

Madhya Pradesh High Court

Arjind Kumar Singh @ A.K. Singh vs The State Of Madhya Pradesh on 23 May, 2022

Author: Virender Singh

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE VIRENDER SINGH
ON THE 23rd OF MAY, 2022
MISC. CRIMINAL CASE NO.52538 of 2022

Between :

Arjind Kumar Singh @ A.K.Singh S/o
Late Shri Bechan Singh Aged 60 years
Occupation-Business R/o Village Sureri
P.S.Sureri District Jaunpur (U.P.)
Recently Resident at 154 AG Scheme
No.54 Vijay Nagar Indore Madhya
Pradesh.

(By Shri Arunodaya Singh - Advocate)

AND

State of Madhya Pradesh, Through
Station House Officer Police Station
Chorhata, District Rewa Madhya
Pradesh.

(Shri Piyush Bhatnagar - Panel Lawyer)

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This petition coming on for admission to the court
passed the following :

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The petitioner has invoked inherent power of this Court conferred under Section 482 CrPC for quashing FIR No.414/2014 Signature Not Verified SAN Digitally signed by ANAND KRISHNA SEN Date: 2022.05.25 12:38:47 IST registered against him alongwith some other co-accused persons under Section 420, 467, 468, 471, 201, 120B of IPC and Section 34(2) of the M.P. Excise Act at Police Station Chorhata District Rewa.

2- According to the prosecution case, on 06.11.2014, Inspector Anil Kumar Verma, SHO, P.S.Chorhata received information that two trucks bearing registration No.UP 62 T 4829 and UP 65 BT 2367 are carrying illegal liquor. Liquor had been loaded from Narmada Distilleries, Itma Kothar, Amarpatan, District Satna and they are going to deliver it somewhere in Allahabad UP. Information was entered in daily diary at serial No.322/19:40. The police departed from the police station. They barricaded the road near the turn of Chorhata bypass and waited for the trucks. After sometime both the trucks came and when the police tried to get them stopped, their drivers sped up and tried to

run away. They were chased and got stopped at toll barrier. On inquiry, driver of the truck No. UP 62 T 4829 revealed his name as Shivram Yadav while driver of truck No. UP 65 BT 2367 revealed his name as Nanhe Yadav. Alongwith them cleaner Bhanu Singh was also present in the truck. On search 800 boxes of IMFL (Royal Select Delux Whiskey) were found in the truck No. UP 62 T 4829 while 833 boxes of same IMFL were found in truck No. UP 65 BT 2367. In both the trucks documents for transporting the whiskey showing Signature Not Verified SAN Digitally signed by ANAND KRISHNA SEN Date: 2022.05.25 12:38:47 IST their transportation to Arunachal Pradesh and Chhandigarh from Narmada Distilleries, Itma Kothar, Amarpatan, Satna were found. The permit purportedly issued by Assistant District Excise Officer (ADEO), Office In-charge Narmada Distilleries, Satna alongwithbilty of MP UP South Assam Road Carriers Indore were also found. Suspecting their genuineness, the police inquired about them from Shri Jagdish Gupta (ADEO) posted in Narmada Distilleries and Assistant Deputy Commissioner, Satna. In inquiry and examination it emerged that any of the managerial staff of Narmada Distilleries viz. A.K. Singh, Nanak Singh, Sanjeev Dodi, Gurubaksh Singh and Sanjeev Agrawal had prepared those fake counter foils of original permit bearing serial No. A-15438 and A 15439 and sent them to one Chanchal Tiwari, Indore and then Chanchal Tiwari in connivance with ADEO Shri Jagdish Gupta prepared those fake counter foils/permit and sent them to the transporter to prepare a bilty to transport the seized liquor. Daily diary, Export-Import permit book, Acknowledgment/receipts were seized from the plant of Narmada Distilleries and on comparison some discrepancies were found in the documents showing that fake export permit were got printed by the accused persons and issued with fake signatures and seal of the Excise Officer to earn wrongful gain and to cause loss to the State Exchequer. The police also suspected that the accused persons were repeatedly transporting Signature Not Verified SAN Digitally signed by ANAND KRISHNA SEN Date: 2022.05.25 12:38:47 IST liquor by using the same permit, therefore, the offence was registered and charge-sheet was filed in 2015 against 18 accused persons, which is pending trial.

