

HIGH COURT OF CHHATTISGARH, BILASPUR

WPCR No. 188 of 2015

1. Smt. Shruti Singh W/o Shri S.D. Singh Aged About 39 Years
Occupation - Service Presently posted as Station House Officer, P.S. Bakimogra, District Korba Chhattisgarh R/o C-545, Yamuna Vihar Jamni Pali, N.T.P.C. Township, District Korba Chhattisgarh ,
2. Sher Singh Bande, S/o Shri J.P. Bande, Aged About 42 Years
Occupation - Service Presently Posted as Inspector S I B Kanker, R/o Barde Bhate, Behind New Bus Stand, District Kanker, Chhattisgarh
3. Deepanshu Kabra S/o Shri Jai Bhagwan, Aged About 41 Years
Occupation- Service, Presently Posted As Inspector General S I B ,
Raipur District : Raipur, Chhattisgarh **--- Petitioners**

Versus

1. State of Chhattisgarh through the Secretary, Department of Home, Mahanadi Bhawan, Naya Raipur, District Raipur Chhattisgarh
2. Director General of Police, Chhattisgarh, Police Headquarters, Raipur
District : Raipur, Chhattisgarh
3. Station House Officer, Police Station Ganj, Raipur District : Raipur, Chhattisgarh **--- Respondent**

For the Petitioners	:	Mr. Rajeev Shrivastava, Advocate
For respondent No.2	:	Ms. Priya Mishra, Advocate
For the State/R-1& R-3	:	Mr. Sangharsh Pandey, Panel Lawyer

WPS No. 3160 of 2015

1. Kumari Chandrakar D/o M. L. Chandrakar, Aged About 40 Years
Occupation- Service, Presently Posted As I. G. P. At Jagdalpur, District Bastar, Chhattisgarh.
2. D. R. Verma, S/o Late M. L. Verma, Aged About 57 Years Occupation
Service, Presently Posted as Sub Inspector, Police Station Kurud, District Dhamtari, District : Dhamtari, Chhattisgarh **--- Petitioners**

Versus

1. State of Chhattisgarh through the Secretary, Department of Home Mahanadi Bhawan, Naya Raipur, District Raipur, Chhattisgarh
2. Director General of Police, Office of the Director General of Police, Raipur, District : Raipur, Chhattisgarh **--- Respondents**

For the Petitioners	:	Mr. Y.C. Sharma, Advocate
For the State	:	Mr. Sangharsh Pandey, Panel Lawyer
For respondent No.2	:	Ms. Priya Mishra, Advocate

WPS No. 3055 of 2015

1. Smt. Shruti Singh W/o Shri S.D. Singh Aged About 39 Years
Occupation - Service Presently Posted as Station House Officer, P.S.
Bakimogra, District Korba Chhattisgarh. R/o C-545, Yamuna Vihar,
Jamni Pali, NTPC Township, Distt. Korba (C.G).
2. Sher Singh Bande, S/o Shri J.P. Bande, Aged About 42 Years
Occupation - Service Presently Posted As Inspector S I B Kanker, R/o
Barde Bhate, Behind New Bus Stand, Kanker, District Sourth Baster ,
District : Kanker, Chhattisgarh
3. Deepanshu Kabra S/o Shri Jai Bhagwan, Aged About 41 Years
Occupation- Service, Presently Posted as Inspector General S I B ,
Raipur, District : Raipur, Chhattisgarh **--- Petitioners**

Versus

1. State of Chhattisgarh through the Secretary, Department of Home
Mahanadi Bhawan Naya Raipur, District-Raipur , Chhattisgarh
2. The Director General of Police, Office of the Director General of
Police, Raipur , District : Raipur, Chhattisgarh **--- Respondents**

For the Petitioners	:	Mr. Rajeev Shrivastava, Advocate
For the State	:	Mr. Sangharsh Pandey, Panel Lawyer
For respondent No.2	:	Ms. Priya Mishra, Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order on Board****02.08.2018**

1. The present petitions are being heard together as they arose
out of a common issue involved between the parties in lis/
subject matter.
2. All the petitioners are police officers holding different posts
in the department. The necessity to file these petitions
arises for the reason that in a judgment dated 17.07.2015
passed by the Additional C.J.M. Raipur, in criminal case No.
102/2012 relating to Crime No. 91/2011 the trial Court while
passing the judgment observed that few of the accused
could not be inculpated because of the failure on the part of
Police Officials to rope them for want of effective
investigation. Consequently it was observed and directed

that the criminal proceeding be registered against all the erring police officials and subsequently in order to comply with the observation an MJC was opened, wherein the direction was given by the learned additional CJM for initiating criminal proceeding as well as departmental enquiry. Therefore, the petitions were filed with two fold prayer i.e., to quash the MJC and departmental enquiry initiated on the basis of observations made.

