

(2001) 03 MP CK 0016
In the Madhya Pradesh High Court
Case No : Writ Petition No. 5713 of 1998

Sheel Kumar Choubey

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 08-03-2001

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 155(2), 156(1), 156(2), 482
Prevention of Corruption Act, 1988 — Section 13

Citation : (2001) CriLJ 3728

Hon'ble Judges : Dipak Misra, J

Bench : Single Bench

Advocate : R.N. Singh and Arpan Pawar, for the Appellant; P.D. Gupta, Dy. A.G. for No. 1 to 3 and Sharad Verma, for Nos. 4 to 13, for the Respondent

Final Decision : Dismissed

Judgement

Dipak Misra, J.—Invoking the extra-ordinary jurisdiction of this Court under Article 226 and 227 of the Constitution of India the petitioner has prayed for issue of a writ in the nature of certiorari for quashment of entire investigation relating to Crime No. 99/94 registered at Special Police Establishment, Lokayukt Office, Bhopal and further to quash the First Information Report contained in Annexure P-1.

2. The facts as have been undraped are that the petitioner is a Sub-Engineer in the Water Resources Department, Government of Madhya Pradesh since 13-9-74. At the time of joining of the post the pay scale of Sub-Engineer was Rs. 280-480. Subsequently, the said pay scale was revised. During the period 1974-79 the petitioner was posted at various places, namely, Saraipali Mahasamund, Raipur and from 1979-80 he was at Waidha, and thereafter he was continuing in Damoh district. During the said period he did not have to spend much and saved substantial amount out of his salary. A chart showing his income and expenditure during the aforesaid period has been brought on record as Annexure-P-2. The

petitioner got married in the year 1975. His father-in-law has substantial agricultural income and his mother-in-law was in government service. At the time of marriage the petitioner's wife, Smt. Vijya Choubey, brought substantial moveable property including golden ornaments and other house hold articles. This property was received by the wife of the petitioner as "Stridhan". It is further pleaded in the petition that he has two sons and two daughters and as they all are minors very less amount is spent on them. It has also been asserted that the mother of the petitioner is a pension holder as his father who v/as in government service expired in 1962. The mother also inherited some agricultural land situate at village Dhana, District Sagar and she had a good income from agriculture. Out of agricultural income petitioner's mother had purchased landed property and it is still in her possession. His mother has purchased the property out of her own income. The schedule of property purchased by the mother of the petitioner has been brought on record as Annexure-P-4. It is put forth that respondent No. 3, Superintendent of Police, Special Police Establishment, Lokayukt, while investigating Crime No. 99/94 registered at Special Police Lokayukt, Bhopal included a house situate at Civil Line, Sagar in the name of the petitioner's mother-in-law. Smt. Savitri Bai, as "Benami" purchased from the petitioner's income, though as an actual fact the said property is purchased from the income of his mother-in-law. The petitioner has filed documents to show the agricultural income of his mother-in-law and other documents to indicate that the house belongs to her. It has also been pleaded that the petitioner's younger brother, Rup Narayan Choubey, is working as a Sub Divisional Officer/Assistant Engineer in the Water Resources Department. He lost his wife in May, 1994 and his eldest daughter died in a road accident. The ornaments belonging to the wife of his younger brother are shown by the respondent No. 3 to be the property held and possessed by the petitioner for the purpose of indicating disproportionate assets of the petitioner. Similarly, F.D.Rs. of worth Rs. 18,500/- belonging to his nieces have been accounted towards the property of the petitioner, It has been alleged that respondent No. 3 and his subordinate officers while preparing the inventory has illegally seized various documents belonging to the brother of the petitioner. It has been set forth in the petition that his sister, Smt. Nidhi Dubey, is married to Shri Arun Dubey who is a Police Inspector. It has been explained that certain fixed assets have been seized from the house of the petitioner at Damoh and Civil Line, Sagar. It has been set forth that on 3-5-94 an accident had occurred wherein Smt. Shakuntala Choubey wife of Shri Rup Narayan Choutaey, daughter of Shri Rup Narayan Choubey and Trtpti Dubey daughter of Shri Arun Kumar Dubey had died at the spot near Damoh. Because of this calamity certain documents were left at the petitioner's house and they have been seized at the time of conduct of raid. The respondent No, 3 seized gold weighing 825.5 gms from the lockers in the name of the mother of the petitioner from Dena Bank, Sagar. The respondent No. 3 has shown quantity of 141 gms. of gold amounting to Rs. 63,410/- to be the property belonging to the petitioner, though as an actual fact the entire gold belonged to the mother of the petitioner who has independent source of income from her agricultural property.

