

HIGH COURT OF MADHYA PRADESH BENCH : INDORE

Criminal Revision No.546/2007

Arun Kumar Jain
Vs.
Dinesh Tripathi and nine others

Dr. Manohar Dalal, counsel for the applicant.

Shri A. Upadhyay, counsel for Respondent No. 1.

Shri C. L. Yadav, Sr. Advocate assisted by Shri O. P. Solanki,
Advocate for Respondents No. 2, 4, 5, 6 and 9.

Shri Z. A. Khan, Sr. Advocate assisted by Shri R. R. Trivedi,
Advocate for Respondents No. 3 and 8.

Shri C. R. Karnik, Dy. G. A. for respondent/State.

Misc. Criminal Case No.1580/2008

Arun Kumar Jain
Vs.
Dinesh Tripathi and nine others

Shri C. L. Yadav, Sr. Advocate assisted by Shri O. P. Solanki,
Advocate for the applicants.

Shri C. R. Karnik, Dy. G. A. for respondents No. 1 and 2.

Dr. Manohar Dalal, counsel for respondent No. 3.

ORDER

(Passed on this _____ day of January, 2010)

Per J. K. Maheshwari, J.

This order shall govern the disposal of Cr. R. No. 546/2007 Arun Kumar Jain Vs. Dinesh Tripathi and nine others and M.Cr.C. No.1580/2008 Madhu Kumar Babu and four others

Vs. State and others. A copy of this order be placed in the record of both the cases.

02. The Criminal Revision No.546/2007 has been filed by the complainant Arun Kumar Jain assailing the tenability and viability of the order dated 11.4.2007 passed by the 1st Additional Sessions Judge, Indore in Criminal Rvisions No.352/2006, 386/2006 and 389/2006, whereby the order passed by the trial Court dated 3.5.2006, directing the Police to take appropriate steps as per Section 156 (3) of Cr.P.C. on a private complaint against the accused persons in accordance with law with an intimation to the Court on the next date was set aside, and the matter was remitted back to the trial Court to pass appropriate orders after due application of mind. Being aggrieved by such direction applicant Arun Kumar Jain has assailed the order impugned in the revision.

03. M.Cr.C. No. 1580/2008 has been filed by the accused persons namely Madhu Kumar Babu, Virendra Singh. B. J. Salunke and Brajesh Mishra under Section 482 of Cr.P.C. to quash the private complaint filed against them by Arun Kumar Jain. In the petition it is contended that as per the allegations of the private complaint, on the face of it no offence is made out against them and it has been filed to take vengeance with mala fide intention, however, the complaint filed against them may be quashed. It is also contended that the revisional Court while passing the order

impugned after referring various judgments of the apex Court came to hold that while passing the order, exercising the powers under Section 156 (3) of Cr.P.C., the Magistrate ought to have applied his mind on the allegations as alleged in the complaint. If on the face of allegations no offence disclosing cognizable offence is made out then trial Court ought not to apply his mind again, in passing the order in furtherance to the order of revisional Court. Thus, the complaint filed against them may be quashed.

04. The facts of the case in brief are that the complainant Arun Kumar Jain has filed a private complaint stating that from the year 1996-2000, he was posted as Dy. Superintendent of Police in the Special Police Establishment, Lokayukt at Indore and also as in-charge Superintendent of Police. One Mr. Subhash Sojatiya Accused No. 7 was the ex-minister of Information and Public Relation Department. The matter of his elder brother Ashok Sojatiya, who was the Engineering-in-Chief in Water Resources Department, had investigated by him and a charge sheet under Sections 13 (1) (d) and 13 (2) of the Prevention of Corruption Act 1988 read with Sections 420, 120-B of the IPC was filed. Similarly he had also investigated the matter of his younger brother Mr. Kamlesh Sojatiya and the charge sheet under Section Sections 13 (1) (d) and 13 (2) of the Prevention of Corruption Act 1988 read with Sections 420, 120-B of the IPC was filed against him also. Thus Mr. Subhash Sojatiya has become biased against him and

