
(2018) 08 MP CK 0177

In the Madhya Pradesh High Court

Case No : Criminal Miscellaneous Case No. 9533 Of 2017

Rajesh Dandotiya S/o Ramjilal

APPELLANT

Vs

State of Madhya Pradesh & ors

RESPONDENT

Date of Decision : 23-08-2018

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 482
Prevention of Corruption Act, 1988 — Section 7, 13
Evidence Act, 1872 — Section 65B

Citation : (2018) 08 MP CK 0177

Hon'ble Judges : Sanjay Yadav, J; Ashok Kumar Joshi, J

Bench : Division Bench

Advocate : Anil Mishra, Rohit Mishra

Final Decision : Dismissed

Judgement

Ashok Kumar Joshi, J

Petitioner has filed this petition under Section 482 of the CrPC for quashment of FIR registered as Crime No.244/2016 by Special Police

Establishment, Lokayukta, Gwalior under Section 7 of the Prevention of Corruption Act, 1988 (for brevity, the 'PC Act') and for quashing the relating charge sheet filed against him in the above-mentioned crime.

2. According to prosecution's case, relevant facts are that on 27.7.2016 complainant/present respondent No.2-Narayan Singh Baghel filed a typed

complaint in the office of Lokayukta Gwalior to the effect that Revenue Inspector Rajesh Dandotiya is demanding a bribe of Rs.10000/- regarding

pending application submitted on behalf of his father for demarcation of his agricultural land. After receiving the complaint, under instruction of Police

Superintendent, Inspector Rajiv Gupta handed over a government voice recorder

to complainant on 27.7.2016 for recording his conversation to be happened in future with the present petitioner regarding demand of bribe amount and a Police Constable Dheeraj Naik was also sent along with the complainant but on 28.7.2016 complainant returned back the sealed envelope of voice recorder with a subsequent application to the effect that on 27.7.2016 conversation with the present petitioner could not be possible. On 28.7.2016 at 10=00 am complainant met with Rajesh Dandotiya at his residence situated at Harishankarpuram, Gwalior and talked with him wherein bribe of Rs.10000/- was demanded by the present petitioner and in first instalment payment of Rs.5000/- was decided and the relevant conversation was recorded by the complainant in given voice recorder and later on the relating voice recorder in a sealed envelope was returned back in the Lokayukta Office. Thereafter, a letter was sent to Collector, Gwalior for providing two Gazetted Officers as panch witnesses during trap proceeding. Two Gazetted Officers were provided and in their presence the sealed voice-recorder's envelope was opened and conversation was heard repeatedly and transcript of conversation was recorded and a certificate under Section 65-B of the Evidence Act was prepared. Under preliminary panchnama proceeding, Rs.5000/-submitted by the complainant were treated with phenolphthalein powder and treated notes were kept by Head Constable in worn shirt's left pocket and after preparing preliminary panchnama trap party proceeded for Tahsil Chinor and reached the present petitioner's office, but on that day the present petitioner was not available in town Chinor, thereafter complainant talked with Rajesh Dandotiya on mobile and next Thursday was appointed for delivery of first instalment of the bribe amount. On 4.8.2016 complainant Narayan Singh submitted an application to the Police Superintendent Lokayukta, Gwalior to the effect that now there is no possibility of taking bribe by Rajesh Dandotiya as he is having suspicion in relation to complainant and, therefore, it was demanded that the bribe amount Rs.5000/- be returned to him. The relating amount was returned back to the complainant and in relation to unsuccessful trap proceeding, separate panchnama was prepared. In the investigation, Rajesh Dandotiya was interrogated on 19.9.2016 and on 19.9.2016 he was arrested and thereafter written notice for providing sample of his voice was sent to him but Rajesh Dandotiya submitted a written application to Superintendent of

Police Lokayukta that he is not desirous for voluntarily giving sample of his voice. Rajesh Sharma (Dandotiya) was released on bail. Call details of

present petitioner's mobile No. 8871993239 and complainant Narayan Singh's mobile No. 9753199283 were received through S.P. Gwalior from the

relating office. After completing formalities of the investigation, prosecution sanction dated 9.6.2017 of the Additional Secretary, Revenue

Department, Government of MP, Bhopal was obtained and thereafter charge sheet was submitted.

3. Petitioner has filed this petition under Section 482 of the CrPC on 22.8.2017 on grounds that he has been falsely implicated by the complainant and

he never demanded any bribe amount from the complainant. Despite his several attempts, his voice sample was not taken by the investigating agency

and still he is ready to provide his voice sample but with an oblique motive intentionally his voice sample was not taken. Prima facie, no ingredient of

Section 7 of the PC Act is appearing against him, therefore, relating FIR and charge sheet is also liable to be quashed as the produced case diary's

relating conversation by the prosecution along with charge sheet is not containing his voice. Therefore, it is prayed that above-mentioned FIR and

resultant charge sheet be quashed.

4. During pendency of the investigation, IA No. 6639/2017 is filed on behalf of the present petitioner for directing the respondent-authorities to get the

voice sample of petitioner recorded at any time and IA No.855/2018 is also filed on behalf of the petitioner along with his affidavit for taking on record

the voice identification and tape authentication report dated 16.11.2017 of relating expert Moinuddin Mondal to the effect that the petitioner voluntarily

gave his sample to the indicated specialist, who compared his voice sample with the CD supplied with the copy of charge sheet supplied by the

prosecution and submitted in favour of the present petitioner. On the basis of above-mentioned report of relating specialist, it is submitted that in view

of this expert's report, the FIR and resultant charge sheet be quashed.

