

Vikas Kumar Bajhal Vs. Vindeshwari Pathak

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Court : Madhya Pradesh

Decided On : Aug-30-2013

Appellant : Vikas Kumar Bajhal

Respondent : Vindeshwari Pathak

Judgement :

Misc.

Criminal Case No.10752/2013 30.8.13 Per B.D.Rathi,J Shri Mukesh Kumar Agrawal, Advocate for the petitioner.

Heard on admission.

This is a petition, under Section 482 of the Code of Criminal Procedure (for short the Code.) challenging the order dated 03/06/2013 passed by I Additional Sessions Judge designated as Special Judge (under the Prevention of Corruption Act, 1988).Katni, whereby application under Section 156(3) of the Code has been rejected.

Respondent Nos.1 to 4 are Officers and Employees of Sulabh International Social Service Organisation, respondent no.5 is the then Mayor of Nagar Palika Nigam, Katni, respondent no.6 is the then Commissioner, respondent no.7 is Executive Engineer and respondent Nos.8 to 11 are other employees.

The case of the petitioner is that he had filed a complaint case under Section 190 of the Code, before the Special Court at Katni alleging offences under Sections 379, 409, 406, 420/34 and 120 of the Indian Penal Code (for short IPC.) read with Section 13(1)(d) & 13(2) of the Act against the respondents.

The facts leading to the complaint were that respondent Nos.5 to 9, in collusion with respondent Nos.1 to 4, awarded contract for construction, execution and maintenance of Sulabh Complex by executing the agreement without carrying out spot inspection and made payment in excess to that specified in the tender document.

Certain other irregularities were also alleged in the complaint against the respondents.

After filing the complaint case the applicant filed an application under Section 156(3) of the Code for issuing direction to Special Police Establishment (Lokayukt Organization) that if found proved, the FIR be registered against the respondents, but the same was rejected by the impugned order.

Learned counsel for the petitioner submitted that prior to filing of complaint, the petitioner had tried to lodge an FIR, but the same could not be registered due to political interference.

He submitted that the impugned order was bad in law and deserved to be set aside.

Having regard to the arguments advanced by learned counsel for the petitioner, the impugned order and the documents annexed thereto, were perused.

The private complaint was filed by the petitioner on 6/2/2013, in which all the facts were mentioned, along with list of witnesses and relevant documents.

It is evident from the record, that complainant was fully confident as to the manner in which the case is to be proved.

It is also pertinent to mention here that petitioner has nowhere stated that he is unable to collect and produce the evidence against the respondents.

Trial Court, after rejecting the application under Section 156(3) of the Code, fixed the case for adducing evidence under Section 200 of the Code.

There is nothing on record to suggest that complainant, prior to filing of the complaint, had approached the Police for registering the offence against the respondents, and, in absence of any complaint to Higher Officers of the Police regarding denial of the police to lodge report, contention of the petitioner that police had refused to register a case, does not inspire confidence.

Learned counsel for the petitioner submitted that in paragraph 24 of the complaint, it is categorically mentioned that on 14/3/2011 and 13/4/2011, he had lodged the FIR but no action was taken.

Thereafter, on 2/5/2011, he had made a complaint to Inspector General and Superintendent of Special Police Establishment, Lokayukt, Bhopal, and as still the matter was not investigated into, he was constrained to file the complaint.

However, the petitioner has not filed copies of the corresponding documents to support the said contention.

Provisions of Section 156(3) of the Code cannot be invoked just to harass the respondents.

Further, the Court is not bound to send the complaint to Police for investigation under the said provision merely because the complainant prays for the same.

The Court has discretion in the matter.

In view of the aforesaid, we are not inclined to interfere with the impugned order as the same is not palpably perverse or manifestly erroneous on face of the record.

The petition, therefore, stands dismissed.

(AJIT SINGH) (B.D.RATHI) JUDGE JUDGE (and)

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