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**HIGH COURT OF CHHATTISGARH, BILASPUR****WPCR No. 140 of 2016****Judgment reserved on 22-06-2016****Judgment delivered on 14-09-2016**

1. Rajesh Kumar Chandel S/o Shri Bhajan Singh Chandele, Aged About 50 Years Presently Posted As Divisional Forest Officer, Sukma Division District Sukma Chhattisgarh

**---- Petitioner****Versus**

1. State Of Chhattisgarh Through Its Secretary, Department Of Law, Naya Mantralaya, Naya Raipur, Raipur Chhattisgarh
2. The Principal Secretary, General Administration, Government Of Chhattisgarh, Naya Mantralaya, Naya Raipur, Raipur Chhattisgarh
3. The Additional Director General Of Police, E.O.W./A.C.B. Opp, Jai Jawan Petrol Pump, Telibandha, Raipur Chhattisgarh
4. The Secretary, Department Of Forest, Government Of Chhattisgarh, Naya Mantralaya, Naya Raipur, Raipur Chhattisgarh
5. Union Of India, Through The Secretary, Ministry Of Environment & Forest, Indira Paryawaran Bhawan, Jorbagh Road New Delhi,

**---- Respondent**


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| For Petitioner       | Shri Ajay K. Mishra, Sr. Adv. with Shri Ankit Singhal, Advocate. |
| For Respondent/State | Shri Shashank Thakur, Govt. Advocate.                            |
| For Respondent/UOI   | Shri R.K. Gupta, Advocate                                        |

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**Hon'ble Shri Justice Prashant Kumar Mishra**

**C A V Order**

1. This petition under Article 226 of the Constitution of India has been preferred by the petitioner (accused) for issuance of writ in the nature of certiorari quashing the final report prepared by the respondent No.3; as also to issue a writ of mandamus, commanding the respondent No.3 or its subordinate investigating officer to take the explanations tendered/submitted by the petitioner for its consideration in preparing the final report; as also to restrain the respondents No.1 & 2 from according sanction to prosecute the petitioner on the basis of incomplete final report.
2. Facts of the case, in brief, as projected by the petitioner in the writ petition, are that the petitioner is a Divisional Forest Officer (DFO), presently posted at District Sukma, Chhattisgarh, and is, thus, a public servant as defined under Section 2 (c) of the Prevention of Corruption Act, 1988 (for short 'the PC Act'). On the basis of information received, the Anti Corruption Bureau (ACB)/Economic Offence Wing (EOW) registered offence against the petitioner under the provisions of Sections 13 (1) (e) & 13 (2) of the PC Act bearing crime No.12/14 and conducted search of petitioner's residence at Danteshwari Ward, Jagdalpur, Agriculture Farm House at Chotedevda, Jagdalpur, rented house No.P-34, Jobs' Enclave, Rajkishore Nagar, Bilaspur and Government Quarter at

Pendra Road, Bilaspur. The raid was also conducted in the house of the petitioner and, thereafter, the petitioner was summoned for giving the statement.

3. Having found that during the check period i.e. from 1-6-1993 to 11-12-2002 the petitioner has amassed huge unaccounted wealth disproportionate to his known source of income, the respondent issued letters to the petitioner on 28-1-2015 and, thereafter, reminders on 3-3-2015, 21-4-2015 & 2-5-2015 requiring him to submit information about his movable and immovable properties in Form II, Form II & Form III, however, the petitioner, failed to submit the information. The petitioner, thereafter, submitted a representation on 30-12-2015 (Annexure – P/4) submitting the information. It was received by the respondents on 19-1-2016, therefore, by letter dated 25-1-2016 (Annexure – P/5) the petitioner was informed that since the charge sheet has already been prepared and the matter has been sent to the State Government on 7-7-2015 for obtaining sanction to prosecute, the documents cannot be considered at such belated stage.
4. In view of the above letter dated 25-1-2016, learned counsel appearing for the petitioner would argue that the investigation against the petitioner has not been conducted in a proper, fair & reasonable manner, which may result in miscarriage of justice,

therefore, a direction deserves to be issued to the respondents to make proper investigation, to quash the final report prepared by the respondent No.3 and to restrain the State from according sanction to prosecute the petitioner. To buttress the aforesaid contention, learned counsel placed reliance upon the decision of the Supreme Court rendered in **Mithilesh Kumar Singh v. State of Rajasthan and Others**<sup>1</sup>.

