

**IN THE HIGH COURT OF MADHYA PRADESH  
AT GWALIOR**

**BEFORE**

**HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA**

**ON THE 3rd OF NOVEMBER, 2022**

**WRIT PETITION NO. 23876 OF 2022**

**BETWEEN:-**

**MAHENDRA KUMAR VAIDYA**

**.....PETITIONER**

***(BY SHRI R.P.SINGH KAURAV – ADVOCATE)***

**AND**

- 1. THE STATE OF MADHYA PRADESH  
THROUGH PRINCIPAL SECRETARY,  
HOME AND POLICE VALLABH BHAWAN,  
BHOPAL (MADHYA PRADESH)**
- 2. SUPERINTENDENT OF POLICE BHIND,  
DISTRICT BHIND (MADHYA PRADESH)**
- 3. STATION HOUSE OFFICER/SHO  
RAWATPURA, TEHSIL LAHAR, DISTRICT  
BHIND (MADHYA PRADESH)**
- 4. PROSECUTRIX**  
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**.....RESPONDENTS**

***(SHRI DEVENDRA CHAUBEY – GOVERNMENT ADVOCATE FOR***

*STATE)*

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*This petition coming on for hearing this day, the Court passed the following:*

**ORDER**

This petition under Article 226 of the Constitution of India has been filed seeking following relief.

7.1 That, the respondent/police authority concerned may kindly be directed to file/submit FR report (final-report) before the court concern within a stipulated period of one month.

7.2 That, the respondent/police authority concern further may kindly be directed not to interfere in the life and liberty of the petitioner directly or indirectly in the name of pendency of the matter in the issues.

7.3 That, any other relief during justice in to the matter may kindly be awarded to the petitioner in the interest of justice.

It is submitted by the counsel for the petitioner that the prosecutrix / respondent no. 4 lodged FIR on 07.09.2021 alleging offence under Sections 376, 450 of IPC by the petitioner. Although the investigation is going on, but the SDO(P), Lahar, District Bhind on the instructions given by the S.P., Bhind submitted his report dated 13.01.2022 and came to a conclusion that the FIR lodged by the prosecutrix is false. Accordingly, it is submitted that the Investigating Officer should be directed to file closure report.

Per contra, the petition is vehemently opposed by the counsel for the State. It is submitted that it is well established principle of law that the parallel enquiry even under Section 36 of CrPC is not maintainable. In spite of that, the S.P., Bhind on his own authorized the SDO(P), Lahar,

District Bhind to conduct parallel enquiry. Since the parallel enquiry is not permissible, therefore, the report dated 13.01.2022 is also a nullity and the Investigating Officer cannot look into the same.

Heard the learned counsel for the parties.

This Court in the case of **Deepak @ Preetam Verma and another vs. State of M.P. and another by order dated 11/9/2018 passed in M.Cr.C. No.12592/2018** has held that parallel enquiry under Section 36 of CrPC during the pendency of investigation is not maintainable. The said order has been affirmed by the Supreme Court **by order dated 18/1/2022 passed in SLP (Criminal) No.1345/2019 (Surendra Singh Gaur vs. State of M.P. and others)** and held as under:-

“The present petitioners have approached in their own rights to question the observations/remarks which have been recorded by the learned Judge in the order impugned in reference to the manner in which an inquiry was conducted parallel to the investigation which was undertaken by the Investigating Officer in reference to FIR in Crime No. 75/2017.

We have heard the learned Counsel for the parties at length and we are of the view that neither Section 36 of the Code nor the circulars of which a reference has been made during the course of arguments in any way provides for holding an independent and parallel inquiry along with the investigation going ahead in reference to the FIR in Crime No. 75/2017.

In the instant case, a complaint was made for holding fair investigation in reference to the FIR in Crime No. 75/2017, we find no reason the officers under whose instructions an independent inquiry was initiated apart from the investigation which was going ahead in reference to the crime, in contravention of the procedure prescribed by law.

After the matter is examined at length by the High Court under the impugned judgment(s) for which

reference has been made that an independent inquiry which was conducted in reference to the FIR in Crime No. 75/2017 was in no manner contemplated by law and in this reference observations have been made in regard to the conduct of the officers in holding an inquiry in reference to the FIR in Crime No. 75/2017.

The learned Counsel appearing on behalf of the State filed their counter affidavit and has placed on record a circular dated 26th June, 2010 under the instructions of the Inspector General of Police, Madhya Pradesh. We find that the circular of the State Government is in conformity with Section 36 of the Code, but the procedure which was followed by the officers in holding inquiry was not in consonance with the circular of which a reference has been made by the High Court under the impugned judgment.

After hearing the learned Counsel for the parties and taking note of the material on record, we find no error being committed by the High Court in the judgment impugned, which may call for our interference under Article 136 of the Constitution. Consequently, both the petitions fail and are dismissed.

Pending application(s), if any, shall stand disposed of.”

Thus, it is clear that the parallel enquiry under Section 36 of CrPC is not maintainable during the pendency of investigation. In spite of clear judicial pronouncement, it is surprising that S.P., Bhind again directed the SDO(P), Lahar, District Bhind to conduct a parallel enquiry. This action of S.P, Bhind cannot be appreciated. However, since the parallel enquiry during pendency of investigation is not maintainable, therefore, the report submitted by SDO(P), Lahar, District Bhind is a nullity and cannot be made a part of the police case diary or the investigation and thus, the Investigating Officer cannot be directed to look into the report submitted by the SDO(P), Lahar, District Bhind. Therefore, it is directed that the

Investigating Officer shall not include the report dated 13.01.2022 submitted by SDO(P), Lahar, District Bhind in the police case diary and if it has already been taken on record, then it shall not be considered at all for any purpose and shall not be made a part of the final report.

It is next contended by the counsel for the petitioner that as per the mandate of Section 173(1) of CrPC, the Investigating Officer has to conclude the investigation without any unnecessary delay.

It appears that it was the petitioner who was creating all sorts of hurdles in the investigation by approaching the senior officer for conducting the parallel inquiry.

Be that whatever it may.

Since this Court has already directed that the enquiry report submitted by the SDO(P), Lahar, District Bhind dated 13.01.2022 shall not be taken into consideration for any purposes, therefore, the Investigating Officer is directed to conclude the investigation and file the final report / charge-sheet / closure report as per the mandate of Section 173(1) of CrPC.

With aforesaid observations, the petition is **dismissed**.

**(G.S. AHLUWALIA)**  
**JUDGE**

Abhi