3- The petitioner has preferred this petition on the grounds that he has not been named in the FIR. He was not present on the spot. In any manner, he is not associated to both the companies viz. Narmada Distilleries or Silver Oaks Distilleries. Memo of Association of both these companies clearly shows that the petitioner is neither the share holder or Director nor holding any other post in these companies. No documents, as said to be filed with the charge-sheet, bears his signatures. His implication is based only on the disclosure made by the co-accused persons before the police which is totally inadmissible piece of evidence as there was no recovery in pursuance thereto. Therefore, his prosecution, which he is facing since last 7 years and even the trial Court could not frame the charges, is utterly an abuse of process of law, hence, the same be quashed.

4- Learned counsel representing the petitioner reiterated the contentions referred to above. He placed reliance on Umesh Kumar vs. State of Andhra Pradesh reported in (2013) 10 SCC 591 wherein it is held that inherent powers under Section 482 CrPC can be exercised by the High Court to give effect to an order under the CrPC; to prevent abuse of process of the Court; and to otherwise Signature Not Verified SAN Digitally signed by ANAND KRISHNA SEN Date: 2022.05.25 12:38:47 IST secure the ends of justice. Although, in exercise of such powers, it is not permissible to appreciate the evidence, it can evaluate the material on record to the extent of its prima facie satisfaction about the existence of sufficient grounds for proceeding against the accused.

5- Placing reliance on the case of Umesh Kumar (supra), the learned counsel further argued that law does not prohibit entertaining the petition under Section 482 CrPC for quashing the charge-sheet even before the charges are framed or before the application of discharge is filed or even during the pendency of such application before the Court concerned. The High Court cannot reject the application merely on the ground that the accused can argue the factual or legal issues at the time of framing of charges. The powers of the Court can be exercised to save the accused from undergoing the agony of a criminal trial. 6- Lastly, it is contended that since there is no evidence against the petitioner except the inadmissible memorandum statement of the co-accused persons, his prosecution is not sustainable in the eyes of law, therefore, the proceedings pending against him be quashed.

7- The State has opposed the prayer, however, learned Panel Lawyer failed to controvert the contention raised by the learned counsel for the petitioner with regard to availability of the evidence Signature Not Verified SAN Digitally signed by ANAND KRISHNA SEN Date: 2022.05.25 12:38:47 IST against the petitioner. Nothing could be pointed out to show association of the petitioner with both the companies or any other evidence to show his involvement in the process of preparing or fabricating the forged documents, as alleged by the police. 8- Learned Panel Lawyer referred to few memorandum statement of the co-accused persons recorded by the Police under Section 27 of the Evidence Act, wherein it has been stated by their respective authors that the petitioner was the key person of the management of the companies but he could not point out any documents seized during the investigation or filed with the charge- sheet to show association of the petitioner with the companies. 9- The learned Panel Lawyer further referred to the FSL report filed with the charge-sheet showing that permits found in the truck at the time of seizure bearing Serial No. A 15438 and A 15439 did not match with the original register book kept in the distilleries but here again he could not point out anything to connect these documents with the petitioner.

10- The power under Section 482 of Cr.P.C. is extra ordinary in nature and it is settled proposition of law that this power has to be exercised sparingly and with great care and caution only to give effect to an order under the Code or to prevent abuse of process of the Court or to otherwise secure the ends of justice and only in the cases where attaining facts and circumstances satisfy that Signature Not Verified SAN Digitally signed by ANAND KRISHNA SEN Date: 2022.05.25 12:38:47 IST possibilities of miscarriage of justice Will arise in case of non-use of power. In quashing the proceeding, the High Court has to see whether the allegations made in the complaint, if proved, make out a prima facie offence. In that case only the Court should be permitted to proceed with the trial to establish the liability. At this stage sifting or weighing of the evidence is neither permitted nor expected. While considering the petition under Section 482 of Cr.P.C., the Courts have to be strictly confined to the scope and ambit of the provision.

11- A question as to whether quashing of the FIR filed against the respondent - Bhajan Lal for the offences under Sections 161 and 165, IPC and Section 5(2) of the Prevention of Corruption Act was proper and legal, came up for consideration before the Hon'ble Supreme Court in State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 (1992 AIR SCW 237 : AIR 1992 SC 604).

12- Reversing the order passed by the High Court, the Apex Court explained the circumstances under which such power could be exercised. It was explained that such power could be exercised 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. It is observed in para 102 as under:

Signature Not Verified SAN Digitally signed by ANAND KRISHNA SEN Date: 2022.05.25 12:38:47 IST "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 under Section 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 formula 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 under Section 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 Signature Not Verified SAN Digitally signed by ANAND KRISHNA SEN Date: 2022.05.25 12:38:47 IST 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 under Section 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- This propositions of law has later been reiterated in Mahesh Chaudhary v. State of Rajasthan (2009) 4 SCC 443), Shakson Belthissor v.

