INTHE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE ROHIT ARYA

&

HON'BLE SHRI JUSTICE RAJENDRA KUMAR VANI

M.Cr.C. No. 32300 of 2023

BETWEEN:-

VIKAS RAJORIA S/O SHRI S. K. RAJORIA, AGED ABOUT 43 YEARS, OCCUPATION: SERVICE E-3 WATER RESOURCE COLONY, RAJGARH (MADHYA PRADESH)

.....PETITIONER

(BY SHRI SANKALP KOCHAR – ADVOCATE)

AND

1. STATE OF MADHYA PRADESH THROUGH SPECIAL POLICE ESTABLISHMENT (LOKAYUKTA) DISTRICT BHOPAL (MADHYA PRADESH)

2 TULSI NARAYAN MEENA R/O VILLAGE SOTHWA, TEHSIL SHEOPUR DISTT. SHEOPUR (MADHYA PRADESH)

.....RESPONDENTS

(SHRI SANKALP SHARMA – ADVOCATE FOR THE RESPONDENT/ LOKAYUKTA)

Reserved on : 2.4.2024

Pronounced on : 23.04.2024

This M.Cr.C. having been heard and reserved for orders, coming on for pronouncement this day, ***Hon'ble Shri Justice Rajendra Kumar Vani*** *pronounced the following:*

ORDER

This petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 for quashing the FIR bearing crime No.138 of 2023 registered at Special Police Establishment, Lokayukta, for the offences punishable under Sections 13(1)(d), 13(2) of the Prevention of Corruption Act, 1988 & Amendment Act, 2018 and Section 120-B of IPC.

2. The facts giving rise to this M.Cr.C. in brief are that a scheme was floated by the State of Madhya Pradesh for plantation of Jatropha on both the sides of Chambal canal at District Sheopur. The scheme was launched under MNREGA in the year 2006. The work included procurement of saplings, plantation and supervision of the saplings, planted for a period of three years from 2006 to 2009. Petitioner

Vikas Rajoria joined as Sub-Divisional Officer in Water Resources Department, Sheopur in March, 2007. The Petitioner among other works was entrusted with the work of rehabilitation and modernization of Chambal canal under the aforesaid scheme.

2.1 A complaint regarding Jatropha plantation work was lodged by complainant Tulsi Narayan Meena in the office of Lokayukta on the allegations that fund of Rs.3.45 crores has been misappropriated and embezzled by the petitioner and other officers while preparing estimates, technical sanction, issuing supply orders of plants, preparing muster rolls, filling M.B., making valuation and thereby they committed an offence under the Prevention of Corruption Act with criminal conspiracy for commission of said offence. The complainant alleged inter alia that work has not been executed in proper manner and thus resulted in loss of Rs.3.45 crores of the public exchequer. The said complaint was registered as complaint No.314/2013 in Lokayukta office.

2.2 Simultaneously, on such complaint a department enquiry was initiated against 24 delinquent engineers including the petitioner by the Principal Secretary, Water Resources Department. Chief Engineer, Yamuna Basin, Gwalior, was appointed as enquiry officer in that departmental enquiry.

2.3 All aspects which find a mention in the instant FIR were considered for framing charge in the departmental enquiry. However, no charges were found proved against the petitioner and 23 other delinquent employees. As a consequence, petitioner and 23 other delinquent employees were exonerated of the charges pertaining to irregularity, financial misappropriation and misconduct, on merits.

2.4 Opinion of Rural Development Department was also sought on the departmental enquiry report. The point of disagreement by the Rural Development Department reads as under :-

