THE HIGH COURT OF MADHYA PRADESH
CRR-3958-2019
Laxman Rao Vs. Court of Third Additional Sessions Judge, Guna and anr.

Through Video Conferencing

Gwalior, Dated : 02/02/2022

Shri Amit Lahoti, Counsel for the applicant.

Shri C.P. Singh, Counsel for the State.

This criminal revision under Section 397/401 of CrPC has been filed against the order dated 26.09.2019 passed by First Additional Sessions Judge, Guna in Criminal Appeal No.251/2018, by which the order dated 01.09.2018 passed by JMFC, Guna in Criminal Case No. 145/2013 has been affirmed.

2. The necessary facts for disposal of the present revision in short are that one trial under Sections 120-B and 412 of IPC was pending in S.T. No.118/2010 on the allegations that on 13.07.2009 one Rakesh Jain, who was travelling in a bus, was looted and an amount of Rs.20.00 lacs was taken away. The applicant was one of the seizure witness of the looted amount. He appeared in the trial and stated in his examination-in-chief that the accused namely Ramkumar Niranjan had made a memorandum and had disclosed that he has kept his share of Rs.80,000/- in his village Pahada and, accordingly, an amount of Rs.80,000/- was seized from the house of the accused vide seizure memo Ex. P-7. Since the applicant had given the incorrect evidence, therefore, he was declared hostile and in cross-examination by the

Public Prosecutor, he corrected himself and submitted that in fact, the amount of Rs.80,000/- was seized from Ramkumar Niranjan from his house at Bhander and he also clarified that as he had forgotten the incident, therefore, by mistake he had disclosed that the amount was recovered from Pahada village. The applicant was cross-examined by the accused Ramkumar Niranjan and in cross-examination, he admitted that he is the member of *Gram Raksha Samiti,* but again he took a somersault and again said that the amount was seized from the village Pahada. Thus, it is clear that the applicant was intentionally trying to weaken the prosecution case.

3. The Trial Court by passing the final judgment dated 04.02.2013 passed in S.T. No.118/2010 also directed that since the applicant had intentionally changed his version and, therefore, the complaint be filed under Section 340 of CrPC for his prosecution under Section 195 of IPC. Accordingly, the complaint was filed and an objection was raised by the applicant by filing an application under Section 340 of CrPC that since no preliminary enquiry was conducted, therefore, the complaint is not maintainable. By order dated 01.09.2018 the said application was rejected.

4. Being aggrieved by the said order, the applicant preferred an appeal which too has been dismissed by the impugned judgment dated

29.06.2019 passed by First Additional Sessions Judge, Guna in Cr.A. No.251/2018.

5. It is submitted that in absence of preliminary enquiry, the direction to file complaint should not have been given. Further, the prosecution of every witness is not necessary merely on the ground that he has not supported the prosecution case.

6. Heard the learned counsel for the applicant.

7. The first question for consideration is as to whether the preliminary enquiry is necessary for directing the prosecution of the witness and whether the witness is entitled for any hearing or not ?

8. The Supreme Court in the case of **Pritish v. State of Maharashtra and others** reported in **(2002) 1 SCC 253** has held as under:-

> **"9.** Reading of the sub-section makes it clear that the hub of this provision is formation of an opinion by the court (before which proceedings were to be held) that it is expedient in the interest of justice that an inquiry should be made into an offence which appears to have been committed. In order to form such opinion the court is empowered to hold a preliminary inquiry. It is not peremptory that such preliminary inquiry should be held. Even without such preliminary inquiry the court can form such an opinion when it appears to the court that an offence has been committed in relation to a proceeding in that court. It is important to notice that even when the court forms such an opinion it is not mandatory that the court should make a complaint. This sub-section has conferred a power on the court to do so. It does not

