

(2013) 02 MP CK 0079

In the Madhya Pradesh High Court

Case No : Writ Appeal No. 83 of 2013

Vishram Singh Kushwaha

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 22-02-2013

Acts Referred:

Citation : (2013) 2 MPHT 192 : (2013) 2 MPLJ 274

Hon'ble Judges : S.K. Gangele, J;G.D. Saxena, J

Bench : Division Bench

Judgement

G.D. Saxena, J.—Being aggrieved by an order dated 5th February 2013 of the learned single bench of this court in W.P. No. 791/2013, this appeal u/s 2(1) of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyayapeeth Ko Appeal) Adhiniyam, 2005 has been preferred with the following prayer:-

In view of the facts mentioned here in above the appellant prays that this appeal be allowed and impugned order dated 5th February 2013 passed by the Hon''ble Writ Court in W.P. No. 791/13 be set aside in the interest of justice and allow the writ petition filed by the petitioner with consequential benefits.

The petitioner by moving the aforesaid petition challenged the impugned order dated 26th September 2012 (Annexure P/1), the order dated 25th September 2012 (Annexure-P/2), passed by the Tahsildar, Narwar which was confirmed by the Sub-Divisional Officer Karera-Narwar District Shivpuri alongwith an order dated 12th December 2012 (Annexure P-11) passed by the Collector, Shivpuri, in Revenue Appeal No. 05/12-13/Appeal, u/s 44 of the M.P. Land Revenue Code 1959, in consequence of which the F.I.R. (Annexure-P/12) was registered against the appellant at Crime No. 176/2012 for commission of offence u/s 420/467/468 of I.P.C. The learned Writ Court after due consideration passed the following order:-

In the light of the aforesaid, in my opinion, there is no ingredient in the FIR which warrants interference by this court at this stage. The other orders

Annexure P/1, Annexure P/2 and Annexure P/11, are administrative orders which also warrants no interference from this court. Consequently petition sans substance and is hereby dismissed.

2. Facts in short, just for decision are that a complaint in writing from Malkhan Singh, son of Chau, Mst. Bhago wife of Rajaram, Amarsingh son of Asharam and Nistibai wife of Harisingh members of Scheduled Tribes, residents of village Indargarh was received that the lands comprised in Survey No. 9/21712/11, 786/3, 395/11 and 323/1 of Indargarh were government lands recorded in Khasra since five years from years 2006-2007 to 2010-2011. The petitioner being Patwari of the area after joining hands with others made a wrong entry regarding possession of the interested parties and created false rights over government lands. Eventually, the said lands were mortgaged in favour of the forged owners who thereafter sold the lands to others. Immediately after receiving such complaint, the Tahsildar with previous permission of the Sub-Divisional Magistrate of the area conducted the inquiry in the matter. Before inquiry, show-cause notice was served upon the petitioner. The petitioner submitted his reply and on his request the record under inquiry was made available for his inspection. Thereafter, in his presence, the evidence of the persons was recorded. After requisite inquiry, the Tahsildar passed the order dated 22nd September 2012. In compliance of the order dated 22nd September 2012, the FIR was lodged at Police Station Narwar. Being aggrieved by the order dated 22nd September 2012, the petitioner preferred an appeal u/s 44 of the M.P. Land Revenue Code before the Collector Shivpuri. This appeal was decided by an order dated 12th December 2012. It is also submitted that in an inquiry conducted to know the truthfulness, the Inquiry Officer before passing administrative order did not afford any opportunity to the petitioner to defend himself and therefore the orders issued on administrative side vide Annexure P-1 and Annexure P/11 are liable to set aside and in consequence thereto the FIR lodged on the basis of order dated 22nd September 2012 is also liable to be set aside. In support of his submissions, learned counsel for the appellant relied on the decisions in the cases of D.K. Yadav Vs. J.M.A. Industries Ltd., , V.C., Banaras Hindu University and Others Vs. Shrikant, , Kothari Filaments and Another Vs. Commissioner of Customs (Port) Kolkata and Others, , and D. Venkatasubramaniam and Others Vs. M.K. Mohan Krishnamachari and Another, .

3. Per contra, the submission put forth by the learned Government Advocate appearing on behalf of State is that on the complaint so received against the appellant, Tahsildar before conducting inquiry issued show-cause notice to appellant. In turn, the appellant submitted his reply to show-cause notice and prayed for supply of the relevant documents. However, the Inquiry Officer allowed the appellant for inspection of the documents in court. After inspection of the relevant documents, the Inquiry Officer recorded the statements of witnesses in presence of the appellant. It is also submitted that the relevant revenue documents in which forgery was made was under custody of the appellant. So, in the inquiry conducted on complaint, the principles of natural justice were fully

followed. Hence, the order made after due inquiry was lawfully passed pursuant of which the FIR is validly registered. Accordingly, it is prayed that the appeal has no substance and therefore same is liable to be dismissed.

4. Heard learned counsel for the parties at length and also perused the documents filed on record.

5. In *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, Their Lordships, Hon. Shri Bhagwati, J. speaking for himself and Hon. Shri Untwalia and Hon. Shri Fazal Ali, JJ. Observed as follows:

14. ...The audi alteram partem rule is intended to inject justice into the law and it cannot be applied to defeat the ends of justice, or to make the law "lifeless, absurd, stultifying, self defeating or plainly contrary to the common sense of the situation". Since the life of the law is not logic but experience and every legal proposition must, in the ultimate analysis, be tested on the touchstone of pragmatic realism, the audi alteram partem rule would, by the experiential test, be excluded, if importing the right to be heard has the effect of paralysing the administrative process or the need for promptitude or the urgency of the situation so demands. But at the same time it must be remembered that this is a rule of vital importance in the field of administrative law and it must not be jettisoned save in very exceptional circumstances where compulsive necessity so demands. It is a wholesome rule designed to secure the rule of law and the court should not be too ready to eschew it in its application to a given case. True it is that in questions of this kind a fanatical or doctrinaire approach should be avoided, but that does not mean that merely because the traditional methodology of a formalised hearing may have the effect of stultifying the exercise of the statutory power, the audi alteram partem should be wholly excluded. The Court must make every effort to salvage this cardinal rule to the maximum extent permissible in a given case. It must not be forgotten that "natural justice is pragmatically flexible and is amenable to capsulation under the compulsive pressure of circumstances". The audi alteram partem rule is not cast in a rigid mould and judicial decisions establish that it may suffer situational modifications. The core of it must, however, remain, namely, that the person affected must have a reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise.

