

Madhya Pradesh High Court

D.K. Khare vs The State Of Madhya Pradesh on 7 May, 2022

Author: Sheel Nagu

1

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR
BEFORE

HON'BLE SHRI JUSTICE SHEEL NAGU

&

HON'BLE SHRI JUSTICE MANINDER S. BHATTI

MCRC NO.492 OF 2022

Between: -

D.K. KHARE, S/O SHRI S.P. KHARE,
AGED ABOUT 54 YEARS, OCCUPATION-
SUSPENDED ASSISTANT DIRECTOR,
OFFICE OF THE JOINT DIRECTOR,
EDUCATION, JABALPUR, R/O 624,
SANJEEVANI NAGAR, GARHA,
DISTRICT-JABALPUR (M.P.)

PETITIONER

(BY SHRI ANIL KHARE, LEARNED SENIOR ADVOCATE WITH SHRI SAHIL
SHARMA, ADVOCATE)

AND

STATE OF MADHYA PRADESH THROUGH
SUPERINTENDENT OF POLICE, ECONOMIC
OFFENCES WING, BHOPAL (M.P.)

RESPONDENT

(BY SHRI MADHUR SHUKLA, GOVERNMENT ADVOCATE)

This petition coming on for admission this day, Hon'ble Shri

Justice Maninder S. Bhatti passed the following:

2

ORDER

(07/05/2022) The instant order will governs M.Cr.C.No.492/2022 where challenge is made to the order of framing of charge and also M.Cr.C.No.6432/2017 by which the filing of charge-sheet is being assailed in the same crime number. Thus, both the matters are being decided by its composite order.

By invoking inherent power of this Court conceived by Section 482 of Code of Criminal Procedure 1973 (for short 'Cr.P.C. '), the petitioner is seeking quashment of the order dated 18.11.2021, whereby charges have been framed by the trial Court in respect of the offences punishable under Sections 420, 468, 471 of IPC and Section 13(2) of Prevention of Corruption Act, 1988, against the petitioner; also the statement of charges dated 07.12.2021; and all consequential proceedings thereon.

2. The case of the prosecution in a nutshell, is to the effect that, one Shri B.D. Pandey made a complaint against the petitioner, who at the relevant time was holding the post of Joint Director, School Education, Legal Cell, Jabalpur. In the said complaint which was made to the Economic Offences Wing, Bhopal, numbers of allegations were leveled against the present petitioner relating to securing promotion on the post of Principal on the basis of a false experience certificate, allegation of disproportionate income out of which the petitioner purchased a car as well as flat in Sanjeevani Nagar Jabalpur. Further allegations were to the effect that the petitioner demanded Rs.50,000/- from one Parasram Uchattar Maha Vidhyalaya Maharajpur for granting recognition and he cancelled the recognition of number of schools as they did not agree to illegitimate demands of the present petitioner and there were also allegations of misappropriation of funds in ICT Project under which the computers were to be purchased for different schools. The said complaint moved by complainant was addressed to the Superintendent of Police, Economic Offences Wing, Jabalpur. The said complaint, dated 02.12.2011 was forwarded to the Deputy Director (Vigilance), Public Instructions, Bhopal who in turn, vide his letter dated 24.12.2011 directed the Joint Director, Public Instructions Division Jabalpur, District-Jabalpur to conduct an inquiry of each issue raised in the complaint and then submit a report.

3. One Shri Santosh Tripathi was holding the post of Joint Director, School Education Department, Jabalpur in the month of March, 2012 who vide his letter dated 15.03.2012 forwarded the said complaint to the present petitioner whereby the petitioner was called upon to submit his explanation as regards the issue raised in the complaint.

4. Pursuant to the letter dated 15.03.2012, the present petitioner submitted his reply on 11.04.2012 and thereafter, the report was prepared by Shri Santosh Tripathi upon receipt of explanation (point wise) submitted by the present petitioner dated 11.04.2012. In the said report he found that none of the charges against the petitioner were proved. The report does not bear any date below signature, but the same contains an endorsement dated 01.10.2012. The said report dated 01.10.2012 was forwarded by the Additional Director, Public Instructions, vide his letter dated 19.11.2012 to the Inspector General of Police, Economic Offices Wing, Vallabh Bhavan, Bhopal and in the light of the said report, the complaint against the petitioner was closed.

