

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P. No. 546 of 2016**

Kshir Sagar Patel S/o Laxminarayan Patel, aged about 38 years, R/o House No. 19, Kaliondi Kunj, Meethuguda, P.S. - Jut Mill, Raigarh, Tahsil & Distt. Raigarh, Chhattisgarh.

---- Petitioner**Versus**

1. State of Chhattisgarh through in-charge of Police Station E.O.W./ A.C.B., Raipur, Distt. Raipur, Chhattisgarh.
2. Additional Director General, Anti-Corruption Bureau, Telibandha Raipur, Distt. Raipur, Chhattisgarh.
3. Mr. Yogendra Tamrakar, Special Public Prosecutor in Criminal Case No. 9/2015 in the Court of Honorable Special Judge (PC Act), Raipur, Distt. - Raipur, Chhattisgarh.

---- Respondents**Cr.M.P. No. 791 of 2016**

Kaushal Kishore Yadu S/o Shri M.L. Yadu, aged about 52 years, R/o Wahma Sadan behind Shanti Niketan School, Panjabi Colony Dayalband, P.S. Civil Line, Bilaspur, Tahsil & District Bilaspur, Chhattisgarh.

---- Petitioner**Versus**

1. State of Chhattisgarh through the Secretary, General Administration Department, Mahanadi Bhawan, Mantralay, Naya Raipur, District Raipur, Chhattisgarh.
2. The Secretary, Department of Food and Civil Supplies, Govt. C.G. Mahanadi Bhawan, Mantralay, Naya Raipur, District Raipur, Chhattisgarh.
3. The Economic Offences Wing / Anti Corruption Bureau through its Superintendent / Officer-in-charge, Raipur, District Raipur, Chhattisgarh.

---- Respondents

For Petitioners	:	Shri V. C. Ottalwar, Advocate
For Respondent/State	:	Shri Ashish Shukla, Govt. Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****15/11/2016**

Both these petitions have been filed by the petitioners with a limited prayer seeking for quashment of the entire criminal proceedings in Special Case No. 794/2015 arising out of Crime No. 09/2015 pending before the Court of Special Judge(PC Act), Raipur.

2. Shri V. C. Ottalwar, counsel appearing in both the petitions submits that he has a limited prayer to be made in both the petitions that is for the matter to be remitted back to the Anti Corruption Bureau who in turn shall conduct a fresh investigation and take an appropriate step in the light of the finding that would be come. His contention is on the context that on the one hand the ACB which has filed charge sheet before the Court below on 06.06.2015 has found some material against the petitioners of having committed the offence and on the other hand, he draws the attention to the document i.e. the questionnaire of the State Legislative Assembly wherein to a question that was put, the Hon'ble State Minister of Food has given a categorical averment of there being no irregularity or illegality to have occurred in the alleged purchase of rice from the rice millers neither is there any allegation of any sub-standard quality of rice being purchased from the rice millers. Thus, the two statements i.e. one made by the Hon'ble Minister in the Assembly and the other put forth by the ACB before the Court below are itself self contradictory and therefore counsel for the petitioners requested that the matter may be sent for reinvestigation to the ACB for holding a fresh investigation as to whether an offence is made out or not.

3. Per contra, Shri Ashish Shukla, Govt. Advocate opposing the two petitions submits that the allegation against the petitioners is not just of purchase of sub-standard/inferior quality of rice but there are other allegations also against them. According to the State counsel, during the course of raid

which was conducted in the office of the Civil Supplies Corporation, huge amount of cash was recovered from the office. In addition, cash amount was also recovered from the possession of both the petitioners. So far as petitioner Kshir Sagar Patel is concerned, during the course of investigation Rs.2,47,800/- was recovered from his house and there was also serious charge of embezzlement against him in the office of the Civil Supplies Corporation. So far as petitioner Kaushal Kishore Yadu is concerned, an amount of Rs. 1,63,000/- was recovered from his house and Rs.23.35,000/- was recovered from his bank locker. He submits that these are prima facie strong materials for implicating the petitioners in the said case.

4. So far as the filing of charge sheet is concerned, the department of the Anti Corruption Bureau has conducted a thorough investigation and it is only after the investigation was done that the charge sheet was filed and therefore even if for some reason the Minister must have made a statement in the Assembly, that by itself cannot be a ground for the prayer for reinvestigation in the instant case by the petitioners be allowed.

