

(2010) 11 MP CK 0036

Madhya Pradesh High Court

Case No: MCrC No. 7892 of 2009

Rajesh Dubey

APPELLANT

Vs

State of M.P.

RESPONDENT

**Date of Decision:** Nov. 29, 2010

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 156(3), 482
- Penal Code, 1860 (IPC) - Section 186, 294, 353, 506
- Prevention of Corruption Act, 1988 - Section 12, 13, 7

**Citation:** (2011) CriLJ 1325 : (2011) ILR (MP) 1097

**Hon'ble Judges:** Vimla Jain, J; Rakesh Chandra Mishra, J

**Bench:** Division Bench

**Final Decision:** Allowed

**Judgement**

@JUDGMENTTAG-ORDER

1. These petitions, u/s 482 of the Code of Criminal Procedure (for short "the Code"), are interlinked as preferred for the same relief viz. quashing of the criminal proceedings pending before the Court of Special Judge (under the Prevention of Corruption Act, 1988 [for brevity "the Act"]) at Seoni as Special Case No. 2/2009. In that case, cognizance of the offence punishable u/s 7 of the Act has been taken against Petitioners namely Rajesh Dubey and Govind Prasad Shrivastava upon the charge-sheet submitted by Inspector-SPE (Lokayukta), Jabalpur on 13/7/2009, after due investigation into the complaint made by A.K. Tripathi, the Respondent No. 2, in both the M CrCs and forwarded by Special Judge, u/s 156(3) of the Code, to Superintendent of Police, SPE (Lokayukta), Jabalpur for investigation.

2. For the sake of convenience, the Petitioners shall be referred to by their respective names whereas Respondent No. 2 namely Ashwini Kumar Tripathi shall be referred to as the complainant.

3. At the relevant point of time, Rajesh Dubey, the Petitioner in M CrC No. 7892/2009 was posted as Tahsildar at Lakhnadaun whereas Govind Prasad Shrivastava, the Petitioner in M CrC No. 11903/2009 was working as his Reader. The complainant, though a bona fide resident of Uttar Pradesh, had been practicing as an Advocate at Lakhnadaun after his removal from the post of Civil Judge Class-II in the Lower Judicial Service of Madhya Pradesh.

4. The complaint in respect of the offences punishable under Sections 7, 12 and 13 of the Act was presented before the Special Judge on 25.09.2008. It contained the following allegations

High Court of Madhya Pradesh had invited applications from practicing lawyers for direct recruitment to the Higher Judicial Services of M.P. and last date for receipt of applications was fixed as 12.09.2008. Being interested in applying for the same, the complainant had moved an application for issuance of a domicile certificate in the office of Tahsildar at Lakhnadaun nearly 7 days prior to the incident in question. Although, as per the standing guidelines issued by the Collector of the District, the certificate ought to have been issued on the date of filing of the application yet, Govind, the Reader, continued to avoid acceptance of the application on the pretext that the Tahsildar was busy in election work. Ultimately, it was on 10.09.2008 that Govind received the application and asked the complainant to come on the following day at 4 p.m. However, when the complainant reached the office to collect the certificate, Govind returned the application saying that it was not possible to issue the same for two reasons, -firstly, he was not born in the State of M.P. and secondly, the application was not otherwise complete. The complainant still asserted that the application was complete in all respects and the requisite fee of Rs. 20/- had already been deposited by him but at this juncture, Govind reminded him that like any other applicant desirous of getting the domicile certificate issued on the same day, the complainant was also required to pay a sum of Rs. 500/- as illegal gratification. In turn, he refused to pay any amount as bribe. This led to an altercation that attracted attention of persons present in and around the office. Rajesh also arrived there but, on being apprised of the root cause of quarrel, insisted for fulfillment of the requirement as pointed out by Govind. Gathering support and activation from Rajesh, his controlling officer; Govind turned violent and while hurling abuses, not only tore the application and the documents annexed thereto but also threw the same at the complainant's face saying that "see that the certificate has been prepared

5. Thus, according to the complainant, the domicile certificate was not issued solely because the demand for a sum of Rs. 500/- as an illegal gratification was not satisfied.

6. Shri Surendra Singh, learned Senior Counsel appearing on behalf of Petitioner Rajesh Dubey has strenuously contended that his prosecution is an abuse of the process of the Court in view of the following facts

(i) The complainant, who has not only served as Civil Judge for a considerable period of 9 years but has also practiced at the Bar, was expected to know that (a) under the relevant rules, he was not entitled to get Domicile Certificate and (b) in the wake of his removal from the post of Civil Judge, he was disqualified for appointment to the Higher Judicial Services.

(ii) There was not even an iota of evidence to indicate that Rajesh had ever demanded any illegal gratification from the complainant for the purpose.

(iii) The complaint was made with a view to wreaking vengeance by the complainant, who stands prosecuted for the offences punishable under Sections 186, 353, 294 and 506 of the IPC upon the FIR lodged by Govind at P.S. Lakhnadaun on 11.09.2008 at 5.30 p.m.

(iv) Allegations levelled against the Petitioners are patently absurd as it is inconceivable that any demand for bribe would be made at a public place in presence of the crowd.

(v) A considerable delay of 14 days was sufficient to conclusively establish falsity of the complaint particularly in view of the fact that being well versed with law; the complainant was expected to understand significance of a prompt complaint.

7. Adopting the same line of arguments, Shri G.S. Alhuwalia, Advocate appearing for Govind, has highlighted the misconduct for which the services of the complainant as Civil Judge were terminated. According to him, apparently, the complaint was made as a counterblast to the registration of criminal case against the complainant upon a promptly lodged FIR reflecting that

On 11.09.2008 at about 4:40 p.m., in the wake of the objection that his application was not entertainable as he was not a bona fide resident of State of Madhya Pradesh by birth, the complainant, being infuriated, caught hold of collar of Govind's shirt and as his fellow officials came forward to intervene, tore the documents lying on his table and gave a fist blow resulting into injuries on lips and neck.