5. Now, the aforesaid prosecution projects a new story labeling the report dated 01.10.2012 to be forged, on the basis of which the petitioner was ultimately exonerated and the complaint was closed. However, the second set of the story starts from another report dated 18.01.2013 which is prepared by one Shri K.K. Dwivedi, Joint Director, Public Instructions Jabalpur, who after transfer of Shri Santosh Tripathi, joined as Joint Director, Public Instructions, Jabalpur. The charge-sheet reveals that Shri K.K. Dwivedi then pursuant to the above detailed letter dated 01.03.2012 bearing number 389 issued by Commissioner Public Instructions Bhopal, again submitted a report and in this report the allegations against the present petitioner were found to be proved.

6. Thus on the basis of this report, the prosecution decided to investigate the matter and resultantly, final report under Section 173 of Cr.P.C. was filed, in which though Shri Santosh Tripathi, Shri S.S. Maravi and one Shri Yogendra Yadav were also projected as accused, but for want of sanction, no charge-sheet were submitted against them. However, charge- sheet against the present petitioner was filed.

7. Ultimately after filing of charge-sheet, it ensued in passing of an order of framing of charge dated 18.11.2021 and also the statement of charges dated 07.12.2021, which are being assailed in the present petition under Section 482 of Cr.P.C.

8. Learned counsel for petitioner submits that the entire prosecution case which has been initiated against the present petitioner, is baseless and ill-founded as well. He further submits while taking this Court to the statement of charge-sheet containing four charges against the petitioner under Sections 420, 468 and 471 of IPC and Section 13(2) of Prevention of Corruption Act, 1988 respectively, that the statement of all four offences revolves around so called forged inquiry report dated 01.10.2012, which according to prosecution was prepared by Shri Santosh Tripathi, the then Joint Director, Public Instructions, Bhopal.

9. The charge No.1 states that the petitioner in order to benefit himself got the inquiry report dated 01.10.2012 prepared in connivance with Shri Santosh Tripathi, Joint Director, Public Instructions, Bhopal and thus, the petitioner committed an offence under Section 420 of IPC.

10. Charge No.2 stated that the petitioner in connivance with Shri Santosh Tripathi, Joint Director, Public Instructions, Bhopal prepared a forged inquiry report dated 01.10.2012 which falls within the ambit of valuable security and while submitting the same with Economic Offences Investigation Bureau, committed an offence under Section 468 of IPC.

11. The third statement of charge states that the petitioner got the inquiry report dated 01.10.2012 prepared by Shri Santosh Tripathi, Joint Director, Public Instructions, Bhopal and the same was prepared to derive benefit by projecting the same to be a genuine document and thus the conduct of the petitioner was punishable under Section 471 of IPC.

12. The language of the fourth charge is same as that of charge No. 3 itself alleging Section 471 of IPC but the 4 th charge is under Section 13(2) of Prevention of Corruption Act, 1988.

13. Thus, the learned counsel for petitioner submits that if the charges are taken into consideration in their entirety it would reveal that entire allegation is against the present petitioner, to the effect that he was instrumental in preparation of the so called inquiry report dated 01.10.2012 and on the basis of said inquiry report the petitioner herein derived benefit and the petitioner used that inquiry report to escape from the clutches of law, and in turn submitted, the same with the Economic Offences Wing, Bhopal. Learned counsel submits that none of the charge contains even a whisper of allegations which were in fact, leveled in the original complaint moved by Shri B.D. Pandey.

14. Learned counsel further submits that the allegations in the complaint moved by Shri B.D. Pandey are not the charges against the petitioner and the entire charges are arising out of the so called inquiry report dated 01.10.2012. The prosecution does not dispute that report was signed by Shri Santosh Tripathi. According to statement of one Shri Ashok Sahu, he reduced the report into writing on the dictation of Shri Santosh Tripathi. The present petitioner having no nexus with the preparation of the so called inquiry report dated 01.10.2012, could not have been implicated, and resultantly he could not have been subjected to prosecution. Learned counsel also submits that the offence of cheating, in-fact, is a consequential offence and the offence of cheating is based on charge of forgery which is committed under Sections 468 and 471 of IPC. According to the petitioner's counsel unless and until an offence under Section 468 of IPC is established, there can not be allegation of cheating under Section 420 of IPC.