having malign intention. It is averred that Mr. Subhash Sojatiya was very much close to the then Chief Minister Mr. Digvijay Singh, however, due to his intervention he has faced a lot of mental and physical torture. By their intervention he was invariably placed under suspension, and also gave an assurance in the assembly for arrest in a false case registered against him. It is further said that the accused No. 1, 7, 8 and 9 having conspiracy, by meeting of mind with a view to take revenge and an assault over him. It is said that one Dinesh Tripathi accused No. 1 reached in between 7:15am to 8:00 am at his house in the morning along a pet dog. While reaching in front of his house it is said by him that you have not yet come to rescue to his fault, I have been sent by Mr. Subhash Sojatiya "Mantri" to convey this message to you. Thereafter, Dinesh Tripathi has sent his pet dog to attend the natural call in front of his house and on refusal by him an assault by means of Lathi over the head has made causing injury. The FIR submitted by applicant has not been registered. It is further averred that the conspiracy was done by Accused No. 9 Dilip Bhandari, the then SDOP, Sonkatch, the present SDOP, Depalpur with the connivance of Respondent No. 7 Subhash Sojatiya and accused No. 8 Karan Singh Panwar. The Accused No. 2, Madhukumar Babu, No. 3 Rakesh Gupta, No. 4 Virendra Singh No. 5 B. J. Salunke and No. 6 Brajesh Mishra have not taken any action on his complaint, while on the FIR of Dinesh Tripathi an offence under Sections 341,

323, 295 and 506 of IPC was registered against the complainant at Crime No.545/2003 in Police Station Palasia, Indore. Therefore, he has filed private complaint against all these persons stating that they have not taken any step to register the FIR, while cognizable offence is made out, against accused No. 1, 7, 8 and 9; it indicates their association or having criminal conspiracy, with the accused persons, however, prayer is made to take cognizance to the offence under Sections 307, 201, 212, 120-B, 166, 167, 289, 323, 341, 468, 471 read with Section 34 of IPC against all the accused persons and to punish them suitably.

05. In the present case on filing of the complaint before trial Court along with some documents an application under Section 156 (3) of Cr.P.C. was filed, where upon an order dated 3.5.06 has been passed, directing the SHO concerned of police station to take appropriate step on the attached private complaint against the accused persons in accordance with law with an intimation to the Court on the next date. Against the said order three revisions were filed by Mr. Madhu Kumar Babu, Virendra Singh, Brajesh Mishra, B. J. Salunke and Rakesh Gupta.

06. It was contended in the revisions that the allegation as alleged relates to non discharging their official duty by the applicants, however, without seeking permission under Section 197 of Cr.P.C. order directing investigation under Section 156 (3) of

Cr.P.C. cannot be passed by the Magistrate. It is also contended that on the basis of the allegations as alleged in the private complaint offence cognizable under Sections 307, 468 and 471 of IPC has alleged, however, the Magistrate is not having jurisdiction to direct for investigation under Section 156 (3) of Cr.P.C. The ground of non-application of mind has also been urged along with some other grounds. The revisional Court allowed those revisions holding that the order impugned passed by the trial court is without due application of mind, however, such order is liable to be set aside and the matter was remitted back to the trial Court to pass appropriate order by application of mind after going through the contents of the complaint, while other arguments were rejected. Now by filing the petition under Section 482 of Cr.P.C. the quashment is sought for by Mr. Madhu Kumar Babu, Virendra Singh, Brajesh Mishra and B. J. Salunke that the direction as issued by the revisional Court cannot be made applicable against them because on the face of the allegations as alleged in the private complaint no cognizable offence is made out, and they have been made accused to take vengeance due to not registering the FIR on the complaint of Arun Kumar Jain.

07. Shri Manohar Dalal, counsel appearing for the applicant has placed reliance on a judgment of the apex court in the case of Devarapalli Lakshminarayana Reddy and others Vs. Narayana Reddy and others – AIR 1976 SC 1672 and urged that

the Magistrate who receives a complaint disclosing offence exclusively triable by Sessions Court, is not ousted by jurisdiction to send it to the police for investigation under Section 156 (3) of Cr.P.C. The order of investigation is different from the powers to take cognizance conferred on him by Section 200 (1) of Cr.P.C. In such circumstances it is contended by him that even if an offence triable by Court of Sessions under Sections 307, 468, 471 of IPC has alleged, the issuance of direction by the Magistrate to investigate the complaint by police is not beyond its competence. The issue of jurisdiction of taking cognizance by the Magistrate at that stage is not required to be adjudicated. He has further been placed reliance on a judgment of the apex Court in the case of **Mohd. Yousuf Vs. Smt. Afaq Jahan and another – AIR 2006 SC 705** reiterating the same arguments. Reliance has also been placed on a Single Bench judgment of this Court passed in **Criminal Revision No. 131/2004 Satyanand Mishra Vs. Prakash Chand Jain decided on 8.3.2006** and it is contended that in similar case the order passed by the trial court has been upheld by this Court directing investigation against the officers of top class of hierarchy, therefore, in the present case also the order passed by the Magistrate deserves to be upheld.

