

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

CRIMINAL WRIT PETITION NO. 1048 OF 2017

1] Hanumant S/o Rajeshwarrao Kulkarni,
Age- 60 years, Occu.- Pensioner,
R/o. Mahalaxmi Residency,
Choudhari Nagar, Tq. & Dist. Jalna.

2] Vinod S/o. Uttamrao Tambe,
Age- 39 years, Occu.- Service,
R/o. P.T.C. Turchi, Tq. Tasgaon,
Dist. Sangli (Maharashtra).

... **Petitioners**
(Org. Accused)

Versus

1] The State of Maharashtra,
Through Police Inspector,
Sadar Bazar Police Station, Jalna,
Dist. Jalna.

2] Sandip S/o. Bhanudas Palve,
Age- 50 years, Occu- Service,
R/o. Police Training Camp,
Tq. & Dist. Jalna

... **Respondents**
(Res. No.2 Org. informant)

...

Mr. Swapnil S. Dargad, Advocate for Petitioners.

Mr. R. D. Sanap, APP for Respondent No.1 & 2 / State.

...

CORAM : **SHRIKANT D. KULKARNI, J.**

RESERVED ON : 26th September, 2022.

PRONOUNCED ON : 07th October, 2022.

JUDGMENT :

. The petitioners by invoking Article 227 of the Constitution of India and Section 482 of the Code of Criminal Procedure have sought the following substantive reliefs:

- “C. That the order passed by the Ld. Special Judge, Jalna in Summary Proceeding No. 01 / 2015 passed below Exh. 1, dated 7.7.2017, thereby rejecting the A-Summary Report against the present petitioners, may kindly be quashed and set aside. / ASJ-4, Jalna.
- D. That, this Hon’ble Court may pleased to pass necessary writ, order or directions in like nature and direct the Ld. Special Judge, ASJ-4, Jalna to decide A-Summary Report afresh as it cannot compel to file charge sheet.”

2 It is necessary to have a look on the brief facts of the case, which are important and relevant to decide this petition.

At the relevant point of time, petitioner Nos.1 and 2 were serving in the Police Training Centre at Jalna. Mr. Sandip Bhanudasrao Palve, Principal of Police Training Centre, Jalna, lodged FIR with Sadar Bazar Police Station, Jalna. It is stated in the FIR that

the present petitioners and others had accepted money from trainee police constables for giving relaxation in the day-to-day assignment. The trainee police constables were not getting good quality food. A news was flashed on the news channel and accordingly, criminal law was put in motion. It is alleged that the present petitioners and others (names are stated in the FIR) had accepted huge amount by using their position. The investigation by ACB was commenced. The investigation officer after completion of investigation, did not find sufficient evidence to file the charge-sheet against the present petitioners. As such, the investigation officer could not apply for sanction to launch the prosecution against the present accused persons. The investigation officer submitted 'A' summary report before the learned Special Judge (ACB), Jalna.

3 The learned Additional Sessions Judge / Special Judge, (ACB), Jalna after causing inordinate delay, was pleased to reject 'A' summary report and further directed to the investigation officer to carry further investigation in view of Section 173(8) of the Code of Criminal Procedure (hereinafter referred to as "Cr.P.C.") and after following legal procedure file final report.

4 Heard Mr. Swapnil Dargad, learned counsel for the petitioners and Mr. Sanap, learned APP for respondent No.1 and 2 / State.

5 Mr. Dargad, learned counsel for the petitioners invited my attention to the copy of FIR (page No.17). He pointed out that Crime No.3150 of 2013 came to be registered at Sadar Bazar Police Station, Jalna against the petitioners and nine others under Sections 7, 12, 13(1)(5) read with 13(2) of the Prevention of Corruption Act, 1988 on 19th December, 2013. He pointed out that after thorough investigation, it was revealed that there was no sufficient evidence against the petitioners and others to file the charge-sheet. Even after recording the statements of witnesses (more than 36 in number) could not get cogent evidence to file criminal prosecution. As such, the investigation officer submitted 'A' summary report alongwith details before the learned Special Judge, (ACB), Jalna on 20th February, 2015. He pointed out that though 'A' summary report was submitted by before the Special Judge, Jalna in the year 2015, he did not pass any order for a period of more than two years. The petitioners constrained to file criminal writ petitions vide Criminal Writ Petition No.293 of 2016 and Criminal Writ Petition No.314 of 2016 before the Division Bench of this Court and sought directions to the Special Judge to take decision in 'A' summary proceedings filed by the