It has also been pleaded that cash worth Rs. 92,243/- was seized from the house of the mother-in-law but the same has been treated as property belonging to the petitioner, ignoring the fact that she had her own independent source of income and petitioner had nothing to do with her money. According to the writ petitioner the wife of the petitioner, Smt. Vijaya Choubey, had brought substantial ornaments and also cash at the time of marriage and she had purchased agricultural land out of her own income which has been shown by respondent No. 3 to be the income of the petitioner for making out a case under Sub-section 13(1)(e) and 13(1)(2) of the Prevention of Corruption Act. It has also been highlighted in the petition that in addition to what the petitioner had earned towards his salary, he had income from Joint family property. It has been alleged that respondent No. 3 while preparing inventory relating to the property held and possessed by the petitioner has erroneously included the property held by joint Hindu family and has also computed the property of his mother-in-law, sister and brother which is ex facie illegal. It is also put forth that the petitioner had purchased a plot in the year 1985 for which he had obtained departmental permission and sanction. He had also purchased one MIG house at Damoh worth Rs. 1,93 lacs in the year 1993 for which he had obtained departmental permission. It is alleged that the respondent No. 3 and his subordinate officers have exaggerated the figures by including some house situate at Housing Board Colony, Damoh and house situate at Indira Nagar, Civil Line, Sagar and another house shown as a Farm House. It has also been put forth that the respondent No. 3 has not taken into consideration the properties held by the family members of the petitioner in their own capacity and has included the same in the property of the petitioner thereby bringing his case u/s 13 of the Act. It has been asserted by the petitioner that income out of bank deposits of his wife and four children has not been properly accounted and has not been deducted while calculating his income. The gifts received by the petitioner's wife at the time of marriage have also not been excluded. It is also set forth that the income saved during the period commencing 13-9-74 to 30-12-80 has not been taken into account. A grievance has been made that the properties of his mother and mother-in-law have been included without any Justifiable reason. It has also been contended that agricultural income out of lands held by mother and wife of the petitioner has not been accepted by respondent No, 3 while preparing the details of the property and same has been deliberately ignored as a result of which the case has been instituted. It is urged in the petition that there are serious errors in mathematical calculation but the petitioner was not afforded an opportunity to participate in the search and seizure and, therefore, he has been deprived of the opportunity to explain the factual scenario to the investigating agency. It has also been highlighted that had the objective investigation been done and the properties of the relations who have their own independent sources of income been excluded, the offence could not have been registered against the petitioner. It has also been stated that investigation has been done by Superintendent of Police who has no Jurisdiction to do so and that alone vitiates the investigation and the registration of the case. With these averments relief has been prayed for

as has been indicated above.

3. A return has been filed by the respondents Nos. 1 to 3 contending, inter alia, that the charge-sheet has been filed before the Special Court on the basis of prima facie material collected during the investigation. The said respondents have filed a copy of final report and details of expenditure/Investment made in the names of wife, sons and daughters of the petitioner. It is also put forth that a prima facie case is made out against the petitioner. It is also highlighted that the petitioner has impleaded respondents Nos. 4 to 14 to get support in the case but that is in the realm of defence and it cannot be considered for quashing of the proceedings in exercise of power Under Arts. 226 and 227 of the Constitution of India,

4. A reply has been filed by respondent No. 4 contending that the self acquired property of said respondent has been shown as the property of the petitioner which is absolutely illegal. Various calculations have been given to justify the stand.

5. A reply has been filed by the respondents Nos. 6 to 9 supporting the stand of the petitioner and taking a further plea that if they would have been given reasonable opportunity they would have proved that the petitioner had nothing to do with their properties and the action taken by the respondent No. 3 is wholly capricious.

6. A reply has been filed by respondent No. 10 through her father and respondent No. 13 contending that the property of respondent No. 13 has been erroneously seized and justification has been given that the property belongs to respondent No. 13 and she holds the same in her own capacity.

