

THE HIGH COURT OF MADHYA PRADESH

M.Cr.C.No.47310/2018
(Mahendra vs. The State of Madhya Pradesh)

Indore, Dated:30/11/2018

Shri Vinay Saraf, learned senior counsel with shri Bharat Yadav, learned counsel for the applicant.

Shri R.K. Sharma , learned Public Prosecutor for the respondent/State.

ORDER

This is a petition under Section 482 of Code of Criminal Procedure, 1973 (for short 'The Code'), praying for quashment of First Information Report bearing crime No.456/2017, registered at Police Station-Badnawar, District-Dhar against the applicant for offence punishable under Sections 420, 406, 409 and 120B of IPC and the consequential criminal proceedings pending before the First Additional Session Judge, Dhar in S.T. No.40/2017.

(2) The relevant facts for disposal of the case in nutshell are that the applicant is working Sub Engineer, Gram Panchayat, Dharsikhedi, Janpad Panchayat, Badnawar, District Dhar. On 04/06/2017 a news article was published in daily morning news paper 'Dainik Bhaskar' disclosing the irregularities of Gram Panchayat Dharsikhedi, Badnawar, District Dhar, in respect of transferring the incentives to the beneficiaries who have constructed the toilets in the village under 'Swach Bharat Mission'. On 05/06/2017 the Executive Officer of Jilla Panchayat Dhar, District Dhar constituted a committee to verify the irregularities pointed out in the news article.

(3) The aforesaid committee, after completion of enquiry submitted its final report in which it was found that the present

applicant verified the constructions of 1 toilet (toilet of beneficiaries in Swach Bharat Mission) and one Ashok Nayma (Rojgar Sahayak, Janpad Panchayat Badnawar, District-Dhar) updated the bank account numbers of the beneficiaries for the purpose of transferring the incentive to the beneficiaries. It is further alleged that the actual beneficiaries who constructed the toilets at their place under 'Swach Bharat Mission' did not get the beneficiaries incentive, instead of them the beneficiaries incentive was transferred to some other person bank account. It is also alleged that the applicant along with co-accused Ashok Nayama committed irregularities for construction of toilet and transferring the beneficiaries incentive under the scheme of 'Swach Bharat Mission' and thereby misusing their power, they misappropriated a sum of Rs.14,16,000/-.

(4). On the basis of fact finding report of the committee F.I.R was lodged against the applicant and other co-accused persons and on the basis of aforesaid report a case under Section 420, 406, 409 and 120B of IPC was registered against them. On completion of investigation, charge-sheet has been filed on 11/12/2017 before the Court of Judicial Magistrate First Class who committed the case to the Sessions Court, now it is pending before the 1st Additional Sessions Judge Dhar in S.T. No.40/2017.

(5). Learned counsel for the applicant has submitted that the applicant was working as Sub Engineer and duty of the applicant was to verify the construction of the toilets and uploading the photograph of the same through the digital application on the portal. The applicant verified the construction of 1 toilet and there is no allegation that the verification report

was found to be false or fabricated. As per the prosecution case itself the persons who constructed the toilets at their place under 'Swach Bharat Mission' get the incentive, instead of them the beneficiaries incentive was transferred to some other person bank account. Uploading and feeding the bank account numbers of the beneficiaries was not the task of the applicant and he has not done the same. The same has been done by Rojgar Sahayak Ashok Nayama. There is nothing on record to show that the applicant has been gained out of the said transaction. Thus, he has not committed any offences of cheating or misappropriation of government money. Hence, he prayed that the First Information Report bearing crime No.0456/2017, registered at Police Station-Badnawar, District-Dhar against the applicant for offence punishable under Sections 420, 406, 409 and 120B of IPC and the consequential criminal proceedings pending before the First Additional Session Judge, Dhar in S.T. No.40/2017 may be quashed.

(6) Learned Public Prosecutor for the respondent /State has submitted that on the basis of the enquiry conducted by the Assistant Project Officer, District Panchayat Dhar, the applicant was found involved in the present crime, therefore court below has not committed any error of law in taking cognizance against the present applicant as there exists prima facie case against him, hence, no interference is required.

