

(2007) 08 MP CK 0020

In the Madhya Pradesh High Court

Case No : Criminal Rev. No. 49 of 2007

Ramjit Singh

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 31-08-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397, 401
Prevention of Corruption Act, 1988 — Section 13(1)(e), 13(2)

Citation : (2007) 4 MPLJ 581

Hon'ble Judges : W.A. Shah, J

Bench : Single Bench

Advocate : S.K. Vyas, assisted by Atul Sreedharan, for the Appellant; R.S. Chauhan, Deputy Government Advocate for State, for the Respondent

Final Decision : Allowed

Judgement

W.A. Shah, J.

This is a petition u/s 397 read with section 401 of the Code of Criminal Procedure and it arises out of order dated 28-11-2006 passed by the learned Special Judge, Dewas in Special Case No. 1/2006 thereby dismissing the application of the petitioner for discharge and framing charge against the petitioner u/s 13(1)(e) read with section 13(2) of the Prevention of Corruption Act.

The narration of facts, as mentioned in the petition, is as under:

(a) That, at the time of filing the charge-sheet against the petitioner, the petitioner was the District Excise Officer at Dewas. On 16-2-2001, the respondent raided the residence of the petitioner at Dewas and evaluated the articles found there in an arbitrary manner. Thereafter, the respondent also raided the petitioner's residence at 36/1/(B), Scheme No. 78 at Vijay Nagar, Indore.

(b) That, the respondent carried out the evaluation of the petitioner's property in an extremely arbitrary manner and did not take into account the ancestral

wealth, both movable and immovable properties of the petitioner amounting to Rs. 2,10,512/-, Streedhan worth Rs. 49,534/-, the salary that accrued to the petitioner when the petitioner worked on the post of teacher and Sub-Inspector of Police amounting to Rs. 1,10,236/- out of which after adjusting 33% towards amount spent on self came to Rs. 73,859/- money earned from giving tuitions accrued to Rs. 24,500/-, the amount of Rs. 28,831/- which came into the legitimate account of the petitioner by way of Provident Fund and Family Welfare Fund during the time the petitioner worked as a teacher. It is also pertinent to state that the net amount earned by the petitioner from agricultural income between 1973-74 and 1986-87, a period of thirteen years was Rs. 3,65,000/- from 17.5 bighas of land. The respondent by ignoring these incomes accruing to the petitioner has not taken into account Rs. 7,52,236/-. Under these circumstances, the net income of the petitioner computed during the check period, amounts to Rs. 8,52,431/-. The respondent has not added to the income an amount of Rs. 1,09,851/- and has maliciously shown the income of the petitioner at Rs. 7,42,580/-. Likewise, the respondent has not added or taken into account the agricultural income of the petitioner within the check period amounting to Rs. 9,58,739/- from 35.10 bighas of land. Further, the respondent has failed to reckon the part final of the GPF accruing to the petitioner valued at Rs. 55,000/-. The respondent has also failed to include the house loan taken from Leopard Securities Ltd., Indore amounting to Rs. 1,50,000/-. In such manner, the respondent has maliciously not included an amount of Rs. 12,73,590/- into the income of the petitioner during the check period, and omitted in all a total income of Rs. 19,90,336/- (before and after the check period).

(c) That, likewise, the respondent maliciously inflated the expenditure of the petitioner. The respondent has shown the household expenditure as Rs. 5,03,638/- whereas, as per the standard set by the Hon'ble Apex Court, a person spends no more than 33% of his income on household expenses. Accordingly, the household expenses of the petitioner come to Rs. 2,81,302/- being 33% of Rs. 8,52,431/-.

(d) That, the respondent has maliciously evaluated the house of the petitioner at Indore at Rs. 24,53,266/-. Whereas the value of the house at the time of purchase was only Rs. 9,94,000/- including the cost of Registration and Stamp Duty as prescribed by the Guidelines of the Registration Department. Therefore, the respondent has shown an excess amount of Rs. 14,59,266/- as the cost of the house. It is pertinent to mention here that the initial evaluation of the said house done by the Public Works Department at the behest of the respondent was Rs. 6,33,00.0/- (built up area) which when added with the cost of the land (admeasuring 2550 sqft and calculated @ Rs. 158 sqft as per Collector guideline by the Registration Department of Indore was Rs. 4,02,900/-) came to Rs. 10,35,900/-. It is pertinent to state here that the actual cost of purchase of the said property was less than even the figure arrived at by the valuation of the PWD, this is seen from the fact that the registration of the said property was at

Rs. 9,94,000/-. However, as this did not suit the case of the respondent, they maliciously re-evaluated the said property through a private valuer and arrived at the abovementioned inflated figure of Rs. 24,53,266/-. In this regard, the petitioner states that, the initial report of the PWD is more reliable as the same is a Government Department and, therefore, not open to influence. However, the report of the Private Valuer cannot be accorded much credit as he is prone to give a report as desired by the party that pays his fees.

