(2009) 11 MP CK 0051

In the Madhya Pradesh High Court

Case No : Miscellaneous Cri. C. No. 4027 of 2009

Omprakash Gupta APPELLANT

Vs

State of M.P. and Others RESPONDENT

Date of Decision : 13-11-2009

Acts Referred:

Constitution of India, 1950 — Article 21
Criminal Procedure Code, 1973 (CrPC) — Section 155(2), 156(1), 482
Prevention of Corruption Act, 1988 — Section 13(1), 13(2), 17

Citation : (2010) 3 MPJR 293

Hon'ble Judges : S.S. Dwivedi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.S. Dwivedi, J.

This matter has been placed before me by the order of Hon''ble Chief Justice for opinion due to difference of opinion of the Members of the Division Bench (comprising of Hon''ble S. Samvatsar and Hon''ble A.P. Srivastava, JJ) on this matter related to a petition u/s 482 of Cr. PC; for quashment of the charge sheet filed against the petitioner in Crime no. 76/02 by the respondent - State.

Brief facts of the case are that petitioner is posted as Executive Engineer, Public Health and Engineering Department at Morena. At a relevant time, some complaints were made against him with regard to alleged corruption by him as the Public Officer, on which basis, Special Police Establishment Lokayukt, Gwalior took cognizance and arranged a raid at the residential house of the petitioner on 24-3-2002. In this raid, inventory has been prepared by the investigating officer with regard to the property found in possession of the petitioner and which has also been alleged to be owned by him and on preparation of inventory, the investigating officer has found that total property / assets in the possession of the petitioner having value of Rs. 72,10,412/-, whereas from all known sources of income, total income of the petitioner / accused is found to be of Rs.

54,69,125/- during the check period from 1/3/1989 to 24/3/2002 and thereby a difference of value of assets is found to be Rs. 17,41,287/- which is found to be unaccounted income / assets of the petitioner, on which basis, Special Police Establishment registered a case against the petitioner u/s 13(1)(e) and read with 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as the P.C. Act). After the due investigation, necessary sanction for prosecution of the petitioner has been obtained from the Law Department and thereafter, charge sheet has been filed against the petitioner.

Petitioner has challenged the registration of the case as well as filing of the charge sheet against him before this Court by this petition filed u/s 482 of Cr. P.C. and contended that as per the inventory prepared by the investigating officer itself, the investigating officer has wrongly added the assets of an electronic shop namely Aircon Business Link and wrongly-added the value of the property found in the concerning shop of worth Rs. 29,74,801/-, whereas it is on record that this electronic shop belongs to the major son of the petitioner namely Devendra Kumar Gupta who is graduate engineer and M.B.A. and this asset has wrongly been added in the inventory prepared by the investigating officer as belongs to the applicant / accused and if the aforesaid value of Rs. 29,74,801/- which is the assets of Aircon Business Link of the petitioner''s major son be deducted from the value of the total assets / property found in possession of the applicant, then the amount of Rs. 17,41,287/- which is found to be excessive income will not remain in the petitioner''s name and thus, no case is made out against the petitioner, on which basis, he can be prosecuted for the offence punishable u/s 13(1)(e) read with 13(2) of the P.C. Act, therefore, on the aforesaid ground prayed for quashment of the entire proceedings initiated by the respondent / State against the petitioner.

In reply, learned Special Public Prosecutor for the respondent / State opposed the petition and submitted that as the charge sheet has been filed and trial is going on against the petitioner and on the basis of papers attached with the charge sheet, prima - facie, the assets valued at Rs. 17,41,287/- is found in excess from the known sources of income of the petitioner and whatever defences would be taken by the petitioner, that can be considered by the Trial Court at the appropriate stage and at this stage, no grounds are available for any quashment of the entire proceedings initiated against the petitioner.

The aforesaid matter came up before the Division Bench of this Court and after hearing both the parties, the learned Judges of the Division Bench taken a different view with regard to disposal of this petition filed u/s 482 of Cr. P.c.

Learned Samvastar, J after appreciating the documentary evidence came to the conclusion that as per the documentary evidence available on record it is found true that the investigating officer has wrongly added the assets of s. 29,74,801/- in the value of the property of the petitioner whereas these assets belong to Aircon Business Link run by major son of the petitioner namely Devendra Kumar Gupta and if the value of aforesaid assets is deducted from the total value of assets of the petitioner then the difference in between legal income of the petitioner and the value of the total assets will not be found to be excess and thus, no case is made out against the petitioner for any disproportionate income, and, therefore, came to the conclusion that the petition filed u/s 482 of Cr. P.C. ought to be allowed and the charge sheet out to be quashed.

