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**(2001) 05 MP CK 0044**  
**In the Madhya Pradesh High Court**  
**Case No : Writ Petition No. 1310 of 2001**

Vinay Kumar Saxena

APPELLANT

Vs

State of M.P. and others

RESPONDENT

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**Date of Decision :** 03-05-2001

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227

Penal Code, 1860 (IPC) — Section 147, 148, 149, 294, 323

**Citation :** (2001) 3 MPLJ 306

**Hon'ble Judges :** Dipak Misra, J

**Bench :** Single Bench

**Advocate :** Manish Datt, for the Appellant; Ashok Agarwal, Panel Lawyer For State, for the Respondent

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## Judgement

Dipak Misra, J.

Invoking the extraordinary jurisdiction of this Court under Articles 226 and 227 of the Constitution of India the petitioner has prayed for issuance of a direction to the Respondents to properly investigate with regard to crime No. 114/1999 instituted for offences punishable u/s 147, 148/149, 365, 323, 294 and 506-511 of Indian Penal Code (in short "Indian Penal Code") registered at Police Station, Gorakhpur on the basis of FIR lodged by the W.P. No. 1310 of 2001 decided on 3-5-2001. (Jabalpur) petitioner and further to quash the order by which the investigation has been transferred to Criminal Investigation Department, Bhppal. Apart from these two reliefs other reliefs have been prayed which are essentially ancillary to the aforesaid reliefs.

Facts as have been portrayed in the writ petition are that the petitioner is a contractor and has undertaken the works of constructions in the Housing Board. The petitioner had made a complaint against one A.K.S. Tomar, the Additional Commissioner, M.P. Housing Board, Jabalpur regarding the corruption and an enquiry was conducted against said Shri Tomar. This complaint of the petitioner had annoyed said Tomar who had harboured an ill will against the petitioner. On

23-2-1999 the petitioner had gone to the office of Shri L. S, Songer, Deputy Housing Commissioner along with his companions Ravindra Shrivastava and Dinesh Vishwakarma. Shri Tomar was called by Shri Songer but when he did not come to the office of the Deputy Housing Commissioner Shri Songer asked the petitioner to meet Shri Tomar in the Office. Thereafter the petitioner reached the office of the Administrative Officer. At that time Shri Tomar who was present over there started abusing the petitioner. Thereafter the petitioner came out and at that juncture Shri Tomar took away the petitioner to the University, According to directions of Shri Tomar the petitioner was kidnapped in a jeep by Ashok Tomar and his three other companions. After being kidnapped the jeep reached at Gorakhpur Where there was a crowd and on a cry being made by the petitioner the jeep was surrounded and in between ASI Garg came over, there and the said accused persons were arrested. Against Ashok Tomar a series of offences had already been registered and against Satendra Singh two offences were registered under Sections 307 smf 506-511 of Indian Penal Code respectively. It is pleaded in the petition that the petitioner was sent for medical examination and it was found he had sustained grievous injury in his ear. Thereafter the said accused persons filed application for grant of bail u/s -439 of Code of Criminal Procedure (hereinafter referred to as "the Code") but the same was rejected by the Court of Session. On that stage the petitioner came to learn from the Inspector Kurchania that the crime No. 114/1999 was not being investigated by the concerned officer of Gorakhpur Police Station and same was being investigated by the Criminal Investigation Department on the basis of an order passed by the Department of Home. Thereafter the petitioner was asked to remain present at Police Station Gorakhpur at 4 p.m. on 15-3-1999. The petitioner along with all the witnesses reached Police Station, Gorakhpur but inspector Kurchania was not present. It is urged by the petitioner that the case has been transferred to CID at the behest of the accused person, Shri A.K.S. Tomar who has political connections and on the said basis he has managed to get the investigation transferred to CID in spite of the fact that the Police Administration has not demanded for it. It is urged that transfer of the file to CID is in violation of the Regulation 16 of the Police Manual. It is also put forth that Superintendent of Police had not demanded any investigation by the CID nor there has been no request by the Police of Police Station, Gorakhpur. It is also set forth that there is no request of the accused persons to the S.P., Jabalpur in this regard. With these averments reliefs have been sought for as indicated hereinabove.