3. Learned counsel for the petitioner would submit that the criminal case ended in conviction not in acquittal, consequently the ratio of the judgment reported in **(2014) 5 SCC 108 (State of Gujrat v. Kishanbhai and others)** which the learned Court has relied would not at all apply. It is stated that on the availability of evidence on the date, the charge sheet was filed, subsequently after further investigation the supplementary charge sheet was filed and separate 5 challans were filed which would show that during initial investigation when the first prosecution was launched the other culprits were not inculpated and as and when the discovery of criminality was found the arrests were made. It is stated that subsequently by passage of time, the progress of investigation further unfolded the involvement of different persons and they were arrested in phase-wise and few of them absconded too. It is stated that the observation of the like nature is not within the domain of the power of the court below and further it is only the constitutional Courts which are empowered to do so to give such direction. It is further submitted that even on the date of judgment, the court itself observed that the investigation is going on, which contradicts the fact that there was a closure from the side of police.

Consequently a presumption cannot be drawn that the police officers had failed in discharge of their duty. It is submitted that under the facts and circumstances of the case, the finding recorded by the court below requires to be set aside along-with finding in the MJC No.977/2015.

4. Learned State Counsel without going into the merits of the case would submit that the State was bound to follow the direction given by the Court. It is further submitted that as many as 6 Challans at different points of time were filed and the investigation was continuously followed-up and the prosecutions were launched as and when the facts disclosed the involvement of different persons.
5. Perused the documents annexed to these petitions. The judgment dated 17.07.2015 passed by the learned Additional C.J.M/Special Magistrate (CBI), Raipur, in Criminal Case No. 102/2012 relating to Crime No.91/2011 is perused. The caption of the said judgment would show that six persons were prosecuted in such criminal trial namely (1) Shailendra @ Gudda son of Sukhdev, (2) Satyanarayana, son of Alok Ram Sahu, (3) Ajeet Singh, son of Kunwar Bharat, (4) Sunil Kumar Singh, son of Ram Nageena, (5) Dheeraj Upadhyay, son of Tribhuvan and (6) Rajesh Kumar Sachan, son of Sarju Prasad. The court convicted the aforesaid persons under different sections i.e., 120-B, 465, 409, 411 IPC & Section 10 of the Chhattisgarh Pariksha (Anuchit Sadhno Ka Nivaran) Adhiniyam 2008.
6. The learned court below at Para 19 of the judgment observed that it is a self proven that the question paper of chemistry subject of Chhattisgharh P.M.T. Examination 2011 was leaked. Therefore, it can be safely presumed that two

parties i.e., Mahim Pattern Private Limited, Agra and the office of the Chhattisgarh Vyavasay Pariksha Mandal (for short "VYAPAM") were involved in such commission of crime. It was further observed that investigation towards those aspects is completely silent and therefore the role played by the police officers and other officers of the C.G. Examination Board is doubtful. Based on such observation, the court below had directed to take criminal action against all the police officers and other officers of the Chhattisgarh Vyavasay Pariksha Mandal.

7. During the course of submission made by the State, it is stated that initially 3 persons were arrested namely Rajesh Kumar Sachan, Sunil Kumar Singh & Satyanarayan on 19.06.2011, for which, charge sheet was filed on 10.09.2011. They all were accused in Criminal Trial No. 102/2012. Subsequently the arrest was made of Shailendra @ Gudda s/o Sukhdev, Dheeraj Kumar and Akhilesh Kumar in November & December 2011 for which a supplementary charge sheet was filed on 13.02.2012. So subsequently, accused Shailendra @ Gudda and Dheeraj Kumar were prosecuted in Criminal Trial No. 102/2012 and Akhilesh Kumar appears to have absconded. The third supplementary charge sheet was filed against one Bedi Ram on 07.05.2012 who was arrested on 11.02.2012, however absconded. The 4th charge sheet was filed by the Police on 03.10.2013 against Ajit Singh who was prosecuted in Criminal Trial No. 102/2012. The 5th charge sheet was filed on 05.05.2015 against Deendayal @ Sanjeev Singh and he was arrested on 01.04.2015.
8. The facts, therefore, unfolds that after launch of first

