

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.921 OF 1999

STATE OF MADHYA PRADSH
T

... APPELLAN

VERSUS

RAMESH C. SHARMA
NT

... RESPONDE

J U D G M E N T

SEMA, J.

Heard the learned counsel for the State.

Despite the notice none appeared on behalf of the respondent.

The factual matrix may be briefly recited. The respondent was working

as Upper Division Clerk-cum-Store Keeper in the office of the District E
ducation

Officer. He was charged under Section 5(1)(d) of the Prevention of Corrupt
ion Act,

1947. After the investigation is completed a charge sheet was submitted on
which a

cognizance was taken and charge was framed against the respondent on 18.
6.1991.

Thereafter, the case was fixed for evidence. It is at that stage the respondent moved an

application for discharge on the ground that the investigation was not d
one by a

competent Police Officer as per proviso of Section 5(1)(d) of the Preven
tion of

Corruption Act, 1947(hereinafter referred to as 'the Act'). The learned special Judge after considering the application rejected the said application on the ground that no prejudice has been caused to the respondent. It was also noticed that the case was directed to be investigated by the Assistant Inspector General. Aggrieved thereby, the respondent filed a Criminal Revision Petition before the High Court. By the impugned order the High Court has quashed the investigation and the charge solely on the ground that the investigation has not been carried on by a competent officer as

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contemplated under Section 5A(1)(d) of the Act. Aggrieved thereby, this appeal has been preferred by the State of Madhya Pradesh by special leave.

While granting leave this Court on 6.6.1999 suspended the operation of the impugned order and permitted further proceedings to continue.

Learned counsel for the State contended that the impugned order of the High Court is contrary to the settled principle of law enunciated by this Court in a catena of decisions and it is liable to be set aside. Avoiding multiplicity, we may refer to a decision of this Court rendered in the case of State of M.P. and others vs. Ram Singh, 2000(5) SCC 88. This Court in the Ram Singh's (supra) after noticing the various decisions of this Court, inter alia, held that a defect or illegality in the investigation, however serious, has no direct bearing on the competence or procedure relating to cognizance or trial. In a recent decision in the case of Union of India vs. Prakash P. Hinduja and another, 2003 (6) SCC 195, in which one of us

(Justice G.P. Mathur) is the author of the judgment after noticing the various

decisions of this Court pointed out in paragraphs 20 and 21 of the judgment as

under :

'20. Thus the legal position is absolutely clear and also settled by judicial authorities that the court would not interfere with the investigation or during the course of investigation which would mean from the time of the lodging of the first information report till the submission of the report by the officer in charge of the police station in court under Section 173(2) Cr.P.C., this field being exclusively reserved for the investigating agency.

21. An incidental question as to what will be the result of any error or illegality in investigation on the trial of the accused before the court may also be examined. Section 5-A of the Prevention of Corruption Act, 1947 provided that no police officer below the rank of a Deputy Superintendent of Police shall investigate any offence punishable under Section 161, Section 165 and Section 165-A IPC or under Section 5 of the said Act without the order of a Magistrate of the First Class. In H.N.

Rishbud the investigation was entirely completed by an officer of the rank lower than the Deputy Superintendent of Police and after permission was accorded a little or no further investigation was made.

The Special Judge quashed the proceedings on the ground that the investigation on the basis of which the accused were being prosecuted

was in contravention of the provisions of the Act, but the said order was set aside by the High Court. The appeal preferred by the accused to this

Court assailing the judgment of the High Court was dismissed and the following principle was laid down : (AIR pp.203-04, para 9)

"9. The question then requires to be considered whether and to what extent the trial which follows such investigation is vitiated. Now, trial follows cognizance and cognizance is preceded by investigation. This is undoubtedly the basic scheme of the Code in respect of cognizance cases. But it does not necessarily follow that an invalid investigation nullifies the cognizance or trial based thereon. Here we are not concerned with the effect of the breach of a mandatory provision regulating the competence or procedure of the court as regards cognizance or trial. It is only with reference to such a breach that the question as to whether it constitutes an illegality vitiating the proceedings or a mere irregularity arises.

A defect or illegality in investigation, however serious, has no direct bearing on the competence or the procedure relating to cognizance or trial. No doubt a police report which results from an investigation is provided in Section 190 of the Code of Criminal Procedure as the material on which cognizance is taken. But it cannot be maintained that a valid and legal police report is the foundation of the jurisdiction of the court to take cognizance. Section 190 of the Code of Criminal Procedure is one out of a group of sections under the heading 'Conditions requisite for initiation of proceedings'. The language of this section is in marked contrast with that of the other sections of the group under the same heading i.e. Sections 193 and 195 to 199.

These latter sections regulate the competence of the court and bar its jurisdiction in certain cases excepting in compliance therewith. But Section 190 does not. While no doubt, in one sense, clauses (a), (b) and (c) of Section, 190(1) are conditions requisite for taking of cognizance, it is not possible to say that cognizance on an invalid police report is prohibited and is

therefore a nullity. Such an invalid report may still fall either under clause (a) or (b) of Section 190(1), (whether it is the one or the other we need not pause to consider) and in any case cognizance so taken is only in the nature of error in a proceeding antecedent to the trial."

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The Court after referring to Prabhu v. Emperor, AIR 1944 PC 73 and Lumbhardar Zutshi v. R., AIR 1950 PC 26, held that if cognizance is in fact taken on a police report initiated by the breach of a mandatory provision relating to investigation, there can be no doubt that the result of the trial, which follows it cannot be set aside unless the illegality in the investigation can be shown to have brought about a miscarriage of justice and that an illegality committed in the course of investigation does not affect the competence and the jurisdiction of the court for trial. This being the legal position, even assuming for the sake of argument that CBI committed an error or irregularity in submitting the charge-sheet without the approval of CVC, the cognizance taken by the learned Special Judge on the basis of such a charge-sheet could not be set aside nor could further proceedings in pursuance thereof be quashed. The High Court has clearly erred in setting aside the order of the learned Special Judge taking cognizance of the offence and in quashing further proceedings of the case."

Keeping in view the aforesaid decisions, in our view, the law on the point is no more res integra. In this view of the matter the impugned order passed by the High Court is unsustainable in law, the same is quashed and set aside. This appeal is allowed in the above terms.

.....J.

(H.K. SEMA)

.....J.

(G.P. MATHUR)

NEW DELHI,

SEPTEMBER 21, 2005.

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ITEM NO.101

COURT NO.6

SECTION IIA

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CRIMINAL APPEAL NO(s). 921 OF 1999

STATE OF M.P.

Appellant (s)

VERSUS

RAMESH C. SHARMA

Respondent(s)

(With office report)

Date: 21/09/2005 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE H.K. SEMA

HON'BLE MR. JUSTICE G.P. MATHUR

For Appellant(s)

Ms. Vibha Datta Makhija, Adv.

For Respondent(s)

Ex-Parte

UPON hearing counsel the Court made the following

O R D E R

Heard the learned counsel for the State.

Despite the notice none appeared on behalf of the
respondent.

The impugned order is quashed and set aside. The
appeal is allowed in the terms of the signed judgment.

(PAWAN KUMAR)

(PREM PRAKASH)

COURT MASTER

COURT MASTER

(signed judgment is placed on the file)