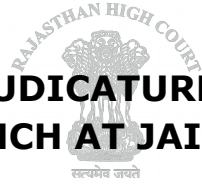




**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Criminal Miscellaneous (Petition) No. 4934/2020

Chetram S/o Arjunlal, R/o Antapada Tehsil Laxmangarh Distt.
Alwar (Raj.)

----Petitioner

Versus

State Of Rajasthan, Through P.P.

----Respondent

For Petitioner(s) : Mr. Manish Gupta
For Respondent(s) : Mr. Atul Sharma, PP

HON'BLE MR. JUSTICE SUDESH BANSAL

Judgment

RESERVED ON
PRONOUNCED ON
BY THE COURT

February 19th 2024
February, 28th, 2024

1. By way of instant criminal misc. petition under Section 482 Cr.PC, petitioner-accused has prayed to quash the order dated 25.04.2019 passed by the Special Judge, Prevention of Corruption Cases, Alwar, dismissing an application filed by Anti Corruption Bureau (hereinafter for short "ACB") under Section 169 Cr.PC, in connection with FIR No.248/2016 registered at Police Station Anti Corruption Bureau, Jaipur for offences under Sections 7, 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 (hereinafter for short "the PC Act") & Section 120-B IPC, and has prayed to grant the application, allowing to discharge/release the petitioner-accused in the present criminal case, on the ground of refusal of prosecution sanction.



2. Learned counsel for petitioner-Mr. Manish Gupta, strenuously contended that as per Section 19 of the PC Act, previous sanction for prosecution of a public servant, for the charges of corruption, is mandatory. Petitioner is indisputably a public servant and the application filed by ACB for grant of prosecution sanction against the petitioner has been rejected by a competent Authority. Learned counsel pointed out that the Managing Director, Alwar Zila Dugdh Utpadak Sahkari Sangh Limited (hereinafter for short "the Alwar Dairy"), vide letter dated 19.11.2016 and again vide letter dated 08.12.2017, has forwarded a decision of the Board of Directors, declining to grant prosecution sanction against the petitioner, therefore, his contention is that the petitioner deserves to be discharged from the charges of corruption and cannot be prosecuted in connection with the aforesaid FIR.

3. Learned counsel for petitioner has vehemently argued that an application under Section 169 Cr.PC was moved by the ACB before the Special Judge, Prevention of Corruption Cases, to release the petitioner, due to refusal to grant prosecution sanction by the dairy federation, Alwar, whereupon, the Special Judge had no option except to allow the application. Learned counsel submits that the Special Judge erred in dismissing the application under Section 169 Cr.PC and issuing directions suo moto, to place the application for reconsideration of the refusal to grant prosecution sanction, before the higher Authority/Reviewing Authority afresh, so also to initiate further investigation in the matter.

4. Learned counsel for petitioner vociferously contended that such exercise of jurisdiction by the Special Judge, is wholly uncalled for as much as without jurisdiction, hence the impugned



order is absolutely against the settled mandate of law, as such needs to be quashed by the High Court in exercise of its jurisdiction under Section 482 Cr.PC and simultaneously, the application filed by the ACB under Section 169 Cr.PC, deserves to be allowed.

To buttress his contentions, learned counsel has placed reliance on following judgments:-

- (i) **Dharam Pal Vs. State of Haryana [(2014) 3 SCC 306];**
- (ii) **Reeta Nag Vs. State of West Bengal [(2009) 9 SCC 129];**
- (iii) **Amrutbhai Shambhubhai Vs. Sumanbahi Patel [(2017) 4 SCC 177];**
- (iv) **Krishna Pati Tripathi Vs. State of M.P.; Writ Petition No.29159/2022 decided on 21.04.2023;** and
- (v) **Prahlad Sharma Vs. State of Rajasthan: SB Criminal Revision No.146/2016 decided on 06.12.2018.**

5. Learned Public Prosecutor appearing on behalf of State so also for ACB, prayed to pass just and proper order as this Court deems necessary to prevent abuse of process of law and to secure ends of justice. However, learned Public Prosecutor does not dispute that the impugned order was passed, dismissing the application filed by the ACB under Section 169 CrPC, but the ACB has not come forward to challenge the impugned order before the High Court, in order to pursue its application.