08. Per contra, counsel appearing on behalf of the accused persons, Shri C. L. Yadav, Sr. Advocate, Shri Z. A. Khan, Sr. Advocate, and Shri Manoj Soni, J. K. Joshi, Advocates contends

that by an order of the revisional Court the order passed by the Magistrate has been set aside, because it was without due application of mind, however, such findings are liable to be upheld, in view of the judgment of the apex Court in the case of **Suresh Chand Jain Vs. State of Madhya Pradesh and another – AIR 2001 SC 571**. It is submitted by them that any Judicial Magistrate while taking cognizance, to a offence, may direct for investigation under Section 156 (3) of Cr.P.C., enabling the police to start the investigation. It is open to the Magistrate to direct the police to register the FIR, nothing is illegal in doing so, because it involves only the process of entering the substance of the information relating to the commission of the cognizable offence. On the same analogy reliance has further been placed on Full Bench judgment of Allahabad High Court in the case of **Ram Babu Gupta and another Vs. State of U.P. and others – 2001 Cri.L.J. 3363** and the judgment of the apex Court in the case of **Madhu Bala Vs. Suresh Kumar and others – AIR 1997 SC 3104**. It is embarked upon by them that issuance of direction to investigate through police is not an empty formality, the Magistrate passing an order ought to have apply his mind to the allegations as alleged in complaint, and only on finding some substance the direction for investigation may be ordered. The judgment relied upon by Shri Dalal, Advocate of **Devarapalli Lakshminarayana Reddy** (supra) and **Mohd. Yusuf** (supra) is of no help to him because the

revisional Court has set aside the order impugned of the trial Court only on the ground that it has been passed without due application of mind, turning down other arguments, however, the said judgments are of no help to him.

09. It is also contended that looking to the allegations as alleged in the private complaint no cognizable offence is prima facie made out against accused persons Madhu Kumar Babu, Rakesh Gupta, Virendra Singh, B. J. Salunke and Brajesh Mishra, i.e. the officers posted in different capacity from Sub Inspector to the Superintendent of Police at the relevant time at Indore. Therefore, issuance of the direction against those accused persons under Section 156 (3) Cr.P.C. to investigate the private complaint is unwarranted and without due application of mind.

10. By filing the petition under Section 482 of Cr.P.C. it is contended that in exercise of power under Section 482 of Cr.P.C. this Court with a view to prevent abuse of process of any Court or to otherwise secure the ends of justice, may quash the private complaint filed against them. It is said that as per the judgment of the apex Court in the case of **State of Haryana and others Vs. Ch. Bhajan Lal and others – 1992 Cri.L.J. 527** seven principles have been laid down, which are as under :-

“(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 F.I.R. 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 S. 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 on 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 spit him due to private and personal grudge.”

11. In the present case on the allegations made in the complaint on its face value in entirety it do not prima facie constitutes any offence to be made out against the accused persons namely Madhu Kumar Babu, Rakesh Gupta, Virendra Singh, B.J. Salunke, Dilip Bhandari and Brajesh Mishra. More so, lodging of the private complaint by complainant manifestly with a mala fide intention, because on a complaint made by the Dinesh Tripathi an offence was registered against him, who is a police officer and no action has been taken on his complaint, however, for this reason also the private complaint is liable to be quashed against the officers posted at the relevant time. It is also contended that

looking to the contents of the private complaint no allegation of commission of any offence under Section 307 of IPC has alleged against the accused persons Madhu Kumar Babu, Rakesh Gupta, Virendra Singh, B. J. Salunke and Brajesh Mishra; more so the allegation of conspiracy prior to commission of the said offence is also not in the private complaint. No document or pleading has been made to show any connection of these officers with the then Minister Mr. Subhash Sojatiya, however, there is no evidence how they have conspired with Dinesh Tripathi and Mr. Sojatiya with a view to assault over the complaint, therefore, prima facie no offence is made out on the basis of the said complaint. It is also contended that the principles of vicarious liability having no application in criminal cases. Until and unless specific act or overt act of a particular officer has been pleaded in complaint showing ingredient of commission of the alleged offence; which is missing in the private complaint the Magistrate is not required to direct investigation against them. In such circumstances powers under Section 482 of Cr.P.C. even at the stage of issuance of the direction to the police under Section 156 (3) of Cr.P.C., may be exercised. Reliance has been placed on a judgment of apex Court in the case of Maksud Saiyed Vs. State of Gujarat and others – (2008) 5 SCC 668.

