

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE SHEEL NAGU
&
HON'BLE SHRI JUSTICE HIRDESH
MCRC No.24473 of 2023

BETWEEN:-

U.S. (UPJEET SINGH) ARORA,

.....PETITIONER

(BY SMT. SHOBHA MENON, SR. ADVOCATE WITH MS. RITU JANJANI - ADVOCATE)

AND

- 1. STATE OF MADHYA PRADESH THROUGH SPECIAL POLICE ESTABLISHMENT, OFFICE OF LOKAYUKT, BHOPAL DIVISION, DISTRICT- BHOPAL (M.P.)**
- 2. DEPUTY SUPERINTENDENT OF POLICE, SPECIAL POLICE ESTABLISHMENT, OFFICE OF LOKAYUKT, BHOPAL DIVISION, DISTRICT- BHOPAL (M.P.)**

.....RESPONDENTS

(BY SHRI ABHIJEET AWASTHY - ADVOCATE)

Reserved on : 06.10.2023
Pronounced on : 15.12.2023

*This petition having been heard and reserved for orders, coming on for pronouncement this day, **Hon'ble Shri Justice Sheel Nagu** pronounced the following:*

ORDER

This petition invoking inherent powers of this Court u/S 482 of the Criminal Procedure Code seeks quashment of charge-sheet bearing No.1/2005 dated 17.01.2005 emanating from Crime No.35/1998 registered at Special Police Establishment (Lokayukt), Bhopal. Further challenge is made to the order dated 20.09.2010 (Annexure A/26) taking cognizance of the offences punishable u/S 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as “**PC Act**”) read with Section 120-B of the Indian Penal Code (for short “**IPC**”) and to the order dated 19.11.2010 (Annexure A/7) of framing charge qua the said offences.

2. Learned counsel for rival parties Smt. Shobha Menon, Senior Advocate alongwith Ms. Ritu Janjani, Advocate and Shri Abhijeet Awasthy, Advocate are heard on the question of admission so also final disposal.

3. Learned senior counsel Smt. Shobha Menon, Senior Advocate alongwith Ms. Ritu Janjani, has essentially raised following grounds in support of aforesaid challenge:

(i) Bare reading of allegations in the charge-sheet do not disclose any cognizable offence either under the PC Act or under the IPC.

(ii) The transaction lying at the foundation of the offences alleged is purely contractual with no element of criminality.

(iii) Petitioner in his capacity as Assistant Engineer in the Department of Energy, Government of M.P. had no power or authority to accept the NIT in question nor had any power to disburse the amount and thus no offence is made out against petitioner.

(iv) Amendment to Section 13 of the PC Act with effect from 26.07.2018 substitutes the unamended provision u/S 13(1)(d) of the PC Act thereby erasing the said unamended Section 13(1)(d) from the statute book and; as such, no offence under unamended Section 13(1)(d) of the PC Act could have been alleged against petitioner in the impugned order and charge-sheet.

4. The contents of petition, the documents annexed thereto and the arguments of learned counsel for rival parties are heard and perused. With the consent of learned counsel for rival parties, this petition is finally heard and decided in the following terms.

5. Bare reading of the charge-sheet dated 17.01.2005 (Annexure A/25) where petitioner is a named accused, reveals that though petitioner was not involved in the process of inviting, considering or deciding the tender

regarding purchase of Lantern but the inspection report *inter alia* signed by petitioner disclosed that upto 30th June, 1996, 1,000 Lanterns were received by the department. The allegation further reveals that despite aforesaid report submitted *inter alia* by petitioner about 1,000 Lanterns were actually not been received by the department till 30th June, 1996. Resultantly, a doubt was cast upon the said inspection report submitted *inter alia* by petitioner and on further investigation it was revealed that petitioner and other signatories of the said inspection report were found *prima facie* guilty of submitting a false inspection report to cause loss to government and corresponding financial benefit to the tenderer. As such, based upon the material collected by the Investigating Agency, the trial Court while taking cognizance and framing charge found that a false inspection report submitted *inter alia* by petitioner was one of the links in the entire chain of events which took place starting from calling of tender upto delivery of Lanterns to the department. Suspicion of petitioner's involvement arose due to the false inspection report and therefore, learned Trial Judge took cognizance and framed charges as aforesaid.