6. From the aforementioned decisions of Hon. the Supreme Court, the position which emerges is that rules of natural justice are not rigid rules; they are flexible. Their application depends upon the setting and the background of statutory provision; nature of the right which may be affected and the consequences which may entail its application. The question of applicability of the principles of natural justice is to be decided on the facts and circumstances of each case. An administrative authority in dealing with a judicial or quasi-judicial proceeding is required to follow the principles of natural Justice and fair procedure and give an opportunity of hearing to the delinquent. Even if the proceeding is not a judicial or quasi-judicial proceeding, but an administrative

matter affecting the rights of the party, the authority concerned is required to act in a just and fair manner in deciding the controversy and the requirement of Just and fair procedure mandates that a reasonable opportunity of hearing should be given to the party proceeded against and a copy of the order of the Enquiry Officer/Authority should be served on him before final decision in the matter is taken.

7. When an administrative authority deals with a Judicial or quasi-judicial proceeding or a proceeding affecting the rights of the person concerned, it should state in short and explicit manner the reasons which have prompted it to pass the order. The necessity to pass a reasoned order is all the more necessary for the original authority. The requirement of reasoned order will also extend to a case where the order of the original authority is not appealable or revisable under the statute or the rules. A reasoned order will not merely help the appellate or revisional authority or the High Court under Article 226 of the Constitution to judge whether the concerned authority passed the order consciously and on application of mind to relevant matters, but also help to avoid the criticism that the order is arbitrary, capricious, whimsical or biased.

8. Now, on going through the grounds as shown by the appellant as well as learned Govt. Advocate appearing for the respondents/State together with bare perusal of the papers submitted by the appellant, they make it clear that prior to the inquiry on the complaint against the appellant, the authority issued show cause notice and just before the commencement of inquiry, the reply to such show cause notice was taken on record. On request of the appellant the opportunity for inspection of the documents relating to inquiry was afforded. The appellant also inspected the documents in court. Thereafter in presence of the appellant the evidence of witnesses was recorded. After considering the proof as adduced before the authority, the order (Annexure-P/1) was passed. Being aggrieved by the order of the Inquiry Officer, the appellant preferred an appeal to the superior authority i.e. Collector. The appellate authority after considering the appeal vide Annexure-P/11 dismissed the same.

9. The next contention of the learned counsel for the appellant is that the FIR registered against him on the basis of the letter issued by the Inquiry Officer does not disclose the ingredients of the offence as committed by him. However, on perusal of the FIR, it appears that a specific allegation is levied against the appellant by the Inquiry Officer.

10. In *State of Haryana and others Vs. Ch. Bhajan Lal and others*, the Hon. Apex Court has observed:-

102. 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 extraordinary power under Article 226 or 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 un-controverted 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 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.

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.

11. The said view is followed in a recent judgment in the case of Amit Kapoor Vs. Ramesh Chander and Another, which is as follows:-

15. In Bhajan Lal case, the Court also stated that though it may not be possible

to lay down any precise, clearly defined, sufficiently channelised and inflexible guidelines or rigid formulae or to give an exhaustive list of myriad kinds of cases wherein power u/s 482 of the Code for quashing of an FIR should be exercised, there are circumstances where the Court may be justified in exercising such jurisdiction. These are, where the FIR does not prima facie constitute any offence, does not disclose a cognizable offence justifying investigation by the police; where the allegations 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; where there is an expressed legal bar engrafted in any of the provisions of the Code; and 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. Despite stating these grounds, the Court unambiguously uttered a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too, in the rarest of rare cases; the Court also warned that the Court would not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice.

12. Considering the case, we find that the FIR prima facie discloses commission of offences. It does not establish that the allegations contained therein do not constitute any cognizable offence. Thus, while deciding a case filed for quashing the FIR or complaint or restraining the competent authority from investigating into the allegations contained in the FIR or complaint or for stalling the trial of the case, the High Court should be extremely careful and circumspect. If the allegations contained in the FIR or complaint discloses commission of some crime, the High Court must keep its hands off and allow the investigating agency to complete the investigation without any fetter and also refrain from passing order which may impede the trial. It is not necessary to go into the merits and demerits of the allegations simply because the petitioner alleges maus animus against the author of the FIR or the complainant. Thus, looking to the specific factual aspect of the present case, we are of the opinion that at present stage, it can not be safely said that the FIR does not prima facie constitute any offence or does not disclose a cognizable offence justifying investigation by the police.

13. Hence, judging the present case in the light of the aforementioned principles, we have no hesitation to hold that in the backdrop of the framework of the statute, the nature of the order passed in the case at hand, does not suffer from any lacuna since the competent authority, before passing the order has provided all opportunity to the petitioner/appellant, by supplying him the documents as well as inspection of the record. The view taken by us gains support from the principles laid down by the decisions aforesaid. Resultantly, the writ appeal has no force being sans substratum. Consequently, it fails and is hereby dismissed.