6. Heard. Considered.

7. Briefly stated facts of the present case as culled out from the record are that:



(i) One Tej Singh S/o Rajaram Yadav made a written report before the ACB, Alwar on 23.08.2016 that he was the Secretary of milk collection center in Harijan Basti, but same has been closed by the concerned officers of the Alwar Dairy, therefore, he is desirous to open a new milk collection center in Village Luhadera. On making inquiry in this regard, he came to know that permission to open a new milk center is granted by Sh. Bannaram Meena, Chairman of the Alwar Dairy, and he accepts application only of those persons, who pay Rs.50,000/- additionally. He stated in the report that Sh. Bannaram Meena himself does not take this amount directly, but his Personal Assistant & LDC, Sh. Chetram (petitioner herein) receives such amount from the party. He alleged that Chetram asked him to pay the amount of gratification of Rs.50,000/-, for granting permission to open a new milk collection center, but since he does not want to pay the bribe to Sh. Bannaram Meena, Chairman and Sh. Chetram (LDC-cum-PA), hence a legal action be taken against them.

(ii) After receiving of such written complaint, a team of ACB initially verified the allegations of making a demand of gratification by Chetram from the Tej Singh, for the purpose of granting him permission to open a milk collection center. In the verification, it was found that during telephonic talks between both, the amount of gratification was settled to the tune of Rs.45,000/- instead of Rs.50,000/-. The complainant Tej Singh, as per instructions of the ACB team, proceeded to pay amount of Rs.45,000/- to Chetram and their inter se mutual talks on phone were recorded. As per plan, Tej Singh went to office on 31.08.2016 to make payment of amount of gratification of Rs.45,000/- and met to Chetram in the



office-chamber of Chairman, Sh. Bannaram Meena. There, on the instructions of Chetram, one another person Dhanni Ram Yadav, asked Tej Singh to put the amount on the table of Chairman. He put the amount of Rs.45,000/- on the table, which was covered by Dhanni Ram with a small towel. Immediately thereafter, team of ACB put a raid and the amount of gratification was seized from the table and both persons namely Sh. Chetram and Sh. Dhanni Ram Yadav, were arrested on the spot. In such backdrop of facts, the FIR No.248/2016 came to be registered on 02.09.2016 at Police Station Anti Corruption Bureau, Jaipur for offences under Sections 7, 13(1)(d) and 13(2) of the PC Act & Section 120-B IPC.

(iii) It appears from record that after thorough investigation and on the basis of red handed trap, the ACB found the aforesaid offences proved against Sh. Chetram and Sh. Dhanni Ram Yadav. The role of Sh. Bannaram Meena, Chairman of Alwar Dairy, was noticed to be suspicious, however, investigation against him was postponed, but later on, charge sheet was filed by the ACB only against Dhanni Ram Yadav.

(iv) It appears that when after investigation, Chetram who happens to be posted as LDC-cum-PA of the Chairman was found involved in the present criminal case and offence against him was held established by ACB, but before filing of the charge-sheet against him, since he was a public servant, an application for seeking grant of prosecution sanction was moved by the ACB before the Dairy Federation, Alwar. The application moved by ACB was replied vide letter dated 19.11.2016 by the Managing Director, Dairy Federation, Alwar that the Board of Directors has declined to grant prosecution sanction against the Chetram. Again,



an application for reconsideration the refusal of prosecution sanction was moved by the ACB, but vide letter dated 08.12.2017 issued by the Managing Director, Alwar Dairy, it was informed that the Board of Directors have reviewed the issue and affirmed their previous decision to decline prosecution sanction against Chetram, thus the second application by the ACB to reconsider the issue was also turned down.

(v) It appears that after denial of the prosecution sanction by the Board of Directors, twice, to prosecute the Chetram in the present FIR, ACB moved an application under Section 169 Cr.PC dated 24.10.2018 before the Special Judge, Prevention of Corruption Cases, Alwar, to discharge/release the accused Chetram, and filed charge sheet only against the co-accused Dhanni Ram Yadav.