(e) That, the malicious streak of the respondent continues with the inclusion of expenditure incurred by the petitioner for the construction of a boundary wall of the agricultural land of the petitioner situated at village Karai, Patwari Halka No. 11 allegedly valued at Rs. 1,53,541/- and also for the construction of a room, on top of the ancestral house of the petitioner at village Baneri valued at Rs. 2,00,000/-. The malice on the part of the respondent is writ large on the face of it by the fact that both these constructions (as the record shows) were carried out in the year 2003, whereas the check period was from October" 88 to 16-2-2001. Under the circumstances it is clear that the respondent has included expenditure incurred by the petitioner after the check period as one that was incurred by the petitioner during the check period.

(f) That, the respondent while evaluating the expenditure on LIC has increased the amount paid as premium by Rs. 414/-. While evaluating the monies invested by the petitioner in Indira Vikas Patra, the respondent has inflated the total investment by Rs. 10,000/-. All these are evident from the documents submitted by the respondent/Prosecution in support of the charge-sheet.

(g) That, the arbitrariness of the respondent has once again manifested itself by inflating the expenditure in relation to the purchase of a Bajaj Scooter and Kinetic Honda Scooter. The cost of the Bajaj Scooter has been shown by the respondent as Rs. 18,488/- whereas the actual cost of the said scooter was Rs. 15,728/- which stands proved by the bill of purchase which was seized by the respondent in the course of investigation and forms a part and parcel of the case records, likewise, the Kinetic Honda Scooter which was purchased by the petitioner at a cost of Rs. 29,625/- is shown as being purchased for Rs. 31,462/- by the respondent. This kind of arbitrariness and deliberate malice on the part of the prosecution renders the entire investigation as motivated and malicious.

(h) That, the respondent/Prosecution has maliciously shown the tractor brought and owned by the brother of the petitioner Sh. Hotam Singh as having been financed by the petitioner and, therefore, a benami property, and valued the same at Rs. 2,57,799/- and the tractor trolley at Rs. 70,000/-. It is pertinent to state here that the family partition of the petitioner had taken place in the year 1977-78, and all the three brothers of the petitioner are living separately. There is no existing Hindu United Family property. It is further pertinent to state here that the respondent has no material on record to show that the petitioner has purchased the said Tractor and the same is benami with Sh. Hotam Singh. The Prosecution has further failed to show prima facie, that Sh. Hotam Singh did not

have adequate income from his agricultural sources and was so unable to have purchased the tractor from his own income. It is most humbly and respectfully submitted that before the allegation of benami can be taken as prima facie proved, it is essential to establish that the person in whose name the property vested did not have adequate income to purchase the said property. In the instant case, Sh. Hotam Singh had shown the documents and his sources of income through which the tractor was purchased by him. However, the respondent maliciously refused to make the same a part of the case record as that would demolish the case of the prosecution. Therefore, the allegation of benami purchase of the said tractor is not supported by material on record and, therefore, deserves to be rejected. The respondent has likewise tried to show the car owned by the petitioner's brother to be a benami property of the petitioner and valued the same at Rs. 2,45,008/-. Here also, the prosecution miserably fails to produce any kind of evidence to show that the petitioner's brother was financially incapable of buying the said car and thus the said contention of the prosecution is untenable and deserves to be rejected. It is also necessary to state that the prosecution has once again maliciously increased the cost of the car as the bill shows that the car was purchased at Rs. 1,95,000/-. The total cost of all the three vehicles has been evaluated at Rs. 5,72,807/-. It is pertinent to state here that the net income of the petitioner's brother Mr. Hotam Singh from twenty eight years of Agricultural income from 17 bighas of land amounted to Rs. 10,63,000/-.

(i) That, the respondent, while accounting the payment of income tax by the petitioner has evaluated the same at Rs. 8,942/-, whereas, the actual payment of income tax was Rs. 8,841/-. In effect the respondent has evaluated the income tax payment by the petitioner in excess of Rs. 101/-.