12. After having heard learned counsel appearing on behalf of the parties, in the opinion of this Court, and as per the

judgment of apex Court in the case of **Suresh Chand Jain** (supra), it is the trite law, the Magistrate is empowered to pass an order under Section 156 (3) of Cr.P.C. to investigate the allegations as alleged in the private complaint even if it is triable by the Court of Sessions. It is also settled that while passing such an order the Magistrate ought to have applied his mind to the allegations as alleged in the complaint. It is also settled that if an order passed by the Magistrate is without due application of mind even at the stage of direction Section 156 (3) of Cr.P.C., it may be liable to be set aside.

13. In the present case it is apparent that on filing a private complaint by the complainant Arun Kumar Jain along with an application under Section 156 (3) of Cr.P.C. a request was made to allow the said application and to issue direction for investigation on complaint. The trial court had directed to SHO of concerned police station to take action in accordance with law on the attached private complaint and intimate to the Court on the next date. In view of the contents of the private complaint it is apparent that the assault as alleged was made by the accused No. 1 Dinesh Tripathi upon complainant in between 7:15am to 8:00am while he was along with his pet dog. The allegations of bias and malign intention has been alleged against accused No. 7 Mr. Subhash Sojatiya due to filing of Challan by the complainant against his brothers. Conspiracy has been done by accused No. 8 Karan Singh

Panwar and No. 9 Dilip Bhandari. It is only alleged that accused Madhu Kumar Babu, Rakesh Gupta, Virendra Singh, B. J. Salunke and Brajesh Mishra, were the officers posted in the police station as Sub Inspector, Town Inspector, City Superintendent of Police, and the Superintendent of Police, Indore have not taken any action on the complaint of complainant against Dinesh Tripathi and to harbour them made some change in the Rojnamcha entries. There is no allegation of having any connection of these officers with Mr. Subhash Sojatiya, and Dinesh Tripathi prior to the said incidence. The allegation of having any conspiracy prior to the said incident is also not pleaded in complaint, therefore, in such circumstances prior to passing an order under Section 156 (3) of Cr.P.C., against the said officers, the Magistrate is required to apply his mind on the allegations of private complaint. Therefore, the order passed by the revisional Court to set aside the order of trial Court appears to be just and proper.

14. In Judgment of **Satyanand Mishra** (Supra) of learned Single Bench of this Court, relied upon by Mr. Dalal, learned counsel, said to be of identical facts of this case is unfounded. In the said case, the allegations of the offences punishable U/s 13(1), 13(2) of the Prevention of Corruption Act, read with Section 120 B of the IPC of hatching conspiracy were alleged against the accused person wherein the order of investigation U/s 156(3) was passed.

In the said case, complaint was filed on 27/11/2003. The trial court passed an order “the time would require for going through the complaint and the documents filed therewith” therefore, it was kept for consideration on 04/12/2003. On the said date, time was sought for to examine the complainant in court, however, it was fixed on 09/01/2004. On the said date, the court observing that U/s 19 of the Prevention of Corruption Act, without prior sanction cognizance cannot be taken, however, directed the police to investigate into the matter. Thus, it is apparent in the said case after giving two dates and after going through the contents of the complaint and applying his mind, directed the police to investigate because previous sanction as required U/s Prevention of Corruption Act was not there. Thus, this court was of the opinion that the order passed by learned judge directing investigation by police is after due application of mind. In the present case, the facts are entirely different because on the date of filing of the complaint, the Trial Court mechanically directed to the concerned SHO to take action and to report compliance on the next date. Moreso, the Trial Court has not applied his mind whether any specific allegation of commission of cognizable offence against the officers posted at the relevant time is available or not. In the said circumstances, the judgment of **Satyanand Mishra** (supra) having no application and the complainant cannot derive any benefit from the said judgment.