> "1. जेट्रोफा पौधा रोपण में किसी विशेष तकनीकी ज्ञान की आवश्यकता नहीं बतायी गई है। परम्परागत रूप से सिंचाई परियोजनाओं के प्राक्कलन में "M Ptantation Head" का प्रावधान रहा है विभागीय अधिकारियों द्वारा इस मद में राशि का प्रावधान कर प्लांटेशन कराया जाता रहा है, तो फिर उसका यह तर्क कैसे स्वीकार किया जा सकता है कि वह वृक्षारोपण तकनीकी से वाकिफ नहीं था।
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> 2. जैट्राफा वृक्षारोपण के प्लांटेशन में योजना अवधि के पश्चात् पौधा संरक्षण की राशि प्रावधान नहीं किया जाना वस्तुतः अपचारियों की ही भूल है। अपचारियों का यह दायित्व था कि वह स्वीकृत कार्य के प्राक्कलन का भली–भॉति अध्ययन कर ही वृक्षारोपण कार्य को प्रारम्भ करते यदि प्राक्कलन उनके द्वारा निर्मित नहीं किया गया था। तब भी कार्य प्रारम्भ करने के पूर्व उनको इस तथ्य से सक्षम प्राधिकारी को अवगत कराया जाना था एवं पुनरीक्षत प्राक्कलन को प्रस्तुत करना चाहिए था जो कि उनके द्व ारा नहीं किया गया।
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> 3. रोजगार मूलक कार्यों का प्रथमः उद्देश्य रोजगार उपलब्ध कराना तो होता ही है परन्तु लोकधन रोजगार निर्मित करने पर भी "Parmanent Productive assets" की प्राप्ती भी अपेक्षित होती है जिसका संज्ञान अपचारियों को होना चाहिए था। अपचारियों की उदासीनता लापरवाही के कारण ही पौधों का क्षरण

एवं नष्ट होना पाया गया। "

2.5 After consideration of reply of petitioner and other delinquent employees and note of disagreement, the appointing Authority closed the departmental enquiry vide order dated 19/1/2018 without imposition of any penalty on delinquents and exonerated them from the charges levelled. The communication as regards exoneration of delinquents from charges was made to the Lokayukt on 20.12.2018 vide letter No.34/ D/ *kshi. Pra.*/ Mu.Aa.Gwl/2016. The Lokayukt after consideration of departmental enquiry as well as the points of disagreement of Rural Development Department, vide order dated 19.3.2020 closed enquiry case No.314/2013 which was communicated to Principal Secretary, WRD vide letter dated 3.6.2020 by Lokayukta.

It may be stated that the aforesaid enquiry was conducted with effective indulgence and intervention of Lokayukt on number of occasions.

2.6 A copy of the complaint by complainant Tulsi Narayan Meena was also filed before the D.G. SPE. This complaint was registered by D.G., M.P.S.P.E. as complaint No.97/2014 which was received by D.G., M.P.S.P.E. on 17.7.2014. On 30.6.2023 M.P.S.P.E. has lodged an FIR on the basis of this complaint bearing crime No.138/2023

under Sections 13(1)(d), 13(2) of the Prevention of Corruption Act, 1988 & Amendment Act, 2018 and Section 120-B of IPC against 24 officers of Water Resources Department including the petitioner.

3. It is submitted by learned counsel for the petitioner that on the plain reading of the FIR it becomes axiomatic that no cognizable offence is found as no independent enquiry or investigation was ever conducted by the M.P.S.P.E. FIR is nothing but mere reproduction of the complaint submitted by the complainant, charges framed, the findings recorded in departmental enquiry, disagreement note of Rural Development Department and reproduction of 14 points picked up by the investigating officer from complaint No.314/2013 which was instituted and closed by Lokayukt. It is also submitted that FIR suffers from suppression of material facts regarding enquiry/complaint No.314/13.

3.1 While referring to Section 4 of the M.P. Special Police Establishment Act, 1947 (for brevity "the Act of 1947") and Sections 7, 13(3)(ii) and Section 12 of the Madhya Pradesh Lokayukt Evam Up-Lokayukt Adhiniyam, 1981 (for brevity "the Adhiniyam of 1981"), it is contended that M.P.S.P.E. works under direct supervision and control of Lokayukt and Lokayukt can utilize the services of M.P.S.P.E. for the purpose of conducting enquiry under the Adhiniyam of 1981. M.P.S.P.E. has no jurisdiction whatsoever to take

up individual complaint and conduct parallel enquiry, moreso when Lokayukt itself has closed the very same complaint after thoroughly conducting a detailed enquiry and closure of it by Lokayukt on 20.3.2020 in terms of Section 12 of the Adhiniyam of 1981. It is not open for the M.P.S.P.E. to lodge the FIR on the verbatim complaint in the year 2023. In departmental enquiry no allegation regarding any financial embezzlement against the delinquent employee was found proved since 86.16% of the project of the budget has been spent on labourers, hence, on this count the project was completely successful.