(j) That, the respondent has shown an incorrect expenditure allegedly incurred by the petitioner on account of his niece's marriage, and has evaluated the same at Rs. 2,04,856/-, whereas the actual expenditure incurred by the petitioner on the said occasion was only Rs. 1,22,694/- as is supported by the documents filed along with the charge-sheet. Therefore, the excess difference works out to Rs. 82,162/-.

(k) That, the mischief of the respondent in arbitrarily evaluating the expenses of the petitioner manifests itself in the evaluation of household articles. The respondent has evaluated the household articles at Rs. 7,19,008/-, whereas the actual expenditure on household articles amounts to Rs. 3,93,573/-. Therefore, the respondent has inflated the expenditure on household articles by Rs. 3,25,435/-. It is pertinent to mention here that the records of the case expose the malice of the respondent as it had in the course of the raid also made a search of the house of the petitioner's house at Indore belonging to one Mr. Rambit Singh Sikarwar. Mr. Sikarwar's house was being done up and the respondent went there and also included the articles found there as being a part and parcel of the petitioner's assets, and added the same amounting to Rs.

1,00,065/-. The truth of the matter is that the petitioner has no connection whatsoever with the said Mr. Sikarwar.

(l) That, on the basis of the abovementioned, the petitioner states that the respondent has maliciously shown an excess expenditure of about Rs. 30,30,659/- and alleged that the petitioner is in possession of assets worth Rs. 37,12,717/- which is disproportionate to the known sources of income of the petitioner.

(m) That, after completing the investigation, the respondent filed the charge-sheet against the petitioner before the Hon''ble Special Court on 22-3-2006. Cognizance was taken by the Hon''ble trial Court on 13-4-2006, and the petitioner was granted bail by the Hon''ble trial Court on the same date. Thereafter, the petitioner had filed an Application u/s 91, Criminal Procedure Code on 22-4-2006. The said Application was rejected vide order dated 12-5-2006. Thereafter, the petitioner appointed Mr. S.K. Vyas, Advocate to appear in the said case on behalf of the petitioner. Mr. S.K. Vyas filed his vakalatnama on 19-5-2006, and the next date of hearing was fixed on 24-5-2006.

(n) That, on 24-5-2006 at 1230 hrs, the petitioner filed a twenty page Application for Discharge u/s 239, Criminal Procedure Code accompanied by a three hundred and twenty five page compilation of documents to be relied upon by the petitioner's counsel at the time of arguments on Charge.

(o) That, when the petitioner reached the Hon''ble trial Court along with Mr. Santosh Sharma, Advocate, Junior of Mr. S.K. Vyas, Advocate at 1230 hrs, the Hon''ble Court was recording evidence in another case. Mr. Santosh Sharma, Advocate filed the Application for Discharge before the Hon''ble trial Court and requested the Hon''ble Court to grant a short date to enable Mr. S.K. Vyas to appear and argue on behalf of the petitioner on the issue of charge. A copy of the said Application for Discharge was also served upon the Prosecution upon which, the Ld. Prosecutor, requested the Hon''ble Court to grant him time to go through the Application and the voluminous documents. The Hon''ble Court directed the petitioner to wait. At 1730 hrs, the petitioner was called in by the Hon''ble Court and read out the charges framed against him u/s 13(1)(e) read with section 13(2) of the Prevention of Corruption Act, 1988. The petitioner was stunned by the developments as his Application for Discharge was never heard by the Hon''ble Court. Nonetheless, the petitioner pleaded not guilty to the said charges.

(p) That, the Order on Charge dated 24-5-2006 is arbitrary, perfunctory and pedestrian which betrays a non-application of mind by the Ld. Special Judge.

(q) That, against the said order framing charges, the petitioner preferred a Criminal Revision bearing No. 553/06 before this Hon''ble Court which vide order dated 20-7-2006 was pleased to set aside the initial order framing charges by the Hon''ble Special Court dated 24-5-2006, and remanded the case to the

Hon''ble Special Court to decide the application for discharge filed by the petitioner after hearing the petitioner''s counsel on the said issue.