15. Learned counsel for the petitioner also submits that at this stage of the prosecution, when only charges have been framed, if the entire charge sheet is taken into consideration, the same would reveal that it is nowhere alleged that the so called inquiry report dated 01.10.2012 was forged by the present petitioner. It is also not the allegation of the prosecution that the present petitioner prepared the said report in his own handwriting or forged the signature of Shri Santosh Tripathi and, therefore, according to the petitioner, he is neither author of the said report nor signatory to it, therefore, framing of charge under Section 468 of IPC is grossly erroneous.

16. Learned counsel for petitioner further submits that in the charge- sheet filed against the petitioner, clause 13 contains names of Shri Santosh Tripathi, Shri S.S. Maravi and Shri Yogendra Yadav as co-accused. But the prosecution itself declined sanction against Shri Santosh Tripathi. Moreover when the prosecution ventured to move an application under Section 319 of Cr.P.C. before the Trial Court with prayer to prosecute Shri Santosh Tripathi as well, but later on the same was not pressed and to this effect learned counsel for petitioner has drawn attention of this Court to the order dated 20.11.2019 which is filed at page no.54 along with the memorandum of present petition.

17. Thus, according to learned counsel for petitioner, the basis on which the petitioner is being prosecuted is the report dated 01.10.2012. The said inquiry report according to prosecution itself is signed by Shri Santosh Tripathi. The prosecution itself has declined sanction of the prosecution of Shri Santosh Tripathi. Even the application to prosecute him moved before the trial Court under Section 319 of Cr.P.C. has also been dismissed by the trial Court. Thus, the petitioner submits that the charges which have been leveled against the petitioner are baseless inasmuch as the entire exercise to prosecute the petitioner followed by trial would be an exercise in futility and will cause immense hardship and jeopardy to the present petition. The learned counsel for petitioner submits

that the impugned order of framing of charges, statement of charges and all consequential proceedings thereon deserve to be dismissed.

18. Per contra, learned counsel for respondent submits that the present petition which has been filed by the petitioner is misconceived being premature. According to the learned counsel for respondent, on perusal of paragraph 3 of order dated 18.11.2021 which is being sought to be impugned in the present petition, reveals the allegation against the present petitioner and the same shows that in the inquiry report which was submitted by Shri K.K. Dwivedi, the then Joint Director, Public Instructions, Jabalpur, who had occupied the post after transfer of Shri Santosh Tripathi, was a proper report containing the cogent reasons dealing with each issue of the complaint. It is further submitted by the learned counsel that all the allegations against the present petitioner were found to be proved in the second inquiry report dated 18.01.2013 which was submitted by Shri K.K. Dwivedi, the then Joint Director, Public Instructions, Jabalpur and, therefore, the learned counsel for respondent submits that since prima-facie the allegations leveled in the complaint of Shri B.D. Pandey have been found to be proved in an inquiry report thus, the charges have been rightly framed against the petitioner. The learned counsel for respondent also submits that the petitioner with an intention to evade from the liability to be dealt with the penal action, in connivance with Shri Santosh Tripathi, prepared so called report dated 01.10.2012 and, therefore, the report being non-speaking was merely a device to extend undue favour to the present petitioner. The counsel further submits that the date of report was also suspicious, inasmuch as the date on which the same was submitted, Shri Santosh Tripathi had already been transferred and, thus submits that apparently the report dated 01.10.2012 was forged one and none other than the petitioner was benefited on the basis of said forged report and, therefore, the petitioner has been rightly implicated.