7. A reply has been filed by respondent No. 12, the sister of the petitioner, to show that the properties seized are her self acquired property and could not have been regarded as property of the petitioner. Similar stand had been taken by the respondent No. 11 indicating that the property of the said respondent has been seized in connection with crime though there are documents to show that the property belongs to the said respondent.

8. I have heard Mr. R.N. Singh, learned senior counsel with Mr. Arpan Pawar for the petitioner, Mr. P.D. Gupta, learned Deputy Advocate General for respondents Nos. 1 to 3 and Mr. Sharad Verma, learned counsel for respondents Nos. 4 to 13.

9. Mr. R.N. Singh, learned senior counsel, has submitted that respondent No. 3 has illegally taken into account the properties which stand in the names of the relatives of the petitioner as a result of which acquisition has been shown to be disproportionate whereas such conclusion has no basis in law. The learned senior counsel has canvassed that the whole case is based on mala fides, and therefore, untenable in the eye of law. Mr. Singh has also pointed out from the charge-sheet that there has been erroneous calculation in it which makes the whole charge-sheet vitiated in law. It is his further submission that if an opportunity of

hearing would have been given to the petitioner he could have explained his stand and in that event the charge-sheet would not have been filed against him. Learned counsel in support of his contentions has placed reliance on the decision rendered in the case of State of Haryana and others Vs. Ch. Bhajan Lal and others, .

10. Mr. Sharad Verma, learned counsel appearing for the respondents 4 to 13, has supported the stand of the petitioner and has vehemently urged that the properties of the said respondents have been erroneously treated as the properties of the petitioner and thereby they have been seriously prejudiced.

11. Mr. P.D. Gupta, learned Deputy Advocate General for the respondents Nos. 1 to 3, per contra, has referred to various aspects of the charge-sheet to highlight that the petitioner has disproportionate assets and he had purchased properties in the names of others which are Benami transactions and the search and seizure prima facie point out the same. Learned counsel has also contended that the petitioner was given the opportunity to explain his stand but his pleas were found to be unsatisfactory and thereafter the charge-sheet has been filed.

12. Before I advert to the rival submissions raised at the Bar I think it apposite to refer to the decision rendered in the case of State of Haryana and others Vs. Ch. Bhajan Lal and others, . In paragraph 108 of the aforesaid decision the Apex Court has laid down the following guidelines ;?

In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extra-ordinary power under Article 226 of the inherent powers u/s 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and Inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

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

2. 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.

3. 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.

4. 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.

5. 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.

6. 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.

7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding 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.

13. In this context I may profitably refer to a decision rendered in the case of Rashmi Kumar (Smt) Vs. Mahesh Kumar Bhada, wherein the Apex Court ruled thus:?

The High Court should sparingly and cautiously exercise the power u/s 482 of the Code to prevent miscarriage of justice. The High Court would be loath and circumspect to exercise its extraordinary power u/s 482 of the Code or under Article 226 of the Constitution. The Court would consider whether the exercise of the power would advance the cause of justice or it would tantamount to abuse of the process of the Court. Social stability and order require to be regulated by proceeding against the offender as it is an offence against the society as a whole. This cardinal principle should always be kept in mind before embarking upon the exercise of the inherent power vested in the Court.

14. In the case of Hari Shanker Jalan v. Food Inspector, Cherakole 1997 SCC 968, it has been held that in a case of prosecution under Prevention of Food Adulteration Act, 1954 the plea that the appellant's company had nominated a person u/s 17(2) of the aforesaid Act who would only be liable for any breach of the provisions of the Act was regarded as a question of fact which could be gone into at the stage of trial.

15. In this context, I may usefully refer to another decision rendered in the case of Satvinder Kaur Vs. State (Govt. of N.C.T. of Delhi) and Another, the Apex Court ruled thus :

...the legal position is well settled that if an offence is disclosed the Court will not normally interfere with an investigation into the case and will permit investigation into the offence alleged to be completed. If the FIR, prima facie, discloses the commission of an offence, the Court does not normally stop the investigation, for, to do so would be to trench upon the lawful power of the police

to investigate into cognizable offences. It is also settled by a long course of decisions of this Court that for the purpose of exercising its power u/s 482, Cr. P.C. to quash an FIR or a complaint, the High Court would have to proceed entirely on the basis of the allegations made in the complaint or the documents accompanying the same per se; it has no jurisdiction to examine the correctness or otherwise of the allegations.