(vi) Learned Special Judge passed the order dated 25.04.2019, dismissing the application of ACB under Section 169 Cr.PC with two directions that:-

(A) to further investigate into the matter to inquire about the role of Bannaram Meena, Chairman of the Alwar Dairy in this matter, and;

(B) the application filed by ACB, to reconsider the issue of refusal of prosecution sanction against accused Chetram, be placed before the higher officials of Dairy Federation or State Government, for re-consideration as Reviewing Authority.

8. From perusal of the letter dated 19.11.2016, issued by the Managing Director, Alwar Dairy, it reveals that the matter of grant of prosecution sanction to prosecute petitioner Chetram on the



allegation of present FIR, was placed in the meeting of Board of Directors dated 16.11.2016 conducted under the president-ship & supervision of Sh. Bannaram Meena, the then Chairman of Alwar Dairy. The prosecution sanction was refused on two grounds; i) the amount of gratification was not recovered directly from the Chetram, & ii) Chetram was not authorized to grant permission for opening of a milk collection center.

9. Thereafter, when the ACB moved application for reconsideration the issue of refusal of prosecution sanction, again the matter was taken up in the meeting of Board of Directors dated 29.11.2017, conducted under the president-ship of same Chairman, Sh. Bannaram Meena. The same quorum of Board of Directors, decided the application of the ACB for reconsideration and affirmed their previous decision of refusal to grant prosecution sanction, then vide letter dated 08.12.2017, the ACB was informed about final refusal of prosecution sanction.

Therefore, in such backdrop of facts, the prosecution sanction against the petitioner was declined in the meeting although twice, but both meetings were held under the president-ship of Sh. Bannaram Meena, the then Chairman of the Alwar Dairy.

10. It is noteworthy that the main allegation of demanding bribe was made by the complainant-Tej Singh against Sh. Bannaram Meena, the then Chairman of Alwar Dairy, as indicated in his written report and it was specifically mentioned that Bannaram Meena did not take the bribe directly, but his PA-cum-LDC, Sh. Chetram takes the amount. During the investigation by the ACB, in their red handed trap, the amount of Rs.45,000/- was seized



from the chamber of Chairman, Sh. Bannaram Meena and both accused persons namely Chetram & Dhanni Ram Yadav were arrested from his chamber. The ACB postponed the investigation against Bannaram Meena, to find out his role in the present case, however, ACB nowhere disclosed the result of investigation against Sh. Bannaram Meena.

11. When the issue came up before the Special Judge, Prevention of Corruption Cases, Alwar, seeking to discharge/release the petitioner-Chetram because of refusal of the prosecution sanction, learned Special Judge observed that in fact, in the complaint made on 23.08.2016, two persons were named namely (i) Sh. Bannaram Meena, the then Chairman of Alwar Dairy, and (ii) Chetram, LDC-cum-PA of the Chairman, who demanded the money from complainant Tej Singh. The allegations were found true by the ACB, on prima facie verification, and thereafter, trap proceedings were initiated on 31.08.2016. In the red handed trap, amount of gratification, which was fixed @ Rs.45,000/-, was recovered on the spot from the office of Chairman, Sh. Bannaram Meena. As far as Sh. Bannaram Meena is concerned, though his role was too found suspicious, but investigation against him was postponed at that point of time, but in the investigation, the charges were found proved by the ACB against Sh. Chetram & one Sh. Dhanni Ram Yadav

12. Learned Special Judge noticed that later on, the ACB submitted charge-sheet only against Dhanni Ram Yadav. Investigation report about the role of Sh. Bannaram Meena, was not filed by ACB and in the meeting of Board of Directors under the president-ship of Sh. Bannaram Meena, sanction for



prosecution against the accused-Chetram was declined by the Alwar Dairy.