The learned Samvastar, J. has also found that as the investigation in this case has been conducted by the inspector of Special Police Establishment, Lokayukt who has not been found to be the Gazetted Officer having post of Dy. Superintendent of Police, therefore, the investigation by an incompetent officer is also found to be illegal and on this ground also held that the proceedings initiated against the petitioner is liable to be quashed as per the provisions of Section 17 of the P.C. Act.

Contrarily, learned another member of the Division Bench (Shri A.P. Shrivastava, J) after appreciation of the entire documentary evidence on record came to the conclusion that as the charge sheet has been filed in the Trial Court and the Trial Court has taken cognizance against the petitioner, therefore, no grounds are available to invoke the inherent jurisdiction of this Court for to quash the legitimate prosecution initiated by the State against the petitioner. Whatever defence available to the petitioner will be considered at the time of trial by the Trial Court itself at the appropriate stage and, therefore, came to the conclusion that petition filed u/s 482 of Cr. P.C. by the petitioner is liable to be dismissed.

In view of difference of opinion of the learned Judges, of the Division Bench, the matter has been placed before the Hon''ble Chief Justice and Hon''ble the Chief Justice, by order dated 17-9-2009, directed to list the matter for opinion before this Bench, and thus, the matter came up before this Bench.

Having heard learned counsel for the petitioner as well as Special Public Prosecutor for the State and perused the record.

It is submitted on behalf of the petitioner that as the charge sheet has been filed against the petitioner before the Trial Court and only on the perusal of documentary evidence attached with the charge sheet no case is made out against the petitioner. To elaborate this contention, the learned counsel for the petitioner drew my attention towards the inventory prepared by the investigating officer attached with the charge sheet wherein the investigating officer while assessing the value of the assets of the petitioner''s property has also added the assets of the electronic shop i.e., Aircon Business Link and the value of the properties found in this shop having value of Rs. 29,74,801/- and on detailed report of the investigating officer which is attached with the charge sheet is found that petitioner''s major son Devendra Kumar Gupta is doing electronic business in the aforesaid Aircon Business Link showroom. The income of that showroom is also added in the legal income of the petitioner in column no. 11, 12, 14 and 15 wherein the profit of this electronic shop is found to be Rs. 1,42,620/-, loan from the bank advanced to this shop is found to be Rs.

7,72,316/-, unsecured loan is also found to be Rs. 2.60.000/- and liabilities loan is found to be Rs. 3,90,430/-. Thus, the aforesaid income has been wrongly added in the income of the petitioner and the value of the properties of this shop is also wrongly added in the value of assets of the petitioner. There is no provision in the prevention of Corruption Act to the effect that a major son of a public servant cannot do his own business by his own assets and if that being provision of law, then not a single major son of a public servant can do any business due to fear that whatever he earns from his business will be added in the asset value of public officer. In view of that, learned counsel submits that if the value of assets of Aircon Business Link having value of Rs. 29,74,801/- is deducted from the total value of the property of applicant then the difference of legal income and the value of assets found in possession of the applicant will not be excess to any amount and thus, the whole prosecution against the petitioner is found to be baseless and, therefore, learned counsel for the petitioner submits that Hon''ble Justice Shri S. Samvastar, J, has taken correct view of quashment of the proceedings.

In reply, learned Special Public Prosecutor for the State submitted that as the charge sheet has been filed before the Trial Court and it is the jurisdiction of the Trial Court to assess and appreciate the entire documentary evidence submitted with the charge sheet itself and without any sufficient proof, those documents cannot be found to be proved document and after the evidence adduced by the petitioner, the Trial Court may consider as to whether the assets belonging to Aircon Business Link can be added in the value of assets of the petitioner or not. Therefore, in such circumstances, normally the High Court should not interfere with the prosecution initiated by the respondent / State. Learned counsel for the respondent placed reliance on various decisions of the Apex Court as well as of this Court also reported in State of Maharashtra and others Vs. Ishwar Piraji Kalpatri and others, ; State of Madhya Pradesh Vs. Awadh Kishore Gupta and Others, ; Dr. Monica Kumar and Another Vs. State of U.P. and Others, ; Central Bureau of Investigation Vs. K.M. Sharan, ; Sate of Bihar vs. Bau''oori Kanthiah and others (2009) 1 SCC 114, Sheel Kumar Choubey vs. State of M.P. and Others 2002 (5) M.P.L.J. 539 and Permanand Jha Vs. State of M.P., . In all these cases, the Hon''ble Apex Court as well as this High Court also laid down the principle with regard to jurisdiction of this Court, how and under what circumstances, the criminal proceedings can be quashed by exercising the inherent powers by this Court u/s 482 of Cr. P.C.