16. The present factual matrix has to be tested on the anvil of the aforesaid enunciation of law. While exercising either jurisdiction u/s 482 of the Code of Criminal Procedure or under Article 226 of the Constitution of India it is to be borne in mind that the endeavour of the Court should not be to scrutinize the facts in a meticulous manner and scan the same threadbare to arrive at the truth or the falsity of the allegations. The Court is not expected to adopt a hyper technical approach and centrifuge through a microscopic eye to reach the conclusion that no case is made out against the accused. The judicial scrutiny at this stage is quite limited and there should not be scanning or sieving to weigh the pros and cons or the acceptability of the plea of defence.

17. At this stage I may point out that in the case of State of Haryana and others Vs. Ch. Bhajan Lal and others, the Apex Court has clearly indicated that the guidelines are not exhaustive but illustrative. The question that falls for consideration is whether the petitioner's case comes under in any of the seven guidelines or if there is extra or special feature to take it beyond the illustrations. Keeping the aforesaid enunciation of law the present factual matrix has to be adjudged. Submission of Mr. Singh is that the petitioner was not afforded an opportunity of hearing to explain his stand. On a perusal of the charge-sheet it is noticeable that the petitioner was given the opportunity to explain his stand and he had also submitted a representation to the competent authority. In view of this I do not find substance in the contention of Mr. Singh.

18. The next contention of Mr. Singh is that the properties belonging to the relatives of the petitioner has been taken into consideration as a result of which an unfortunate conclusion has been arrived at. To substantiate the said contention he has referred to paragraph 12 of the charge-sheet to highlight that there has been error of calculation and agricultural income and other incomes have not been taken into consideration and erroneously properties of mother-in-law have been included. Per contra, Mr. Gupta, learned Dy A.G., has referred to paragraph 14.5 of the charge-sheet to highlight that the petitioner has agricultural property which is valued at rupees 5 to 6 lacs. He has referred to the allegations which indicate that various houses have been constructed by the petitioner. Learned Dy. A.G. has also drawn the attention of this Court to paragraph 19 of the charge-sheet to draw inspiration that the wife of the petitioner was the owner of four acres of land, and therefore, no substantial income can be attributed to her individual source. Learned counsel for the State has referred to charge-sheet wherein it has been put forth that the house situated at Damoh has been in the name of the petitioner and house at Sagar,

Civil Line is in his possession and there are documents to show that the property was purchased by the petitioner in the name of his mother-in-law. Learned counsel for the State has submitted that the petitioner has purchased 25 acres of agricultural land in village Baramvad, Sagar after the year 1981 and has constructed a house on a portion of it and has dug three wells and installed a pump set. Learned counsel has further pointed out that the petitioner's income is excess by Rs. 12,78.412/- and the fact situation clearly justifies that it was beyond the known source of income of the petitioner.

19. On a perusal of the charge-sheet it cannot be said that there is no material against the petitioner or present case is totally without any evidence. It can also not be said that 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. In fact, if submissions of Mr. Singh are appreciated in proper perspective it can safely be concluded that they are in the realm of defence. The petitioner may eventually be acquitted by explaining his stand and adducing cogent evidence in support of his pleas but that would not be a factor to be taken into consideration at this juncture for quashment of the charge-sheet and FIR. If the petitioner would have been able to cover his case in one of the seven illustrations as indicated in case of State of Haryana and others Vs. Ch. Bhajan Lal and others, then there would have been possibility of quashing the proceeding. I am afraid, the petitioner has not been able to lay the foundation stone for any of the "Setus" of the aforesaid "Sapt Setus". No foundation stone having been laid the question of building the bridge does not arise. The "Setu" remains unconstructed. In absence of the same it is difficult to accept the submissions of the learned counsel for the petitioner.

20. Before I part with the case I would like to make it clear though I have declined to quash the charge-sheet and FIR, I have not expressed any opinion on the stand taken by the petitioner which relates to his defence. The trial Court shall not take into consideration any of the observations made in this order and shall deal with the trial with utmost objectivity and it would be open to the petitioner to raise all his contentions during the trial. As the matter has been pending for last three years prompt steps shall be taken by the trial Court to dispose of the same as expeditiously as possible.

21. Resultantly, I do not find any substance in the writ petition and the same is dismissed without any order as to costs.