
(2017) 01 MP CK 0250
In the Madhya Pradesh High Court
Case No : 14620 of 2016

Smt. Kalpana Soni & Ors.

APPELLANT

Vs

State of M.P. & Anr.

RESPONDENT

Date of Decision : 20-01-2017

Acts Referred:

Code of Criminal Procedure, 1973, Section 482 - Saving of inherent powers of High Court
Indian Penal Code, 1860, Section 120B - Punishment of criminal conspiracy
(C

Citation : (2017) 01 MP CK 0250

Hon'ble Judges : S K Gangele, Subodh Abhyankar

Bench : Single Bench

Advocate : Anil Khare, Pallavi Khare, Pankaj Dubey, Rakesh Shukla

Final Decision : Allowed

Judgement

1. The present petition under Section 482 of Cr.P.C. has been filed by the petitioner against the lodging of FIR bearing Crime No.28/2014 for offences punishable under Sections 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988. Subsequently to the filing of the present petition, the charge sheet has also been filed in the case, which is also on record.

2. In brief the facts of the case are that the petitioner was posted as Tehsildar at Govindpura, Bhopal at the relevant time during the year 2010 and the allegation against him is that he deliberately allowed a land acquisition proceeding to go in wrong direction, which was initiated by one Pyarelal on 23.2.2007 by filing an application before the General Manager, District Industries Center, Bhopal for acquiring his land situated at village Kolua, Survey No.196/36, admeasuring 1.040 hectare. In the FIR, it is mentioned that on this application, if the General Manager of District Industries Center and his Subordinate Officers had verified the records, they would have known that an award has already been passed in respect of the acquisition proceedings with regard to the aforesaid land on

21.3.1984 and thus the allegation against the petitioner is that had he verified the old records regarding the land acquisition proceedings, he could have known that the award had already been passed in the year 1984 but he misused his official capacity and led the proceedings in a wrong direction which could have caused a loss of approximately Rs.5 Crores to the Government exchequer.

3. It is further alleged against the petitioner that on 28.8.2010, a complaint was made against the petitioner by one Raja Khan alleging that the petitioner had demanded a sum of Rs.50,000/- to process the file in respect of the land acquisition of one Hari Kishan and others by the Industries Department and in this trap proceeding some documents came to the knowledge of the Investigating Agency one being letter dated 16.2.2010, wherein it was informed to the Collector that the land acquisition proceedings have already been initiated in the year 1962-

63.

4. The contention of the petitioner is that the petitioner has not only come on the scene at the subsequent stage of alleged land acquisition proceedings as he was posted as Tehsildar at Govindpura from 19.04.2010 to 06.09.2010, but also that he had not committed any illegality in processing the documents which came to his table in respect of the alleged land acquisition proceedings. It is the further case of the petitioner that the Industries Commissioner has issued a letter dated 16.2.2010 (filed as annexure P/2 and also filed with Charge sheet at page 245) to the Collector wherein it is mentioned that in the year 1962 land acquisition proceedings have been initiated to acquire the land at village Kolua and the award was also passed on 20.11.1963 where after, after payment of the compensation the possession was also acquired. It is further mentioned that from the land acquired by the State, a land admeasuring 1.040 hectare (2.57 acres) was left for the maintenance of the family of Mayayaram S/o Shankarlal, Prahlad, ShyamLal S/o Durga Prasad, MewaBai widow of Durga Prasad, Pyarelal, Hadkou, Devi Lal, Khemchand S/o Ramchand, Harikishan, Kunjilal, Dheerajlal, Munna s/o. Chunnilal, Jiyabai widow of Chunni Lal, and because of error on the part of the Department, the aforesaid land was also acquired and in such circumstances when the land has already been acquired and allotted to the Industries Department, it is not possible now to revert the aforesaid land, hence the aforesaid land be acquired and the case be processed.

5. On such letter dated 16.2.2010, the Officer-in-Charge in the office of the Land Acquisition Office marked the file to Land Acquisition Officer stating that the letter dated 16.2.2010 postulates acquiring the land bearing khasra No.196/38 ad measuring 1.040 hectare, therefore, the file be sent to the Tehsildar for procuring inspection report.

