
(2014) 07 MP CK 0117

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Case No. 5270 of 2011

R.K. Kartikeya

APPELLANT

Vs

Rahul Jain

RESPONDENT

Date of Decision : 16-07-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 197, 200, 482

Penal Code, 1860 (IPC) — Section 120-B, 420

Prevention of Corruption Act, 1988 — Section 10, 11, 13, 15, 19(1)

Citation : (2014) 4 MPHT 245 : (2014) 4 MPJR 46

Hon'ble Judges : S.K. Gangele, J;B.D. Rathi, J

Bench : Division Bench

Advocate : Amit Lahoti, Advocate for the Appellant; Shailendra Dwivedi, Advocate for the Respondent

Final Decision : Allowed

Judgement

B.D. Rathi, J.—By invoking the extraordinary jurisdiction of this Court, petitioner has preferred this petition u/s 482 of Code of Criminal Procedure, 1973 (in short "the Code") calling in question the order of cognizance dated 11-05-2011 passed in private complaint case by Special Judge (Prevention of Corruption Act), Guna against the petitioner and issuance of bailable warrant in the sum of Rs. 1,000/- against the petitioner for his presence before the Court on 20-06-2011.

2. The brief facts of the case are that respondent-Rahul Jain was ex-councillor of Municipality, Guna. On 12-09-2006 in daily news paper "Raj Express" one notice was published inviting tender for repairing cover body for vehicle cargo 709. Cut off date for submitting the tender was fixed as 26th September, 2006. Prior to that no administrative and financial sanction has been taken by the petitioner who was the then CMO of Municipality, Guna. Thereafter, tenders were submitted by three different firms. Tender of M/s. Laxmi Agro Industry was accepted being lowest one and work order was issued. The security amount has not been obtained and when tenders were opened time and date were not mentioned.

Thereafter, on completion of contracted work, physical verification of supplied material was conducted and it was found that the material supplied was of sub-standard quality thereby petitioner and one another co-accused Mohanlal Verma, Sanitary Inspector both have committed offence punishable u/s 13 of Prevention of Corruption Act 1988 (in short "the Act") read with Sections 420 and 120-B of IPC.

3. Statement of complainant/respondent-Rahul Jain (PW-1) was recorded u/s 200 of the Code and thereafter on 11-05-2011 impugned order was passed against the petitioner and the complaint to the extent of co-accused Mohanlal Verma was dismissed on the ground that no offence was made out against him.

4. The two folds arguments advanced by learned counsel for the petitioner seeking quashment of impugned order are (1) sanction u/s 197 of the Code as well as u/s 19(1) of the Act have not been obtained before filing the private complaint and without taking into consideration this aspect of the matter, the order impugned has been illegally passed by learned trial Court (2) if the entire facts of the complaint are taken into consideration in its totality even then no offence is made out against the petitioner as prior to issuing the work order, administrative and financial sanction was obtained from the concerned authority, security amount was also got deposited from the tenderer and as per the physical verification report dated 18-01-2008 prepared by Assistant Engineer and Sub Engineer of Municipality, Guna, articles were found as per specification.

5. Combating the submissions made by learned counsel for the petitioner, respondent's learned counsel Shri Dwivedi submitted that at that time of passing of impugned order, it was not necessary to see whether the sanction u/s 197 of the Code or Section 19(1) of the Act were there or not. The factual matrix cannot be decided without taking evidence of parties on merit, therefore, the petition filed by the petitioner being sans substance, deserves dismissal.

6. Undoubtedly, for the offence punishable under the provisions of the Act, no Court shall take cognizance of an offence punishable under Sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant except with the previous sanction as provided u/s 19(1) of the Act. Similarly, no Court shall take cognizance of offence (here punishable under I.P. Code) alleged to have been committed by a public servant while acting or purporting to act in discharge of his official duty except with the previous sanction as provided u/s 197 of the Code.

7. In the case in hand, it is an admitted fact that both the sanctions have not been taken prior to filing the complaint, therefore, in view of the principle laid down by the Apex Court in the case of Anil Kumar and Others Vs. M.K. Aiyappa and Another, cognizance cannot be taken by the Court. In the case of State of U.P. Vs. Paras Nath Singh, the Apex Court has laid down the law that bar on the exercise of power of the Court to take cognizance of any offence is absolute and complete. The very cognizance is barred that is the complaint cannot be taken

notice of. Cognizance means "jurisdiction" or "the exercise of jurisdiction" or "power to try and determine the cause". In common parlance it means taking notice of. A Court, therefore, is precluded from entertaining a complaint or taking notice of it or exercising jurisdiction if it is in respect of a public servant who is accused of an offence alleged to have been committed during discharge of his official duty.

8. The case in hand is one step ahead where by passing the impugned order bailable warrant has already been issued against the petitioner. It means cognizance has been taken for the offences punishable under the Act and under Indian Penal Code also which could not be without obtaining prior sanction u/s 197 of the Code or u/s 19(1) of the Act, therefore, only on this sole ground impugned order of taking cognizance against the petitioner is liable to be set aside.

9. From the factual matrix of the case, it is evident that prior to issuing the work order, administrative and financial sanction was granted by the concerned authority for execution of work in question on 17-10-2006 by resolution No. 202. It is not in dispute that lowest tender was accepted. On perusal of receipts No. 28, 29, 30 issued from book No. 30 dated 26-09-2006, it is evident that the security amount of Rs. 5,000/- was got deposited by petitioner from every tenderer. Similarly, by physical verification report dated 18-01-2008 it is evident that the material supplied by the contractor was found as per specification. After taking into consideration the aforesaid factual matrix, it is clear that no offence is made out either under the provisions of Act or under IPC.

10. Therefore, on both the grounds, this petition is allowed. Impugned order dated 11-05-2011 is hereby set aside. Entire proceeding pending in the trial Court on the basis of private complaint filed by respondent/complainant-Rahul Jain is also hereby quashed. No order as to costs.