Learned Special Public Prosecutor also submits that the investigation by the Inspector of the Special Police Establishment, Lokayukt is also not found to be illegal in view of provision of Section 17 of P.C Act wherein the power has been given to the Superintendent of Police of Special Police Establishment to confer the power for investigation to the police officer having rank of Inspector and in the present case, the concerning S.P./ competent officer has conferred the power to the Inspector to investigate the matter. Hence, on this ground also, the proceedings cannot be quashed because the investigation has been conducted by an officer having rank of Inspector specially due to conferment of power by the competent authority and for this purposes, the learned counsel for the respondent also placed reliance on two decisions of the Hon''ble Apex Court reported in Sailednranath Bose vs. The State of Bihar AIR 1968 SC 1292 and H.N. Rishbud and Inder Singh Vs. The State of Delhi, and also on the decisions of this Court reported in Manoj Koshta vs. State of M.P. 2004 (1) M.P.L.J. 99; Rajendra Kumar Verma Vs. State of M.P., ; Ramjit Singh vs. State of M.P. 2007 (4) M.P.L.J. 581 and State of Madhya Pradesh and Others Vs. Shri Ram Singh, . In all these cases, the Hon''ble Apex Court as well as this Court held that "If the power has been conferred by the competent officer on a pubic officer belonging to the rank of Inspector for investigation of the crime registered u/s 13(1)(e) of the PC Act then investigation is not found to be done by incompetent officer, and thus cannot be quashed.

Now, with regard to the investigation by the officer having rank of Inspector is concerned, the learned counsel for the respondent has filed a Gazette Notification issued by the Government of M.P. and this notification reads here as under: -

Madhya Pradesh Rajpatra, Dated 28 November, 1989"

Bhopal, the 28,h November, 1989

No. F-15-2-(III)-89-XLIX-10-In exercise of the powers conferred by the first provision to Section 17 of the Prevention of Corruption Act, 1988 (No. 49 of 1988), the State Government, hereby authorises all the Inspectors of Police attached to the Madhya Pradesh Special Police Establishment for the purpose of the said section."

By order and in the name of Governor of Madhya Pradesh, R.L.VARSHNEY, Dy. Secy.

On perusal of the aforesaid notification issued in the official Gazette, it is clear that all the police officers having the rank of Inspector are authorized by the State Govt. for investigation of the crime registered by the Special Police Establishment, Lokayukt.

Similarly, thereafter, for a particular case the conferral of the power u/s 17 of the PC Act is also placed on record whereby in this case registered against the petitioner Om Prakash Gupta, the Police Superintendent, Special Police Establishment Lokayukt, Gwalior has conferred the power for investigation in favour of the investigating officer Devendra Singh Kushwah and thereafter, Ashok Kumar Bhardwaj and then on Kaptan Singh and Virendra Singh Tomar, who has conducted the investigation in this case and in view of the specific order passed in this case by the competent authority i.e., the Police Superintendent of Special Police Establishment, Lokayukt, Gwalior for investigation in this case by the police officer having rank of Police Inspector, then certainly the investigation conducted by the aforesaid inspectors in this case does not find to be illegal or erroneous on which ground the entire charge sheet can be quashed.

In view of the case law on the point, Hob''ble Apex Court in Shailendra Bose (Supra) and of this Court also in Manoj Koshta; Ramjit Singh and Rajendra Kumar Verma (Supra), the Apex Court as well as this Court has repeatedly held that if the investigation has been conducted by the officer having rank of Inspector and special power has been conferred by the Superintendent then the investigation by the such officer is not found to be erroneous and illegal and on this ground, the proceedings cannot be quashed.