19. The learned counsel for respondent also submits that other two co-accused, namely, Shri S.S. Maravi and Shri Yogendera Yadav were involved in forwarding the so called report dated 01.10.2012, thus, they were arrayed as co-accused. However out of these two, Shri Yogendra Yadav has expired during the pendency of the case before the trial Court. Thus counsel submits that in view of the above narrated submission, there is no infirmity or perversity in the order of framing of charges dated 18.11.2021 or the statement of charges dated 07.11.2021 and hence, prayed that the present petition filed under Section 482 of Cr.P.C deserves to be dismissed. In view of his contention, he relied upon the judgment of Apex Court in the case of Saranya vs. Bharathi and Another reported in (2021) 8 SCC 583 and State of Rajasthan vs. Ashok Kumar Kashyap reported in 2021 SCC OnLine SC

314.

20. We have heard learned counsel for rival parties at length and perused the record.

21. Perusal of record reveals that a complaint by Shri B.D. Pandey dated 20.12.2011 was moved containing the allegations against the present petitioner under 7 different heads. It is further gathered that on the basis of the said complaint, letter dated 01.03.2012 bearing number 389 was sent by Deputy Director (Vigilance), Public Instructions, Bhopal which is contained in page no. 365

of the compilation of the charge-sheet. A perusal of same shows that the Deputy Director (vigilance), Public Instructions, Bhopal, while forwarding the said complaint to Joint Director, Public Instructions Jabalpur directed to conduct an inquiry on each issue raised in the complaint and submit a report within a period of 15 days to the Directorate with his opinion.

22. Now, letter dated 01.03.2012 is important and has bearing, as far as the case in hand is concerned. This letter is issued on 01.03.2012 and addressed to Joint Director, Public Instructions, Division Jabalpur. When this letter was issued, Shri Santosh Tripathi was holding the post of Joint Director, Public Instructions, Jabalpur. Therefore, this letter was addressed to the Joint Director, Public Instructions, Jabalpur, the post which was occupied by Shri Santosh Tripathi in the month of March, 2012. Pursuant to this letter, the Joint Director, Public Instructions, Jabalpur i.e. again Shri Santosh Tripathi sent a letter dated 15.03.2012 to the present petitioner bearing no.620, which is at page no.366 of the compilation of the charge-sheet and vide letter dated 15.03.2012, the present petitioner was called upon to submit his detailed explanation within a period of 7 days. Then pursuant to this letter, present petitioner submitted his explanation that is also at page no. 83 of the compilation of the charge-sheet. This was the reply to the letter of Shri Santosh Tripathi, Joint Director, Public Instructions, Jabalpur dated 15.03.2012 and reply was submitted by the present petitioner on 11.04.2012. Thereafter, so called suspicious inquiry report dated 01.10.2012 which is contained in page no.82 came in picture.

23. We have taken into consideration the report which is contained in page no. 82 of the compilation. The same contains signature at the bottom. According to the prosecution, Shri Santosh Tripathi, during the course of investigation, admitted that he signed the report. So far as the matter which is written in this report, there is admission by one of witness Shri Ashok Sahu. His statement is also on the record of charge-sheet at page no. 463 in which he states that he reproduced the said report in writing as per dictation given by Shri Santosh Tripathi. Thus, the said report which contains a date at the top i.e. 01.10.2012 was ultimately forwarded to the prosecution agency by the then Additional Director, Public Instructions, vide letter dated 19.11.2012 bearing no.1509 which is at page no.81 of the compilation of the charge- sheet and resultantly, the complaint against the petitioner was closed which is reflected from page no.80 of the compilation of the charge sheet.

24. However, now the report (page 304), which in-fact, according to the prosecution is genuine and depicts the true picture, as regards the charges against the petitioner if taken into consideration, the same shows that the same is dated 18.01.2013 and contains the reference of letter of the Additional Commissioner, Public Instructions, bearing no.389 dated 01.03.2012 (the same letter in response to which, Shri Santosh Tripathi had submitted his report). However, Shri K.K. Dwivedi had reduced the second report dated 18.01.2013 in writing and ultimately opined in his report that the charges against the present petitioner were found to be proved and thus, on the basis of this report, once again the machinery of the prosecution was set in motion and has resulted into the filing of charge-sheet against the present petitioner.