6. Whether the suspicion is strong enough to support the impugned charges framed or not is a question of degree of complicity which cannot be decided at this early stage since this exercise is to be left alone for the trial Court to be conducted after collection and marshalling of evidence.

7. This Court in view of above does not feel that any illegality or impropriety was committed by the trial Court while taking cognizance and framing charges against petitioner in regard to said offences.

8. The other grounds raised by petitioner of substitution of the unamended Section 13 by the amended Section 13 leading to wiping out of the unamended Section 13(1)(d) from the statute books and thus the same becoming unavailable to be even alleged, is heard to be dismissed at the very outset.

8.1 The Rule of Law does not recognize the concept of vacuum in law at any point of time. Substitution of the unamended Section 13(1)(d) of the PC Act by amended Section 13(1)(d) of the PC Act admittedly leads to obliterating the unamended Section 13(1)(d) from the Statute Books w.e.f. 26.07.2018. Meaning thereby that offences which have taken place on or after 26.07.2018 would now be dealt with by the amended Section 13(1)(d) of the PC Act. Whereas the offences which occurred prior to 26.07.2018 would be dealt with by unamended Section 13(1)(d) of the PC Act. This view is bolster by provisions of Article 20(1) of the Constitution which reads thus:

“20. Protection in respect of conviction for offences.-(1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.”

If the contention of learned senior counsel is accepted that substitution leads to obliteration of the unamended Section even for offences which occurred prior to substitution is accepted then vacuum in law would be created thereby letting all those offenders go scott free who committed

crime punishable under the unamended Section 13(1)(d) of the PC Act. This can never be the intention of law.

8.2 A similar view was taken in respect of the same amendment in the PC Act by a Coordinate Bench of this Court on 11.09.2019 in Criminal Revision No.4247/2019 (*Dhan Raj Malvi vs. State of M.P.*) and also in W.P. No.2865/2020 (*Vijendra Kumar Kaushal vs. Union of India*) on 06.02.2020. Pertinently the said case in **Vijendra Kumar Kaushal** (supra) when challenged by petitioner accused therein in SLP (Cr.) No.2962/2020, the same was dismissed.

8.3 In respect of ground of substitution leading to obliteration of the statutory provision, learned counsel for petitioner has relied upon *Kolhapur Cenesugar Works Ltd. And another vs. Union of India and others, (2000) 2 SCC 536, PTC India Ltd. vs. Central Electricity Regulatory Commission, (2010) 4 SCC 603, State of Rajasthan ando thers vs. Trilok Ram, (2019) 10 SCC 383 and Katta Sujatha Reddy and another vs. State Telangana and others, 2023 (1) SCC 355*. These verdicts are of no avail to the petitioner in view of aforesaid decision rendered in **Dhan Raj & Vijendra** by this Court and duly affirmed by Apex Court.

8.4 As regards the other grounds of absence of *mens rea* for the transaction being purely contractual in nature is concerned, it is seen from the record that petitioner was though not involved in the process of receipt, consideration of tender and award of contract but has submitted a false report as regards receipt of certain number of Lantern which was found to

be incorrect. The inspection report submitted by petitioner was found to be at variance to the actual number of Lanterns delivered. Any false report exposes the signatory of the report to civil as well as criminal action. During investigation, petitioner did not submit any clarification justifying the inspection report. Thus, the Investigating Agency *prima facie* found that the said false report was prepared with *malafide* intention and with criminal intent of causing loss to government and corresponding financial advantage to the private person.

9. This Court sees no reason to interfere in this justified view of the Investigating Agency. Once the existence of the element of *mens rea* is *prima facie* established as is the case herein, veracity and extent of the same is to be deciphered during the trial and cannot be gone into at this stage.

10. Consequently, present petition deserves no interference and is **dismissed** as such.

(SHEEL NAGU)
JUDGE

(HIRDESH)
JUDGE