

HIGH COURT OF CHHATTISGARH, BILASPUR**(Judgment Delivered on 12.06.2020)****WPCR No. 238 of 2020**

1. Jai Deo Gupta S/o (Late) Shri Ram Gupta Aged About 84 Years R/o Near Head Post Office Rajendra Nagar, Bilaspur, Chhattisgarh
2. Dr. Deepshikha Agarwal D/o Manik Chandra Aggarwal Aged About 55 Years R/o 12, Altamas Classic, Sales Tax Colony, Kamardih, Raipur, Chhattisgarh

---- Petitioners**Versus**

1. State Of Chhattisgarh Through Its Chief Secretary Mahanadi Bhawan, Atal Nagar Raipur, Chhattisgarh 492002
2. Central Bureau Of Investigation Plot No. 5-B, 6th Floor, CGO Complex, Lodhi Road New Delhi 110003

---- Respondents

For Petitioners : Shri Mahesh Jethmalani, Sr. Advocate
with Shri Vivek Sharma, Advocate

For Respondents/State : Shri S.C. Verma, Advocate General

Hon'ble Shri Justice Goutam Bhaduri**CAV Judgment**

1. Heard on admission.
2. The facts as pleaded are that petitioner No.1 Jai Deo Gupta along with other persons formed a Mikki Memorial Trust. A public trust registered under Chhattisgarh Public Trust Act, 1951 with an objective to provide medical relief to the poor persons. The trust named MGM Eye Institute was established at

Raipur in 2004 as an eye care center. In pursuance thereto the trust applied for a term loan of rupees 3 Crore to procure the equipments in the hospital, which was sanctioned by the Bank. Thereafter, in the year 2007 a MoU was entered with the State wherein hospital was obliged to render subsidized health services to the government employees and Economic Weaker Section. It is contended that in the year 2017 an FIR was lodged against Mr. Bhupesh Baghel under Section 13 (2) of the Prevention of Corruption Act, 1988 by the EOW/ACB, who was the then M.L.A. of the Patan Constituency and presently the Chief Minister of the State, on different grounds. At that time, the son of petitioner was serving as ADG-EOW/ACB. Thereafter, after the assembly election in December, 2018 Mr. Bhupesh Baghel was sworn in as Chief Minister, thereafter, certain FIR was lodged bearing No.6/19, 7/19 & 605/19 with the police as the grievance was nursed against the son of the petitioner No.1 namely Mukesh Gupta. The petitioner contended that the said FIR was lodged with mala fide, consequently, the son of petitioner No.1 invoked the writ jurisdiction of the Supreme Court, wherein the FIR bearing No.6/19, 7/19 & 605/19 were stayed. It is further contended that thereafter the general administration of the State has issued the order to conduct an enquiry by EOW/ACB and proposal of cancellation of affiliation of hospital was made. It is contended that the son of the petitioner No.1 in the meanwhile was prosecuting his grievance before the Supreme Court, wherein the interim orders were passed in favour of the son of petitioner No.1. Thereafter, they received a media report on 05.05.2020 that the preliminary enquiry No. 5/19 has been converted into FIR under Section 406, 420 and 120B of the IPC read with Section 7 of the Prevention of Corruption Act, 1988 for criminal breach of trust and on the ground that the hospital has

used 3 crore rupees grant issued by the State to repay the loan taken by the trust. It is been pleaded that since the son of petitioner No.1 had approached to the Supreme Court, as such in a retaliation with malafide, the present FIR was lodged.

3. The present petition is to quash the FIR and the relief as prayed is as under:-

10.1 Issue a writ of certiorari quashing the FIR No.18/20 dated 05.05.2020 registered at P.S. EOW-ACB, Raipur, against the Petitioners.

10.2 Transfer the investigation to the CBI or to such another independent agency as this honorable court may deem fit in the circumstances of the case.