He is further of the view that absence of any plausible explanation as to why the complainant had not reported the matter directly to the S.P. (Lokayukta) for a considerable period of time, was sufficient to doubt veracity of the complaint. Our attention has also been invited to the fact that Investigating Officer had not been able to seize any receipt evidencing deposit of Rs. 20/- as the requisite fee or carbon copy thereof.

8. In response, learned Special Public Prosecutor has submitted that the defences raised by the Petitioners would require inquiry into the facts and can not be considered at the preliminary stage for the purpose of quashing the proceedings initiated on the basis of the complaint. Placing reliance on the decision of the Apex Court in [State of Orissa and Another Vs. Saroj Kumar Sahoo](#), , he has further

contended that the allegations of mala fides against the Petitioners are inconsequential and cannot, by themselves, be the basis to stifle a legitimate prosecution.

9. At the outset, it may be observed that particulars of misconduct forming foundation of the termination of complainant's services have hardly any relevance to the issues involved in these petitions. Moreover, we do not propose to go into the question as to whether on the date of the alleged occurrence, the complainant was entitled to grant of domicile certificate.

10. A brief perusal of the chronology of events leading to lodging of complaint, allegations made therein and counter allegations as contained in the FIR lodged by Govind, would reveal that on 11.09.2008 around 4.30 p.m., a quarrel had ensued in the office of Tahsildar at Lakhnadaun upon Govind's disinclination to process the application of the complainant for issuance of domicile certificate and in the course of the quarrel, certain documents were torn and pieces thereof were seized in criminal case registered as Crime No. 202/2008 against the complainant in respect of the offences punishable u/s 186, 353, 294 and 506 of the IPC. However, as indicated by the Deputy Collector, Seoni in the letter-dated 23.01.2009 addressed to Officer-In-Charge of Finance Section (that has been annexed to the charge sheet submitted against the Petitioners), no complaint as to the alleged misconduct of Govind and connivance of Rajesh was made to the Collector of the District. This apart, the complaint is completely silent on the point as to whether the complainant had laid the information about the occurrence before the SHO of P.S. Lakhnadaun or any officer of SPE (Lokayutka) at any earlier point of time.

11. The complainant, being a former Judge and a practicing Advocate, was certainly expected to be well versed with the legal position, as explained in [Khedu Mohton and Others Vs. State of Bihar](#), that delay in filing the complaint throws a great deal of doubt on the prosecution story. A delay would be insignificant only when there is no motive for false implication or where the complainant has been able to offer a plausible explanation for it. However, mere statement that police did not take action can hardly be taken to have explained the delay in making complaint (See. [Dilawar Singh Vs. State of Delhi](#),

12. Adverting to the facts of the case, it can easily be concluded that the complaint was made with mala fide motive as a counter blast to registration of the criminal case against the complainant, after a considerable delay of 14 days. Allegations made in the complaint suggesting that Govind was impliedly encouraged by Rajesh to openly demand bribe in a public office were so patently absurd and inherently improbable that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused persons. As pointed out already, the complainant had not preferred to inform legally competent authority viz. Special Police Establishment (Lokayukta) about the misdemeanour of the Petitioners as public servants. It is well settled that -

the criminal law is not to be used as an instrument of wreaking private vengeance by an aggrieved party against the person who, according to that party, had caused injury to it. Barring a few exceptions, in criminal matters the party who is treated as the aggrieved party is the State which is the custodian of the social interests of the community at large and so it is for the State to take all the steps necessary for bringing the person who has acted against the social interests of the community to book

( [Thakur Ram Vs. The State of Bihar,](#)

13. In a recent decision rendered in [M.N. Ojha and Others Vs. Alok Kumar Srivastav and Another,](#) while quashing the criminal proceedings against Bank Manager and Officers initiated upon a complaint made by one of the guarantors against whom action had already been taken by the Bank Officers for cheating and misappropriation of hypothecated goods in the wake of default in re-payment of Bank loan by borrower, the Supreme Court has reiterated the following guidelines

... the High Court cannot refuse to exercise its jurisdiction if the interest of justice so required where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no fair-minded and informed observer can ever reach a just and proper conclusion as to the existence of sufficient grounds for proceeding. In such cases refusal to exercise the jurisdiction may equally result in injustice more particularly in cases where the complainant sets the criminal law in motion with a view to exert pressure and harass the persons arrayed as accused in the complaint. It is well settled and needs no restatement that the saving of inherent power of the High Court in criminal-matters is intended to achieve a salutary public purpose "which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. If such power is not conceded, it may even lead to injustice

14. In Saroj Kumar Sahoo's case (supra) also, while explaining nature, scope and purpose of Section 482 of the Code, the Apex Court has only sounded a note of caution that inherent power is to be exercised sparingly, ex debito justitiae to do real and substantial justice and that too in the rarest of rare cases.

15. Applying these principles to the factual scenario highlighted above, we are of the considered opinion that the present case is one of the rarest of rare cases that requires our interference to secure the ends of justice as the continuance of prosecution would amount to abuse of the process of the Court. Needless to say that case of the Petitioners falls within category Nos. (5) and (7) of the cases as enumerated in [State of Haryana and others Vs. Ch. Bhajan Lal and others,](#)

16. In the result, both the petitions stand allowed. The criminal proceedings pending as Special Case No. 2/2009 before the Court of Special Judge (under the Act) at Seoni are hereby quashed.

17. A copy of this order be retained in the connected MCrC.