(r) That, pursuant to the above said order, the matter was listed and heard on the issue of framing charges by the Hon''ble Special Court on 5-10-2006. The arguments on behalf of the petitioner were being made by Mr. S.K. Vyas, Senior Advocate. In the course of the submissions, it was essential to refer to the assessment made by the PWD of the petitioner''s house at Indore. In the copy of the charge-sheet given to the petitioner by the prosecution, the said document was at page 128 of File No. 3 relating to the immovable property of the petitioner. The said document was extremely crucial for the defence of the petitioner as it evaluated the house of the petitioner at Indore at Rs. 6,33,000/- for the built up area. The IO who has been ill disposed towards the petitioner (as is seen from the manner in which the investigation has been carried out) got one more valuation done by a private valuer [See para 2(d) for details] who was influenced by the IO to give an exorbitantly inflated amount for the said house. However, when the Ld. Counsel for the petitioner referred to the said document, the same was found to have been maliciously and deliberately removed from the Court File itself, so that the petitioner could not have the benefit of pointing out to the Ld. Special Court that the entire investigation has been motivated and tarnished on account of improper conduct of the IO. The petitioner shall elaborate on this point in the Grounds to the petition. The petitioner states with the utmost respect to the Judiciary that the Ld. Special Judge, did not find it essential to stop all proceedings and inquire into such a serious act amounting to an offence against the Court itself whereby a document had been deliberately been removed from the Court File. Instead, the Ld. Special Judge continued to hear the matter as if nothing untoward had taken place.

(s) That, thereafter, the Hon''ble Special Court in the most casual manner, without appreciating the material on record has inadvertently acted as the mouth piece of the prosecution and passed the impugned order.

(t) That, the said order on charge, and order framing charges dated 28-11-2006 is being impugned on the following amongst other;

GROUND

(i) That, the impugned order has been passed in the most mechanical, perfunctory and pedestrian manner and smacks of non-application of mind.

(ii) That the most important ground on which the petitioner deserves to be discharged is that the entire investigation done by the IO is malicious. The malice of the IO is primarily manifested in his eagerness to secure a conviction against the petitioner at any cost. In this regard, the first instance which brings the malice of the IO to the fore is his act of covering the top portion of the stamp paper on which the sale deed of the Vijaynagar residence of the petitioner were drawn. This was done with the intention of concealing the monetary value of the stamp paper, so that Courts would languish in confusion and not appreciate the

defence of the petitioner that the property in question was far below in value than the value suggested by the IO. If the Courts were to see the value of the stamp papers, it would disclose the cost at which the said, lands were registered from the stamp duty paid thereon, in which case the valuation arrived at by the IO would seem doubtful and whose benefit would flow to the petitioner. In this regard it is pertinent to state here that the total stamp duty paid in registration of the said property was Rs. 85,500/- which was 9.5% of the market value (built up area + plot area) of the property as per the Collector guideline for the year 2000 -2001. Thus, if the market value of the said property as suggested by the IO was Rs. 24,53,266/- then the stamp duty on the same would have been Rs. 2,33,060/- @ 9.5% of the market value. It was only to ensure that the Courts do not see through the false and absurd valuation arrived at by the IO by examining the value of the stamp duty paid, that the IO has deliberately fabricated and manipulated the photocopy of the sale deed by covering the stamp value on each page of the sale deed. This fact was also brought to the notice of the Ld. Special Judge in the course of submissions. However, the same could not be appreciated by the Ld. Special Judge.

(iii) That, the second instance of the IO's manipulation, which is even more shocking than the first is elaborated in paragraph 2(r) to this petition. In this case, the IO has deliberately and maliciously removed the said evaluation report of the PWD from the Court file for if the Court were to accept the contention of the petitioner that the report of the PWD, being one prepared by a Government agency/body was reliable, then an amount of Rs. 14,59,266/- would have been deducted from the overall assessed amount of Rs. 57,57,728/- which would have brought the excess amount tumbling down to Rs. 42,98,462/-, and this deduction by itself would have taken the bottom out off the prosecution case and resulted in the petitioner's discharge. To ensure this does not happen, the IO, removed the said document which was numbered as page 128 in File No. 3. A question may arise in the mind of this Hon''ble Court whether the said disappearance of the document was merely an accident/co-incidence rather than a deliberate act on the part of the IO. In application, the petitioner states that if the disappearance was innocent, then in File No. 3, after page No. 127 the next page would have been page No. 129, instead, page No. 129 has been renumbered as page No. 128 and it continue like that till the last page which originally ended at page No. 132, however, the renumbered file ends at page No. 131. The petitioner says this with conviction as the copy of the charge-sheet given to the petitioner which was identical to the charge-sheet filed in Court has 132 pages. Then the next question that could arise in the mind of this Hon''ble Court is how the petitioner alleges with such conviction that it is the IO who has indulged in the serious Criminal Act of tampering with the original file of the Hon''ble Special Court and not some one else ? Once again in anticipation, the petitioner states that the said inference is drawn on two counts. Firstly, the staff handling the Court File are neutral parties and have nothing against the petitioner. By no stretch of imagination can a wrong motive be attributed to the

Hon"ble Special Court. Secondly, the motivated actions of the IO in manipulating other documents like the photocopies of the sale deeds clearly reveal the malice with which the IO has been prosecuting the case against the petitioner. If the petitioner was discharged on the basis of the said document, besides the IO there was no other who could have been answerable to anyone, therefore, the only inescapable conclusion that can be drawn from this manipulation with the Court file is that it was done by someone who did not want the petitioner to get the benefit of the said document, and that points only to the IO.