investigation officer. The Division Bench of this Court was pleased to issue directions to the Special Judge, Jalna vide order dated 10th March, 2017 to decide summary proceedings vide Final Report No.AF/22015 as expeditiously as possible and preferably within four months from the date of receipt of communication of the order. He submitted that in view of the directions given by the Division Bench of this Court, the learned Special Judge, out of grudge, was pleased to reject the 'A' summary report without considering the 'A' summary report alongwith papers on record. There was no application of mind. He submitted that the impugned order is bad in law. The learned Special Judge cannot issue directions for further investigation. There was no material to reject the 'A' summary report. The Court may pass order for further investigation under Section 156(3) of the Cr.P.C., but not while considering the report of 'A' summary proceedings. Mr. Dargad, learned counsel for the petitioners has placed his reliance on the decision of the Honourable Supreme Court in case of ***Vinubhai Haribhai Malaviya Vs. State of Gujarat, AIR 2019 Supreme Court 5233.***

6 Mr. Dargad, learned counsel for the petitioners further submitted that there was no *prima-facie* case against the petitioners as revealed from the investigation. As such, the learned Special

Judge could not have directed for further investigation by rejecting the 'A' summary report. He submitted that the impugned order is bad in law and liable to be quashed and set aside. Mr. Dargad has placed his reliance on the decision of the Honourable Supreme Court in case of ***Vasanti Dubey Vs. State of Madhya Pradesh, (2012) 2 Supreme Court Cases 731.***

7 Mr. Dargad, learned counsel for the petitioners vehemently submitted that the learned Special Judge cannot *suo-motu* direct a further investigation under Section 173(8) of the Cr.P.C. or direct a re-investigation into a case on account of the bar of Section 167(2) of the Cr.P.C. Mr. Dargad relied upon the decision of this Court in case of ***Shri Mohan Govekar Metro Bar, Ribndar, Tiswadi, Goa Vs. State, (by the Public Prosecutor), Panaji and another, 2014 SCC OnLine Bom 5*** (Panaji Goa) and submitted that the order of *suo-motu* further investigation to the investigation agency is not permissible.

8 Mr. Dargad, learned counsel for the petitioners relied upon citation in case of ***Abhinandan Jha and others Vs. Dinesh Mishra, AIR 1968 SC 117*** and submitted that the Special Judge has no power under the Cr.P.C. to issue *suo-motu* directions for further investigation when a 'A' summary proceedings is filed.

9 Mr. Dargad, learned counsel for the petitioners while concluding the argument vehemently submitted that the impugned order is bad in law and liable to be quashed and set aside.

10 Mr. Sanap, learned APP for the State supported the impugned order passed by the learned Special Judge. He submitted that in view of seriousness of the offences registered against the petitioners and material available on record, the learned Special Judge has taken the view that further investigation in the case is necessary and accordingly, passed the order of further investigation by rejecting 'A' summary report. There is no legal defect in the impugned order passed by the learned Special Judge. He further submitted that now sanction for prosecution is received from the competent authority and therefore, the investigation agency may file the charge-sheet.

11 I have considered the submissions of the learned counsel for the petitioners and the learned APP for the State. I have also gone through the impugned order passed by the learned Special Judge, Jalna, copy of 'A' summary report with investigation papers, summary of statements of witnesses, copy of FIR and other papers.

12 Mr. Dargad, learned counsel for the petitioners has placed on record copy of order passed by the Division Bench of this Court in Criminal Writ Petition No.293 of 2016 and Criminal Writ Petition No.314 of 2016 dated 10th March, 2017 marked 'X' for identification, whereby the Division Bench of this Court was pleased to issue directions to the Special Judge to take decision in the proceedings of 'A' summary within four months from the date of communication of the order since the learned Special Judge has not taken any decision for more than two years. Perhaps this direction prompted the learned Special Judge to reject the 'A' summary report.

13 On careful study of the impugned order passed by the learned Special Judge in 'A' summary proceedings, it would be clear that the learned Special Judge has not at all applied his judicious mind to the facts of the case. There is no discussion about 'A' summary report and the material annexed by the investigation agency and why the said report came to be rejected. The investigation agency after examining the statements of police constables (36 in number), arrived at conclusion that there was no sufficient evidence against the petitioners to launch criminal prosecution. The summary of statements of police constables (36 in number) is annexed with 'A'

summary report. The impugned order is completely silent as to why such summary of the statements of witnesses came to be disbelieved. What was the material before the learned Special Judge to reject the 'A' summary report. There was no material before the learned Special Judge to issue directions for further investigation to the investigation agency. Paragraphs 6, 7 and 8 of the impugned order clearly indicate non-application of judicial mind by the learned Special Judge / Additional Sessions Judge, Jalna, while taking decision in the 'A' summary report. The learned Special Judge has simply re-produced the provisions of Criminal Manual relating to Chapter-I paragraph 24 relating to 'A' summary and by considering that case is registered under the Prevention of Corruption Act, straightway rejected the 'A' summary report.