A reply has been filed by the Respondents contending, inter alia, that A.K.S. Tomar is an Executive Engineer in M.P. Housing Board. He filed a Writ petition forming the subject matter of W.P. No. 1315/1999 alleging that Police has not registering any offence on the basis of an F.I.R. lodged by him. He had made allegations against the local police. The reply filed by the Respondents therein has been brought on record as Annexure R-1. Shri Tomar also represented making allegations that on his complaint the local police had not taken any cognizance and requested that the matter should be got investigated by some

independent agency. Considering the rival allegations the matter has been handed over to the CID, and hence, there is no illegality in the said decision.

A rejoinder affidavit has been filed by the petitioner reiterating the stand that the investigation was handed over to the CID without any basis and solely due to political influence of said Shri Tomar.

I have heard Mr. Manish Datt, learned counsel for the petitioner and Mr. Ashok Agrawal, learned Panel Lawyer for the State.

It is submitted by Mr. Manish Datt that handing over of the investigation to the Criminal Investigation Department is regulated by the Regulation 16 of the Police Manual and certain conditions precedent are provided in the said Regulation but in the case at hand though the same had not been satisfied the case has been handed over to the C.I.D. It is urged by him that no reason has been given to hand over the matter to the CID except a bald stand that request was made by the accused to get the crime investigated by some independent agency and considering rival allegations the matter has been handed over to the CID for investigation. It is put forth by Mr. Datt that an accused has no right to get the matter investigated by a particular agency. Learned counsel has placed reliance on the decisions rendered in the cases of Kirtan Bhuyan and others Vs. State of Orissa, , Union of India and another Vs. W.N. Chadha, , and Central Bureau of Investigation and another Vs. Rajesh Gandhi and another, .

Mr. Ashok Agrawal, learned Panel Lawyer for the State has submitted that Shri Ashok Tomar had represented making allegations that on his complaint the local police had not taken any cognizance of the matter, and taking various facts into consideration the order has been passed by the competent authority to transfer the case of CID and hence, no fault can be found with the action of the Respondents. The learned counsel has submitted that conducting of investigation is the prerogative of the State Government and a complainant/informant cannot seek a writ of mandamus how the investigation has to be conducted.

Before I advert to the respective contentions raised at the Bar it is apposite to refer to the return filed in W.P. No. 1351/1999 preferred by Shri Tomar. In the said writ petition Shri Tomar has raised a grievance that the Respondents, namely, the State and its functionaries are not performing their statutory duties inasmuch as though he has lodged an FIR against some anti social elements the same was being not registered. In the return it was stated that a written complaint was sent to the Additional Superintendent of Police and incharge of Police Station, Gorakhpur marked the complaint to ASI, A.K. Garg to make an enquiry. Mr. Garg had made an enquiry and submitted the report that allegations made in the complaint were not correct and had been made to circumvent the report made by Shri Vinay Saxena. It was also pleaded that Shri Tomar was not available during the enquiry conducted by Mr. Garg. In paragraph six of the return it has been stated that Shri Ashok Tomar and Satyendra Singh were caught while taking Mr. Saxena in a vehicle and brought to the Police Station. It

is also stated that the case has been transferred to the CID. The aforesaid writ petition was disposed on 16-8-1999 by the learned single Judge of this Court who after noting down the allegations made by Shri Tomar and referring to the letter by the Additional Superintendent of Police came to observe as under:--

Learned counsel submitted that the Police is acting in highhanded manner and is not discharging its obligation. If the Town Inspector has not conducted himself in a proper manner, then the appropriate course was to approach the higher authorities i.e. Superintendent of Police, Inspector General of Police, Director General of Police and the Home Secretary. I do not find from the record that any such steps were taken. It is not proper to express any opinion in regard to the nature of the offence as to whether it is cognizable or non-cognizable, as I am of the view that the petitioner should have approached the concerned authorities.

In view of above, the writ petition is dismissed without expressing any opinion on the merit of the matter.

I have referred to the aforesaid case only to indicate that this Court had not issued any direction in regard to the complainant made by Shri Ashok Tomar and in the return the Respondent had commented on the conduct of Shri Tomar and his involvement in crime in question.

