

Qamaruddin Vs. the State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Jun-26-2012

Appellant : Qamaruddin

Respondent : The State of Madhya Pradesh

Judgement :

HIGH COURT OF MADHYA PRADESH, JABALPUR Miscellaneous Criminal Case No.7366/2011 Qamaruddin..Petitioner Versus State of Madhya Pradesh..Respondent For the petitioner : Shri Rajendra Babbar, Advocate. For the respondent: Shri Aditya Adhikari with Shri Abhishek Gulatee, Advocates. ***** Present: HONOURABLE SHRI JUSTICE AJIT SINGH HONOURABLE SHRI JUSTICE SANJAY YADAV *****

ORDER

(26.6.2012) The following order of the Court was passed by Ajit Singh, J.By this petition, filed under section 482 of the Code of Criminal Procedure 1973, the petitioner has essentially prayed for quashing of the first information report dated 26.3.2009 and the order dated 1.2.2011, Annexure A1, passed by the Special Judge (Prevention of Corruption Act), Bhopal, in Special Case No.9/2010.

2. During the relevant period the petitioner was posted as Assistant Estate Officer in the Bhopal Development Authority. One K. C. Malkani, a resident of Bhopal, made a written complaint in the month of November 2003, Annexure R1, to the Principal Secretary, Housing and Environment, State of Madhya Pradesh, alleging

illegal acts and corruption having been committed by the petitioner in the construction of Chetak Complex, Mata Mandir, Stop No.10, etc. thereby causing financial loss to the Bhopal Development Authority. K. C. Malkani also sent a carbon copy of the complaint to the Lokayukta which was registered as Lokayukta Enquiry No.224/2003. Thereafter the complaint was forwarded to the Special Police Establishment for appropriate action. 2 The Special Police Establishment registered the same as Preliminary Enquiry No.13/2005 and after holding preliminary enquiry registered first information report on 26.3.2009 vide crime no.24/2009. The first information report clearly refers to the Preliminary Enquiry No.13/2005 which pertains to complaint made by K. C. Malkani. After investigation charge sheet has been filed against the petitioner and co-accused Onkar Kale who too was an employee of the Bhopal Development Authority.

3. It is to be noted that one Raghuvir Yadav had also made a complaint dated 20.7.2005, Annexure R2, against the petitioner to the Lokayukta which was registered as Lokayukta Enquiry No.143/2005. Pursuant to the enquiry of this complaint it was revealed that the Bhopal Development Authority had departmentally proceeded against the petitioner on the charges of financial irregularities and then compulsorily retired him from service. Taking note of this fact, complaint of Raghuvir Yadav was filed by order dated 11.4.2007 which was communicated to the petitioner.

4. According to the charge sheet filed against the petitioner he along with Onkar Kale, by resorting to corrupt practices and interpolating the documents in different construction projects of the Bhopal Development Authority, caused wrongful financial gain to himself and loss to the Bhopal Development Authority. The total loss caused to the Bhopal Development Authority has been assessed to Rs.1,87,836/-.

5. It is argued on behalf of the petitioner that as the complaint made by Raghuvir Yadav was decided to be filed, the first information report also deserves to be quashed. According to the learned counsel, the first information report also refers to the name of Raghuvir as complainant.

6. It is true that the first information report mentions the name of Raghuvir as complainant but on further scrutiny we find that it also clearly mentions Preliminary Enquiry No.13/2005 which is the basis of first information report and Preliminary Enquiry No.13/2005, as already stated above, was made on the complaint of K. C. Malkani. Therefore, for this mistake, it cannot be held that the allegations of dishonesty, 3 forgery, corrupt practices against the petitioner are baseless and the first information report deserves to be quashed. It is also to be noted that Enquiry No.143/2005 on the complaint of Raghuvir Yadav was closed not because the allegations made therein against the petitioner were found to be untrue but because the Bhopal Development Authority, after recovering the amount of financial loss caused to it, had compulsorily retired him. The action of Bhopal Development Authority taken against the petitioner does not absolve him of his criminal acts.

7. The Special Judge, after hearing the petitioner and respondent, by order dated 1.2.2011 has framed charges against the petitioner for offences under sections 13(1)(d) read with section 13(2) of the Prevention of Corruption Act 1988 read with sections 120-B, 420, 467 and 468 of the Indian Penal Code. On perusal of the charge sheet, particularly the statements of witnesses Manot Kumar Verma, Vijay Kumar Verma, Mathura Prasad Mishra and Anil Ujjainkar recorded under section 161 of the Code of Criminal Procedure 1973, we too find prima facie evidence against the petitioner for framing the aforesaid charges against him. Since the petitioner had retired from service no sanction under the provisions of Prevention of Corruption Act, 1988 was required. not it is also well settled that for offences under sections 120B, 420, 467 and 468 of the Indian Penal Code, no sanction is necessary under section 197 of the Code of Criminal Procedure, 1973. See Prakash Singh Badal v. State of Punjab (2007) 1 SCC 1 and Abhay Singh Chautala v. Central Bureau of Investigation (2011) 7 SCC 141. The petitioner also could not place any material to convince us that the complaint made by K. C. Malkani in the month of November 2003 was beyond the prescribed period of five years. On the contrary there is evidence on record to indicate that interpolation was made in the file for causing financial loss to the Bhopal Development Authority just before the date of complaint.

8. The petition has no merit and is accordingly dismissed. (AJIT SINGH) (SANJAY YADAV) JUDGE JUDGE

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