prosecution, subsequent prosecutions were also launched on different dates. The last charge that was filed on 05.05.2015, thereby by implication it can be presumed that the said accused was not tried in criminal case no. 102/ 2012 as the judgment itself is dated 17.7.2015. With respect to other accused Manish Kumar, he was arrested on 13.10.2015 and 6th supplementary charge sheet was filed on 08.01.2016. The court below in its judgment dated 17.07.2015 in Criminal Case No. 102/2012 at para 2 had observed and admitted the fact that on the date of judgment also, the investigation was carried out by the police Ganj, which also fortifies the statement of the State that the investigation was continuing and as and when the facts were unfolded the charge sheet was filed with the arrest of different persons. With respect to the observation made as to the person who printed the papers namely Mahim Pattern Private Limited, Agra as its involvement was observed, the order sheet would show that previously an application u/s 319 of Cr.P.C., was filed by one of the accused to inculcate the said Printer as an accused. The said application was dismissed by the court below by order dated 02.09.2013 Annexure P-5 and the court observed that no evidence exists which would suggest that Mahim Pattern Private Limited has failed in its duty to keep the papers confidential whereby the papers were leaked out. In the result, the application u/s 319 of Cr.P.C., was rejected.

9. Therefore, if the facts are considered together it would show that at para 19 of the judgment certain directions which were given by the learned Addl. C.J.M., contradicts its own finding at para 2 wherein it recorded that the investigation was still

going on in respect of the crime. As also the order dated 02.09.2013 whereby the application u/s 319 Cr.P.C., was dismissed fortifies another fact whereby principally the Court itself has given a verdict that the evidence exists against the Printer to prosecute him. Earlier a clear finding having been given that no evidence exists to inculcate Mahim Pattern Private Limited, therefore, the finding of para 19 of the final judgment is a different opinion and contradicts the same and amounts to review. Further more, the reading of order would show that the learned court below has passed its direction on the basis of ratio laid down in *(2014) 5 SCC 108 State of Gujrat v. Kishan Bhai (Supra)* wherein the Supreme Court has said at para 22 that every acquittal should be understood as a failure of justice delivery system, in serving the cause of justice. Likewise every acquittal should ordinarily lead to inference, that an innocent person was wrongfully prosecuted. In that case, the State was directed to put in place a procedural mechanism which would ensure that the cause of justice is served, which would simultaneously ensure the safeguard of interest of those who are innocent.

10. In the instance case, the trial of all the persons who were prosecuted ended in conviction. Therefore, the learned court below has failed to follow the ratio laid down in the present facts of the case. The facts as suggest would show that the court itself has observed that the investigation was going on and further on earlier occasion, the court observed that inculcating one of the accused namely Mahim Pattern Private Limited cannot be made as no evidence exists. However, subsequently while passing the judgment against such

finding the observation was recorded.

11. The series of facts would show that on the different points of time, supplementary charge sheets were filed continuously over a period of time. The Supreme Court further in **2016 (3) SCC 135 Pooja Pal v. Union of India and others** while laying the ratio of fresh investigation stated that the constitutional courts alone are empowered to direct fresh investigation or reinvestigation and further investigation while regular court empowered to only direct further investigation. Here in this case, it is not disputed by the State that the investigation is still going on, therefore, the investigation was not stopped for all the times. It has been stated by the State that the investigation was carried out even after the impugned order was passed.
12. In the result, the observation made by the court below directing registration of criminal case at Para 26 of its judgment passed in Criminal case No. 102 of 2012 is set aside. Consequently, the proceedings of MJC bearing No. 977/2015 (*State v. Police Superintendent of Police and others*) is also hereby quashed. The consequences of such order shall follow and departmental enquiry so initiated on the basis of such observation also stands quashed. In the result, the petitions are allowed. No order as to costs.

Sd/-
GOUTAM BHADURI
JUDGE