(iv) That, the petitioner has also filed a case against the IO under the Contempt of Courts Act on 6-12-2006 before the Hon"ble Special Court for having maliciously tampered with the Court file by removing documents from it without the permission of the Hon"ble trial Court, and the same has been marked as M.J.C. No. 35/06.

(v) That, the motivated and malicious actions of the IO have sullied the entire investigation and has gravely prejudiced the defence of the petitioner. The conduct of the IO in the case against the petitioner clearly reveals that far from being a fair investigation, the same is acutely motivated with the IO going to the extent of tampering with the Court File in order to ensure that the petitioner does not get the benefit of a discharge.

(vi) That, the Ld. Special Judge also failed to appreciate that the mandatory order permitting investigation into the said offence by the Superintendent of Police was never given in the case against the petitioner. In this regard, it would be pertinent to examine the second proviso to section 17 which reads "Provided further that an offence referred to in clause (e) of sub-section (1) of section 13 shall not be investigated without the order of a police officer not below the rank of a Superintendent of Police". In the instant case against the petitioner, the order authorizing the investigation has been passed by Mr. M.K. Katakwar, who was officiating on the Post of SP Lokayukt, Ujjain, but was an officer of the Rank of an A.S.P. and not an SP. The principle behind interpretation of criminal statutes is strict interpretation. When the said proviso made it mandatory for an officer not below the rank of a Superintendent of Police to order investigation for an offence u/s 13(1)(e), the same, in the case of the petitioner was passed by an officer of the rank of Assistant Superintendent of Police. The post held by Mr. M.K. Katakwar was that of SP Lokayukt, however, that does not make the order passed by him legal as he was not in the rank of an SP on the date he passed the said order. The difference of rank and post is clear and unambiguous. Mr. M.K. Katakwar was drawing the salary of an A.S.P. while officiating on the post of SP Lokayukt which clearly reveals that the rank of Mr. M.K. Katakwar was inferior to the rank of an SP.

(vii) That, it is also relevant to state here, that the rank of an SP is only given to officers of the Indian Police Service. The list IPS officers in Madhya Pradesh for the year 2006 shows the induction of Mr. M.K. Katakwar into the IPS at S. No. 199, and shows his date of appointment into IPS as 4-6-2004. This clearly

reveals that Mr. M.K. Katakwar was not an IPS officer on the date on which he ordered investigation into an offence u/s 13(1)(e) of the PC Act, 1988 against the petitioner and, therefore, could not have been an officer of the rank of SP as required under the second proviso to section 17.

(viii) That, in all, Mr. M.K. Katakwar had issued four orders pertaining to investigation of the case against the petitioner. Amongst this, the first order dated 15-2-2001 is of seminal importance as the investigation is deemed to have commenced pursuant to this order. The second order was passed on 13-3-2001, whereby the IO was changed and the investigation was handed over to Mr. A.K. Samadhia, Inspector. This was illegal as an officer of the Rank of an Inspector could not have investigated without the orders of either the JMFC or the State Government. Vide the third order dated 30-6-2001, the IO was once again changed and the investigation was handed over to Mr. M.C. Mishra, D.S.P. vide the last order dated 31-1-2004 the investigation was handed over to the present IO, once again a person of the rank of an Inspector.