The moot question that arises for consideration is whether the investigation should have been transferred to the CID. Mr. Datt, learned counsel for the petitioner has drawn the attention of this Court to Regulation 16 of M.P. Police Regulation, Chapter I of the said Regulation deals with the constitution, organization and distribution of the State Police Force. Chapter II deals with the position and duties of superior officers. Regulation 13 deals with the functions of D.I.G. Regulation 15 deals with supervision of crimes by D.I.G. The said Regulation reads as under:--

15. D.I.G. -- Supervision of Crime by. In matters criminal it is the duty of the Deputy Inspector General carefully to superintend the prevention registration, investigation and detection of crime within his jurisdiction. He should aid and control his Superintendents in all important investigations and they should be able to rely on him for encouragement, instruction and advice. He is responsible for seeing that the investigation of serious crime is supervised by a suitable agency, and should pay particular attention to the maintenance of cordial relation with the magistracy, and of co-operation between different districts.

Regulation 16 deals with the serious crime. The said Regulation is as under:--

16. Serious Crime. -- The co-ordination of the work of the Criminal Investigation Department with that of the district police is entirely in the hand of the Deputy Inspector-General in charge of that department. Superintendents will immediately report to him any case of special difficulty which baffles the local police, cases of professionals, or organised crime, and cases of counterfeit coining or note forgery. He will also be sent copies of the special and

supplementary reports in all cases of dacoity, administering stupefying drugs by suspected professionals, and any other case of special interest. It will be for him to decide whether an officer of the Criminal Investigation Department should be deputed to assist the local police or whether the case should be taken out of the hands of the local police altogether by the Criminal Investigation Department. He will submit once a month for the information of the Inspector-General a summary of the work done by the Criminal Investigation Department.

Submission of Mr. Datt is that the present case is one where Superintendent of Police had not reported to the D.I.G. mentioning any special difficulty which baffled the local police or other type of matter that finds mention in the said Regulation. It is put forth by Mr. Datt that DIG has the authority to decide whether an officer of CID should assist the local police or whether the case should be taken out of the hands of local police as together by the CID but such a power cannot be exercised in an arbitrary and unreasonable manner. Mr. Datt has also referred to Section 154 to 173 of the Code to highlight the role of the Police Officers in the matter of investigation. It is not disputed by him that when Regulation 16 comes into play the CID can be directed to investigate.

Heart of the matter is that whether in present case there was justification to transfer the case to CID. As has been stated the only stand taken in the return that Shri Tomar had made complaint against the local police that it was not taking cognizance of the report. This Court while deciding the W.P. No. 1351/1999 had dealt with the matter and did not think it proper to interfere. True it is, the power vests with the authority to transfer the case but the question that arises for consideration is whether the power can be exercised at the instance of accused and without any reason. This Court in order to find out on what basis the matter was transferred to the CID by order dated 14-12-2000 passed the following Order:--

Considering the allegations made in the petition, it is necessary to have a look at the file in which the order was passed transferring the case from District Force to the Criminal Investigation Department. Mr. P.D. Gupta, learned Dy. A.G. is directed to produce the relevant file on 11-1-2001.

The matter was adjourned on four occasions and ultimately this Court was informed that there is no file in that regard. Thus it is apparent there is nothing on record to show how the direction came to be issued.

At this juncture I may refer to a two Judge Bench judgment of the Apex Court rendered in the case of W.N. Chadha (supra) wherein the Apex Court held as under:--

The principle of law that could be deduced from the above decisions is that it is no doubt true that the fact that a decision, whether a prima facie case has or has not been made out, into by itself determinative of the exclusion of hearing, but the consideration that the decision was purely an administrative one and a full-fledged enquiry follows is a relevant and indeed a significant factor in deciding

whether at that stage there ought to be hearing which the statute did not expressly grant.

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Under the scheme of Chap. XII of the Code of Criminal Procedure, there are various provisions under which no prior notice or opportunity of being heard is conferred as a matter of course to an accused person while the proceeding is in the stage of an investigation by a police officer.

