

HIGH COURT OF CHHATTISGARH, BILASPUR**WPCR No. 193 of 2016**

Order Reserved on : 22.08.2016

Order Passed on : 13.12.2016

- M. K. Gupta S/o Late Shri Darbarilal Gupta, Aged About 58 Years
Occupation: Jt. Director, Town & Country Planning, Directorate Of T & C P C G Govt. Of Chhattisgarh, R/o 35, Maulshri Vihar, V I P Road, Purena, Raipur, (Chhattisgarh)

---- Petitioner**Versus**

1. Additional Director General (Police) E O W/ Anti Corruption Bureau, Opp. Jai Jawan Petrol Pump, Telibandha, Raipur, (Chhattisgarh)
2. The Superintendent Of Police, Anti Corruption Bureau, Chhattisgarh, Raipur, (Chhattisgarh)
3. The Principal Secretary, Department Of Law & Legislative Affairs, Govt. Of Chhattisgarh, Mahanadi Bhawan, New Raipur, (Chhattisgarh)
4. The Secretary, Deptt. Of Housing & Environment, Government Of Chhattisgarh, Mahanadi Bhawan, New Raipur, (Chhattisgarh)
5. The Secretary, Department Of Law & Legislative Affairs, Govt. Of Chhattisgarh, Mahanadi Bhawan, New Raipur, (Chhattisgarh)

---- Respondent

For Petitioner : Shri Ajay Mishra, Sr. Advocate with Shri Ankit Singhal, Adv.
For Respondent/State : Shri UNS Deo, Govt. Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra**C A V Order**

1. The present petition under Article 226 of the Constitution of India

has been preferred by the accused of Crime No.58/2011 registered against the petitioner on 29.9.2011 for offence under Sections 7, 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 (for short 'the Act') for directing respondent No.3 to get the petitioner's voice sample cross-checked or tested from the credible forensic laboratory before finalizing the final report, as also for quashing the said final report likely to be prepared against the petitioner. The petitioner has also prayed for a direction to respondents 4 & 5 to objectively consider his representation and afford opportunity of hearing before passing any order regarding sanction or refusal of sanction.

2. The petitioner is working as Joint Director, Town and Country Planning Department, Government of Chhattisgarh. FIR has been registered on the complaint made by one Mukesh Keshwani on 15.9.2011 stating that his family has 5 acres of agricultural land at village Samoda and Konari, Tehsil and District Durg. He applied for diversion of the land for the reason that he wanted to engage himself in poultry farm business. His application was sent to the Office of the Joint Director, Town and Country Planning Durg in July, 2011. The complainant met the petitioner in respect of sanctioning of lay out and issuance of NOC for which the petitioner demanded Rs.60,000/- as illegal gratification. After lodging of written complaint Mukesh Keshwani was provided a digital voice recorder so that conversation between the petitioner and the complainant could be recorded. Pursuant to the recorded conversation, the complainant went to the petitioner's office and paid Rs.20,000/- to the petitioner on 28.9.2011. The petitioner was trapped red-handed while accepting the bribe and the bribe amount was recovered from the floor under his office table. The petitioner

was arrested on the date of trap itself.

3. Learned counsel for the petitioner would argue that the matter of sanction of lay out and grant of NOC was not pending before the petitioner on the date of alleged demand or acceptance, therefore, no case is made out against the petitioner. He would also submit that the petitioner has never demanded any amount from the complainant and the voice recorder allegedly containing his voice is concocted. Therefore, he requested the police for obtaining his voice sample for cross-checking or cross-matching with the voice recorded by the complainant claiming it to be the petitioner's voice. It is further argued that once the voice sample was taken, charge sheet cannot be filed without obtaining the report and no sanction can be granted against the petitioner. Reliance is placed in the matter of **Mithilesh Kumar Singh Vs. State of Rajasthan and Others** {(2015) 9 SCC 795} and **Babubhai Vs. State of Gujarat** {(2010) 12 SCC 254}.
4. On the other hand, learned State Counsel would vehemently oppose the maintainability of the writ petition on submission that when the charge sheet is not yet finalized, the petitioner cannot be permitted to seek quashing of such charge sheet which would amount to quashing of the FIR itself.
5. The petitioner has prayed for twin reliefs; firstly, direction to get his voice sample tested by the Central Forensic Science Laboratory and for quashing the charge sheet to be prepared and before that to hear the petitioner at the time of grant of sanction.
6. In the considered opinion of this Court, the petitioner does not deserve any of the reliefs prayed for in the writ petition. The

reason therefor is that as held by the Supreme Court in the matter of **Union of India and Another v. W.N. Chadha**¹ the accused cannot direct course of investigation. It is held thus in paragraphs 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 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

¹ 1993 Supp (4) SCC 260

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.”

7. If on petitioner's request his voice sample has been taken, the same need not necessarily be examined because the earlier voice sample is already on record. The process of the Court under Article 226 of the Constitution of India cannot be used for issuance of writ to collect evidence in favour of the accused. If there is any lacking or weakness in the case of the prosecution, the accused would get opportunity to demolish the prosecution case in course of trial. He may get his own voice sample examined by a recognized laboratory and may place it as his defence but the prosecution having once laid a trap on the basis of prima facie proof of illegal demand made by the petitioner is not obliged to collect evidence after laying trap wherein the petitioner has been caught red handed.
8. Insofar as trial for quashing the charge sheet which is yet to be finally prepared, it is to be seen that in the matter of **N. Soundaram Vs. P.K. Pounraj and Another** {(2014) 10 SCC 616}, the Supreme Court has held that charge sheet can be quashed only when the prosecution fails to establish any case against the accused even if the entire prosecution is taken to be true. In the said matter, the following has been held in paragraph-13:-

“**13.** It is well settled by this Court in a catena of cases that the power under Section 482 CrPC has to be exercised sparingly and cautiously to prevent the abuse of process of any court and to secure the ends of justice. [See **State of Haryana v. Bhajan Lal**, 1992 Supp (1) SCC 335] The inherent power should not be exercised to stifle a legitimate prosecution. The High Court should refrain from giving a prima

facie decision unless there are compelling circumstances to do so. Taking the allegations and the complaint as they were, without adding or subtracting anything, if no offence was made out, only then the High Court would be justified in quashing the proceedings in the exercise of its power under Section 482 CrPC. [See ***MCD v. Ram Kishan Rohtagi***; (1983) 1 SCC 1] An investigation should not be shut out at the threshold if the allegations have some substance. [See ***Vinod Raghuvanshi v. Ajay Arora***; (2013) 10 SCC 581]”

9. The said principle has been reiterated in the matter of **Homi Rajvansh Vs. State of Maharashtra and Others** {(2014) 12 SCC 556}.
10. The petitioner's counsel has argued on the merits of the case to convince this Court that even on facts no case is made out against the petitioner. However, since this Court is not inclined to quash the charge sheet in view of the law laid down by the Supreme Court in the matter of **Daljit Singh Gujral and Others Vs. Jagjit Singh Arora and Others** {(2014) 12 SCC 198}, any view on merits of the case may affect the case of either of the parties in the trial Court, therefore, this Court has not dealt with the merits of the case.
11. The judgments cited by learned counsel for the petitioner is distinguishable on facts.
12. For the foregoing, this Court does not find any substance in this writ petition, which deserves to be and is hereby dismissed.

Sd/-
Judge
 (Prashant Kumar Mishra)