3.2 It is also submitted by learned counsel for the petitioner that registration of FIR after lapse of 9 years from the date of submission of that complaint and after 14 years of purported date of incident is highly doubtful. Perusal of the FIR reflects that only reason for registration of FIR is non- cooperation of the said department, whereas bare perusal of the report of departmental enquiry leaves no room of doubt that all the record including bills, vouchers etc. were placed before the Lokayukt who eventually closed the complaint after perusal of the entire record. The said record is still available with the State Government and petitioner cannot be penalized for *inter se* alleged non-cooperation between the respondent and the State Government. No permission by M.P.S.P.E. from the Lokayukt has ever been sought and no material has been placed on record to reflect

that permission was eventually granted. The FIR has been registered by M.P.S.P.E. without application of mind. Exoneration of the petitioner in departmental enquiry was based on thorough examination of the record and after exoneration in departmental enquiry the registration of the FIR on the same allegations and material is absolutely not tenable because the standard of proof is required to be one beyond reasonable doubt in criminal cases while under departmental enquiry the standard of proof is based on preponderance of probability. It is prayed by the learned counsel for the petitioner to quash the FIR holding it to be a clear abuse of process of law.

3.3 In support of his submissions, learned counsel for the petitioner relied on following decisions:

1. Ashoo Surendranath Tewari vs. Deputy Superintendent of Police, EOW, CBI & Anr., (2020) 9 SCC 636.

2. Hasmukhlal D.Vora and Anr. vs. State of Tamil Nadu, 2022 SCC OnLine SC 1732.

3. Ramesh Chandra Gupta vs. State of U.P. & Ors., 2022 SCC OnLine SC 1634.

4. Mahmood Ali & Ors. vs. State of U.P. & Ors. decided on 8.8.2023 in Criminal Appeal No.2341 of 2023.

5. Babu Venkatesh and others vs. State of Karnataka and Anr.,

(2022) 5 SCC 639.

6. Krishna Lal Chawla and others vs. State of Uttar Pradesh & Anr., (2021) 5 SCC 435.

7. Vakil Prasad Singh vs. State of Bihar, (2009) 3 SCC 355.

8. Dr. Ashok V. Vs. State & Anr., decided on 4th July, 2023 in Criminal Petition No.531 of 2022 (Single Bench of High Court of Karnataka at Bengaluru).

9. Shri Baini Prasad Chansoriya vs. State of M.P. & Ors. decided on 9.12.2022 in Cr.R.No.1629 of 2022 (Division Bench of High Court of Madhya Pradesh at Jabalpur).

10. Ashok Kumar Kirtiwar vs. State of M.P., 2002 (2) M.P.L.J. 264 (DB).

11. Smt. Meera Devi Saxena vs. State of M.P. & Ors. decided on 12.10.2022 in W.A.No.995 of 2022 (Division Bench of High Court of Madhya Pradesh at Gwalior).

12. Dr. Sarbesh Bhattacharjee vs. State NCT of Delhi decided on 14.10.2022 in W.P.(Crl)781/2021 (Single Bench of High Court of Delhi).

13. Parminder Singh @ Dimpy decided on 17.11.2023 in 2023-PHHC:146633 (Single Bench of High Court of Punjab & Haryana)**.**

4. Per contra, it is submitted by learned counsel for the respondent that prosecution contends that no funds were actually disbursed to the

impoverished labourers and instead the entire amount has been illicitly siphoned off as outlined in para 14 of the FIR. Despite repeated requests including demands for muster rolls, payment vouchers, bills and other pertinent record, the department deliberately withheld this information. This deliberate non-disclosure raises suspicion that funds were never disbursed to the labourers, underscoring further investigation in the present case imperative. Para 13 of the departmental enquiry clearly reflects this factual aspect. In case of commission of a cognizable offence lodging of an FIR becomes mandatory. The FIR is not an encyclopaedia.

4.1 It is also submitted that upon examination of the report of departmental enquiry, it becomes evident that a crucial aspect concerning payment of MNREGA workers was never considered in the light of supporting evidence as none of the delinquents faced charges pertaining to any discrepancies in disbursing payments to MNREGA workers. The M.P.S.P.E. is authorized to investigate the matter and to file charge-sheet against the petitioner, therefore, prays to dismiss this petition.