10.3 Pass any such order as this Hon'ble Court may deem fit in the interest of justice.

4. Shri Mahesh Jethmalani, learned senior counsel for the petitioner assisted by Shri Vivek Sharma, would submit that on 27.04.2019 a preliminary enquiry was registered against the petitioners, the same was converted into FIR on 5th of May, 2020 ignoring the guideline of time issued by the Supreme Court in the case of ***Lalita Kumari Vs. Government of Uttar Pradesh and others {(2014) 2 SCC 1}***. It is further submitted that the son of the petitioner No.1 namely Mukesh Gupta had filed a writ petition criminal before the Supreme Court, wherein the FIR has been stayed by the Supreme Court on 02.09.2019 and further on 25.10.2019 the earlier order so passed by the Supreme Court was continued and further it was ordered that Mukesh Gupta S/o Jai Deo Gupta the petitioner No.1 herein shall not be harassed unduly and shall not be arrested also. It is contended that thereafter to

circumvent the order, the State with all malafide trying to harass the petitioner by filing FIR against the father of the petitioner and the present FIR is made. It is stated that the petitioner No.1 is aged about 84 years and petitioner No.2 is aged about 55 years.

5. It is further submitted that the respondents/State have not supplied the copy of the FIR to the petitioner ignoring the mandate laid down in case of ***Youth Bar Association of India Versus Union of India and Another*** {(2016) 9 SCC 473}, wherein it has been categorically held by the Supreme Court that the accused is entitled for the copy of the FIR. Reference is also made to the letter dated 06.05.2020 wherein a letter was addressed to the Superintendent of Police, EOW/ACB, Raipur as against this the petitioner received a letter from the I.O. of State Economic Offence Wing, Anti Corruption Bureau, whereby the supply of copy of the FIR was denied. Referring to the law laid down in the case of ***Youth Bar Association of India (supra)*** counsel would submit that barring the sensitive matter the FIR is required to be uploaded at police website. He would further submit that the FIR has not been uploaded in the website of the police. Further in reply to the submission made by the Advocate General, it is submitted that as per the State, the FIR has been registered and on the background of which the FIR is registered, he referred to Annexure P-6 dated 10th of April, 2005. The counsel would submit that the basis of allegation to register the FIR itself is wrong as grant of 3 crore rupees by the State was used to repay the loan as was requested to State and nothing was concealed as projected by State that the grant of 3 Crore by the State was used to repay the loan availed from

the Bank. It is further submitted that there is a violation of the directions issued by the Supreme Court in the case of ***Lalita Kumari Vs. Government of Uttar Pradesh and others*** {(2014) 2 SCC 1} as also in the case of ***Youth Bar Association of India Versus Union of India and Another*** {(2016) 9 SCC 473} as the FIR was registered beyond the period of time of preliminary enquiry and further the FIR was neither supplied to the petitioner nor was uploaded in the police website, which would lead to show that the FIR is outcome of the mala fide. The counsel also referred to the pleading of malafide in the petition and submits that the registration of FIR against the petitioner No.1, who is the father of Mukesh Gupta is bad in law.

6. Per contra, learned Advocate General vehemently opposed the arguments. It is stated that the reference which has been made by the petitioner about those order of the Supreme Court dated 02.09.2019 (Annexure P-20) & 25.10.2019 (Annexure P-22) are in respect of the FIR Nos.6/19, 7/19 & 605/19. It is categorically submitted that those FIR are different and are not against the present petitioners. It is further contended that the allegation that the petitioners have obtained a grant of Rs.3 Crores for treatment of the poor people but instead to serve the poor people repaid the same for loan availed from the State Bank. The counsel would submit that during the meeting with Bank to negotiate to repay the loan, son of the petitioner Mukesh Gupta used to be present at meetings so as to pressurize the banking officials in his official capacity and those evidence have to be collected yet. It is further submitted that after FIR was registered the respective few file of MGM Trust from the

Mantralaya got missing. It is stated that as a precautionary measure the FIR has not been uploaded in the website. Learned Advocate General would further submit that the public money was siphoned to repay the loan amount and if the FIR is uploaded in the police website, it may lead to doing away with evidence and would lead to danger & safety of the witnesses as the son of the petitioner is an influential person and witnesses may be pressurized and further papers may be missing. He would further submit that the copy of the FIR has been sent to the Magistrate from which the copy may be obtained by the accused and also since the FIR has been decided not be uploaded in police website, a committee has been formed by the State and the petitioner can very well approach to that committee through their representative to have the copy of FIR. He would further submit that they undertake to supply the copy of the FIR if the petitioner makes an approach to the committee or concerned police. He would further submit that the quashing of the FIR as has been prayed at this stage would stop the entire investigation and the petitioners if they are afraid of their arrest they may avail the alternative remedy to avoid the arrest by filing bail petition. He would further submit that the entire petition is devoid of merits and is liable to be dismissed.