(7) I have considered rival contentions placed on behalf of the parties and have perused the charge-sheet placed on record alongwith the present application.

(8) In order to make out a prima facie case for prosecuting a person, the complaint must show that the accused had dishonest

intention of cheating.

(9) The Supreme Court in the case of S.N. Palanitkar Vs. State of Bihar reported in AIR 2001 SC 2960 has held as under:

"The ingredients of an offence of cheating are (i) there should be fraudulent or dishonest inducement of a person by deceiving him (ii)(a) the person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property ; or (b) the person so deceived should be intentionally induced to do so or omit to do anything which he would not do omit if he were not so deceived; and (iii) in cases covered by (ii)(b), the act of omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property.

It is further held that In order to constitute an offence of cheating, the intention to deceive should be in existence at the time when the inducement was made. It is necessary to show that a person had fraudulent or dishonest intention at the time of making the promise, to say that he committed an act of cheating. A mere failure to keep the promise subsequently cannot be presumed as an act leading to cheating."

(10) Thus, if the FIR is considered in the light of the law laid down by the Supreme Court in the above mentioned case along with Section 420 of I.P.C., then it is clear that in the FIR there is no allegation made against the applicant that he updated the details of the beneficiaries and their bank account numbers. As per contents of FIR the aforesaid work has been done by Rojgar Sahayak Ashok Nayama, who has updated the bank account of the beneficiaries and transferred the beneficiaries incentives on the bank account of persons who have not constructed the toilets under 'Swach Bharat Mission'. As per the enquiry report given by the Assistant Project Officer, District Panchayat Dhar, the

applicant verified the construction of 1 toilet and there is nothing on the record that the aforesaid verification report was found to be false or fabricated. List of of the beneficiaries disclosed that the applicant verified the person who constructed the toilet at his places, however, the Rojgar Sahayak Ashok Nayama wrongly uploaded the bank account and transferred the amount in the account of Gangabai Ramchandra who is the mother of actual beneficiaries Madan Ramchandra, latter on he received the amount from his mother..

(11) The enquiry report and the statements of the witnesses recorded under Section 161 of Cr.P.C. did not insinuate the applicant as beneficiary of the transaction in any manner, nor indicate any participation of the applicant alongwith the other co-accused person Ashok Nayama. Moreover, the inquiry was conducted with respect to the alleged misappropriation in which the applicant had been accused of verification of the 1 beneficiary. Apart from it no other allegation of being a beneficiary of the transaction has been recorded in the report. As per the conclusion of inquiry report the applicant was negligent in his duty but the same is not enough to fasten criminal liability against the applicant. If every act of negligence, if permitted to be viewed as committed with a criminal intention, then the same would lead to travesty of justice which is to be discouraged by the courts. In these circumstances, participation of the criminal trial by the applicant will tantamount to punishment.

(12) The Hon'ble Apex Court in the case of *State of Haryana & Ors. Vs. Ch. Bhajan Lal, AIR 1992 SC Page 604*, has held that if even after accepting all the allegations and the material with the charge-sheet, necessary ingredients to constitute alleged

offences (s) are not available, then it will be in the interest of justice to quash the proceedings/charge-sheet else it will result in lead to unnecessary harassment to the accused.

(13). In view of the aforesaid, it is an appropriate case for quashment of FIR in crime 0456/2017, registered at Police Station-Badnawar, District-Dhar against the applicant for offence punishable under Sections 420, 406, 409 and 120B of IPC and the consequential criminal proceedings pending before the First Additional Session Judge, Dhar in S.T. No.40/2017 qua applicant-Mahendra.

(14). Accordingly, this petition is hereby allowed and First Information Report bearing Crime No.0456/2017 and all the consequent proceedings having arisen therefrom against the applicant- Mahendra is hereby quashed.

Certified copy as per rules.

**(S. K. AWASTHI)
JUDGE**

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