4.2 In support of his submission, learned counsel placed reliance on the following decisions:-

(i) Lalita Kumari vs. Govt. of U.P. and others, (2014) 2 SCC 1.

(ii) Superintendent of Police, CBI & Ors. vs. Tapan Kumar Singh,

(2003) 6 SCC 175.

(iii) Sidhartha Vashisht vs. State (NCT of Delhi), (2010) 6 SCC 1.

(iv) Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra and others, AIR 2021 SC 1918.

(v) Vineet Narain and others v. Union of India and another, AIR 1998 SC 889.

(vi) Harihar Prasad vs. State of Bihar, (1972) 3 SCC 89.

(vii) Nara Chandrababu Naidu vs. The State of Andhra Pradesh and others, decided on **16.1.2024** in **Criminal Appeal No.279 of 2024 (SC).**

(viii) U.K.Samal and others vs. The Lokayukt Organization and others decided on **29.4.2011** in **W.P.No.16863 of 2007** (Division Bench of Madhya Pradesh High Court at Jabalpur)

(ix) Shankara Bhat and others vs. State of Kerala and others decided on **27.8.2021** in **Crl.MC No.7542/2018** (Single Bench of High Court of Kerala at Ernakulam).

5. Heard learned counsel for the parties and perused the available documents.

6. Before dwelling upon the rival submissions put-forth by learned counsel for the parties, it shall be useful to reiterate the law as laid down by Hon'ble the Apex Court in various case laws in which scope of Section 482 of Cr.P.C. has been dealt with for quashment of the criminal

proceedings.

7. Hon'ble the Apex Court in ***Prashant Bharti vs. State (NCT of Delhi); (2013) 9 SCC 293,*** has observed that exercise of inherent power provided under Section 482 of Cr.P.C. the High Court would not ordinarily embark upon an inquiry to ascertain whether the evidence in question is reliable or not and inherent jurisdiction has to be exercised sparingly and carefully with caution, but at the same time, Section 482 empowers the High Court to prevent the abuse of process of Court.

8. Hon'ble the Apex Court in the case of ***Mahmood Ali and Ors.*** **(supra)** judgment dated 08.08.2023 observed in para 12 as under:-

> "12. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to

> constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged."

9. In ***Prashant Bharti's case (supra)***, Hon'ble the Apex Court while taking note of the law laid down in ***Rajiv Thapar vs. Madan Lal Kapoor; (2013) 3 SCC 330*** has observed in para 30 as under:-

> "30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashing, raised by an accused by invoking the power vested in the High Court under Section 482 of the Cr.P.C.:-
> 30.1 Step one, whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the material is of sterling and impeccable quality?
> 30.2 Step two, whether the material relied upon by the accused, would rule out the assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as

> would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false.
> 30.3 Step three, whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant?
> 30.4 Step four, whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?
> 30.5 If the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal proceedings, in exercise of power vested in it under Section 482 of the Cr.P.C. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as, proceedings arising therefrom) specially when, it is clear that the same would not conclude in the conviction of the accused."

10. In ***State of Haryana and others vs. Bhajan Lal and others; 1992 SCC (Cri) 426,*** Hon'ble the Apex Court identified the following cases in which FIR/complaint can be quashed:-

> "102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be

possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.
(1) Where the allegations made in the first information report 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.
(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.
(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just, conclusion that there is sufficient ground for proceeding against the accused.
(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the

> grievance of the aggrieved party.
> (7) 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 and with a view to spite him due to private and personal grudge."

11. Considering the law laid down in **Bhajan Lal & Ors. (supra)** Hon'ble Supreme Court in **Ramesh Chandra Gupta (supra)** has held that FIR is required to be quashed when the Court comes to a conclusion that allowing the criminal prosecution to continue would be an abuse of process of the Court.

12. Now we have to examine whether the case of the petitioner falls within the ambit of provisions of Section 482 of Cr.P.C. In the considered opinion of us following three questions emerge for adjudication in the present case:

> (i) Whether a parallel enquiry could be conducted by the M.P. S.P.E. after the enquiry on the same complaint has been conducted and closed by Lokayukt under Section 12 of the Adhiniyam of 1981 ?
>
> (ii) Whether complaint of 2013-14 received by M.P. S.P.E. can be converted into FIR in the year 2023 after closure of complaint under Section 12

of the Adhiniyam of 1981 ?