14 I find merit in the submissions of Mr. Dargad, learned counsel for the petitioners in this regard. The impugned order is a classic example of non-application of judicial mind. There was no independent scrutiny of 'A' summary report and the material annexed with 'A' summary report. Without making any kind of scrutiny of 'A' summary report and the documents, the 'A' summary report seems to have been rejected straightway. The impugned order is bad in law and liable to be quashed and set aside.

15 Apart from that, Mr. Dargad, learned counsel for the petitioners has raised following two important legal points :

- i) The Special Judge has no power to issue directions for further investigation in a matter of 'A' summary proceedings ; and
- ii) There was no sufficient material against the petitioners to launch criminal prosecution under the provisions of the Prevention of Corruption Act, 1988.

16 In case of ***Kishan Lal Vs. Dharmendra Bafna and Anr., 2009 Cril L. J. 3721***, the Honourable Supreme Court has held that area of investigation is the domain of the investigation agency and the Court may interfere in that area only in exceptional situations. Further investigation can be ordered if the report submitted by the investigation officer is biased.

17 In case of ***Vasanti Dubey*** (supra), the Honourable Supreme Court has held that the Special Judge could not proceed in the matter under the Prevention of Corruption Act without sanction for prosecution and in spite of that directed to obtain sanction order for

re-investigation and consequently refused to accept closure report, which is incorrect.

18 In case of ***Reeta Nag Vs. State of West Bengal and others, (2009) 9 Supreme Court Cases 129***, the Honourable Supreme Court has held that once a charge-sheet is filed under Section 173(2) of the Cr.P.C. and either charge is framed or the accused are discharged, the Court may, on the basis of a protest petition, take cognizance of the offence complained of or on the application made by the investigating authorities permit further investigation under Section 173(8) of the Cr.P.C. The Court cannot *suo-motu* direct a further investigation under Section 173(8) of the Cr.P.C. or direct a re-investigation into a case on account of the bar of Section 167(2) of the Cr.P.C. In the present case, there was no application from the investigation agency for conducting further investigation as permitted under Section 173(8) of the Cr.P.C. As such, recourse was not available before the learned Special Judge to issue directions for further investigation in the matter.

19 In case of ***Shri Mohan Govekar Metro Bar, Ribndar, Tiswadi, Goa*** (supra), this Court in paragraph 7 has observed that there is no provision made in the Criminal Procedure Code allowing

the Magistrate to give direction *suo-moto* to Investigating Agency to make further investigation when report under Section 170 of the Code is filed and charge sheet is filed. There are provisions like Section 311 and 319 of the Cr.P.C. The provision like one in Section 173(8) is an enabling provision, but that is for the use of Investigating Agency. Mr. Dargad, learned counsel for the petitioners has referred number of citations on the above two legal aspects. The learned Special Judge is required to consider those two legal points in the light of citations. The exercise of independent assessment of 'A' summary report with annexures at the hands of the learned Special Judge is required in the above scenario.

20 Having regard to the above reasons and discussion, it would be appropriate to quash and set aside the impugned order passed by the learned Special Judge and direct the learned Special Judge to take decision afresh in the 'A' summary proceedings after giving an opportunity of hearing to both the sides. Hence, the following order is passed:

ORDER

- I. The criminal writ petition stands allowed.

- II. The impugned order passed by the learned Special Judge / Additional Sessions Judge-4, Jalna below Exhibit-1 in Summary Proceedings No.1 of 2015 dated 7th July, 2017, is hereby quashed and set aside.
- III. The learned Special Judge, Jalna is requested to take fresh decision in the above said 'A' summary proceedings after giving equal opportunity to both the sides in the background of material placed on record with the 'A' summary report and the legal points raised, within three months from the date of receipt of writ of this Court.
- IV. Inform to the concerned Court for information and compliance.
- V. Rule is accordingly made absolute in above terms.
- VI. No order as to costs.

[SHRIKANT D. KULKARNI, J.]