State of Kerala and Anr, AIR 2010 SC (Supp) 864 Signature Not Verified SAN Digitally signed by ANAND KRISHNA SEN Date: 2022.05.25 12:38:47 IST and Mosiruddin Munshi v. Md. Siraj AIR 2014 SC 3352 and in many other cases.

14- It is held in Krishnanan Vs. Krishnaveni (1997 AIR SCW 950 : AIR 1997 SC 987) that when the High Court on examination of the record finds that there is grave miscarriage of justice or abuse of process of the Courts or the required statutory procedure has not been complied with or there is failure of justice or order passed or sentence imposed by the Magistrate requires correction, it is the duty of the High Court to have it corrected at the inception lest grave miscarriage of justice would ensue. It is, therefore, to meet the ends of justice or to prevent abuse of the process that the High Court is preserved with inherent power and would be justified, under such circumstances, to exercise the inherent power. It may be exercised sparingly so as to avoid needless multiplicity of procedure, unnecessary delay in trial and protraction of proceedings.

15- In Inder Mohan Goswami And Another Vs State of Uttaranchal and others (2007) 12 SCC 1 Hon'ble the Apex Court observed:

27. The powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. The court must be careful to see that its decision in exercise of this power is based on sound Signature Not Verified SAN Digitally signed by ANAND KRISHNA SEN Date: 2022.05.25 12:38:47 IST principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court should normally refrain from giving a prima facie decision in a case where all the facts are incomplete and hazy; more so, when the evidence has not been collected and produced before the court and the issues involved, whether factual or legal, are of such magnitude that they cannot be seen in their true perspective without sufficient material. Of course, no hard and fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceedings at any stage.

16- Similar view has been taken in Paramjeet Batra Vs State of Uttarakhand and others (2013) 11 SCC 673. Relevant para of this judgement reads thus:

7. While exercising its jurisdiction under Section 482 of the Code the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is Signature Not Verified SAN Digitally signed by ANAND KRISHNA SEN Date: 2022.05.25 12:38:47 IST available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash criminal

proceedings to prevent abuse of process of court.

17- Judgments passed in C.B.I Vs K.M Sharan reported in 2008(4) SCC 471 & in Mahesh Choudhary Vs State of Rajasthan reported in 2009(4) SCC 439 also talks about the principles and scope of the inherent power under Section 482 Cr.P.C. to quash charge-sheet and held that the High Court is not supposed to "embark upon the inquiry whether the allegations in FIR and the charge-sheet were reliable or not and thereupon to render definite finding about truthfulness or veracity of the allegations" High Court should have limited its considerations to "... Whether allegations made in the FIR and the charge-sheet taken on their face value and accepted in their entirety would prima facie constitute an offense for making out a case against the accused"

18- In Vijayander Kumarb Vs State of Rajasthan reported in 2014(3) SCC 389 also the Court has reiterated the same principles. Para 8 of the judgement is as follows:

8. On behalf of the appellants reliance has been placed upon judgments of this Court in the case of Thermax Limited and Others Vs. K.M.Johny and Others and in case of Dalip Kaur and Others vs. Jagnar Singh and another. There can be no dispute with the legal proposition laid down in the case of Anil Mahajan vs. Signature Not Verified SAN Digitally signed by ANAND KRISHNA SEN Date: 2022.05.25 12:38:47 IST Bhore Industries Limited which has been discussed in paragraph 31 in the case of Thermox Limited (supra) that if the complaint discloses only a simple case of civil dispute between the parties and there is an absolute absence of requisite averment to make out a case of cheating, the criminal proceeding can be quashed. Similar is the law noticed in the case of Dalip Kaur (supra). In this case the matter was remanded back to the High Court because of non-consideration of relevant issues as noticed in paragraph 10, but the law was further clarified in paragraph 11 by placing reliance upon judgment of this Court in R.Kalyani vs. Janak C.Mehta. It is relevant to extract paragraph 11 of the judgment which runs as follows:

"11. There cannot furthermore be any doubt that the High Court would exercise its inherent jurisdiction only when one or the other propositions of law, as laid down in R. Kalyani v. Janak C. Mehta is attracted, which are as under:

"(1) The High Court ordinarily would not exercise its inherent jurisdiction to quash a criminal proceeding and, in particular, a first information report unless the allegations contained therein, even if given face value and taken to be correct in their entirety, disclosed no cognizable offence.

