

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Criminal Misc(Pet.) No. 159/2018

1. Kailash Chandra Agarwal Son Of Shri Shiv Narayan, By Caste Agarwal, aged about 53 years, Resident Of Merta City, District Nagaur. Chairman, Janhit Sewa Sansthan, Merta City, District Nagaur.
2. Nand Bihari Son Of Shri Kailash Chandra Agarwal, By Caste Agarwal, aged about 25 years, Resident Of Merta City, District Nagaur. Vice-Chairman, Janhit Sewa Sansthan, Merta City, District Nagaur.

----Petitioners

Versus

1. State Of Rajasthan
2. Bhanwar Singh @ Gopa Singh Son Of Shri Kalyan Singh, By Caste Rajput, Resident Of Village Bhainsda Kalan, Tehsil Rinyabadi District Nagaur.

----Respondents

Connected With

S.B. Criminal Misc(Pet.) No. 953/2018

1. Chota Ram Son Of Shri Shankar Lal, By Caste Jat, aged about 53 years, Resident Of Sogavas, Tehsil Merta, District Nagaur, At Present Working As Land Records Inspector, Badayali Panchayat Samiti, Rian Badi, District Nagaur.
2. Ram Ratan Son Of Modaram, By Caste Jat, aged about 58 years, Resident Of Basni Seja, Tehsil Merta Shahar, District Nagaur, The Then Patwari Patwar Mandal Badayali, Panchayat Samiti Rian Badi, District Nagaur.

----Petitioners

Versus

State Of Rajasthan Through Public Prosecutor.

----Respondent

S.B. Criminal Misc(Pet.) No. 1163/2018

Tejmal Choudhary S/o Hemraj, By Caste Jat, aged about 62 years, R/o Manpura Tehsil And District Ajmer, Ex. Tehsildar Reyavadi District Nagaur.

----Petitioner

Versus

The State Of Rajasthan Through The Public Prosecutor

----Respondent

For Petitioner(s) : Mr. Anil Kumar Singh.
Mr. G.R. Punia, Sr. Advocate with
Mr. Rajendra Prasad.

For Respondent(s) : Mr. Mahipal Bishnoi, PP.
Mr. Dharendra Singh.

HON'BLE MR. JUSTICE SANDEEP MEHTA

Judgment

Pronounced on: 07/04/2020

Reserved on: 04/03/2020

1. Heard learned counsel for the parties. Perused the material available on record.

2. These three misc. petitions involve identical question of facts and law and are thus being decided together by this common order.

3. These misc. petitions have been preferred by the accused petitioners herein seeking quashing of the FIR No.1/2018 registered at the Police Station CPS ACB, Jaipur, Outpost Nagaur for the offences under Sections 420, 467, 468, 471, 120B IPC and Sections 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'the Act of 1988').

4. The respondent No.2 lodged a complaint to the District Collector, Nagaur and also to the Chief Secretary, Government of Rajasthan and the I.G.-First, A.C.B., Jaipur alleging that wholesale irregularities and illegalities were committed in the sale 75 bighas of land made in favour of Kailash Chandra Agarwal and Nand Bihari (Petitioners of Misc. Petition No.159/2018) and that the

revenue officers concerned i.e. Land Record Inspector Chhotaram, Patwari Ramratan and Tehsildar Tejmal Choudhary, while recommending the sale deeds, had hatched a conspiracy to facilitate the fraudulent sale and thereby, they were responsible for the offences under Sections 420, 467, 468, 471, 120B IPC and Sections 13(1)(d) and 13(2) of the Act of 1988. The complaint so lodged by the respondent No.2 was acted upon and after verification thereof, the FIR No.1/2018 has been registered at the Police Station, CPS ACB, Jaipur, Outpost Nagaur and investigation thereof is being undertaken against the petitioners herein who have approached this Court seeking quashing of the impugned FIR and all subsequent proceedings sought to be taken thereunder.

