

State of M.P. Vs. Dr. Devendrasingh

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Court : Madhya Pradesh

Decided On : May-06-2002

Reported in : 2002CriLJ4368

Judge : S.L. Kochar, J.

Acts : [Prevention of Corruption Act, 1947](#) - Sections 5(1) and 5A(1); [Prevention of Corruption \(Amendment\) Act, 1988](#); Code of Criminal Procedure (CrPC) - Sections 161

Appeal No. : Crl. Revn. No. 217 of 1994

Appellant : State of M.P.

Respondent : Dr. Devendrasingh

Advocate for Def. : P.K. Gupta, Adv.

Advocate for Pet/Ap. : G. Desai, Dy. Adv.-General

Judgement :

ORDER

S.L. Kochar, J.

1. The State of M. P. has questioned the legality of the order passed by the 1st Addl. Sessions Judge/Special Judge (Prevention of Corruption Act), Indore dated

16-5-94 in Special Sessions case No. 2/93 while quashing the part of investigation conducted by Inspector Shri Bodh, Shri Bhandari and Sub-Inspector Shri Sengar and giving liberty to the prosecution for reinvestigation by authorised police officer in accordance with law, under the provisions of Section 5-A(1) Proviso (2) of the [Prevention of Corruption Act, 1947](#) (hereinafter referred to as the 'Act'), discharged the accused.

2. The State of Madhya Pradesh through Economic Offences Investigation Bureau, Indore filed a charge-sheet against the Non-applicant Dr. Devendra Singh for the offence punishable under Section 5(1)(e) of the Act. After filing of the charge-sheet, the non-applicant had submitted an application pointing out illegality in investigation without following mandatory provisions of Section 5-A(1) proviso (2), the investigation done by Inspector Bodh, Inspector Bhandari and Inspector Sengar who were not duly authorised by the Superintendent of Police or the superior police officer by passing a reasoned order to undertake the investigation of the crime. The non-applicant relied upon the pronouncement of the Supreme Court in the State of Haryana v. Bhajanlal AIR 1992 SC 604 : 1992 Cri LJ 527.

3. The learned trial Court, after hearing both the parties at length and after perusing the entire record of the charge-sheet filed by the applicant, quashed the investigation done by the aforesaid three police officers and gave liberty to the applicant for completion of the said part of investigation through legally authorised police officers, and discharged the accused.

4. The learned Deputy Advocate General Shri Desai, appearing for the applicant State placed reliance on a judgment rendered by Hon'ble the Supreme Court in Munnial v. Delhi Administration AIR 1971 SC 1525 : 1971 Cri LJ 1153 and submitted that the investigation by authorised officer as per enactment after taking assistance of Deputies does not make the investigation one as not made by the authorised officer.

5. The law laid down by the Supreme Court in the case of Munnial v. Delhi Administration (supra) on facts the same situation is not available in the present case. In the case of Munnial, the authorised investigating Officer had given categorical statement that some of the statements were written by the subordinate

officer at his dictation. Therefore, the Supreme Court has held that Mere fact that some of the statements were written by subordinate officer at the dictation of authorised officer does not amount to investigation by unauthorised officer.

(Emphasis supplied)

5-A. In the present case, the applicant has not averred in the charge-sheet or even while replying to the application filed by the non-applicant that the statements recorded by Inspector Bodh, Inspector Bhandari and Sub-Inspector Sengar were recorded at the dictation given by authorised officer, that could be in the present case Deputy Superintendent of Police who had conducted the major part of investigation and the said, investigation is held to be valid by the Court below. In the case of Munnial (supra) the Supreme Court had an occasion to consider the aforesaid aspect in an appeal against conviction and recorded statement of authorised investigating police officer was available who had made the categorical statement on oath before the trial Court that the unauthorised subordinate police officer had recorded the statement as per his dictation. This kind of facts are missing in the present case, which have been dealt with at the stage of framing of charge.

6. In the case of State of Haryana v. Bhajanlal 1992 Cri LJ 527 (supra), Hon'ble the Supreme Court has ruled that not only an authorisation is required for investigation by police officer below the rank of Deputy Superintendent of Police or any police officer of above rank as per second proviso to Section 5-A(1) of the Act, but the authorisation should also contain the adequate reason.

7. In the present case, no such authorisation has been accorded by the Superintendent of Police or any Police Officer of above rank.

8. Learned counsel for the non-applicant has placed reliance on a judgment (certified copy made available) rendered by this Court in Criminal Revision No. 6/92 (Rameshchandra Sharma v. State of M.P.) dated 30-3-99 (Indore Bench). In this judgment, this Court, relying on the Supreme Court judgment in Bhajanlal (supra) and unreported judgments of the learned single Judge of this Court passed in Misc. Cr. Case No. 2481/96 (Ramsingh v. State of M.P.) (Gwalior Bench) and

Misc. Cr. case No. 1083/96 (Jagjeet Prasad Gupta v. State of M.P.) (Gwalior Bench), held that there was nothing to show, what were the circumstances, which, impelled the A.I.G. to pass the order directing the Inspector to investigate the matter. In nutshell, the crux of the order passed in Ramesh Chandra Sharma's case (supra) of this Court that the authorisation given by the A.I.G. to the Inspector was not bearing reasons for investigation. Against the judgment passed by the Court (Gwalior Bench) in Ramsingh v. State and Jagjeet Prasad v. State of M.P. Special Leave Petitions were preferred and the same were allowed by the Supreme Court setting aside the judgment/orders passed in these cases.

9. In the judgment reported in (2000) 5 SCC 88 : 2000 Cri LJ 1401 (State of M.P. v. Ramsingh) it is held that the interference by the High Court in the order of entrustment of investigation to the Inspector by the Superintendent of Police containing reasons was not justified. The Supreme Court has further held that :

Prevention of Corruption Act, 1988 is a social legislation to curb illegal activities of public servants and should be liberally construed so as to advance its object and not liberally in favour of the accused.

10. Shri Desai, learned Dy. Advocate General has further made a conscious statement before this Court that the prosecution does not wish to examine witnesses Pradeep Kumar, Smt. Rajkumari and Dayanand whose statements were recorded by Inspector Bodhkumar. Inspector Bhandari and Sub-Inspector Shri Sengar on 15-12-88, 1-11-87 and 31-10-88 respectively.

11. The trial Court, by the impugned order quashed only this part of investigation i.e. recording of statements under Section 161 of the Code of Criminal Procedure of the aforesaid witnesses and also gave liberty for conducting the investigation by the authorised officer as per provisions of the Act. Therefore, the prosecution/applicant should allow to prosecute the non-applicant on the basis of the charge-sheet already filed before the trial Court and the trial Court be directed to proceed with the trial excluding the statements of these three witnesses. Learned counsel for the non-applicant has objection to this. But the same is repealed having no legal basis because, the trial Court has not quashed the entire investigation and charge-sheet and against the order of the trial Court, the non-

applicant has not filed any revision praying for the same. The effect of the trial Court's order would be only that the prosecution can get recorded the statements of these three witnesses by the authorised police officers as per the provision of Section 5A(1) second proviso and after recording of such statements, the same can be taken on record as part of the charge-sheet by the trial Court. As per the statement made by the Deputy Advocate General Shri Desai, the prosecution does not bank upon to examine these three witnesses for prosecuting the non-applicant. The question of recording of further statement of these three witnesses by the competent officer as per provision of the Act would not make any difference for proceeding against the non-applicant by the trial Court.

12. In the result, the order of the trial Court is set aside with the directions as aforesaid.

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