13. In addition to above, the learned Special Judge also noticed that the application of ACB to reconsider the issue of refusal of prosecution sanction against accused-Chetram, was taken up by the same quorum of Board of Directors, headed by Sh. Bannaram Meena, whereas the matter ought to have been placed before higher Authorities of Dairy Federation, or higher officials of the State Government, to reconsider the issue of refusal to grant prosecution sanction by the Committee headed by Sh. Bannaram Meena. On this point, learned Public Prosecutor appearing for ACB also expressed his concurrence, that the reviewing Authority may differ from previous refusal and may grant prosecution sanction.

14. Thus, after extending heed on the conspectus of events holistically, learned Special Judge not only dismissed the application filed by ACB under Section 169 Cr.PC, but also directed the ACB;

(A) to further investigate into the matter to inquire about the role of Bannaram Meena, Chairman of the Alwar Dairy in this matter, and;

(B) the application filed by ACB, to reconsider the issue of refusal of prosecution sanction against accused-Chetram, be placed before the higher officials of the Dairy Federation or State Government, for re-consideration as reviewing Authority.

15. The issue before this Court for consideration, is whether the Special Judge, Prevention of Corruption Cases, Alwar acted well



within its jurisdiction, to issue directions to the ACB as indicated above, while dismissing the application filed by the ACB under Section 169 Cr.PC & whether the impugned order warrants interference by the High Court in exercise of inherent powers under Section 482 Cr.PC?

16. In the Code of Criminal Procedure, Section 2(h) defines term "investigation". According to the definition, "investigation" includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate), who is authorized by a Magistrate in this behalf. Section 156 of the Code, empowers the Police Officer to investigate any cognizable case and as per Sub-section (3) of Section 156, any Magistrate, empowered under Section 190 Cr.PC may also pass an order for investigation by the Police Officer. Section 173 of the Code, talks about the procedure, on submission of report by the Police Officer after completion of investigation. Sub-section (8) of Section 173 postulates powers for further investigation in respect of offence after submission of final report under Sub-section (2) of Section 173. It is apposite to extract Section 173(8) ad verbatim:-

"(8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2)."

With reference to the afore-referred statutory provisions of law, it cannot be said that the Magistrate (in the present case,



Special Judge, Prevention of Corruption Cases) does not have powers and is not authorized to issue directions for further investigation, rather it can safely be held and observed that in the scheme of Code, the Magistrate has ample power and jurisdiction to direct for further investigation, whenever the Court comes to the conclusion that investigation by the Investigation Agency is either lopsided or suffer from lackadaisical, and in order to reveal the truth and to unearth the hidden facts, further investigation is deemed necessary. Term "further investigation" may not be misconstrued de-novo/fresh investigation or re-investigation, but further Investigation means additional, more and supplemental investigation in furtherance to the previous investigation already done. The underlying object behind to direct for further investigation is to arrive at the truth, to render real, effective and substantial justice. The legal proposition on further investigation, within ambit and scope of statutory provisions of the Code, indicated hereinabove, is well settled that the investigation agency may proceed for further investigation suo moto or in certain condition, with the leave of the concerned Magistrate and the Magistrate has also jurisdiction to issue direction to the investigation agency for further investigation, whenever deemed necessary to do real justice in the matter. The powers of the Magistrate are not circumscribed, yet must be exercised within bounds of law.

17. The legal issue is no more res integra and has been set at rest by the Hon'ble Supreme Court in a recent decision, delivered on 28.04.2023 in case of **State through Central Bureau of Investigation Vs. Hemendhra Reddy [(2023) SCC Online SC**





515], wherein the Hon'ble Supreme Court after sailing through its various previous judgments, finally held as under:-

"49. Wherever a final report forwarded by the Investigating Officer to a Magistrate under Section 173(2)(i) of the CrPC is placed before him, several situations may arise. The report may conclude that an offence appears to have been committed by a particular person and persons, and in such a case the Magistrate may either:

(1) accept the report and take cognizance of offence and issue process,

(2) may disagree with the report and drop the proceeding or may take cognizance on the basis of report/material submitted by the investigation officer,

(3) may direct further investigation Under Section 156(3) and require police to make a report as per Section 173(8) of the Code of Criminal Procedure.

(4) may treat the protest complaint as a complaint, and proceed Under Sections 200 and 202 of the Code of Criminal Procedure."

