

1
IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE
HON'BLE SHRI JUSTICE ATUL SREEDHARAN

ON THE 12th OF MAY, 2022

MISC. CRIMINAL CASE No. 4531 of 2014

Between:-

HIMANSHUDHAR DWIVEDI

.....PETITIONER

(By Shri Bhupendra Shukla, learned counsel)

AND

**THE STATE OF MADHYA PRADESH P.S.
AMANGANJ PANNA (MADHYA PRADESH)**

.....RESPONDENT

(By Shri C. M. Tiwari, learned Government Advocate)

.....
*This petition coming on for final disposal at the motion hearing stage
this day, the court passed the following:*

ORDER

The petitioner herein has filed the present petition being aggrieved by the order dated 27.4.2011 (Annexure A/3) where after deciding a criminal case, the learned Additional Sessions Judge (Fast Track Court), Panna, in Sessions Trial No.138/2010 passed an order asking the Superintendent of Police, Panna, to take action against the petitioner, who was the Investigating Officer of the case.

The petitioner is a police officer and is a part of the investigation of Crime No.156/2010 registered at Police Station Amanganj, district Panna, for offences punishable under sections 25 and 27 Arms Act along with sections

399 and 402 IPC. After completion of investigation, the charge sheet was filed against the accused and the charges were framed. Pursuant to the trial, the accused persons were acquitted.

Learned counsel for the petitioner submits that the petitioner has discharged his responsibilities with utmost honesty and sincerity in the capacity of the Investigating Officer. He has further stated that merely because the case has ended in an acquittal, it cannot be a ground for initiating action against the Investigating Officer. He further states that a case may end at acquittal for various reasons, including the witnesses to the seizure turning hostile over which the petitioner has no control as an Investigating Officer. He further submits that even otherwise, where the court feels that certain strictures must be passed against an Investigating Officer or action taken against him, it is essential in the interest of complying with the provisions of natural justice that he be given an opportunity and be heard with regard to those lapses which the court feels happened in the case because of the Investigating Officer.

In this particular case, learned counsel for the petitioner submits that no such procedure has been adopted by the learned trial court and he has straightaway addressed the impugned order/letter to the Superintendent of Police, Panna, without even giving an opportunity to the petitioner to explain his position with regard to the case.

Learned counsel for the petitioner has drawn the attention of this court to the impugned order dated 27.4.2011, Annexure A/3, addressed to the Superintendent of Police by the learned trial court. In the said letter, which is brief and succinct, the learned trial court has informed the Superintendent of Police that on 27.4.2011, the order was passed by the learned trial court acquitting the accused and held that the witnesses including the petitioner herein

and Brijkishore Gautam, Ramnaresh Tiwari and Ramsunder Sharma were either not present at the scene of occurrence or have given their statements before the trial court deliberately in order to save the accused persons on account of which all the accused persons, who were charged with grievous offences like preparation for dacoity and Arms Act, were acquitted. Thereafter, it has expressed its hope that the Superintendent of Police would carry out an enquiry and take appropriate action against all the persons named herein above.

Undoubtedly, it does not appear from the said impugned order that the learned trial court either recorded the statements of aforesaid persons during the course of trial itself putting them on guard or has suggested that they have deliberately tried to shield the accused. This court has gone through the testimony of the petitioner given before the learned trial court. From the said statement, it appears that the trial court has not put any questions to the witness or even suggested to the witness that it has deliberately botched up the investigation in order to protect the accused persons. Under the circumstances, in view of the judgment passed by the Supreme Court in *State of W. B. and others vs. Babu Chakraborty (2004) 12 SCC 201* where the trial court had convicted the accused persons and the High Court had acquitted them, the High Court had passed certain observations and strictures against the officers of the police indicting them. In paragraph no.31 of the judgment, the Supreme Court agreed with the submissions of the learned counsel for the appellants and held that observations made by the High Court in the impugned judgment passing strictures against the appellants have been made while against the record of the case and penalise the two police officers who were discharging their official duties as per the law. The court also held that the action taken by the appellants

has been in the discharge of their official duties wherein they may have violated certain provisions of the law which in the opinion of the Supreme Court would not justify the High Court passing strictures against them where there was absence of malafide. In paragraph no.33, it once again held that the officers who were discharging their statutory duties cannot be blamed and that the action taken by the State Government and the officials concerned was for implementing the objects behind the act. In the present case, the impugned order reflects that no opportunity of hearing was ever given to the petitioner herein to state his position with regard to the investigation.

Under the circumstances, the impugned order itself is violative of principles of natural justice as no opportunity was given to the petitioner to explain his position either before the learned trial court when he was being examined as a witness to the prosecution, where this court could have put questions and elicited answers to suggestions of a deliberately botched up investigation. Therefore, the petition succeeds and the impugned order/letter dated 27.4.2011 (Annexure A/3) addressed by the learned trial court to the Superintendent of Police, Panna, is quashed.

With the above, the petition stands **finally disposed of**.

ATUL SREEDHARAN)
JUDGE