



HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

S.B. Criminal Misc(Pet.) No. 6337/2021

Sourabh Garg S/o Shiv Kumar Garg, Aged About 36 Years, R/o Quarter No.03/229 O.T.C. Scheme Ambamata, District Udaipur. Presently Patwari, Patwar Mandal, Sisarma, Tehsil Girwa, District Udaipur.

----Petitioner

Versus

State of Rajasthan, Through PP

----Respondent



For Petitioner(s)	: Mr.Manish Shishodia, Sr.Advocate through VC with Mr.Abhijeet Sharma through VC
For Respondent(s)	: Mr.Mukhtiyar Khan, P.P.

HON'BLE MR. JUSTICE SANDEEP MEHTA

ORDER

27/01/2022

Reportable

The instant misc. petition has been filed by the accused petitioner under Section 482 Cr.P.C. seeking quashing of the F.I.R. No.407/2021 lodged at the Police Station Anti Corruption Bureau, Udaipur for the offences under Sections 7 and 8 of the Prevention of Corruption Act (Amendment) Act, 2018 (hereinafter referred to as 'the Act' for brevity).

Learned senior counsel Shri Shishodia assisted by Shri Abhijeet Sharma appearing for the accused petitioner through video conferencing vehemently and fervently urges that the



registration of the impugned F.I.R. is also contrary to the ratio laid down by Hon'ble Supreme Court in the cases of ***T.T.Antony Vs. State of Kerala & Ors.*** reported in **(2001)6 SCC 181** and ***Amitbhai Anilchandra Shah Vs. The Central Bureau of Investigation & Ors.*** reported in **(2013)6 SCC 348** as the impugned F.I.R. is nothing but a second F.I.R. as it has been registered on the basis of the material collected during investigation of the earlier F.I.R. No.183/2021 lodged at the Police Station Anti Corruption Bureau, Udaipur. The parcel of facts involved in both the F.I.Rs. is so intrinsically interlinked that the impugned F.I.R. should not have been registered and the allegations levelled therein should have been investigated in the first F.I.R. He also placed reliance on the judgment passed by this Court in ***S.B.Cr.Misc. Petition No.159/2018 "Kailash Chandra Agarwal & Anr. Vs. State of Rajasthan & Anr."*** pronounced on **7.4.2020** and craved acceptance of the petition.

Per contra, learned Public Prosecutor, vehemently and fervently opposed the submissions raised by the learned counsel for the petitioner. He pointed out that during the course of investigation of the F.I.R. No.183/2021, some mobile phones were seized and on an analysis of the conversations saved therein, further transactions regarding exchange of illegal gratifications came to light, which formed a distinct series of offending acts pertaining to demand and acceptance of illegal gratification



I have given my thoughtful consideration to the arguments advanced at the Bar and have gone through the material available on record.

Law is well settled by a catena of decisions two of which (***T.T.Antony and Amitbhai Shah***) have been relied upon by Shri Shishodia that second F.I.R. cannot be registered on the same facts. Section 17A which was introduced in the Prevention of Corruption Act by Act No.16 of 2018 clearly postulates that enquiry or inquiry or investigation of offences relatable to recommendations made or decisions taken by public servant in discharge of official functions or duties cannot be undertaken by a Police Officer without the previous approval of the concerned government. However, the Section does not prohibit registration of an FIR. Undoubtedly, demand and acceptance of bribe are not acts relatable to recommendations made or decisions taken by the public servant in the discharge of official functions or duties. Thus, the embargo of previous approval postulated in Section 17A of the Act would not apply in cases where the investigation is sought for into the allegations of demand and acceptance of bribe.

In addition thereto, it may be mentioned that Section 17A of the Prevention of Corruption Act which reads as below:-

"17A. Enquiry or Inquiry or investigation of offences relatable to recommendations made or decision taken by public servant in discharge of



functions or duties, without the previous approval—

(a) in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of the Union, of that Government;

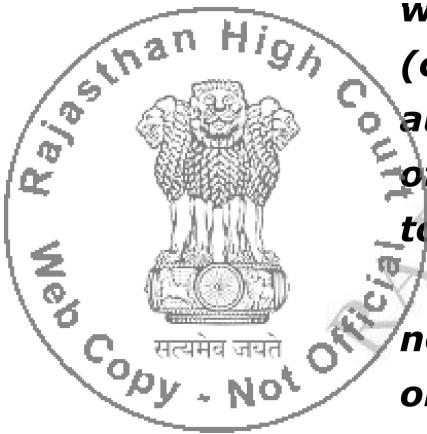
(b) in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of a State, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office, at the time when the offence was alleged to have been committed:

Provided that no such approval shall be necessary for cases involving arrest of a person on the spot on the charge of accepting or attempting to accept any undue advantage for himself or for any other person:

Provided further that the concerned authority shall convey its decision under this section within a period of three months, which may, for reasons to be recorded in writing by such authority, be extended by a further period of one month."

only postulates that no police officer shall conduct any enquiry or inquiry or investigation into an offence relatable to recommendations made or decisions taken by the public servant in discharge of official functions or duties without the previous approval of the appropriate Government. Thus, what is restricted by the provision is the process of enquiry or inquiry or investigation into the offences





prohibit registration of an FIR but only requires that an enquiry or inquiry or investigation shall not be undertaken without prior approval of the Government. Thus, I am of the firm opinion that even in cases covered by Section 17A of the Prevention of Corruption Act, registration of the FIR is not prohibited. Once the F.I.R. is registered, the Investigating Officer would be required to seek approval of the appropriate Government before proceeding to undertake investigation into the allegations.

Analogy for this conclusion can be drawn from Section 19 sub-clause (1) Proviso (i) of the Act which even permits a private person to file a complaint against the public servant for the offences under Sections 7, 11, 13 and 15 of the Act in the competent court. The private complainant would then be required to seek a direction from the concerned court for obtaining prosecution sanction against the public servant concerned. Thus, as even a private complaint can be filed regarding the offences punishable under Sections 7, 11, 13 and 15 of the Act, without any doubt, the Police Officials/ACD Officials can, irrespective of the embargo contained in Section 17A of the Act, register the F.I.R. and seek approval of the Competent Government thereafter.

Coming to the case at hand, and upon perusal of the factual



illegal gratification came to light, which were distinctly linked to some different construction activities. In this background, it is apparent that the impugned F.I.R. has been registered for separate incriminating acts which are not directly relatable to recommendations made or decisions taken by the petitioner public servant in discharge of his official functions or duties and rather pertain to illegal transactions of demand and acceptance of bribe by the present petitioner.

In view of the discussion made hereinabove, I am of the firm opinion that the impugned F.I.R. cannot be said to be a second F.I.R. on the same facts and as the offences under Sections 7 and 8 of the Act have been applied in the case, the restrictions contained in Section 17A of the Act also do not apply and hence, previous approval of the government is not required for making investigation into such allegations.

Hence, I find no merit in this misc. petition, which is dismissed as such. Stay petition is also dismissed.

(SANDEEP MEHTA),J