(Emphasis Supplied)

The Apex Court in the aforesaid judgment, also concluded the powers of the Magistrate to issue directions for further investigation in following term:-

"63. Thus, this Court, in conclusion, observed that, "when Section 156(3) states that a Magistrate empowered under Section 190 may order "such an investigation", such Magistrate may also order further investigation under Section 173(8), regard being had to the definition of "investigation" contained in Section 2(h)."

64. Thus, in view of the law laid down by this Court in the various decisions cited hereinabove, it is well settled that sub section (8) of Section 173 of the CrPC permits further investigation, and even dehors any direction from the court, it is open to the police to conduct proper investigation, even after the court takes cognizance of any offence on the strength of a police report earlier submitted."

(Emphasis Supplied)

18. Apart from referring the judgment delivered in case of **Hemendhra Reddy** (*Supra*), it would not be out of place to refer the previous judgment of the Apex Court in case of **Hasanbhai**



Valibhai Qureshi Vs. State of Gujarat [(2004) 5 SCC 347],

wherein the underlying object behind to proceed for further investigation was discussed and it was held that the prime consideration for further investigation is to arrive at the truth and do real and substantial justice. It was held that mere fact that there may be further delay in concluding the trial should not stand in the way of further investigation if that help the court in arriving at the truth and do real and substantial and effective justice.

19. In case of **Vinay Tyagi Vs. Irshad Ali @ Deepak [(2013) 5 SCC 762]**, while dealing with the issue of further investigation after elaborate discussion in the light of judicial precedents expounded in various earlier judgments, the Apex Court in Paras No.40 & 51 held as under:-

"40. Having analysed the provisions of the Code and the various judgments as afore-indicated, we would state the following conclusions in regard to the powers of a magistrate in terms of Section 173(2) read with Section 173 and Section 156 of the Code:

40.1. The Magistrate has no power to direct 'reinvestigation' or 'fresh investigation' (de novo) in the case initiated on the basis of a police report.

40.2. A Magistrate has the power to direct 'further investigation' after filing of a police report in terms of Section 173 of the Code.

40.3

40.4. Neither the scheme of the Code nor any specific provision therein bars exercise of such jurisdiction by the Magistrate. The language of Section 173 cannot be construed so restrictively as to deprive the Magistrate of such powers particularly in face of the provisions of Section 156 and the language of Section 173 itself. In fact, such power would have to be read into the language of Section 173.

40.5. The Code is a procedural document, thus, it must receive a construction which would advance the cause of justice and legislative object sought to be achieved. It does not stand to reason that the legislature provided power of further investigation to the police even after filing a report, but intended to curtail the power of the Court to the extent





that even where the facts of the case and the ends of justice demand, the Court can still not direct the investigating agency to conduct further investigation which it could do on its own.

40.6. It has been a procedure of propriety that the police has to seek permission of the Court to continue 'further investigation' and file supplementary chargesheet."

.....

51. We have already noticed that there is no specific embargo upon the power of the learned Magistrate to direct 'further investigation' on presentation of a report in terms of Section 173 of the Code. Any other approach or interpretation would be in contradiction to the very language of Section 173 and the scheme of the Code for giving precedence to proper administration of criminal justice. The settled principles of criminal jurisprudence would support such approach, particularly when in terms of Section 190 of the Code, the Magistrate is the competent authority to take cognizance of an offence. It is the Magistrate who has to decide whether on the basis of the record and documents produced, an offence is made out or not, and if made out, what course of law should be adopted in relation to committal of the case to the court of competent jurisdiction or to proceed with the trial himself. In other words, it is the judicial conscience of the Magistrate which has to be satisfied with reference to the record and the documents placed before him by the investigating agency, in coming to the appropriate conclusion in consonance with the principles of law. It will be a travesty of justice, if the court cannot be permitted to direct 'further investigation' to clear its doubt and to order the investigating agency to further substantiate its charge sheet. The satisfaction of the learned Magistrate is a condition precedent to commencement of further proceedings before the court of competent jurisdiction. Whether the Magistrate should direct 'further investigation' or not is again a matter which will depend upon the facts of a given case. The learned Magistrate or the higher court of competent jurisdiction would direct 'further investigation' or 'reinvestigation' as the case may be, on the facts of a given case. Where the Magistrate can only direct further investigation, the courts of higher jurisdiction can direct further, re-investigation or even investigation de novo depending on the facts of a given case. It will be the specific order of the court that would determine the nature of investigation. In this regard, we may refer to the observations made by this Court in the case of Sivanmoorthy Vs. State represented by Inspector of Police [(2010) 12 SCC 29].