(ix) That, even assuming without admitting that Mr. M.K. Katakwar was of the rank of an SP, even then, the order directing an officer of the rank of an Inspector to investigate an offence, in the absence of a special or general order of the State Government as required in the first proviso was illegal and runs contra to the provisions of section 17 of the Prevention of Corruption Act, 1988. Section 17, Cl. (a) authorizes investigation by an officer not below the rank of an Inspector in the case of the Delhi Special Police Establishment, viz., the Central Bureau of Investigation. However, Cl. (a) will not apply in the case against the petitioner as the CBI is not the investigating agency. Cl. (b) provides for the investigation of an offence under the PC Act, 1988, to be done by an officer of the rank of not below the Assistant Commissioner of Police in Metropolitan areas of Bombay, Calcutta, Madras and Ahmedabad and in any other Metropolitan area. However, this Cl. also is inapplicable in the instant case as neither Dewas or Ujjain are Metropolitan areas. Cl.(c) of section 17 mandates that everywhere else, an officer not below the rank of a Deputy Superintendent of Police or a police officer of equivalent rank shall investigate into any offence under the PC Act, 1988, without the order of a Metropolitan Magistrate or a Magistrate of the First Class. The first proviso to section 17 provides for an officer not below the rank of an Inspector to undertake investigation into any offence under the PC Act, 1988 provided there is a General or Special Order of the State Government in this behalf. Thus, the inference drawn from a plain reading of section 17 and the First proviso leads to the inescapable inference that (a) in the instant case, no officer below the rank of the Dy S.P. could have investigated the offence against the petitioner, (b) The IO, Mr. R.S. Chundawat being an Inspector could have investigated the offence only if there was an order of the JMFC or (c) a General or a Special order of the State Government authorizing him to investigate into the case against the petitioner. As there is no order of the JMFC, or a Special or General order of the State Government authorizing Mr. R.S. Chundawat to investigate in the case against the petitioner, the entire investigation done

against the petitioner is illegal and void. The offence being one u/s 13(l)(e) could be investigated only if there was an order of an officer not below the rank of the SP, even then the SP was not authorized to get the case investigated by an Inspector as that was the domain of the JMFC or the State Government under the first proviso.

(x) That, the illegal investigation carried out by the Inspector has seriously prejudiced the case of the petitioner as the Inspector was maliciously disposed towards the petitioner as enumerated hereinabove which is clearly established by the act of the IO in tampering with the evidence gathered by him in the course of investigation and also the act of the IO in removing a crucial document from the Court File which was beneficial to the accused in order to deprive the petitioner a defence at the stage of arguments on charge, and then deliberately renumbering the Court file. Due to such manipulation by the IO, the trial Court was unable to effectively appreciate the arguments on behalf of the petitioner at the stage of discharge which has resulted in the trial Court framing charges against the petitioner. Secondly, the Inspector was not adequately trained or experienced to investigate fairly and without prejudice a case of disproportionate assets which undoubtedly is the most difficult case to investigate under the PC Act, 1988.

(xi) That, another instance of the prejudice that has been caused to the case of the petitioner due to the motivated investigation by the IO is reflected in the mischievous manner by which the petitioner has calculated the expenses at 68% which is contrary to the law.

(xii) That, the prejudice caused to the petitioner by the motivated investigation done by the IO is also reflected in the selective inclusion/non-inclusion of documents in the charge-sheet by the IO. In this regard, the petitioner states that the IO had seized the entire record of 124 pages relating to the Income Tax assessment of the petitioner right from day one. This was shown in the seizure memo dated 16-2-2001 which is placed in File No. 1, page No. 45, S. No. 10. This document is an exhaustive record of all the declared income, expenditure and assets of the petitioner. However, the IO has maliciously withheld the said document in its entirety and only annexed 12 pages of three years of returns filed by the petitioner. This was done so that the Ld. Special Court was prevented from going through the entire file and reaching a conclusion that all the income, assets and expenditure of the petitioner were duly accounted for by the petitioner. It is also relevant to state here that the petitioner had moved an application u/s 91, Criminal Procedure Code inter alia requesting the Hon'ble Special Court to produce the entire 124 pages of documents relating to the income, expenditure and assets of the petitioner as disclosed to the Income Tax Department. However, the said application was rejected by the Hon'ble Special Court vide order dated 12-5-2006.

(xiii) That, it is also pertinent to state here that the brother of the petitioner had also made a representation to the Lokayukt dated 7-8-2004 by which he had informed the Ld. Lokayukt that the IO had forced him to sign on blank papers

under the threat of seizing his tractor as the benami property of the petitioner. This once again discloses the prejudice with which the IO has investigated the case against the petitioner. The petitioner had sought the production of the said document from the respondent u/s 91, Criminal Procedure Code, however, the Ld. Special Judge held that the same was not required at the present stage.

(xiv) That, the Ld. Special Judge erred in not appreciating that explanation clause to section 13(1)(e) of the PC Act, 1988 which reads "For the purposes of this second "known sources of income" means income received from any lawful sources and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant". The said explanation makes it amply clear, that even for a presumption or a suspicion to arise with regard to the assets held by a public servant, the same can only arise if such public servant has erred in his duty of informing his department with regard to the assets held/acquired by him. In the instant case, the petitioner has been regularly and promptly informing his department about his assets and acquisitions from time to time in strict compliance in letter and spirit of the explanation clause to section 13(1)(e). Such intimation given by the petitioner are also a part of the charge-sheet and are in File No. 11 and are at pages No. 1 to 91.