(iii) Whether on facts and in circumstances of the case, allegations in the complaint duly enquired and closed by Lokayukt, may form the basis of an FIR that too after 4 years ?

13. It would be apposite to reproduce the relevant provisions of Sections 7, 12 and 13(3) of the Adhiniyam of 1981 and Section 4 of the Act of 1947

> "**7. Matters which may be enquired into by Lokayukt or Up-Lokayukt.**-Subject to the provisions of this Act, on receiving complaint or other information-
>
> (i) the Lokayukt may proceed to enquire into an allegation made against a public servant in relation to whom the Chief Minister is the competent authority;
>
> (ii) the Up- Lokayukt may proceed to enquire into an allegation made against any public servant other than that referred to in clause (i):
>
> Provided that the Lokayukt may enquire into an allegation made against any public servant referred to in clause (ii).
>
> **Explanation**.- For the purposes of this section the expressions "may proceed to enquire" and "may enquire" include **investigation by police agency put at the disposal of Lokayukt** and Up-Lokayukt in pursuance of sub-section (3) of section 13.
>
> **12. Reports of Lokayukt and Up-Lokayukt**.(1) If, after enquiry into the allegations the Lokayukt or an

Up-Lokayukt is satisfied that such allegation is established, he shall by report in writing communicate his findings and recommendations alongwith the relevant document, materials and other evidence to the competent authority.

(2) The competent authority shall examine the report forwarded to it under sub-section (3) and intimate, within three months of the date of receipt of the report, the Lokayukt or, as the case may be, the Up-Lokayukt, the action taken or proposed to be taken on the basis of the report.

(3) If the Lokayukt or the Up-Lokayukt is satisfied with the action taken or proposed to be taken on his recommendations, he shall close the case under information to the complainant, the Public Servant and the competent authority concerned. In any other case, if he considers that the case so deserves, he may make a special report upon the case to the Governor and also inform the complainant concerned.....

(Emphasis supplied)

13. Staff of Lokayukt and Up-Lokayukt. - (1) & (2) …...

(3) Without prejudice to the provisions of sub-section (1), the Lokayukt or an Up-Lokayukt may for the purpose of conducting enquires under this Act, **utilize the service of**-

(i) [Divisional Vigilance Committee constituted under Section 13-A;

(ii) any officer or investigation agency of the State or Central Government with the concurrence of that Government; or

(iii) any other person or agency.

(4) The services of officers and employees, other than those appointed by the Lokayukt under sub-section (1) shall not be taken back before the expiry of the period of deputation by the concerned department without prior concurrence of the Lokayukt.

(Emphasis supplied)

Section 4 of the Act of 1947-

4. **Superintendence and administration of special police establishment.**-(1) The Superintendence of Madhya Pradesh Special Establishment shall vest in the Lokayukt appointed under section a of the Madhya Pradesh Lokayukt Evam Up-lokayukt Adhiniyam, 1981.

(1-a) Without prejudice to the generality of the power of Superintendence, the Lokayukt may call from the Director Special Police Establishment returns and may issue general directions for regulating practice and procedure to the adopted by the Special Police Establishment.

(2) The administration of the said police establishment shall vest in the Inspector- General of Police, Madhya Pradesh who shall exercise in respect of that police establishment such of the powers exercisable by him in respect of the police force in the State as the State Government may specify in this behalf.

(Emphasis supplied)

14. The aforesaid provisions of law contemplates that Lokayukt

may proceed to enquire into an allegation which includes investigation by police agency put at the disposal of Lokayukt in pursuance of sub-section (3) of section 13 which inter alia provides for utilizing services of such agency for the purpose of conducting enquiries by Lokayukt or an Up-Lokayukt. It also finds support from the provisions of Section 4 of the Act of 1947 which envisages that superintendence of Special Police Establishment shall vest in Lokayukt. Section 12 of the Adhiniyam of 1981 contemplates consideration of report of Lokayukt / Up-Lokayukt after the enquiry is over.