25. The core issue in the present case is to the effect that when signatory of so called forged report dated 01.10.2012, according to the prosecution itself has been refused sanction, the ultimate prosecution will entail in fruitful conclusion of trial ? The prosecution does not dispute that Shri

Santosh Tripathi was initially projected as one of the accused and was proposed to be prosecuted upon receiving sanction, but later on sanction against Shri Santosh Tripathi was declined. Prosecution also does not dispute that the application to prosecute Shri Santosh Tripathi as co-accused moved under Section 319 of Cr.P.C. was also not pressed by the prosecution. Resultantly, Shri Santosh Tripathi now in the present case is neither an accused nor even a witness.

26. Therefore, the question which arises for consideration of this Court is to the effect that when the signatory of inquiry report dated 01.10.2012 has become a stranger to the entire case of the prosecution what will be the ultimate fate of the present case ?

27. It is trite law that scope of judicial interference at the preliminary stage of framing of charge is limited and is permissible u/S 482 of Cr.P.C. when it appears to the Court that upon perusal of entire charge- sheet, no incriminating material is against the accused. The Supreme Court in the case of State of Haryana and others vs. Bhajan Lal and others reported in 1992 Supp (1) SCC 335 has held as under:

"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 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 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 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."

28. Thus, if the present case is tested on the anvil of law laid down by the Apex Court, the same would reveal that the all four charges against the present petitioner revolve around inquiry report dated 01.10.2012, therefore, it can be safely presumed that the inquiry report dated 01.10.2012 is in fact is the pivotal document around which all four charges revolve. The charges so framed against the petitioner does not pertain to any of the allegations which in fact leveled by the complainant-B.D. Pandey. On the contrary, the charges which have been framed by the statement of charge dated 07.12.2021 against the present petitioner only pertain to inquiry report dated 01.10.2012. The prosecution nowhere substantiate that inquiry report dated 01.10.2012 was prepared by the petitioner nor there is any allegation that the said inquiry report was forged by the present petitioner, however the prosecution says that the said inquiry report was used by the present petitioner to derive benefit for exoneration from the charges of misconduct. However, the important question in the present case is to the effect that there are no allegation of forgery of this inquiry report by the present petitioner. The counsel for prosecution failed to point out any document/material to show that there are allegation of forgery of inquiry report dated 01.10.2012 by the present petitioner. Since, the offence of forgery is sine qua non for the offence of cheating, therefore, the prosecution has to prima facie establish that there was forgery at the instance of the petitioner. The sole document i.e. the inquiry report dated 01.10.2012 is admitted to be signed by Shri Santosh Tripathi and reduced into writing by Shri Ashok Sahu. In the present case the prosecution not only declined to grant sanction to prosecute Shri Santosh Tripathi but even ventured to withdraw the application moved before the trial Court under Section 319 of Cr.P.C. to implicate Shri Santosh Tripathi. Thus, apparently the prosecution itself has demolished the very foundation of the prosecution case. Now even assuming the present petitioner is prosecuted on the basis of the statement of charge dated 07.12.2021, it will be farfetched expectation that the prosecution will be taken to its logical end. In absence of basic allegation of forgery against the present petitioner, exercise to conduct the prolong trial will be inconsequential and will result in wastage of precious time of the Court of law.

29. The Apex Court dealt with scope of Section 482 of Cr.P.C. in regard to interference at primary stage of prosecution (reliances placed on AIR 1960 Supreme Court 866, AIR 1988 (1) SCC 692 and

2010 (10) SCC

361).

30. The Apex Court in the case of Sheila Sebastian vs. R.

Jawaharaj and another reported in (2018) 7 SCC 581 has held that the offence of forgery before allegations of cheating meaning thereby if there are no allegation of forgery, there cannot be cheating inasmuch as the offence of cheating in fact stems from the offence of forgery. Thus, in order to complete the chain there has to be established allegation of forgery and then only the allegation of cheating can be levelled.

31. Hence, in view of the above analysis, we are compelled to hold that the prosecution has failed to establish even the foundational ingredients of forgery against the petitioner and thus, the orders dated 18.11.2021 of framing charge and 07.12.2021 (the statement of charges) are accordingly quashed. The petitioner stands discharged. Resultantly, the present petition is allowed. No order as to costs.

(SHEEL NAGU)
JUDGE

(MANINDER S. BHATTI)
JUDGE

sp
SAVITRI PATEL
2022.05.10 10:35:02
+05'30'