7. After submission of arguments one person namely Manik Mehta sought to argue, however, he was not allowed since the arguments were heard on admission.
8. I have heard learned counsel for the parties and perused the records.

9. The order Annexure P-20 which was referred by the petitioner is of Writ Petition (Criminal) No.230/2019. The said petition is by Mukesh Gupta, wherein further proceeding for FIR No.6/19 dated 07.02.2019, FIR No.7/19 dated 11.02.2019 and FIR No.605 of 2019 dated 17.06.2019 has been stayed. The categorical submission is made by the learned Advocate General that these FIRs do not pertain to the subject matter for which the petition has been filed. When categorical submission is made that those stay of FIR having distinct number and are on different subject issue against son of the petitioner, then it would be too remote to hold at this stage that because of the fact certain FIR has been lodged against son of the petitioner and which has been stayed by the Supreme Court, the present petitioner No.1 who is the father of Mukesh Gupta is being harassed. The quashment of FIR which has been sought for it is of a particular different subject matter. Therefore, unless & until direct nexus is established with respect to the facts of earlier & subsequent FIR, the person against whom it is registered, the Court of its own accord will not draw any inference of malafide.

10. The Supreme Court in the case of ***State of Telangana Vs. Managipet alias Mangipet Sarveshwar Reddy {(2019) SCC OnLine SC 1599}*** has laid down the ratio that the purpose of a preliminary inquiry is to screen wholly frivolous and motivated complaints in furtherance of acting fairly and objectively. It further held that the FIR can be registered if the information in respect of prima facie allegations disclosing a cognizable offence is available. It further held that once the officer recording the FIR is satisfied with such disclosure, he can proceed against the accused

even without conducting any inquiry or by any other manner on the basis of the credible information received by him.

11. It is a settled preposition that if the allegation is made in the FIR or the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out a case against the accused and also where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused, the interference can be made.
12. Recently, the Supreme Court in the case of **Rajeev Kourav Versus Baisahab & ors. {Criminal Appeal No.232 of 2020, arising out of S.L.P. (Crl.) No.1174 of 2017}** decided on 11th of February, 2020 has held thus in para 6:-

“6. It is not more res integra that exercise of power under Section 482 CrPC to quash a criminal proceeding is only when an allegation made in the FIR or the charge sheet constitutes the ingredients of the offence/offences alleged. Interference by the High Court under Section 482 CrPC is to prevent the abuse of process of any court or otherwise to secure the ends of justice. It is settled law that the evidence produced by the accused in his defence cannot be looked into by the Court, except in very exceptional circumstances, at the initial stage of the criminal proceedings. It is trite law that the High Court cannot embark upon the appreciation of evidence while considering the petition filed under Section 482 CrPC for quashing criminal proceedings. It is clear from the law laid down by this Court that if a prima facie case is made out disclosing the ingredients of the offence alleged against the accused, the Court cannot quash a criminal proceeding.”

13. In the instant case, as submission is advanced by the State that the FIR has been lodged on the ground that certain amount was obtained from the State by way of grant which was used for payment of loan availed from the bank at the behest of petitioners. The pleadings is also made of mala fide. To establish such mala fide with the nexus of the petitioners nothing is on record to assume the same to highlight it to the fore. As per the pleadings, the FIR under Section 406, 420, 120B of the IPC read with Section 7 of the Prevention of Corruption Act, 1988 is registered. With reference to the letter referred by the petitioner Annexure P-6 dated 10th of April, 2005, the State has averred that those documents are not sacrosanct. Therefore, documents as placed by the petitioner cannot be acted upon to exonerate the petitioner at this stage as otherwise it would amount to accept the defence by this Court.
14. As has been held by the Supreme Court in the case of ***State of Telangana Vs. Managipet alias Mangipet Sarveshwar Reddy {(2019) SCC OnLine SC 1599}*** that the preliminary enquiry is not warranted mandatorily in all corruption cases and the type of preliminary enquiry to be conducted will depend on the facts and circumstances of each case. There is no fixed parameters. Herein as has been stated by the State some preliminary enquiry is conducted and thereafter the FIR has been registered. Prayer is made by the petitioners to quash the FIR bearing No.18/20 dated 05.05.2020. The Supreme Court in the case of ***J Jayalalithaa and others Vs. State of Karnataka and others {(2014) 2 SCC 401}*** has held that legal malice or malice in law means something done without lawful excuse. It is an act done deliberately in disregard to