In view of the aforesaid decisions of the Apex court as well as of this Court also, I am of the opinion that in the present case, the investigation has been conducted by the police officer having rank of Inspector and special powers have been conferred by the State Govt. as well as by the Superintendent of Police as per the II provision of Section 17 of the PC Act.

Therefore, it is held that in this case investigation is conducted by a competent police officer and on this ground, proceedings cannot be quashed.

Now, the second material question is with regard to charge sheet filed against the petitioner u/s 13(1)(e) of the P.C. Act for having the assets and unaccounted income of Rs. 17,41,287/- is concerned, on perusal of the detailed summary of the investigation submitted by the investigating officer with the charge sheet it is apparent that while assessing the value of the property of the petitioner at Sr. no. 18, the investigating officer has also calculated the assets and value of the property of the Aircon Business Link of worth Rs. 29,74,801/- and also added in column No. 19 the amount of Rs. 94,549/- which is the amount of Bank interest on the cash credit loans, which is to be paid to the concerning Firm and is not found to be value of assets in possession of the petitioner.

Admittedly, on perusal of this detail, it is apparent that this Aircon Business Link is belonging to the major son of the petitioner namely Devendra Kumar Gupta who is doing his business separately and to open his business the petitioner''s son Devendra Gupta has taken various loans which are also added in the income of the petitioner in the detailed report submitted by the investigating officer wherein he added the amount of Rs. 1,42,620/- which is the profit of the concerning Aircon Business Link / electronic shop of the petitioner''s son. Similarly, he has also taken loan from the Bank of Rs. 7,72,316/ -. He has also taken unsecured loan of Rs. 2,60,000/-. He has also taken electronic items from various distributors on credit loan which is also found to be having value of Rs. 3,90,430/- and if all these incomes belong to the concerning electronic shop of the petitioner''s son, then that cannot be added in the income and value of assets of the petitioner. Therefore, on both these counts, on perusal of the documents of the prosecution itself, it is apparent that Devendra Kumar Gupta is the major married son of the petitioner and is doing his separate business of electronic shop. Therefore, the assets of that shop and income of that shop also cannot be added in the income and value of the assets of the petitioner found in his possession.

There is no bar under the law that a major son of a government officer cannot do his own business separately and his income and assets should also be added in the income and value of assets of public officer. In such circumstances, amount of Rs. 29,74,801/- which is the value of assets of concerning electronic shop of the petitioner''s son has been wrongly added in the value of assets of the petitioner. Similarly, an amount of Rs. 94,549/-which is amount of bank interest which has been levied on the cash credit loan of the petitioner''s son has also been wrongly added with regard to assets of the petitioner''s property and thus, the aforesaid amount of Rs. 29,74,801/ - + 94,549/- = Rs. 30,69,350/- has been wrongly added in the value of the assets of the petitioner whereas it is the assets of the shop of petitioner''s major son Devendra Gupta, who is doing electronic business in the separate firm.

Learned counsel for the respondent stressed upon the fact that the petitioner''s son has opened this shop in the year 2001 itself, therefore, he has to prove as to from where he brought money of Rs. 29,74,801/- which is found to be the value of assets of the concerning electronic shop. For this, the learned counsel for the petitioner drew my attention to the documentary evidence collected by the investigating officer itself with regard to the assets and liability of the electronic shop of the petitioner''s son wherein petitioner''s son has given detail of the loans for to open the shop and for which, he has taken loans of Rs. 95,000/- from Ashok Gupta, Rs. 7,23,820/- from Har Narayan Chandra, Rs. 1,00,000/- from Smt. Krishna Gupta, Rs. 3,25,000/- from Jyoti Gupta who is the wife of the petitioner''s son, Rs. 1,84,000/- from Ram Kumar Gupta, Rs. 1,00,000/- from Smt. Rashmi Gupta and Rs. 1,35,000/- from the petitioner which is the amount withdrawn by the petitioner from his G.RF. account as the documents have also been collected by the investigating officer. Therefore, on calculation of aforesaid amount borrowed by the petitioner''s son namely Devendra Kumar Gupta for to open electronic shop is found to be Rs. 16,62,820/- and thereafter by adding the loan amount from Bank of Rs. 8,00,000/-. Similarly, the amount of cash credit from the market from where the petitioner''s son has taken electronic items from Sai Electronics which is shown to be the liability debt of Rs. 3,90,430/- and after calculation of the aforesaid amount, Rs. 28,53,250/- is found to be the amount which has been invested by the petitioner''s son in the concerning business of electronics item in the Aircon Business Link. These documents also attached with the charge sheet and this can be looked into for consideration of the truthfulness of the allegation made against the petitioner and, therefore, this cannot be found that all the transactions are found to be Benami transaction and the actual amount has been invested by the petitioner / accused in the concerning shop of his son Devendra Kumar Gupta.