15. On going through the contents of the private complaint

it is apparent that the allegations of assault over the complainant is against accused No. 1 Dinesh Tripathi, who allegedly a man of Mr. Subhash Sojatiya. At the time of commission of the offence, it is stated by him to the complainant that till now you have not yet come to rescue to his fault and he has been sent, by accused No. 7 to convey this message. Thus after reaching to the house of the complainant on some altercation because his pet dog went for call of nature in front of the house of complainant, assault by means of Lathi was made by Dinesh Tripathi causing injury over the head. The allegation of conspiracy is against accused No. 8 Karan Singh Panwar and accused No. 9 Dilip Bhandari. Bare reading of the private complaint it does not reveal that any meeting of mind of the accused Dinesh Tripathi, Mr. Subhash Sojatiya, Dilip Bhandari and Karan Singh Panwar, with the officers posted at the relevant time namely Mr. Madhu Kumar Babu, Rakesh Gupta, Virendra Singh, B.J. Salunke, and Brajesh Mishra to establish the common intention, prior to the alleged incident is on record. Because of prior meeting of mind is not there and no specific allegations of conspiracy has come against those officers, however, looking to the allegations as alleged on the face of the private complaint it cannot be inferred that any indulgence of the officers is there, in commission of the alleged offence under Section 307 of IPC by Dinesh Tripathi. Now only allegation which remains in the private complaint that is of harbouring of Mr. Dinesh Tripathi, because on

a complaint submitted by the complainant the officers posted from the rank of Sub Inspector till Superintendent of Police has not discharged their official duty, becoming a public servant and no case has been registered against him. From the allegations of the complaint specific act of any of the officer has not been pleaded making him responsible for the said act. The allegations with respect to Rojnamcha entry as alleged in the complaint is also not specific to show the act of the particular officer. Thus, on the basis of the allegations as alleged in the complaint no cognizable offence prima facie constitutes against Madhu Kumar Babu, Rakesh Gupta, Virendra Singh, B.J. Salunke and Brajesh Mishra. It is also seen from the record that the complainant is a police officer and an offence against him has been registered on the information of one Dinesh Tripathi. Therefore, he may have feeling of non-registration of the case on his information, which may create an element of bias against these officers posted at the relevant time at Indore, and it may be safely presumed that with a view to take vengeance he might have proceeded against them, without specifying act, overt act and assigning their role in commission of the said offence.

16. In view of the discussion as made herein above in the opinion of this Court the principles as laid down in the case of **Bhajan Lal** (supra) at Sl. No. 1 and 2 and Sl. No.7, having it application and it is one of rare of the rarest cases to exercise the power under Section 482 of Cr.P.C. and to quash the private

complaint filed by the complainant Arun Kumar Jain against Madhu Kumar Babu, Rakesh Gupta, Virendra Singh, B.J. Salunke and Brajesh Mishra. It is further to be noted that the principle of vicarious liability having no application in a prosecution which is to be lodged against superior officers. My view fortifies from the judgment of the apex court in the case of Maksud Saiyed (supra). Thus, in absence of any specific allegation of causing any injury or assigning any role against them merely, on the bald statement issuance of direction to investigate the said incident by the concerning SHO against Madhu Kumar Babu, Rakesh Gupta, Virendra Singh, B.J. Salunke and Brajesh Mishra cannot be directed. It is to be explained here that one Rakesh Gupta posted as Additional Superintendent of Police, Indore, at the relevant time has not filed any petition under Section 482 of Cr.P.C., seeking quashment of the private complaint, but on the basis of the allegations of the private complaint nothing has been found against him and in view of the discussion made herein above the direction to investigate on a private complaint against the officers posted at the relevant time have not been issued, however there is no reason to discriminate him with others. Thus in the opinion of this Court invoking the inherent powers of the High Court under Section 482 of Cr.P.C with a view to prevent the abuse of process of Court or to otherwise secure the ends of justice the complaint filed against the aforesaid five officers is hereby quashed.

17. In view of the forgoing discussion the Criminal Revision No. 546/2007 is devoid of any merit, therefore, the same stands dismissed and the order passed by the revisional Court is upheld to the extent of passing an order afresh only against accused No. 1 Dinesh Tripathi, accused No.7 Subhash Sojatiya, accused No.8 Karan Singh and accused No. 9 Dilip Bhandari. At the same time M.Cr.C. No.1580/2008 stands allowed. The private complaint filed by the complainant Arun Kumar Jain against Madhu Kumar Babu, Rakesh Gupta, Virendra Singh, B.J. Salunke and Brajesh Mishra is hereby quashed. It is directed that in furtherance to the order passed by the revisional Court, the trial Court may pass appropriate order on a private complaint against the four accused persons as indicated herein above.

(J. K. MAHESHWARI, J.)

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