
Dr. Dinesh Kaushal Vs State of M.P.**Miscellaneous Cri. Case No. 5233 of 2012**

Court: Madhya Pradesh High Court (Gwalior Bench)**Date of Decision:** Aug. 29, 2012**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) â€” Section 155(2), 156(1), 482#Penal Code, 1860 (IPC) â€” Section 34, 406, 409, 420

Citation: (2012) 5 MPHT 347**Hon'ble Judges:** Anil Sharma, J**Bench:** Single Bench**Advocate:** Sanjay Singh and Mr. Rajiv Budholiya, for the Appellant; Nutan Saxena, Public Prosecutor for the Respondent/State, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Anil Sharma, J.

Heard finally with the consent of learned Counsel for the parties at motion stage itself. Petitioner has filed this petition u/s

482 of Cr.P.C. for quashing the FIR registered against the petitioner at Crime No. 75/11 for commission of offences punishable under Sections

406, 409 and 420/34 of IPC and the charge sheet pending before learned Judicial Magistrate First Class, Vidisha.

2. Learned Counsel for the petitioner has submitted that the report has been lodged against the petitioner, B.B. Jain, Avinash Gautam and Kishan

Singh in respect of a generator, which was supplied by the Civil Hospital, Vidisha of which the petitioner was Chief Medical and Health Officer at

the relevant time.

3. Learned Counsel for the petitioner has drawn attention towards the letter dated 9-4-2001 written by the Director, Health Services, Bhopal to

CMHO, Vidisha for sending 7.5 KVA generator to Bhopal with an assurance to supply another generator to him in future. Learned Counsel for

the petitioner further drawn attention towards the letter dated 20-7-2010 written for registration of FIR by Mr. S.R. Mohanti to the Superintendent

of Police, Vidisha in which, it has been stated that during investigation, it has been found that Kishan Singh has handed over the generator from his

vehicle to storekeeper of the Joint Director, Health Services, Bhopal - Neeraj Shukla and Neeraj Shukla has sent the generator at some other

place, therefore, the request has been made to register the FIR against Neeraj Shukla, Storekeeper, Joint Director, Health Service, Bhopal - B.B.

Jain, the then vehicle-in-charge of Civil Hospital, Vidisha and driver Kishan Singh, It is clear from the letter that the generator was sent to Bhopal

on the request of Director, Health vide letter dated 9-4-2001 and generator has been received at Bhopal, which is also confirmed from the receipt

of loading and unloading filed along with challan. The CMHO, Vidisha has also written a letter dated 9-11-2009 to the Town Inspector, Vidisha

for registration of case against Neeraj Shukla, B.B. Jain and Kishan Singh.

4. Learned Counsel for the petitioner has submitted that the role of petitioner is only for sending the generator to the Director, Health Services,

Bhopal in compliance of his letter dated 9-4-2001 and there is ample evidence that the generator was received by the storekeeper of Joint

Director, Health Services, Bhopal, therefore, the petitioner who has only complied the order of higher authority and who is not indulged in

committing any breach of trust as generator was handed over to the storekeeper of Joint Director, Health Services, Bhopal, no case is made out

against the petitioner.

5. In order to strengthen his contention, learned Counsel for the petitioner has drawn attention of this Court towards the judgment of Apex Court in

the matter of State of Haryana and others Vs. Ch. Bhajan Lal and others, , in which the Apex Court has laid down seven conditions for quashing

the criminal case, which read as under:--

(1) Where the allegations made in the First Information Report or the complaint, even if, they are taken at there face value and accepted in there

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 FIR do not disclose a cognizable offence,

justifying an investigation by police officers u/s 156(1) of the Code except under an order of a Magistrate within the purview of Section 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 u/s 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 in 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 malafide and/or where the proceeding is maliciously instituted with an ulterior motive

for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

6. Case of petitioner falls under the category Nos. 1 and 2 as there is no evidence connecting the petitioner to the said offence, therefore,

continuation of trial against the petitioner is not sustainable and it amount to miscarriage of justice. On going through the overall facts and

circumstances of the case, the petition filed by the petitioner is hereby allowed. The FIR registered at Crime No. 75/11 at Police Station, Kotwali,

District Vidisha for the offence under Sections 406, 409 and 420/34 of IPC and the Criminal Case No. 194/12 pending in the Court of JMFC,

Vidisha so far as it relates to petitioner are hereby quashed. Learned Trial Court is directed to proceed against the remaining accused persons in

accordance with law.

Copy of this order be sent to the Trial Court for information and necessary compliance.