Thus, on calculation of the aforesaid amount, I am of the considered opinion that as per the documentary evidence filed with charge sheet submitted by the prosecution, the amount spent in the concerning shop by the petitioner''s son has also been properly found to be assessable income of the petitioner''s son and this investment is not found to be of petitioner / accused.

At the time of consideration of the charge sheet, the papers submitted with the charge sheet ought to be looked into and there is no specific provision of law that whatever documents filed with the charge sheet in favour of the petitioner / accused cannot be looked into and only the material documents which favour the prosecution of the petitioner / accused can only be looked. For this, prosecution, reliance can be placed on the decision of Apex Court in State of M.P. vs. Sheetla Sahai and Others AIR 2009 SCW 5514, wherein in para 59, the Hob''ble Apex Court held here as under: -

The prosecution, having regard to the right of an accused to have a fair investigation, fair inquiry and fair trial as adumbrated under Article 21 of the Constitution of India, cannot at any stage be deprived of taking advantage of the materials which the prosecution itself has placed on record. If upon perusal of the entire material on record, the court arrives at an opinion that two views are possible, charges can be framed, but if only one and one view is possible to be taken, the court shall not put the accused to harassment by asking him to face a trial.

In view of the aforesaid decision of the Apex Court, I am of the considered opinion that only on the basis of documentary evidence on record it is proved that the investigating officer has wrongly added the assets of the shop belonging to the petitioner''s major son in the value of the assets of petitioner and if that amount of Rs. 30,69,350/- is deducted from the value of assets of the petitioner''s property then certainly this is not proved that petitioner is having unaccounted property worth of Rs. 17,41,287/- for which he can be liable for the prosecution u/s 13(1)(e) read with 13(2) of PC Act

In all cases laws cited by the counsel for the respondent, the Hob''ble Apex Court has held that the powers conferred u/s 482 of Cr.P.C. should not be used by the High Court in a case where the prosecution of the petitioner / accused is based on the material collected by the prosecution warranted the legal prosecution. But as discussed hereinabove, on appreciation of the documentary evidence collected by the prosecution itself it is apparent that the value of assets of the petitioner''s son has wrongly been added in the calculation and after deducting the aforesaid amount, no grounds are available for prosecution against the petitioner. Therefore, no fruitful purpose will be served to order the petitioner to face the trial before the Trial Court. Learned Samvatsar, J, has rightly placed reliance on the decision of the Apex Court reported in State of Haryana and others Vs. Ch. Bhajan Lal and others, , wherein the Hob''ble Apex Court has laid down 7 conditions for quashment of the complaint which read here as under:

1. Where the allegations made in the First Information Report or the complaint, even if they are taken at there face value and accepted in there entirety do not prima facie constitute any offence or make out a case against the accused.

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 u/s 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

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.

Where the allegations made 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 u/s 155(2) of the Code.

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.

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.

Where a criminal proceedings is manifestly attended with malafide and / or where the proceedings 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.

In view of the condition no. 5 as laid down by the Hon''ble Apex Court in the present case also, the FIR as well as the documents collected by the prosecution does not prove the prima - facie ground for prosecution against the petitioner for the offence punishable u/s 13(1)(e) of the P.C. Act and no fruitful purpose will be served by placing the petitioner for prosecution for the aforesaid offence.

Resultantly, I am of the considered opinion that leaned Brother Samvastar, J has taken correct view to allow the petition filed u/s 482 of Cr.P.C. by the petitioner and has rightly come to the conclusion that proceedings initiated by the Special Police Establishment against the petitioner is liable to be quashed.

Thus, for the reasons indicated herein above, I am agree with the view taken by Hon''ble S. Samvatsar, J. and respectfully disagree with the view taken by Hon''ble A.P. Shrivastava, J. Therefore, the petition filed by the applicant deserves to be allowed.

Now the matter be listed before the Division Bench for final disposal.