5. Shri Anil Kumar Singh, Advocate representing the petitioners Kailash Chandra Agarwal and Nand Bihari (Misc. Petition No.159/2018) and Shri G.R. Punia, learned Senior Advocate assisted by Shri Rajendra Prasad, Advocate representing the Revenue Officers Chota Ram & Ramratan (Misc. Petition No.953/2018) and Tejmal Choudhary (Misc. Petition No.1163/2018), vehemently and fervently urged that the registration of the impugned FIR by the ACB on the basis of a private complaint is absolutely illegal and without justification. In support of this contention, learned counsel representing the petitioners relied upon the following Supreme Court decisions:

- (i) Anil Kumar Singh & Ors. vs. M.K. Aiyappa & Anr.,** reported in **AIR 2014, SC (Supp) 1801, and**
- (ii) L. Narayana Swamy vs. State of Karnataka & Ors.,** reported in **AIR 2016 SC 4125.**

They also urged that fresh Section 17A has been inserted in the Prevention of Corruption Act by way of amendment brought around in the year 2018 whereby, inquiry or investigation cannot be undertaken by any police officer under the Act of 1988 "without the prior permission of the competent Government" where the alleged offence is relatable to any recommendation made or decision taken by a public servant in discharge of official functions or duties. They urged that in the present case, the investigating officer is proceeding to investigate the matter against the public servants for the offences under the P.C. Act and the private individuals without the prior approval of the Government and as such, the impugned FIR deserves to be quashed.

6. Learned Public Prosecutor appearing for the State and Shri Dhirendra Singh, Advocate appearing for the complainant, vehemently and fervently opposed the submissions advanced by the petitioners' counsel. Nonetheless, they too are not in a position to dispute the fact that the FIR has been lodged on the basis of a private complaint and that no approval of the competent Government was taken before initiating the inquiry and registering the formal FIR. Hon'ble the Supreme Court examined an identical controversy in the case of **Anil Kumar (supra)** and laid down that no direction can be given by a Magistrate to the police under Section 156(3) Cr.P.C. to investigate the complaint of corruption against a public servant in absence of a sanction to prosecute.

In the matter at hand, the private complaint lodged by the respondent No.2 was entertained; an inquiry was conducted and

based thereupon, the impugned FIR No.1/2018 has been registered. Section 17A has been introduced in the Prevention of Corruption Act w.e.f. which reads as below:

“17A. (1) No police officer shall conduct any enquiry or inquiry or investigation into any offence alleged to have been committed by a public servant under this Act, where the alleged offence is relatable to any recommendation made or decision taken by such public servant in discharge of his official functions or duties, without the previous approval—

(a) in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of the Union, of that Government;

(b) in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of a State, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office, at the time when the offence was alleged to have been committed:

Provided that no such approval shall be necessary for cases involving arrest of a person on the spot on the charge of accepting or attempting to accept any undue advantage for himself or for any other person:

Provided further that the concerned authority shall convey its decision under this section within a period of three months, which may, for reasons to be recorded in writing by such authority, be extended by a further period of one month.”

Manifestly, the newly inserted provision prohibits conducting of enquiry/inquiry or investigation into any offence under this Act alleged to have been committed by a public servant where the act alleged is relatable to any recommendation made or decision taken by such a public servant in discharge of official functions or duties. Manifestly, the questioned decisions in furtherance whereof, the land subject matter of dispute was sold to and transferred in the name of the petitioners Kailash Chandra Agarwal

and Nand Bihari, were issued by the respective public servants concerned i.e. the Land Record Inspector Chhotaram, the Patwari Ramratan and the Tehsildar Tejmal Choudhary in discharge of their official duties. Therefore, before initiating any inquiry against the public servants under the provisions of the P.C. Act, prior approval of the Government was a *sine-qua-non* and the FIR could not have been registered without such approval. As the public servants cannot be prosecuted in this matter, registration of the FIR by the Anti Corruption Bureau against the private individuals i.e. the petitioners Kailash Chandra Agarwal and Nand Bihari is also totally illegal and amounts to a gross abuse of process of law.

7. In the wake of the discussion made herein above, the misc. petitions deserve to be and are hereby allowed. All further proceedings sought to be taken in connection with the impugned FIR No. 1/2018 registered at the Police Station CPS ACB, Jaipur, Outpost Nagaur are hereby quashed. Stay applications are disposed of.

8. A copy of this order be placed in each file.

सत्यमेव जयते

(SANDEEP MEHTA),J

100-Tikam/-