> mean that the court should, as a matter of course, make a complaint. But once the court decides to do so, then the court should make a finding to the effect that on the fact situation it is expedient in the interest of justice that the offence should further be probed into. If the court finds it necessary to conduct a preliminary inquiry to reach such a finding it is always open to the court to do so, though absence of any such preliminary inquiry would not vitiate a finding reached by the court regarding its opinion. It should again be remembered that the preliminary inquiry contemplated in the sub-section is not for finding whether any particular person is guilty or not. Far from that, the purpose of preliminary inquiry, even if the court opts to conduct it, is only to decide whether it is expedient in the interest of justice to inquire into the offence which appears to have been committed.
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> **10.** "Inquiry" is defined in Section 2(*g*) of the Code as "every inquiry, other than a trial, conducted under this Code by a Magistrate or court". It refers to the pre-trial inquiry, and in the present context it means the inquiry to be conducted by the Magistrate. Once the court which forms an opinion, whether it is after conducting the preliminary inquiry or not, that it is expedient in the interest of justice that an inquiry should be made into any offence the said court has to make a complaint in writing to the Magistrate of the First Class concerned. As the offences involved are all falling within the purview of "warrant case" [as defined in Section 2(*x*)] of the Code the Magistrate concerned has to follow the procedure prescribed in Chapter XIX of the Code. In this context we may point out that Section 343 of the Code specifies that the Magistrate to whom the complaint is made under Section 340 shall proceed to deal with the case as if it were instituted on a police report. That being the position, the Magistrate on receiving the complaint shall proceed under Section 238 to Section 243 of the Code."

9. Thus, where the Court is of the *prima facie* opinion that it is in

the interest of justice to proceed against the witness for giving a false evidence, then holding of preliminary enquiry is not warranted.

10. So far as the question of giving opportunity of hearing to the applicant before directing for his prosecution under Section 195 of CrPC, the said question is also no more *res integra*. In the case of **Pritish (supra)**, it has been held as under:-

> "**12.** Thus, the person against whom the complaint is made has a legal right to be heard whether he should be tried for the offence or not, but such a legal right is envisaged only when the Magistrate calls the accused to appear before him. The person concerned has then the right to participate in the pre-trial inquiry envisaged in Section 239 of the Code. It is open to him to satisfy the Magistrate that the allegations against him are groundless and that he is entitled to be discharged.
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> **13.** The scheme delineated above would clearly show that there is no statutory requirement to afford an opportunity of hearing to the persons against whom that court might file a complaint before the Magistrate for initiating prosecution proceedings. Learned counsel for the appellant contended that even if there is no specific statutory provision for affording such an opportunity during the preliminary inquiry stage, the fact that an appeal is provided in Section 341 of the Code, to any person aggrieved by the order, is indicative of his right to participate in such preliminary inquiry.
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> **14.** Section 341 of the Code confers a power on the party on whose application the court has decided or not decided to make a complaint, as well as the party against whom it is decided to make such complaint, to file an appeal to the court to which the former court is subordinate. But the mere fact that such an appeal is provided, it is not a premise for concluding that the court is under a legal obligation to

afford an opportunity (to the persons against whom the complaint would be made) to be heard prior to making the complaint. There are other provisions in the Code for reaching conclusions whether a person should be arrayed as accused in criminal proceedings or not, but in most of those proceedings there is no legal obligation cast on the court or the authorities concerned, to afford an opportunity of hearing to the would-be accused. In any event the appellant has already availed of the opportunity of the provisions of Section 341 of the Code by filing the appeal before the High Court as stated earlier.

15. Once the prosecution proceedings commence the person against whom the accusation is made has a legal right to be heard. Such a legal protection is incorporated in the scheme of the Code. Principles of natural justice would not be hampered by not hearing the person concerned at the stage of deciding whether such person should be proceeded against or not.