6. After receiving the file, the then Tehsildar (not the petitioner herein but his predecessor) vide note-sheet dated 3.3.2010 sent the file to the Revenue Inspector to submit his report on the observations made by the Land Acquisition

Officer. The Tehsildar received a report from the Revenue Inspector on 15.4.2010 and sent it to the Land Acquisition Officer for further inquiry, who vide office order dated 21.4.2010 remitted the same back to the Tehsildar to seek additional information from the Revenue Inspector in respect of the observations made in the note-sheet dated 21.4.2010. It is only after this remittance that the file came before the petitioner for the first time. The present petitioner then, vide his note sheet dated 26.4.2010 prepared a report on the basis of the report submitted by the Revenue Inspector. In his report, the petitioner submitted that the said land is situated in Industrial Area, Govindpura, Bhopal and on the aforesaid land there are plot Nos.62,71,72,81,82,84,85 and 86 and also some part of the road.

7. After receiving the said file, the Land Acquisition Officer again wrote to the Tehsildar to proceed to inspect the spot and subsequently the petitioner issued the notices to the Bhumiswamis to be present on the spot for its inspection. The aforesaid note sheets are also on record and filed as Annexure P/3, which are filed along with the charge sheet at page No.592 Thus the documents filed by the petitioner are also relied upon by the prosecution agency.

8. After completing the inspection, the petitioner wrote a letter dated 5.5.2010 to the General Manager, District Industries Department, Bhopal and by referring to their letter dated 16.2.2010, which is filed as Annexure P/2. This letter dated 05.05.2010 is written by the petitioner wherein it is mentioned that in the land acquisition proceedings there is no provision to leave any land for the maintenance of the family, hence the aforesaid point may be verified. It is further mentioned by the petitioner in his letter that in the letter dated 16.2.2010, the Industries Commissioner has mentioned that the possession of the aforesaid land has been erroneously given to the Industries department hence the acquisition receipt in this regard and also a certificate that the aforesaid land has not been acquired till date be submitted and since the Revenue Inspector has in his report had stated that on the spot factories have already been constructed then what would be their status as on today. The aforesaid letter is also on record as Annexure P/4 and filed in the charge sheet at page 246 and in respect to the aforesaid letter dated 5.5.2010, the General Manager, the District Industries Centre, Bhopal, wrote a letter on 8.6.2010 that the disputed land at survey No.196/38 admeasuring 2.57 Acres is not included in the acquired lands of 502.96 acres which was initially acquired and it was also mentioned that since the aforesaid land is already allotted to various Industries on which they have already made construction, it is not possible to return the said land to their actual owner. The aforesaid letter dated 8.6.2010 is also on record as Annexure P/5 and filed with the charge sheet at page No.247.

9. It is further submitted by the petitioner that it is in these proceedings only, a trap was laid on 28.8.2010 and pursuant to the aforesaid trap the respondent also sought sanction to prosecute the petitioner but vide its letter dated 6.9.2011 the sanction to prosecute was refused on the ground that the petitioner has been falsely trapped.

10. In the meantime, the Office of the Collector wrote a letter to the District Industries Center on 24.1.2011 for providing the file in respect of land acquisition proceedings of the year 1962-63 and in reply thereto the DIC vide their letter dated 26.4.2011 informed for the first time that the land in question is already covered by the award dated 21.3.1984. Copy of letter dated 26.4.2011 is filed as Annexure P/7 and is at page No.581 of the charge sheet. Thereafter, the FIR was lodged on 13.01.2014, and being aggrieved by the lodging of the said FIR dated 13.1.2014, the petitioner has come before this Court for its quashment and as the charge sheet as stated above has already been filed in this case and a copy of which has already been made available by the petitioner.

11. Learned counsel for the respondent has opposed the petition on the ground that there are many documents available on record, which prima facie establish the commission of the crime by the petitioner and at this juncture the prosecution cannot be snubbed by filing this petition under Section 482 of Cr.P.C.