Their Lordships proceeded further to express as under in paragraph 92 of the judgment:

92; More so, the accused has no right to have any say as regards the manner and method of investigation. Save under certain exceptions under the entire scheme of the Code, the accused has no participation as a matter of right during the course of the investigation of a case instituted on a police report till the investigation culminates in filing of a final report u/s 173(2) of the Code or in a proceeding instituted otherwise than on a police report till the process is issued u/s 204 of the Code, as the case may be. Even in cases where cognizance of an offence is taken on a complaint notwithstanding the said offence is triable by a Magistrate or triable exclusively by the Court of Session, the accused has no right to have participation till the process is issued. In case the issue of process is postponed as contemplated u/s 202 of the Code, the accused may attend the subsequent inquiry but cannot participate. There are various judicial pronouncements to this effect but we feel that it is not necessary to recapitulate those decisions.

At this juncture I think it apposite to refer to a decision rendered in the case of State of Bihar and Another Vs. J.A.C. Saldanha and Others, . Wherein the Apex Court while dealing with the powers of investigation by a Police Officer as contemplated u/s 156 of the Code has ruled thus:--

There is a clear-cut and well demarcated sphere of activity in the field of crime detection and crime punishment. Investigation of an offence is the field exclusively reserved for the executive through the police department the superintendence over which vests in the State Government. The executive which is charged with a duty to keep vigilance over law and order situation is obliged to prevent crime and if an offence is alleged to have been committed it is its bounden duty to investigate into the offence and bring the offender to book. Once it investigates and finds an offence having been committed it is its duty to collect evidence for the purpose of proving the offence. Once that is completed and the investigating officer submits report to the Court requesting the Court to take cognizance of the offence u/s 190 of the Code its duty comes to an end.

In this Context I may refer to a decision rendered in the case of Rajesh Gandhi (supra) wherein the Respondent No. 1, a Director of a company, along with another was an accused for offences punishable under Sections 457, 436, 427,

201 and 120B of Indian Penal Code and u/s 4 of the Prevention of Damages to the Public Property Act, 1984. The investigation was carried on by the local police. Thereafter at the request and with the consent of State of Bihar as per notification dated 2-6-1994 the Central Government by its notification dated 26-10-1994 issued u/s 6 of the Delhi Special Police Establishment Act, 1946 authorised the Central Bureau of Investigation to investigate the said offences. That was challenged by the Respondent in a writ petition in the High Court of Patna and the learned Single Judge quashed the said notification on the ground that the notification did not disclose reasons why investigation was being entrusted to the Delhi Special Police Establishment. Keeping the aforesaid factual matrix in view the Apex Court held as under:--

8..... The decision to investigate or the decision on the agency which should investigate, does not attract principles of natural justice. The accused cannot have a say in who should investigate the offence he is charged with. We also fail to see any provision of law for recording reasons for such a decision. The notification dated 2-6-1994 is issued by the Government of Bihar (Police Department) by which in exercise of powers u/s 6 of the Delhi Special Police Establishment Act, 1946, Governor of Bihar was pleased to consent and extend the power and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Bihar in connection with investigation of the concerned Police Station case No. 159 of 9-3-1993 in the District of Dhanbad, under Sections 457, 436, 437, 201 and 120B, Indian Penal Code and conspiracy arising out of the same and any other offence committed in course of the same. The notifications of 26-10-1994 is issued by the Government of India, Ministry of Personnel in exercise of powers conferred by Sub-section (1) of Section 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 whereby the Central Government with the consent of the State Government of Bihar in their notification dated 2-6-1994 extended the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Bihar for investigation of offences under Sections 457, 436, 427/120B and 201, Indian Penal Code and Section 4 of the Prevention of Damages to Public Property Act, 1984 registered at Dhanbad Police Station, Dhansar, Bihar in their case No. 159 dated 9-3-1993 and any other offences, attempts, abetment and conspiracy in relation to or in connection with the said offence committed in the course of the same transactions or arising out of the same fact or facts in relation to the said case. There is no provision in law under which, while granting consent or extending the powers and jurisdiction of the Delhi Special Police Establishment to the specified State and to any specified case any reasons required to be recorded on the face of the notification. The learned Single Judge of the Patna High Court was clearly in error in holding so. If investigation by the local police is not satisfactory, a further investigation is not precluded. In the present case the material on record shows that the investigation by the local police was not satisfactory. In fact the local police had filed a final report before the Chief Judicial Magistrate, Dhanbad. The report, however, was pending"tmd

had not been accepted when the Central Government with the consent of the State Government issued the impugned notification. As a result, the C.B.I, has been directed to further investigate the offences registered under the said FIR with the consent of the State Government and in accordance with law. u/s 173(8) of the Code of Criminal Procedure, 1973 also, there is an analogous provision for further investigation in respect of an offence after a report under Sub-section (2) has been forwarded to the Magistrate.