the rights of the others. It is an act which is also done with an oblique or indirect object. Malafide also can be established if it is done wrongfully and willfully without any reasonable or probable cause with clear ill feeling and spite. Therefore, when the subject matter of FIR is different, the quashing of other FIR on the basis of fact that the other FIR lodged against the son of the petitioner is stayed by Hon'ble the Supreme Court; it would amount to interference at the inception even to investigate the cognizable crime reported.

15. The Supreme Court in the case of ***P. Chidambaram Vs. Directorate of Enforcement {(2019) 9 SCC 24}*** has held that there is a well defined and demarcated function in the field of investigation and its subsequent adjudication. It is further held that it is not the function of the Court to monitor the investigation process so long as the investigation does not violate any provision of law. It must be left to the discretion of the investigating agency to decide the course of investigation. If the Court is to interfere in each and every stage of the investigation and the interrogation of the accused, it would affect the normal course of investigation. It must be left to the investigating agency to proceed in its own manner in interrogation of the accused, nature of questions put to him and the manner of interrogation of the accused. Therefore, if the FIR at this stage is quashed, it would amount to strangle the investigation itself at the infancy. If the allegations of malafide pleaded in the petition are looked into, the nature of FIR which is under challenge will not overshadow if it is based on available facts in a particular case. If the facts reported prima facie make out a cognizable offence, then

irrespective of presence of any malafide or not, the FIR can be registered for a cognizable offence and even pleading of malafide will not arrest the investigation and registration of FIR.

16. With respect to supply of copy of the FIR, a statement is made at the bar by the Advocate General that after the lodging of the FIR, the relevant file from the Mantralaya was missing. The said statement of the Advocate General cannot be sidelined casually. If it is correct, then it shows the persons within the system are helping the certain people to destroy the evidence. In a result, the case would be the sensitive one.

17. The Supreme Court in the case of ***Youth Bar Association of India Versus Union of India and Another*** {(2016) 9 SCC 473} at para 11.6 has held as under:-

“11.6 The word “sensitive” apart from the other aspects which may be thought of being sensitive by the competent authority as stated hereinbefore would also include concept of privacy, regard being had to the nature of the FIR. The examples given with regard to the sensitive cases are absolutely illustrative and are not exhaustive.”

18. It is obvious that if some relevant file got missing from Mantralaya after lodging of FIR, then in such case the issue will draw fair amount of attention to make it sensitive. In those circumstances if the competent authority has decided not to upload the FIR in police website, then no fault can be attributed to the respondents or will be a reason to quash the FIR. In any case, the petitioner cannot be denied the copy of the FIR. The petitioner through his representative can submit an application for grant of certified copy before the police officer or the Superintendent

of Police to get the copy of the FIR on payment of such fee which is payable for obtaining such a copy from the Court. Likewise, as has been stated by the Advocate General that the FIR has already been forwarded by the police station to the Magistrate, therefore, if the application is filed for certified copy of the FIR on behalf of the accused before the concerned Magistrate, the same shall be given by the concerned Court within two working days. This would be pursuant to the directions issued by the Supreme Court at para 11.2 & 11.3 in the case of ***Youth Bar Association of India Versus Union of India and Another {(2016) 9 SCC 473}***.

19. As a result of discussion in the foregoing paras, the prayer to quash the FIR cannot be allowed and accordingly the petition being devoid of merits is dismissed at the motion stage itself.

Sd/-

Goutam Bhaduri
Judge

Ashu