12. The respondent has filed its reply refuting the grounds raised in the petition wherein it is alleged that though there is no loss occasioned to the Government, still the charge sheet has been filed and the prosecution sanction of R.C. Kureel, General Manager, Industries is awaited. The respondent has also taken up a ground that one Raja Khan made a complaint on 28.8.2010 against the petitioner that the petitioner has demanded Rs.50,000/- from him for providing compensation to one Harikishan, who is also one of the Bhumiswami of the land in subject. Pursuant to the aforesaid trap, an FIR was also registered at Crime No.68/2010 under Sections 7, 13(1) and 13(2) of the Prevention of Corruption Act, 1988 read with Section 120-B of IPC and in this trap it was found by the Investigating Agency that the compensation was already received by the father of Pyarelal on 21.3.1984 and hence it can be presumed that the petitioner has tried to give second compensation and prepared document of compensation without verifying the revenue records and has also contended that the gravamen of the allegation against the petitioner is that without verifying the proceeding of compensation which was already paid in the year 1984, the petitioner continued to process the application filed by Pyarelal, which was falsely submitted for the second time. According to the respondent, the communication dated 5.5.2010, in itself, is sufficient to hold that the petitioner deliberately did not verify the proceedings of the year 1984 and still went ahead with the application filed by Pyarelal.

13. Heard the learned counsel for the parties and perused the charge sheet.

14. We find that it is a fit case for exercising the jurisdiction under Section 482 of Cr.P.C. as after considering the contents of the F.I.R. and the documents filed in the charge sheet on their face value, no case is made out to initiate any proceeding under Section 13(1)(d) and 13(2) of the Prevention of Corruption Act.

15. Before we proceed further, it would be germane to recapitulate Section 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988, which read as under :-

"13. Criminal misconduct by a public servant. -

(1) A public servant is said to commit the offence of criminal misconduct,-

(a) xxx xxx xxx

(b) xxx xxx xxx

c) xxx xxx xxx

d) if he,-

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or

(e) xxx xxx xxx

(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than four years but which may extend to ten years and shall also be liable to fine."

16. It is an admitted fact that no loss has occasioned to the State in the present case but there is an apprehension that acts or omissions could have caused a loss to the State to the tune of Rs.5 Crore. Now as already stated above the case of the prosecution is that the petitioner was involved in the aforesaid offences as he processed the application filed by one Pyarelal to receive compensation in respect of acquisition of the land, which admittedly, already stood acquired and compensation was awarded in the year 1984.

17. Shri Khare, the learned Senior Counsel for the petitioner has drawn our attention to the letter dated 5.5.2010, which, according to the prosecution also, is the foundation of the initiation of proceeding against the petitioner. This letter is filed as Annexure P/4 and is also filed with the charge sheet at page No.246. This letter is written by the petitioner in the capacity of Tehsildar to the General Manager, District Industries Centre, Bhopal. The aforesaid letter reads as under :-

"VERNACULAR MATTER OMITTED"

18. In this letter, a reference is also made to a letter dated 16.2.2010 issued by the Industries Commissioner. The aforesaid letter dated 16.2.2010 is also on record as Annexure P/2 and has been filed along with the charge sheet at page No.343. A perusal of the aforesaid letter dated 16.2.2010 reveals that an application was submitted to the District Industries Commissioner and it is mentioned that the land ad measuring 1.040 hectare situated at village Koluakala, Tehsil Huzur, District Bhopal which is a private land is sought to be

acquired and in this respect earlier land acquisition proceedings were also initiated of the land situated in the same area but from the land which was acquired earlier, the land ad measuring 1.040 hectare (2.57 acre) was left for the subsistence of the land owners but on account of some error on the part of Land Acquisition Officer, the aforesaid land was also possessed by the Industries Department and plots have already been allotted to the various industrial undertakings, and therefore the resolution was passed to acquire the aforesaid land also, hence appropriate proceedings be initiated to acquire the same. After receiving this letter, the Collector has sent the file to the present petitioner for further process and in the process, the petitioner has written the aforesaid letter dated 5.5.2010 to the General Manager, District Trade and Industries Center. In this respect a letter dated 16.02.2010 was issued by the General Manager, District Trade and Industries Center, Bhopal to the Collector, Bhopal wherein it is mentioned that the land acquisition proceedings in respect of the said village Koluakala was initiated in the year 1963 and in the land already acquired, the described land, survey No.196/38 ad measuring 2.57 acres is not included. There is another letter dated 24.1.2009 filed in the charge sheet at page 232, again issued by the office of the District Trade and Industries, Hoshangabad reiterating that the land of Pyarelal is to be acquired and this land is to be acquired through mutual agreement.