We fail to see any requirement of law under which the reasons for further investigation by the C.B.I, are required to be recorded in the notifications of the kind in question. The reasons can be shown independently.

The present factual matrix has to be tested keeping in view the aforesaid enunciation of law. As has been indicated earlier the return only indicates that accused had represented making allegations that local police had not taken any cognizance of the report and requested the matter should be got investigated by some independent agency and considering the facts of rival allegations the matter was handed over to the Criminal Investigation Department for investigation. In this context, it is necessary to refer to the order passed in W.P. No. 1351/1999 wherein the learned Single Judge has opined as under:--

The petitioner submitted that neither his report was lodged, nor any action was taken by the Town Inspector, Police Station, Gorakhpur where against he approached the Superintendent of Police, Jabalpur, which is Annexure-P/5 dated 24th February, 1999. In fact it is a complaint against the act of the Town Inspector of not registering the F.I.R. It is a letter not by the petitioner but by Additional Commissioner.....

After so opining the learned single Judge quoted the prayer made in Hindi and held which has been referred to earlier. As has been held by the Apex Court in various cases the accused has no say in the manner and mode of investigation. In the case of Rajesh Gandhi (supra) the Apex Court while allowing the appeal preferred by the Central Bureau of Investigation with regard to the powers of the executive to direct the investigation by an Agency has also observed that reasons are not to be recorded in the notification and reasons can be shown independently. In the case at hand the only reason ascribed in the return is that accused made a request as the police officer concerned did not register his FIR. The grievance of the accused was not entertained by this Court in W.P. No. 1351/1999 and it was dismissed with a direction to approach the higher authorities. It is not disputed that the Madhya Pradesh Police Regulations have been framed under Indian Police Act, 1861. It is also not disputed that as per Regulation 16 Co-ordination of the work of the Criminal Investigation Department with that of the District Police is entirely in the hands of the Deputy Inspector-General in charge of that department. He is the final authority to decide whether an officer of the Criminal Investigation Department should be deputed to assist the local police or whether the case should be taken out of the hands of the local police altogether by the Criminal Investigation Department.



But as the Regulation stipulates there are certain guidelines for taking such decision. In the case at hand, the unfortunate part is that file was not produced wherein the order was passed by the competent authority. It cannot be presumed that there was issuance of an oral direction. If the order has been passed by the competent authority there is no justification why the same has not been made available to this Court. I am conscious the matter relating to investigation is within the domain of the executive. It is to be borne in mind that the investigation is in the domain of the executive and accused does not have to say any thing about the method and mode of investigation in the matter. But in the present case, the request of the accused has been acceded to which is precisely not permissible in law. I am not going to delve into the matter whether the informant has anything to say with regard to the investigation of crime. The authority has to decide about the investigating agency. But when guidelines have been provided the authority is bound by it. Reason given in the return is far from being satisfactory. As the file relating to the order of investigation has not been produced in spite of opportunities being granted it is to be presumed that no reason exists.

In view of my preceding analysis I am inclined to direct that Deputy Inspector General or the competent authority shall keep in view the Regulation 16 and law governing the field about the role of an accused in the matter of investigation and pass appropriate order in accordance with law. If the said authority finds there is justifiable reasons it may pass an order of transfer of investigation from the district police to the Criminal Investigation Department. Such an order may be passed on consideration of facts in entirety with utmost objectivity and in a dispassionate manner within a period of six weeks from today and till such a decision is taken the investigation by the" Criminal Investigation Department shall not proceed further.

The writ petition is accordingly disposed of without any order as costs.