(Emphasis Supplied)





20. In case of **Vinubhai Haribhai Malaviya Vs. State of Gujarat [(2019) 17 SCC 1]**, the Apex Court again extensively discussed the evasive issue of further investigation, more particularly in respect of the jurisdiction of the Magistrate to issue directions for further investigation. It would be apposite to reproduce Para No.38 of the judgment, wherein the jurisdiction & powers of the Magistrate to issue directions for further investigation was highlighted:-

"To say that a fair and just investigation would lead to the conclusion that the police retain the power, subject, of course, to the Magistrate's nod under Section 173(8) of Act to further investigate an offence till charges were framed, but that the supervisory jurisdiction of the Magistrate suddenly ceases midway through the pre-trial proceedings, would amount to a travesty of justice, as certain cases may cry out for further investigation so that an innocent person was not wrongly arraigned as an Accused or that a prima facie guilty person is not so left out. There was no warrant for such a narrow and restrictive view of the powers of the Magistrate, particularly when such powers were traceable to Section 156(3) read with Section 156(1), Section 2(h), and Section 173(8) of the Code of Criminal Procedure, and would be available at all stages of the progress of a criminal case before the trial actually commences. It would also be in the interest of justice that this power be exercised suo motu by the Magistrate himself, depending on the facts of each case. Whether further investigation should or should not be ordered was within the discretion of the Magistrate who would exercise such discretion on the facts of each case and in accordance with law. It was also clarified that, "The investigation spoken of in Section 156(3) would embrace the entire process, which begins with the collection of evidence and continue until charges are framed by the Court, at which stage the trial can be said to have begun."

(Emphasis Supplied)

21. At the cost of repetition and in the light of afore-referred judgments of the Apex Court, the legal position remains no more res integra about powers and jurisdiction of the Magistrate to issue directions for further investigation. Such powers can be



exercised suo moto as well. Therefore, argument put forth by the counsel for petitioner, in this regard as noted in Para Nos.3 & 4, is wholly misplaced, rather can be held as misleading and wholly converse to the settled proposition of law. Hence, such an argument made by the counsel for petitioner forcefully, is deprecated, being against the settled proposition of law, and is hereby rejected. It is hereby observed that the Special Judge, acted well within its powers and jurisdiction to issue suo moto directions to the ACB for further investigation in the matter, mainly on the point of find out the truth about role of Sh. Bannaram Meena, Chairman of the Alwar Dairy, against whom allegation was made in the complaint.

22. In respect of issuing another direction by the Special Judge to place the matter of refusal of prosecution sanction against petitioner-Chetram, before the higher Authorities of Dairy Federation, or higher officials of the State Government, at the outset, it is noteworthy that in this regard, the Special Judge with the assistance & concurrence of the Public Prosecutor appearing for ACB, opined that, when prosecution sanction is refused by the Authority, the jurisdiction lies with the Reviewing Authority to reconsider the issue and the Reviewing Authority may grant prosecution sanction, if deems it necessary & justified after considering the new & additional facts, coupled with the entire conspectus of events. Thus, the Special Judge concluded that when the ACB moved application for re-consideration of the issue of refusal of the prosecution sanction, it was desirable and necessary for the management body of the Alwar Dairy, to place the application before the higher Authorities of Dairy Federation or



State Government, to reconsider the issue that whether refusal of grant of prosecution sanction is justified or the sanction for prosecution may be granted.