15. As per Sections 7, 12 & 13 of the Adhiniyam of 1981, the Special Police Establishment shall have the power to enquire into the offence as specified in the Gazette under the supervision of establishment of Lokayukta. Therefore, unless there is consent or approval of investigation by the Lokayukt for specified nature of offences as contemplated in S.3 of the Act of 1947, any act of SPE at variance with the decision of Lokayukt or in absence thereof, shall be contrary to the scheme of the Act particularly Ss.7, 12, 13 of the Adhiniyam of 1981 and S.4 of the Act of 1947, and thus unsustainable.

16. It, therefore, follows that M.P. Special police Establishment is established for investigation of certain offences affecting public administration, under the supervision, direction and control of

Lokayukt. The factual matrix at hand suggests that a complaint registered at No. 314/2013 has been subject matter of enquiry by the department under close supervision of the Lokayukt and was subsequently closed by the Lokayukt on 20/3/2020. The identical complaint made at Special Police Establishment at No. 97/2014 is registered as FIR on 30/6/2023 with no inculpatory material whatsoever, after closure of enquiry by the Lokayukt.

17. The Hon'ble Apex Court in the case of **Vineet Narain and others (supra)** has held that superintendence cannot include supervision of actual investigation of an offence by C.B.I. and Government cannot issue any directive under Section 4 curtailing or inhibiting C.B.I. to investigate into an offence notified under Section 3. However, in this case, the matter is different and related to justification of the FIR in question having regard to the facts and circumstances of the case.

18. The conclusion of departmental enquiry indicates that there was no irregularity found in payment to the labourers which is 86.16% of the total project budget of the scheme. There was no provision in the budget for conservation of plants. It is also not manifest from record that how department of Rural Development has locus to express its disagreement on Departmental Enquiry report inasmuch as petitioner and other officers were the employees of Water Resources

Department. That apart, the points for disagreement were very well discussed in departmental enquiry by the enquiry officer and thereafter by the Lokayukt.

19. Perusal of record reveals that identical complaints were submitted before the Lokayukta and Special Police Establishment in 2013-14. Both the complaints under complaint No.314/13 received by Lokayukt and complaint No.97/14 received by D.G. M.P.S.P.E. were regarding embezzlement and misuse of 3.45 crores by petitioner in MNREGA works of plantation along canal in Sheopur district and seeking C.B.I. enquiry into the matter and these complaints also contain major allegations regarding preparation of estimates, technical sanctions, supply orders of saplings, fraudulent muster-rolls and fraudulent measurement books in Jatropha plantation and non-survival of Jatropha plants leading to wastage of public money. Therefore, it cannot be said that both the complaints are materially on the different footing and contain different allegations. As such, the aforesaid documents containing allegations of misappropriation of public fund, financial indiscipline and preparation of muster-rolls etc. were also part of the departmental enquiry and were scrutinized and considered in the enquiry. Therefore, the enqiury conducted by the Lokayukt in enquiry case No.314/2013 is having binding effect on complaint No.97/14 received by D.G. M.P.S.P.E.

20. In 2020 the Lokayukta after a detailed enquiry which is elaborated in the rejoinder filed on behalf of the petitioner at page No.13, ordered for closure of the enquiry. Chronological events of the enquiry conducted by the Lokayukta reveals that the Lokayukta has summoned PS/ACS WRD for various testimonies for appraisal of enquiry on as many as 18 times and thereafter when the Lokayukta was apprised about the completion of D.E. and points of disagreement by Rural Development Department, Lokayukta has after considering it, approved the closure on 19.3.2020 and intimated about such closure vide letter dated 3.6.2020. After such enquiry by the Lokayukta, on 30.6.2023 Special Police Establishment has registered the impugned FIR for the aforesaid offences on the similar complaint received in 2014 after a period of almost 9 years.

21. After reiterating the original complaint, it has been mentioned in this FIR that during the enquiry various documents and information were sought from WRD, Sheopur, e.g. paid vouchers, muster rolls and bills etc. Such information and documents have not been submitted and that could not be procured. but this FIR does not reveal as to what further enquiry has been conducted by the Special Police Establishment which might be the fulcrum for lodging the FIR against petitioner.