5. Per contra, learned counsel appearing for the State would oppose the writ petition on submission that the investigation is already complete and the charge sheet has already been prepared, the same having been sent to the State Government for obtaining sanction, therefore, the writ petition deserves to be dismissed.
6. There is no quarrel about the legal principle that investigation of a crime be it a crime under the provisions of the Indian Penal Code or under any other special enactment like the PC Act has to be fair, proper and reasonable. For an investigation to be fair, it should not only to be fair to the accused but to the victim and the society also. The petitioner has alleged that the investigation against him is not fair, however, he has not alleged as to which investigating officer or any higher officer than him has influenced the investigation in a *mala fide* manner to thwart the process of

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<sup>1</sup> (2015) 9 SCC 795

investigation. Cases can be found on either side that is to say where the accused was not fairly treated or where the victim was not fairly treated or where the accused was illegally benefited by faulty investigation, therefore, the basic object of the principle is to ensure that the investigation should be unbiased so as to make it fair and proper.

7. In **Zahira Habibulla H. Sheikh and Another v. State of Gujarat and Others**<sup>2</sup>, the Supreme Court has held, thus, in para 18 :

18.....When the investigating agency helps the accused, the witnesses are threatened to depose falsely and the prosecutor acts in a manner as if he was defending the accused, and the court was acting merely as an onlooker and when there is no fair trial at all, justice becomes the victim.

8. In **Sasi Thomas v. State and Others**<sup>3</sup> the Supreme Court has held, thus, in para 15 :

15. Proper and fair investigation on the part of the investigating officer is the backbone of rule of law. A proper and effective investigation into a serious offence and particularly in a case where there is no direct evidence assumes great significance as collection of adequate materials to prove the circumstantial evidence becomes essential. Unfortunately, the appellant has not been treated fairly. When a death has occurred in a suspicious circumstance and in particular when an attempt had been made to bury the dead body hurriedly and

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<sup>2</sup> (2004) 4 SCC 158

<sup>3</sup> (2006) 12 SCC 421

upon obtaining apparently an incorrect medical certificate, it was expected that upon exhumation of the body, the investigating authorities of the State shall carry out their statutory duties fairly.....

9. The case relied by the learned counsel appearing for the petitioner was itself preferred by a person who was aggrieved by faulty investigation conducted by the Rajasthan Police in respect of the death of a young girl, who died after a fall from 4<sup>th</sup> floor of her hostel which, according to the petitioner before the Supreme Court, was a result of ragging and it was not a case of suicide. Since the police was coercing the younger sister of the deceased not to disclose the ragging incidents, the petition was filed to protect the right of the victim to unearth the truth. In the said factual background, the Supreme Court held that every investigation of a crime has to be fair, transparent and judicious.
10. The facts of the above-stated case are, thus, distinguishable from the present case wherein the petitioner is facing the charge of amassing huge wealth disproportionate to his known source of income. What the petitioner desires in the present petition is that the prosecution should consider such documents which he failed to submit before the Investigating Officer when it was required by him. The petitioner, thus, wants the investigation to be carried in the manner he desires and if I may say so, the writ petition has

been preferred at the stage when the State Government is considering the sanction to prosecute applied by the ACB. The petition has, thus, been preferred to preempt the sanction to avoid the inevitable.

11. Whether the accused has a right to direct the course of investigation has been dealt with by the Supreme Court in **Union of India and Another v. W.N. Chadha**<sup>4</sup> wherein the following has been held in paras 92 & 120 :

92. More so, the accused has no right to have any say as regards the manner and method of investigation. Save under certain exceptions under the entire scheme of the Code, the accused has no participation as a matter of right during the course of the investigation of a case instituted on a police report till the investigation culminates in filing of a final report under Section 173(2) of the Code or in a proceeding instituted otherwise than on a police report till the process is issued under Section 204 of the Code, as the case may be. Even in cases where cognizance of an offence is taken on a complaint notwithstanding that the said offence is triable by a Magistrate or triable exclusively by the Court of Sessions, the accused has no right to have participation till the process is issued. In case the issue of process is postponed as contemplated under Section 202 of the Code, the accused may attend the subsequent inquiry but cannot participate. There are various judicial pronouncements to this effect but we feel that it is not necessary to recapitulate those decisions. At the same time, we would like

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4 1993 Supp (4) SCC 260

to point out that there are certain provisions under the Code empowering the Magistrate to give an opportunity of being heard under certain specified circumstances.

120. For all the aforesaid reasons we unhesitatingly set aside the order of the High Court quashing the letter rogatory dated 5/7th February, 1990 and the rectified letter rogatory dated 21st/22nd August, 1990 issued in pursuance of the orders passed by the Special Judge. The respondent who is a named accused in the FIR has no locus standi at this stage to question the manner in which the evidence is to be collected. However, it is open for the respondent to challenge the admissibility and reliability of the evidence only at the stage of trial in case the investigation ends up in filing a final report under Section 173 of the Code indicating that an offence appears to have been committed.

12. For all the above-stated reasons and in view of the law laid down by the Supreme Court in **W.N. Chadha** (Supra), none of the relief claimed for by the petitioner can be allowed in his favour.

13. *Ex-consequenti*, the writ petition, *sans substratum*, is liable to be and is hereby dismissed. Sd/-

Judge  
Prashant Kumar Mishra

Gowri