vs. Aswani Kumar Yadav and another, (2001) 2 MPHT 330 : (2001) 3 MPLJ 363 (2) MPHT 330), Om Prakash Vs. Surjan Singh, (2004) 1 MPJR 244 and S.S. Trivedi Vs. State of M.P. and another, (2008) 3 MPLJ 387 , proceedings were quashed at the post cognizance stage on the ground that Revenue Officer concerned was entitled to protection under S. 3(1)(supra) against prosecution in respect of the offences said to have been committed by him in the discharge of his duty. But, as pointed out already, the offending acts in question were allegedly committed by the petitioner in the course of service and not in discharge of his/her duty and without any justification. These precedents are, therefore, distinguishable on facts. Furthermore, as clarified in sub-section (2) of S.3 thereof, sub-section (1) does not, in any way, take away or abridge the power of the State Government to initiate such action (whether by way of civil, criminal, or departmental proceedings or otherwise) against any person who is or was a Judge.

19. Thus, on a careful analysis of the protective provisions of Section 3 of the JP Act, we are of the view that they do not operate as legal bar to investigation into the allegation against the petitioner.

20. Since it is not possible to hold that the FIR discloses no offence against the applicant, it is, therefore, not a fit case requiring interference with the investigation with the investigation in this application under Section 482 of Cr.P.C.

21. In the case Dev Vrat Mishra Vs. State of M.P. and Another, (2011) 2 MPHT 474 : (2011) 1 MPJR 44 : (2011) 2 MPLJ 365 , it has been observed that absence of direct evidence as regards particular accused relating to conspiracy is without significance as, being secretly planned, it can be proved by circumstantial evidence.

22. Admittedly, investigation is still on its way. It is a statutory function of the police and the superintendence thereof is vested in the State Government. In Sanapareddy Maheedhar and Another Vs. State of Andhra Pradesh and Another, AIR 2008 SC 787 : (2008) CriLJ 1375 : (2008) 1 DMC 129 : (2007) 14 SCALE 321 : (2007) 13 SCC 165 : (2007) AIRSCW 3631 : (2007) 4 Supreme 213 , the Apex Court, upon a conspectus of all the leading decisions on the ambit and scope of this Court's powers of interference with investigation including the one rendered in State of West Bengal and Others Vs. Swapan Kumar Guha and Others, AIR 1982 SC 949 : (1982) 1 CompLJ 217 : (1982) CriLJ 819 : (1982) 1 SCALE 38 : (1982) 1 SCC 561 : (1982) 3 SCR 121 , sounded a note of caution in the following words -

The High Court should be extremely cautious and slow to interfere with the investigation and/or trial of criminal cases and should not stall the investigation and/or prosecution except when it is convinced beyond any manner of doubt that the FIR does not disclose commission of any offence or that the allegations contained in the FIR do not constitute any cognizable offence or that the prosecution is barred by law or the High Court is convinced that it is necessary to

interfere to prevent abuse of the process of the Court.

In dealing with such cases, the High Court has to bear in mind that judicial intervention at the threshold of the legal process initiated against a person accused of committing offence is highly detrimental to the larger public and societal interest. The people and the society have a legitimate expectation that those committing offences either against an individual or the society are expeditiously brought to trial and, if found guilty, adequately punished".

23. Nature, scope and purpose of Section 482 of the CrPC again fell for consideration before the Supreme Court in *Central Bureau of Investigation Vs. Shri Ravi Shankar Srivastava, IAS and Another*, AIR 2006 SC 2872 : (2006) CriLJ 4050 : (2006) 7 JT 313 : (2006) 7 SCALE 618 : (2006) 7 SCC 188 : (2006) 4 SCR 450 Supp : (2006) AIRSCW 3990 : (2006) 6 Supreme 305 . In that case, the FIR was registered by Superintendent of Police (CBI), Jaipur against the respondent no.1 viz. Ravi Shankar Srivastava, a member of Indian Administrative Service, upon the information in regard to certain advertisements involving criminal conspiracy resulting in commission of the offences including the one under Sections 13(2) and 13(1) of the PC Act. However, a Single Bench of Rajasthan High Court quashed the FIR on the ground of competence of the CBI to register the FIR under the Delhi Special Police Establishment Act, 1946. Observing that the High Court was not justified in quashing the proceedings based on the FIR, the Supreme Court not only set aside the order but also reaffirmed the following illuminating guidelines-

All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in the course of administration of justice on the principle "*quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest*" (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone the courts exist.

One of the many categories of cases where inherent power can and should be exercised to quash the proceedings is where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge. While dealing with the such case, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or

whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge.

(Emphasis added)

24. By applying the above tests to the facts of the present case, it can easily be concluded that the matter certainly requires investigation and further that there is no compelling and justifiable reason to interfere therewith under Section 482 of the CrPC.

25. To sum up, no interference, under the inherent powers is called for.

26. All the petitions, therefore, stand dismissed. However, nothing contained herein shall be construed as any expression of opinion on the merits of the case. It shall still be open to the applicant to raise all such pleas as are available under law. There shall be no order as to costs.

27. A copy of this order be retained in the connected petitions bearing M.Cr.C. No. 7973/14, M.Cr.C. No. 7975/14, M.Cr.C. No. 7976/14, M.Cr.C. No. 7980/14, M.Cr.C. No. 7981/14, M.Cr.C. No. 7982/14, M.Cr.C. No. 7989/14, M.Cr.C. No. 7992/14, M.Cr.C. No. 7994/14, M.Cr.C. No. 7995/14, M.Cr.C. No. 7999/14, M.Cr.C. No. 8123/14, M.Cr.C. No. 8124/14, M.Cr.C. No. 8126/14, and M.Cr.C. No. 8135/14.