5. So far as the two conflicting statements are concerned, State counsel submits that the petitioners may take advantage of the same during the course of the trial. He further submits that the allegation of the petitioners is also that of having conspired with the other accused persons and in the present offence, there are as many as 16 accused persons including the petitioners and therefore apart from the substantive offence under Sections 109, 409 & 420 IPC and 11, 13 (2) read with Section 13 (1) (d) of the Prevention of Corruption Act, the petitioners have also been prosecuted under Section 120 B i.e. of conspiracy and therefore at this stage, it cannot be said that there is no material against the petitioners for being implicated in the instant case. State counsel relied upon the two decisions of the Hon'ble Supreme Court; one is (2003) 2 SCC 649 (M.C. Abraham and another vs. State of Maharashtra and others

along with other connected matters) and the other is (2010) 6 SCC 243 (Jeffrey J. Diermeier and another vs. State of West Bengal and another). State counsel relying upon said two decisions prayed for rejection of the petitions.

6. Having considered the rival contentions put forth by the counsel appearing on either side and on perusal of the records what reflects is that a serious offence is detected by the Anti Corruption Bureau on a raid being conducted in the office of the Civil Supplies Corporation and the team conducting the raid seized as much as almost 3.5 crores of rupees in cash. There were also huge amount of cash recovered from the individual possession of each of the petitioners and other accused from their residences and bank lockers. Another aspect which cannot be brushed aside is the report of the ACB based upon the investigation which has been conducted and the charge sheet has also been filed.

7. So far as the contention of the counsel for the petitioners in respect of the conflicting view of the Hon'ble Minister is concerned, this Court does not find it to be a strong ground enough for sending the matter back for reinvestigation for the reason that the charge sheet clearly indicates an investigation to have already been conducted by the Department of ACB and the fact that in case if certain additional facts and materials are still recovered by the department, they can still submit the same by way of a supplementary charge sheet also. The supreme Court in the case of Jeffrey (supra) in paragraph-20 and 21 while discussing with the scope of interference of the High Court under Section 482 of CrPC has held as under:

“20. Before addressing the contentions advanced on behalf of the parties, it will be useful to notice the scope and ambit of the inherent powers of the High Court under Section 482 of the Code. The section itself envisages three circumstances under which the inherent jurisdiction may be exercised namely, (i) to give effect to an order under the Code; (ii) to prevent abuse of the process of court; and (iii) to otherwise secure the ends of

justice. Nevertheless, it is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction of the Court. Undoubtedly, the power possessed by the High Court under the said provision is very wide but is not unlimited. It has to be exercised sparingly, carefully and cautiously, *ex debito justitiae* to do real and substantial justice for which alone the court exists. It needs little emphasis that the inherent jurisdiction does not confer an arbitrary power on the High Court to act according to whim or caprice. The power exists to prevent abuse of authority and not to produce injustice.

21. In one of the earlier case, in *R.P. Kapur v. State of Punjab*¹ this Court had summarized some of the categories of cases where the inherent power under Section 482 of the Code could be exercised by the High Court to quash criminal proceedings against the accused. These are:

(i) where it manifestly appears that there is a legal bar against the institution or continuance of the proceedings e.g. want of sanction;

(ii) where the allegations in the first information report or the complaint taken at its face value and accepted in their entirety do not constitute the offence alleged;

(iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.”

8. Likewise, the Supreme Court again in the case of *M. C. Abraham* (supra) in paragraph-17 while discussing with the role of investigating agency has held as under:

“The principle, therefore, is well settled that it is for the investigating agency to submit a report to the Magistrate after full and complete investigation. The investigating agency may submit a report finding the allegations substantiated. It is also open to the investigating agency to submit a report finding no material to support the allegations made in the first information report. It is open to the Magistrate concerned to accept the report or to order further enquiry. But what is clear is that the Magistrate cannot direct the investigating agency to submit a report that is in accord with his views. Even in a case where a report is submitted by the investigating agency finding that no case is made out for prosecution, it is open to the Magistrate to disagree with the report and to take cognizance, but what he cannot do is to direct the investigating agency to submit a report to the effect that the allegations have been supported by the material collected during the course of investigation.”

1 AIR 1960 SC 866

9. In the instant case also this Court finds that the investigating agency has already conducted an enquiry and the state counsel further reiterates that if any additional facts and materials are found, the same can be submitted by the prosecution by way of a supplementary charge sheet.

10. In the given facts and circumstances of the case, this Court does not find a strong case to have been made out by the petitioners seeking for quashment of the entire criminal proceedings. Accordingly, both the petitions deserve to be and are accordingly rejected.

**Sd/-
(P. Sam Koshy)
JUDGE**