In the present case, the prosecution sanction has been refused twice, on behalf of the Alwar Dairy Management, in the meeting of its Board of Directors, but both times, the meeting held under the president-ship of Sh. Bannaram Meena, the then Chairman of the Alwar Dairy. Needless to reiterate that the role of Sh. Bannaram Meena too was found suspicious by the ACB, in the light of allegations, made in the written complaint by complainant-Tej Singh and ACB postponed investigation against Sh. Bannaram Meena, but never placed on record the final investigation report against him. Thus, the refusal of prosecution sanction by Sh. Bannaram Meena, in the same matter against accused-Chetram is not liable to be approved. Moreover, the twin ground for refusal of prosecution sanction, as indicated in minutes of meeting of Board of Directors under the president-ship of Sh. Bannaram Meena, may not be countenanced, in a red handed trap case of ACB.

23. As far as petitioner-Chetram is concerned, the ACB seized the transcript conversations between complainant Tej Singh and petitioner Chetram, putting a demand of Rs.50,000/- and settling the demand @ Rs.45,000/-. Further, in the red handed trap, this amount of gratification was seized and petitioner-Chetram was arrested on the spot. The ACB, after thorough investigation in the matter, found the petitioner-Chetram to be prima facie guilty for offences under Sections 7, 13(1)(d) and 13(2) of the PC Act & Section 120-B IPC, but because he is a public servant and have an umbrella of protection of mandate of Section 19 of the PC Act, so



it was incumbent for the ACB to seek prosecution sanction, however, for one or another reason, discussed hereinabove, sanction was rejected by the Management of Alwar Dairy. ACB moved application for re-consideration, but same too was rejected. Then only, ACB filed the application under Section 169 Cr.PC. It is not a case, where the ACB found no sufficient evidence against the Chetram, to prosecute him for the allegations of corruption charges. Hence, considering the entire facts and circumstances, the learned Special Judge didn't think it proper to release the accused-Chetram merely on the ground of refusal of prosecution sanction, that too, on arbitrary reasonings, rather issued direction to place the matter before the higher Authorities including the C.M.D, Rajasthan Cooperative Dairy Federation, Jaipur or other higher officials representing the State Government to reconsider the refusal of prosecution sanction. Such specific directions have been issued, more particularly, when both times, sanction was rejected in the meeting held under the presidency of Sh. Bannaram Meena, the then Chairman of the Alwar Dairy, whose role itself was found to be suspicious by ACB and against whom investigation was not completed. In such peculiar facts and circumstances, it may not be held that the Special Judge acted arbitrarily, illegally or in excess of its jurisdiction, de hors to its powers or against the mandate of law.

24. It is noteworthy that although from the side of ACB application under Section 169 Cr.PC was moved to discharge/release the petitioner Chetram, on account of refusal of the prosecution sanction, but after rejection of its application and issuance of directions by the Special Judge to place the matter



before the higher officials to reconsider the refusal of prosecution sanction so also to proceed for further investigation, the ACB has not come forward, to assail the order impugned dated 25.04.2019. The same leads to an inference that the ACB, the Investigation Agency, is inclined to proceed in the matter, in furtherance to the directions/observations made by the Special Judge in the order dated 25.04.2019 and is not interested to pursue its application under Section 169 Cr.PC. The petitioner-accused cannot be allowed to press the application filed by ACB and to challenge the order of dismissal.

25. In case of **Dharam Pal** (*Supra*), relied upon by counsel for petitioner, the issue before the Apex Court was in respect of jurisdiction of the Sessions Court to take cognizance of offence against the accused persons before the stage of Section 319 Cr.PC, de hors the Police report and that too before the case was committed to the Sessions Court under Section 209 Cr.PC.

The ratio of judgment does not render any help to the case of petitioner.

26. In case of **Reeta Nag** (*Supra*), relied upon by the counsel for petitioner, the jurisdiction of the Magistrate to issue directions for further investigation was considered, where the Magistrate has passed a final order of framing charges against six persons and discharged other accused persons. In that context, it was held that the Magistrate had no jurisdiction to recall his order, in the guise of issuing directions for further investigation under Section 173(8) Cr.PC.