(2) For the said purpose the Court, save and except in very exceptional circumstances, would not look to any document relied upon by the defence.

Signature Not Verified SAN Digitally signed by ANAND KRISHNA SEN Date: 2022.05.25 12:38:47 IST (3) Such a power should be exercised very sparingly. If the allegations made in the FIR disclose commission of an offence, the court shall not go beyond the same and pass an order in favour of the accused to hold absence of any mens rea or actus reus.

(4) If the allegation discloses a civil dispute, the same by itself may not be ground to hold that the criminal proceedings should not be allowed to continue." 19- The law is now well settled that the information given by the co-accused is inadmissible if the same does not lead to any recovery. In a string of judgment right from the pre-independence, the Courts have settled this proposition of law. We can refer some of the judgments passed in Harichara Kurmi and Jogia Hajam reported in AIR 1964 SC 1184, Anter Singh v. State of Rajasthan reported in (2004) 10 SCC 657 : 2005 SCC (Cri) 597, State of Maharashtra v. Kamal Ahmed Mohammed Vakil Ansari reported in (2013) 12 SCC 17: 2013 SCC OnLine SC 230 (page 36), Mustkeem Vs. State of Rajasthan reported in (2011) 11 SCC 724, Asar Mohammad and Ors. Vs. State of U.P. reported in AIR 2018 SC 5264, Kusal Toppo Vs. State of Jharkhand reported in 2018 SCC OnLine SC 1563, Valiyaveetil Ashraf v. State, S.H.O. Kottakkal Police Station reported in 1992 SCC OnLine Ker 441 : 1994 Cri LJ 555 (page 561) and Pappu v. State of Madhya Signature Not Verified SAN Digitally signed by ANAND KRISHNA SEN Date: 2022.05.25 12:38:47 IST Pradesh reported in 2000 SCC OnLine MP 442 : 2001 Cri LJ 875 (Page 876).

20- We can also illustrate some judgements of this Court passed in Anant Kumar Vs. State of MP reported in 1993 Cr.L.J. 1499, Raghu Thakur Vs. State of M.P. reported in 2012 (4) MPHT 116, Suresh Upadhayay Vs. State of M.P. passed in MCRC 837/2014 dated 5th March 2014, Rajveer Singh Vs. State of M.P. reported in 2015 (1) MPHT 265, Gajendra Singh Bhadoria Vs. State of M.P. reported in MANU/MP/0976/ 2016, Fajal & others Vs. State of M.P. passed in MCRC 10904/ 2017 dated 19th February 2018, Dashrath Vs. State of M.P. passed in MCRC 5452/2017 dated 26 November 2018, Mohamad Wasim Mewati Vs. State of M.P. passed in MCRC Dated 11th March 2019.

21- Thus, it is settled that the information given or disclosure made by the accused, which does not lead to any recovery is not admissible in evidence against other co-accused persons and on the basis of such inadmissible evidence the prosecution of the petitioner is nothing but abuse of process of law, which should not be and cannot be allowed to perpetuate.

22- As referred to above there is no doubt that there is no evidence against the petitioner what so ever it may be, either ocular or documentary, except the memorandum statement of the co- accused persons given before the police, to show his association Signature Not Verified SAN Digitally signed by ANAND KRISHNA SEN Date: 2022.05.25 12:38:47 IST with the Distilleries from where the liquor was allegedly got loaded or to show his involvement in any manner, what-so-ever in creation or fabrication of the fake or forged documents. 23- Though the powers under Section 482 are extraordinary in nature and has to be used sparingly and cautiously, but this is the case where I am fully satisfied that non use of such inherent powers would lead to or would cause injustice. It would be in the interest of justice or necessary to achieve the object of the law that no innocent person shall be allowed to face unnecessary prosecution, if there being no evidence at all against him. Therefore, the petition is allowed and the FIR bearing Crime No.414/2014 registered at Police Station Chorhata, District-Rewa under Section 420, 467, 468, 471, 201, 120B of IPC and Section 34(2) of the M.P. Excise Act qua the petitioner and further proceedings pending against the petitioner on the basis of this FIR or the charge-sheet filed pursuant thereto, are hereby quashed.

24- It is made clear that the prosecution against the other co- accused persons shall continue in accordance with law. 25- Bail bond, if any, submitted by the petitioner shall stand discharged.

(VIRENDER SINGH) V. JUDGE anand Signature Not Verified SAN Digitally signed by ANAND KRISHNA SEN Date: 2022.05.25 12:38:47 IST