16. Be it noted that the court at the stage envisaged in Section 340 of the Code is not deciding the guilt or innocence of the party against whom proceedings are to be taken before the Magistrate. At that stage the court only considers whether it is expedient in the interest of justice that an inquiry should be made into any offence affecting administration of justice. In *M.S. Sheriff* v. *State of Madras* [AIR 1954 SC 397 : 1954 Cri LJ 1019] a Constitution Bench of this Court cautioned that no expression on the guilt or innocence of the persons should be made by the court while passing an order under Section 340 of the Code. An exercise of the court at that stage is not for finding whether any offence was committed or who committed the same. The scope is confined to see whether the court could then decide on the materials available that the matter requires inquiry by a criminal court and that it is expedient in the interest of justice to have it inquired into."

11. Thus, the holding of preliminary enquiry is not *sine qua non* for

issuing a direction for prosecution under Section 195 of CrPC and even the applicant is not entitled for any opportunity of hearing prior to that.

12. So far as the satisfaction of the Trial Court that it is expedient in the interest of justice to direct for prosecution of the applicant is concerned, the applicant is a member of *Gram Raksha Samiti*. He has certain statutory duties to follow. During the course of his evidence, he changed his version at every stage. Thus, this conduct of the applicant is clearly indicative of the fact that the applicant had deliberately changed his version in order to help out the accused.

13. The Supreme Court in the case of **Iqbal Singh Marwah and another v. Meenakshi Marwah and another** reported in **(2005) 4 SCC 370,** has held as under:

> "**23.** In view of the language used in Section 340 CrPC the court is not bound to make a complaint regarding commission of an offence referred to in Section 195(1)(*b*), as the section is conditioned by the words "court is of opinion that it is expedient in the interests of justice". This shows that such a course will be adopted only if the interest of justice requires and not in every case. Before filing of the complaint, the court may hold a preliminary enquiry and record a finding to the effect that it is expedient in the interests of justice that enquiry should be made into any of the offences referred to in Section 195(1)(*b*). This expediency will normally be judged by the court by weighing not the magnitude of injury suffered by the person affected by such forgery or forged document, but having regard to the effect or impact, such

> commission of offence has upon administration of justice. It is possible that such forged document or forgery may cause a very serious or substantial injury to a person in the sense that it may deprive him of a very valuable property or status or the like, but such document may be just a piece of evidence produced or given in evidence in court, where voluminous evidence may have been adduced and the effect of such piece of evidence on the broad concept of administration of justice may be minimal. In such circumstances, the court may not consider it expedient in the interest of justice to make a complaint. The broad view of clause (*b*)(*ii*), as canvassed by learned counsel for the appellants, would render the victim of such forgery or forged document remediless. Any interpretation which leads to a situation where a victim of a crime is rendered remediless, has to be discarded."
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> (Underline Supplied)

14. Considering the facts and circumstances of the case, coupled with the fact that the applicant is the member of *Gram Raksha Samiti* and has statutory duties to discharge and he deliberately changed his version with regard to the place from where the amount of Rs.80,000/- was seized from the accused Ramkumar, this Court is of the considered opinion that the Trial Court did not commit any mistake by directing to file a complaint for prosecution of the applicant. Furthermore, the Trial Magistrate did not commit any mistake by rejecting the application filed under Section 340 of CrPC. As a consequence, the judgment dated 29.06.2019 passed by First Additional Sessions Judge, Guna in Criminal Appeal No.251/2018 and

order dated 01.09.2018 passed by JMFC, Guna in Criminal Case No.145/2013 are hereby affirmed.

15. This Court by order dated 19.08.2019 had stayed the further proceedings in Criminal Case No.145/2013 pending before the JMFC, Guna. The said interim order is hereby vacated.

16. The Trial Magistrate is directed to proceed further with the case and shall make every endeavour to conclude the trial within a period of one year from today. If the applicant does not cooperate in the matter, then the Court below shall be free to take coercive action against the applicant for ensuring the early disposal of the trial.

17. With aforesaid observations, the revision is **dismissed.**

(G.S. Ahluwalia)
Judge

Abhi