(xv) That, it is also relevant to state here that in the course of investigation, the Lokayukt had given form No. 1, 2 and 3 to the petitioner to be filled up by him depicting his property, assets, income and expenditure, which was duly filled and returned to the IO. All this goes to show, that despite the petitioner having given detailed accounts of his assets and properties, the respondent has failed to consider them. The respondent has not given any reason as to why the accounts of properties and assets as given by the petitioner were not worthy of credit. This once again expose the malice on the part of the respondent that even though the respondent had no way of discrediting the said accounts, it went ahead and filed a charge-sheet against the petitioner.

(xvi) That, the sanctioning authority, likewise, has been guilty of non-application of mind. The petitioner had appeared in person before the sanctioning authority on 15-7-2005, and had given a detailed representation explaining the case against the petitioner. However, the sanctioning authority while granting sanction for prosecuting the petitioner has observed at page 2, paragraph 6 of the sanction order that the petitioner did not place any representation before the IO. This is factually incorrect and the same is borne out from the charge-sheet itself wherein the documents relating to properties of the petitioner are in form Nos. 1, 2 and 3. Besides this, the Excise Commissioner had also forwarded to the respondent the details of the petitioner's properties and assets. In the light of the above, there was no occasion or necessity for the petitioner to make a representation to the IO. However, as the intent of the IO was malicious, the petitioner made representation to the Lokayukt, DG SPE Principal Secretary Law and Principal Secretary, Commercial Taxes Department, dated 15-7-2005 and

12-9-2005. This clearly reveals that the sanctioning authority has not even seen the charge-sheet pertaining to the case of the petitioner and has accorded sanction in the most cavalier and carefree manner.

(xvii) That, the impugned order being a non-speaking order is bad for non-application of mind. Nowhere in the order is the case of the petitioner even marginally referred to in a coherent manner. It was essential for the Ld. Special Judge to pass a speaking order with adequate reference to the Discharge Application filed by the petitioner so as to show that he had applied her mind to the merits of the case to arrive at a conclusion that there was a triable issue in the case against the petitioner justifying the framing of charge.

Barring the factual aspects strictly relating to questions, of law involved in this petition, the learned Senior Advocate appearing for the petitioner made the following arguments:

(1) There has been non-compliance of the mandatory provisions of both the provisos attached to section 17 of the Prevention of Corruption Act. [Those provisos are that:

Provided that if a police officer not below the rank of an Inspector of Police is authorised by the State Government in this behalf by general or special order, he may also investigate any such offence without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make arrest therefor without a warrant.

Provided further that an offence referred to in clause (e) of sub-section (1) of section 13 shall not be investigated without the order of a police officer not below the rank of a Superintendent of Police.]

(2) Due to manipulation with the Court records the accused/applicant could not bring home his point to get him cleared of the charge under reference. If manipulation would not have been there, the learned Court below could not have framed the charge.

Since during the course of arguments the learned Senior Advocate laid great emphasis on the second proviso under reference. I would first deal with that. As also I would mention here that in that connection my attention has been drawn to Shri. Amrik Singh and Others Vs. Union of India (UOI) and Others, and others as also to H.S. Gotla Vs. State, .

It is found that in Amrik Singh (supra) it has been held that Superintendent of Police are borne on the cadre of Indian Police Service. In H.S. Gotla (supra) it has been held that sanction granted by Deputy Superintendent who was in-charge Superintendent at relevant time was not valid for the purposes of section 17 of the Prevention of Corruption Act. It was further held therein that mere placing of Deputy Superintendent as in-charge Superintendent does not make him Superintendent of Police. I may observe here that these cases cannot be pressed into service as they do not deal with the provisions of the Madhya

Pradesh Special Police Establishment Act, 1947. The Madhya Pradesh Special Police Establishment Act is applicable in the instant case because the case under reference has been dealt with by the Special Police Establishment.