19. The application was filed by Pyarelal on 23/02/2007. In the charge sheet, the sanction letter for acquisition is also on record, which was issued on 03.02.2010 by Shri M.S. Mangotra, Under Secretary, State of M.P., Commerce, Industries and Employment Department, Bhopal which is addressed to the Industries Commissioner and it is mentioned that the permission to acquire the aforesaid land situated at Survey No.196/38 admeasuring 1.040 (2.57 acre) is granted.

20. In the aforesaid backdrop, when we consider the role played by the petitioner, it transpires that the petitioner was appointed on the aforesaid post on 19.4.2010 and remained there till 6.9.2010 and prior to that, the alleged land acquisition proceeding had already begun, i.e. even prior to the appointment of the petitioner on the aforesaid post and it is nobody's case that the application to acquire the land was initially submitted to the petitioner and he despite having knowledge of the acquisition of the land in the year 1963 proceeded with the same. In fact, the allegation against the petitioner in the FIR is that when he received communication by Industries Commissioner, he did not proceed to record that the land is already acquired and tried to mislead the proceeding. The allegation of issuance of letter dated 5.5.2010, which according to the prosecution is material evidence against him, has come for the first time in the charge sheet only. A perusal of the aforesaid letter dated 05.05.2010 as reproduced hereinabove clearly reveals that the petitioner has not acted in any haste to dispose of the application, which was forwarded to him and, in fact, in the said letter he has sought certain information from the General Manager of District Industries Center, which clearly demonstrates that the petitioner was following the procedures and it cannot be said that he acted arbitrarily in order to

allow Pyarelal to take compensation in respect of the acquisition of the land which was already acquired in the year 1963.

21. Thus, neither the FIR nor the charge sheet as has been filed against the petitioner under Section 13(1)(d) and 13(2) of the Prevention of Corruption Act reveals commission of cognizable offence by the petitioner. When the ingredients of the aforesaid Sections are considered vis.a.vis the allegation made against the petitioner and the documents filed in support thereof, it cannot be said that the petitioner has committed any offence as aforesaid even assuming the contents of the aforesaid documents to be true. In the present case, the petitioner has not, (i) by corrupt or illegal means, obtained for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant, obtained for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtained for any person any valuable thing or pecuniary advantage without any public interest.

The allegation against him is that his acts/omissions could have caused loss to the Government exchequer, which could not be said to be sufficient to bring home the charges against the petitioner.

22. Learned counsel for the petitioner has relied upon the judgment delivered in Criminal Revision No.2032/2015 (Dr. S.K. Singh Vs. The State of M.P. and others) wherein the allegation against Dr. S.K.Singh was of deliberate procedural lapses and this Court after considering the case and relying upon the judgment of of Apex Court in the case of Union of India Vs. Major J.S. Khanna, ETC [(1972) 3 SCC 873] held as under :-

"23. Except for demonstrating a procedural impropriety or illegality in the matter of allotment of work, no criminal intention, malafide or criminality is made out from the entire material available on record. That being the position, we have no hesitation in holding that it is a fit case where prosecution of the petitioners on the material available according to us is not at all warranted and it is a fit case where their discharge can be ordered.

24. In the case of Major J.S. Khanna (supra), similar questions with regard to procedural impropriety has been considered and similar action quashed by the Court as charges were said to be not made out and it was held by the Court in the aforesaid case that mere violation of the procedure may be proved but in the absence of criminal intent and criminality being established, prosecution cannot continues. In the present case also, similar scenario exists and therefore, we are of the considered view that it is a fit case where the petitioners should be discharged as no useful purpose would be served by prosecuting them in the manner as done."

23. In the present case also, at the most, the allegation which may be made against the petitioner is of procedural lapses although the prosecution has also

not brought on record the exact procedure to be followed in processing such applications. In the circumstances, it is not even the case of procedural lapses. Hence no criminal liability can be imposed upon the petitioner for having processed the application which was received by him through the higher authorities. To allow such proceedings to continue would only be the misuse of the process of the court. It is also pertinent to mention here that the State Government has still not given its sanction to prosecute R.C. Kureel, General Manager, Industries.

24. In the facts and circumstances of the case, the petitioner has made out a case for invoking and exercising the powers u/s.482 of Cr.P.C. hence the petition is allowed. The FIR bearing Crime No.28/2014 as also the subsequent charge sheet filed so far as they relate to the petitioner, are hereby quashed.