Firstly, the ratio of law expounded in the said judgment does not apply to facts of the present case, since in the case at hand,





the powers for further investigation has been exercised by the Special Judge, at the initial stage, of filing charge-sheet against Dhanni Ram Yadav and petitioner-Chetram was sought to be discharged and released. Secondly, such ratio of law does not hold the field as in case of **Hemendhra Reddy** (*Supra*), the Apex Court held as under:-

"Thus, a conspectus of the aforesaid decisions of this Court rendered in cases where final reports (closure reports) had already been submitted and accepted makes the position of law very clear that even after the final report is laid before the Magistrate and is accepted, it is permissible for the investigating agency to carry out further investigation in the case. In other words, there is no bar against conducting further investigation under Section 173(8) of the CrPC after the final report submitted under Section 173(2) of the CrPC has been accepted. It is also evident, that prior to carrying out a further investigation under Section 173(8) of the CrPC, it is not necessary for the Magistrate to review or recall the order accepting the final report."

27. In case of **Amrutbhai Shambhubhai Patel** (*Supra*), the relative scope of issuing directions by the Magistrate for further investigation under Section 202 Cr.PC and Section 173(8) CrPC was discussed. It was held that directions for investigation under Section 202 Cr.PC is altogether in different in nature than the further investigation as contemplated under Section 173(8) Cr.PC.

There is no quarrel about the ratio decidendi of such judgment, however, the same does not render any support to the case of petitioner, while challenging the order impugned.

28. In case of **Krishna Pati Tripathi** (*Supra*), the High Court of Madhya Pradesh considered the issue that when the Magistrate has taken cognizance on the complaint under Section 190 Cr.PC, being satisfied with the material available on record, to prosecute



the accused person, it is not open for the Magistrate to direct for further investigation suo moto or even on application by any person. Such powers of further investigation were observed to be wholly different from the jurisdiction of the Magistrate, to direct further investigation under Section 156(3) Cr.PC before the stage of taking cognizance.

The ratio of the judgment is that once the cognizance is taken, the Magistrate cannot direct for further investigation. Such proposition of law deals with the entire different set of facts, which are not involved in the present case.

29. In case of **Prahlad Sharma** (*Supra*), the issue before the Coordinate Bench of the Rajasthan High Court, was that the Court proceeded to take cognizance, ignoring the mandate of Section 19 of the PC Act. Hence, in absence of grant of prosecution sanction, order of cognizance was set aside and accused petitioners were discharged.

In the case at hand, the stage of taking cognizance has not come yet, since the issue qua petitioner has been remanded for re-consideration in respect of refusal of prosecution sanction against him.

30. In the light of afore-referred discussions, this Court is of considered opinion that the impugned order dated 25.04.2019 falls well within jurisdiction of the Special Judge and stands within bounds of law. In case, the order impugned is quashed, rather the same would lead to failure of justice. There are serious allegations of corruption against petitioner Chetram, which have been found prima facie proved by the ACB during course of investigation. However, because petitioner is a public servant and procurement



of prosecution sanction is essential, which has arbitrarily and malevolently been refused, therefore, for ends of justice, matter has been directed to be placed before the reviewing Authority for re-consideration, on the application of ACB.

31. This Court has concurrence with the view of learned Special Judge, that in such facts and circumstances, the refusal of prosecution sanction by the Management of Alwar Dairy, against the petitioner, obviously requires re-consideration by the Reviewing Authority. The ACB has not come forward to challenge the order impugned, therefore, a natural corollary is that the ACB is agreeable to abide by directions of the Special Judge. Looking to overall circumstances and for ends of justice, this Court affirms the order impugned dated 25.04.2019. The concerned Special Judge, Prevention of Corruption Cases, Alwar, deserves appreciation and commendation, for applying such an erudite judicious approach in this matter and this Court does that.

32. As a final result, the present criminal misc. petition is hereby dismissed. Consequently, interim stay order dated 15.12.2021 stands vacated.

33. Stay application and other pending application(s), if any, stand(s) disposed of.

34. A copy of this judgment be forwarded to Anti Corruption Bureau, Jaipur, to proceed further in the matter.

(SUDESH BANSAL),J

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