The Madhya Pradesh Special Police Establishment Act, 1947 has been enacted for making provision of the constitution of a Special Police Force for the investigation of certain offences affecting the public administration, for the Superintendence and administration of the said force and jurisdiction of members of the said force in regard to the investigation of the said offences. In this Act, section 2 deals with the constitution and powers of special police establishment. Its sub-section (1) states that notwithstanding anything contained in the Police Act, the State Government may constitute a special police Force to be called M.P. Special Police establishment for the investigation of offences notified u/s 3. Then there is an Explanation added to this section which says in this section "Investigation" shall have the same meaning as defined in section 2 of the Code of Criminal Procedure, 1973. Further sub-section (2) thereof reads that subject to any orders which the State Government may make in this behalf members of the said police establishment shall have, in relation to the investigation of such offences and arrest of persons concerned in such offences, all the powers, duties, privileges and liabilities which police officers have in connection with the investigation of offences. Then sub-section (3) provides any member of the said police establishment of or above the rank of Sub-Inspector may, subject to any orders which the State Government may make in this behalf, exercise any of the powers of an officer in-charge of a police station in the area in which he is for the time being and when so exercising such powers shall, subject to any such orders as aforesaid, be deemed to be an officer in-charge of a police stations discharging the functions of such officer within the limits of his station.

Sub-section (3) of the M.P. Special Police Establishment Act provides for offences to be investigated by special police establishment. Therein it has been provided that the State Government may, by notification, specify the offences or classes of offences which are to be investigated by Madhya Pradesh Special Police Establishment.

From the records it is seen that vide order dated 28th November, 1989 the State Government has in exercise of the powers conferred by clause (s) of section 2 of the Code of Criminal Procedure declared the Office of the Director of Special Police Establishment, M.P., Bhopal to be a police station for the purposes of the following offences, namely:

- (a) offences punishable under the Prevention of Corruption Act, 1988.
- (b) offences under sections 409 and 420 and chapter XVIII of the Indian Penal Code, when they are committed, attempted or abetted by public servants or the employees of a local authority or a statutory corporation, when such offences adversely affect the interests of the State Government of the local authority or the statutory corporation, as the case may be; and

(c) conspiracies in respect of offences mentioned in item (a) above.

In the said notification it has also been provided that the said police station shall be called the special police establishment police station and its territorial jurisdiction shall extend over the whole area comprised within the State of M.P. Further the notification also deals with subjects which are not relevant in this case.

Under the provisions of section 2 of the Madhya Pradesh Special Police Establishment Act, the constitution of the Special Police Establishment is statutorily made. It is a matter of common knowledge that the constitution relevant for the purposes of this case according to the ranks of the officials is vertically as follows:

- (1) Director General
- (2) Inspector General
- (3) Deputy Inspector General
- (4) Superintendent of Police
- (5) Deputy Superintendent
- (6) Inspector

Under the provisions of the M.P. Special Police Establishment Act, the special police establishment as constituted u/s 2 is independent of regular police of the State. It has its own ranks and files. In these circumstances the Superintendent of Police in the special police establishment is a separate statutory entity which satisfies the requirements of the second proviso of section 17 of the Prevention of Corruption Act, so far as he is concerned. Thus, assuming it that he was an officer below the rank of Superintendent of Police in his regular cadre of Madhya Pradesh Police, nothing goes in favour of the accused/applicant in the circumstances. On this count the authorization of investigation cannot be considered as illegal.

Now coming to the argument of the learned Senior Advocate regarding non-fulfilment of the requirements of first proviso, so far as it relates to part of investigation being conducted by Inspectors who have not been notified by the State Government as competent for investigation of the offences punishable under the Prevention of Corruption Act. I find from the record that there has been necessary authorizations from the side of the Special Judge who is under the provisions of relevant Criminal Law Amendment Act also a Magistrate for the purposes of the Prevention of Corruption Act. The copies of those authorizations are on record and, therefore, there is no substance in this argument.

Now I come to the argument of the learned Senior Adv. that there has been manipulation with the Court records which deprived the accused/applicant from convincing the learned Court below that no prima facie case under reference was

brought home against him. In this connection at this stage there is a presumption u/s 114 of the Evidence Act that the Court records are properly maintained by the Court Officials. Though this is a rebuttable presumption yet for the present stage the presumption being applicable nothing can be heard to call the Court records as manipulated.

Accordingly I do not find any substance in this revision and even otherwise in view of the provisions of section 465 of the Code of Criminal Procedure read with section 190 thereto, it has been very well settled that the illegality if any committed in the course of investigation does not affect the competence and jurisdiction of the Court to take cognizance and try the accused. As is gathered from the statement made at the bar by the learned Deputy Government Advocate, the learned Court below having framed the charge is already proceeding with the hearing of the case and reception of evidence is already in progress, therefore, when the applicant has at the earliest opportunity made an attempt to point out that illegalities are there with the investigation, they have no meaning at this stage though may have some meaning at an appropriate stage if consequent prejudice is shown from the side of the accused/applicant.

In view of the above this revision is accordingly dismissed.