

**HIGH COURT OF MADHYA PRADESH : BENCH AT INDORE**  
**(SINGLE BENCH : HON. Mr. JUSTICE JARAT KUMAR JAIN)**

**M.Cr.C. No.3751 of 2014**

**Ishak Moh. and nother.**

**... APPLICANTS**

**Vs.**

**State of M.P. Through Police Station  
Khilchipur, District Rajgarh.**

**.. NON-APPLICANT**

**M.Cr.C. No.4495 of 2014**

**Bhpendra Singh**

**... APPLICANT**

**Vs.**

**State of M.P. Through Police Station  
Khilchipur, District Rajgarh.**

**.. NON-APPLICANT**

**-X-X-X-X-X-X-X-X-X-X-**

**ORDER**

**(Passed on 30<sup>th</sup> September, 2015)**

This order shall govern the disposal of M.Cr.C. No.3751/2014 which is filed by the then Patwari and Tehsildar for quashment of FIR for want of sanction, whereas M.Cr.C. No.4495/2014 which is filed by one Bhupendra Singh for quashment of Sessions Trial No.414/2013 on the ground of double jeopardy. These petitions are filed under Section 482 of Code of Criminal Procedure.

**2.** Brief facts of the case are that Bhupendra Singh filed an application for mutation of his name in the revenue records in relation



to agricultural land bearing Survey Nos. 269/2/2 and 269/2 admeasuring 1.092 and 1.619 Hect. Situated at Village Dhatravda, Tehsil Jirapur, District Rajgarh stating that the recorded Bhoomi Swami viz. Bhanwari Bai and Bhagwati Bai daughter of Ratan Singh have expired and Anar Singh S/o. Kalu Singh executed a Will on 19.3.1989 in his favour and, therefore, he has become Bhoomi Swami. The then Patwari viz. Ishak gave a report in favour of Bhupendra Singh and thereafter, the then Tehsildar viz. Arvind Sharma by order dated 22.6.1994 mutated the name of Bhupendra Singh in revenue records. Subsequently, a complaint was made that Bhupendra Singh in the application, has wrongly shown that recorded Bhumi Swami Bhanwari Bai and Bhagwati Bai have died. Thereupon, the S.D.O. (Revenue), Khilchipur, District Rajgarh submitted the enquiry report to Collector. Thereafter, Collector, Rajgarh directed the Tehsildar to lodge the report. The Tehsildar on 1.12.2000 sent a written complaint to S.H.O., Jirapur and on this basis, Crime No.260/2000 was registered for the offences u/s. 420, 468, 120-B of the I.P.C. against the present petitioners.

3. After investigation, final report has been filed against the petitioners and the case was committed to the Courts of Sessions for trial. The case is registered as S.T. No.414/2013. Before the Sessions Judge, the petitioners viz. Ishak and Arvind Sharma filed an application u/s. 197 of the Cr.P.C. stating that they were the public servants and while acting or purporting to act in discharge of their official duty, alleged offence have been committed by them, therefore, without sanction of the Government, they cannot be prosecuted. Whereas, petitioner – Bhupendra Singh filed an application that before his prosecution, the S.D.O. (Revenue),



Khilchipur had made two private complaints before the Judicial Magistrate, First Class, Jirapur on the same set of facts, one u/s. 193 of IPC and another u/s. 198 of the IPC, which were registered as Criminal Cases No. 68/2001 and 69/2001 respectively. In both the complaints, the Judicial Magistrate, First Class, Jirapur vide judgment dated 16.12.2009 has acquitted the petitioner –Bhupendra Singh from all the charges, therefore, on the same set of facts, the petitioner – Bhupendra Singh cannot be prosecuted again. Learned Sessions Judge by the impugned order rejected the objections of the petitioners, therefore, they have filed these petitions.

4. Learned counsel for petitioners – Ishak and Arvind Sharma submitted that this is an undisputed fact that at the relevant time, the petitioner – Ishak was Patwari and the petitioner – Arvind Sharma was Tehsildar and they were public servants and in discharge of their official duty as public servants, they have committed the alleged offences, therefore, without sanction u/s. 197 of the Cr.P.C., they cannot be prosecuted. He further submitted that Arvind Sharma, Tehsildar had exercised judicial powers under the M.P. Land Revenue Code, therefore, he being a Judge also entitled for protection under the Judges Protection Act, 1985. For this purpose, learned counsel placed reliance on the judgment of this Court in the case of **Balram Vs. Ashwini Kumar – 2001(3) MPLJ 363**; and **S.S. Trivedi Vs. State of M.P. – 2007(5) MPHT 138**. He also placed reliance on the judgment of this Court in the case of **State of M.P. Vs. Singhai Kapurchand – AIR 1961 MP 316**; and **Omprakash V/s. Surjan – 2004 RN 31**.

5. Learned counsel for petitioners further submitted that learned Sessions Judge in the impugned order has wrongly treated the



direction of Collector for lodging FIR as deemed sanction for prosecution. The Collector is not empowered to grant sanction for prosecution of Tehsildar and only the Government can grant such sanction. Thus, the Sessions Judge has committed an error of law and hence, the impugned order deserves to be set aside.

6. Learned counsel for petitioner – Bhupendra Singh submitted that the S.D.O. (Revenue) has made two complaints for the offence u/s. 193 and 198 of I.P.C. before the Judicial Magistrate, First Class, Jirapur and in both the cases after trial, petitioner – Bhupendra Singh has been acquitted for the same subject matter petitioner cannot be tried again. As per Section 300 of Cr.P.C., person once convicted or acquitted shall not be tried for the same offence. Learned Sessions Judge in the impugned order has rejected the objection on flimsy ground that the record of earlier complaint case has not been produced, therefore, it cannot be held that the subject matter of both the trials are one and the same. Learned Sessions Judge before passing the impugned order should have called the record, but he has not gone into the merits of the case and passed the impugned order which is not sustainable in law, therefore, it be set aside.