5. Per Contra, above-mentioned prayer has been strongly opposed by Public Prosecutor on behalf of respondent/State by placing reliance on the case

of Mubarak Ali vs. State, reported in AIR 1958 MP 157, wherein it is held that for an offence punishable under Section 7 of the PC Act, mere

demand or solicitation of gratification by public servant is sufficient and

acceptance of the bribe is required only for offence punishable under Section 13 of the PC Act, as it is clear from the provision of Section 7 of the PC Act that if any public servant accepts or obtains or agrees to accept or attempts to obtain from any person any illegal gratification, then offence punishable under this Act is constituted.

6. Much emphasis has been given by the Public Prosecutor on the written reply submitted by the present petitioner dated 19.9.2016 in reply to the letter No.5721/Vishesh Police Sthapna/2016 dated 19.9.2016, whose copy is filed by the petitioner before this Court along with the charge sheet and all of its enclosures.

7. It is clear from perusal of the copy of reply dated 19.9.2016 submitted by Rajesh Sharma, Revenue Inspector, Circle Pichhor Tahsil Dabra, District Gwalior, wherein it is mentioned that Rajesh Sharma S/o Ramjilal, Revenue Inspector, presently posted at Circle Pichhor, was posted till 26.8.2016 at Tahsil Chinor's Circle Karahaiya and he is not desirous for examination of his voice and he voluntarily does not want to give sample of voice and legally he could not be compelled for giving his voice sample.

8. Petitioner himself has filed a photocopy of certified copy of the order dated 24.7.2017 passed by the Special Judge (PC Act), Gwalior and it is clear from this submitted photocopy that the petitioner writes his name as Rajesh Sharma (Dandotiya) S/o Ramjilal Sharma. His name in presented charge sheet is also indicated as Rajesh Sharma (Dandotiya) S/o Ramjilal Sharma.

9. At this stage, there appears no ground to disbelieve the above-mentioned reply submitted by the present petitioner himself on 19.9.2016 before SP, Lokayukta, Gwalior and in this reply present petitioner has also mentioned his mobile number 8871993239.

10. Appearing counsel for the petitioner placed reliance on the case of M.K.Harshan vs. State of Kerala, reported as (1996) 11 SCC 720, but this citation is in relation to criminal appeal filed against the judgment of conviction passed by the Special Court affirmed by the High Court and above-mentioned citation is not in relation to the provision of Section 482 of the CrPC relating to quashment of FIR or charge sheet.

11. Whether the submitted CD by the prosecution before the relating Special Court is containing the petitioner's voice or not is a disputed fact, which is to be decided by the trial Court itself after recording evidence of both the

parties and such disputed questions of facts could not be decided on an application filed under Section 482 of the CrPC before this Court. In this reference, citation of Har Swaroop Shrivastav vs. State of MP and another, reported in 2017 (1) M.P.L.C. 169 (MP) is referable.

12. Relating to quashment of FIR and charge sheet, it has been observed by the Supreme Court in the case of Central Bureau of Investigation v. Ravi

Shankar Srivastava, IAS and another, reported in (2006) 7 SCC 188, as under:-

10. As noted above, the powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power

requires great caution in its exercise.

Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to

stifle a legitimate prosecution. The High Court being the highest Court of a State should normally refrain from giving a prima facie decision in a case

where the entire facts or incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues

involved, whether factual or legal, or of magnitude or cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast

rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage.

(See : Janata Dal vs. H.S. Chowdhary [(1992) 4 SCC 305], and Raghubir Saran (Dr.) vs. State of Bihar (AIR 1964 SC 1). It would not be proper for

the High Court to analyze the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable

and on such premises arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and

conclude that the complaint cannot be proceeded with. In a proceeding instituted on complaint, exercise of the inherent powers to quash the

proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set

out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the

same in exercise of the inherent powers under Section 482 of the Code. It is not, however, necessary that there should be meticulous analysis of the

case before the trial to find out whether the case would end in conviction or

acquittal. The complaint has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court. When an information is lodged at the Police Station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceeding. (See : Dhanalakshmi vs. R. Prasanna Kumar [(1990) Supp SCC 686]; State of Bihar vs. P.P.Sharma [AIR 1996 SC 309]; Rupan Deol Bajaj vs. Kanwar Pal Singh Gill [(1995) 6 SCC 194]; State of Kerala vs. O.C.Kuttan [AIR 1999 SC 1044]; State of UP vs. O.P. Sharma [(1996) 7 SCC 705]; Rashmi Kumar vs. Mahesh Kumar Bhada [(1997) 2 SCC 397]; Satvinder Kaur vs. State (Govt. of NCT of Delhi) (AIR 1996 SC 2983); Rajesh Bajaj vs. State (NCT of Delhi) [(1999) 3 SCC 259]; and, in State of Karnataka vs. M. Devendrappa and another [(2002) 3 SCC 89].â??

13. It is clear in the light of above-mentioned factual and legal position that the present petitioner is raising disputed factual questions before this Court, which could not be decided in a petition filed under Section 482 of the CrPC. The present petition in place of raising these factual questions before the trial Court itself, is unnecessarily raising these questions before this Court. Such factual disputed questions can only be decided by the trial Court after recording the evidence. If the present petitioner has obtained a voice expert's scientific report in his favour, he is free to submit that report before the trial Court in his defence and to examine the relating expert as his defence witness before the trial Court itself. It is clear that the present petition filed under Section 482 of the CrPC is devoid of any substance.

14. Consequently, the petition filed under Section 482 of CrPC by the present petitioner is hereby dismissed. Above-mentioned IAs No. 6639/2017 and 855/2018 are disposed of accordingly.