7. On the other hand, learned Govt. Advocate vehemently opposes the prayer and supports the impugned order. He submitted that the petitioners – Ishak and arvind Sharma are not entitled for any protection as they have committed the offence of conspiracy with Bhupendra Singh, which was not in discharge of official duty. He further submitted that in earlier private complaints, the material for prosecution was quite different. In such circumstances, he prays for dismissal of these petitions.



8. After hearing the learned counsel for the parties, I have perused the record.

9. As per the final report, Patwari – Ishak and Tehsildar – Arvind Sharma are the public servants and in discharge of their official duty, they have committed the alleged conspiracy with petitioner – Bhupendra Singh and mutated his name in the revenue records. Thus, there is direct nexus between the alleged act with their official duty, therefore, certainly they are entitled for protection u/s. 197 of the Cr.P.C. Tehsildar – Arvind Sharma has exercised the judicial powers under M.P. Land Revenue Code and mutated the name of Bhupendra Singh, therefore, also entitled to protection under Section 3(1) of Judges (Protection) Act, 1985 as held by this Court in the case of Balram (Supra) and Omprakash (Supra). Learned Sessions Judge in the impugned order has held that while Collector, Rajgarh has directed to lodge the FIR against these petitioners, it means that the Collector being a representative of the State Government, has granted the sanction for prosecution u/s. 197 of the Cr.P.C.

10. From the above facts, it is clear that Sessions Judge is also of the view that sanction is necessary for prosecution of Patwari – Ishak and Tehsildar – Arvind Sharma. Only because the Collector has directed to lodge the report against them, it cannot be deemed that he has granted the sanction for prosecution. Even otherwise, the Collector is not empowered to grant the sanction for prosecution for Tehsildar – Arvind Sharma and as such, sanction can only be granted by the State Government being appointing authority. So far as sanction for prosecution of Patwari – Ishak is concerned, the appoint authority of



Patwari is Sub Divisional Officer (Revenue). Thus, the S.D.O. (Revenue) is empowered to grant sanction for prosecution, but no such order has been passed by the S.D.O. (Revenue). Thus, the impugned order passed by learned Sessions Judge that the Collector has granted deemed sanction for prosecution of petitioners – Ishak and Arvind Sharma is erroneous.

**11.** Now, I have to consider the question of double jeopardy. The S.D.O. (Revenue), Khilchipur filed the complaint against the petitioner – Bhupendra Singh for the offence u/s. 193 of the I.P.C. for giving false evidence in judicial proceedings and another complaint u/s. 198 of the I.P.C. for fraudulent use of the Will of Anar Singh. These complaints were filed before the Judicial Magistrate, First Class, Jirapur and registered as Cr. Case No. 68/2001 and 69/2001 and in both the complaints, vide judgment dated 16.12.2009, petitioner – Bhupendra Singh was acquitted from the charges. In the present case, the allegation against the petitioner – Bhupendra Singh is that he had committed offence of cheating and forgery with conspiracy of petitioners – Ishak and Arvind Sharma and on oath, he deposed that Bhanwari Bai and Bhagwati Bai have died though they are alive and petitioner – Bhupendra Singh has filed a Will of Anar Singh to demonstrate that Anar Singh has bequeathed the land in his favour. Though Anar Singh was not recorded as Bhoomi Swami of the land which is shown in the Will. Thus, petitioner – Bhupendra Singh has fraudulently used the Will. From these facts, it is clear that the subject matter of earlier prosecution and present prosecution is quite different. The earlier offences were related to false evidence and offences against the public justice. Whereas, in the present case, the offences are against the property. Section 300 of the Cr.P.C. provides the



condition – when a person once acquitted or convicted not to be tried for the same offence. The present case comes within Sub Section (4) of Section 300 of the Cr.P.C., which reads as under :-

**“(4) A person acquitted or convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction, be subsequently charged with, and tried for, any other offence constituted by the same acts which he may have committed if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.”**

12. Thus, the earlier offences i.e. offences u/s. 193 and 198 of the I.P.C. are triable by Magistrate, First Class, whereas offences u/s. 420, 468 and 120-B of I.P.C. are triable by Court of Sessions. Thus, the Magistrate is not competent to try the offence u/s. 420, 468, 120-B of I.P.C.

13. With the aforesaid, I am of the view that the subject matter of earlier complaints filed by the S.D.O. (Revenue), Khilchipur and the subject matter of present Sessions Trial are quite different, therefore, the objection raised by the petitioner – Bhupendra Singh in regard to double jeopardy has no merit.

14. With the aforesaid, the impugned order passed by learned Sessions Judge so far as it relates to the petitioners – Ishak and Arvind Sharma is hereby set aside. However, it is made clear that after obtaining proper sanction, these petitioners can be prosecuted.

15. So far as petitioner – Bhupendra Singh is concerned, his objections have rightly been rejected by the learned Sessions Judge.



There is no question of double jeopardy. Therefore, the prosecution against the petitioner – Bhupendra Singh is maintainable.

16. In view of the above discussion, these petitions stand disposed of. Let a copy of this order be sent to the learned Sessions Judge for information and compliance.

17. Let a copy of this order be retained in the file of connected case.

**( JARAT KUMAR JAIN )**  
**JUDGE.**

Alok/