22. It is also discernible from the FIR that no fact has been

mentioned regarding conduction and closure of enquiry case No.314/13 by the Lokayukta which clearly shows that material facts have been suppressed while lodging this FIR. In all fairness, FIR must contain all these facts and it also ought to be mentioned that what grounds were available to Special Police Establishment for lodging this FIR de-hors the conclusion of Lokayukta on closure of the enquiry on analogous complaint.

23. The Hon'ble Apex Court in the case of **Krishna Lal Chawla** in para 13 has held as under :-

> **13.** It is also crucial to note that in the fresh complaint case instituted by him, Respondent 2 seems to have deliberately suppressed the material fact that a charge-sheet was already filed in relation to the same incident, against him and his wife, pursuant to NCR No. 160 of 2012 (Crime No. 283 of 2017) filed by Appellant 1's son. No reference to this charge-sheet is found in the private complaint, or in the statements under Section 200 CrPC filed by Respondent 2 and his wife. In fact, both the private complaint and the statement filed on behalf of his wife, merely state that the police officials have informed them that investigation is ongoing pursuant to their NCR No. 158 of 2012. The wife's statement additionally even states that no action has been taken so far by the police. It is the litigant's bounden duty to make a full and true disclosure of facts. It is a matter of trite law, and yet bears repetition, that suppression of material facts before a court amounts to abuse of the process of the court, and shall be dealt with

> a heavy hand (*Ram Dhan* v. *State of U.P.* [*Ram Dhan* v. *State of U.P.*, (2012) 5 SCC 536 : (2012) 3 SCC (Cri) 237] ; *K.D. Sharma* v. *SAIL* [*K.D. Sharma* v. *SAIL*, (2008) 12 SCC 481]).

24. The FIR contained the similar facts as mentioned in the complaint, so also the factum with regard to conduction of departmental enquiry and its conclusion, coupled with the points of disagreement raised by the Rural Development Department. Para 12 of the FIR contained 14 points which is stated to be the basis of lodging this FIR against the petitioner and other officers of Water Resources Department

25. On the careful perusal of the record, it appears that aforesaid 14 points as well as the facts mentioned in the FIR are mere reproduction of the complaint, charges framed, findings recorded in departmental enquiry by the State Government, disagreement note of the Rural Development Department, letter dated 6.3.2013 issued by MNREGA and statements of witnesses recorded in departmental enquiry. It does not seem from perusal of the enquiry record that any further or independent inquiry has been conducted by the M.P.S.P.E. in addition to the enquiry conducted by the Lokayut.

26. After receiving the complaint in 2014, FIR was lodged after 9 years without assigning any reasonable cause for such delay, moreso

without any further enquiry merely on the ground of non-production of documents on behalf of Government department, but no document or sufficient material has been adduced on behalf of the M.P.S.P.E. to show that what endeavour has been made for seeking the relevant documents from the State Government. No dates for such requisition and no copy of letters in that record has been submitted which creates a doubt on the aforesaid assertion put forth by the M.P.S.P.E. that despite repeated endeavours no document has been submitted.

27. In the case of **Hasmukhlal D. Vora (supra)** the Hon'ble Apex Court in para 24 to 26 has held as under :-

> 24.There has been a gap of more than four years between the initial investigation and the filing of the complaint, and even after lapse of substantial amount of time, no evidence has been provided to sustain the claims in the complaint. As held by this Court in *Bijoy Singh* v. *State of Bihar* [*Bijoy Singh* v. *State of Bihar*, (2002) 9 SCC 147 : 2003 SCC (Cri) 1093] , inordinate delay, if not reasonably explained, can be fatal to the case of the prosecution. The relevant extract from the judgment is extracted below : (SCC p. 153, para 7)
>
> > "7. … Delay wherever found is required to be explained by the prosecution. If the delay is reasonably explained, no adverse inference can be drawn but failure to explain the delay would require the Court to minutely examine the prosecution version for ensuring itself as to whether any innocent

> person has been implicated in the crime or not. Insisting upon the accused to seek an explanation of the delay is not the requirement of law. It is always for the prosecution to explain such a delay and if reasonable, plausible and sufficient explanation is tendered, no adverse inference can be drawn against it."
>
> 25.In the present case, the respondent has provided no explanation for the extraordinary delay of more than four years between the initial site inspection, the show-cause notice, and the complaint. In fact, the absence of such an explanation only prompts the Court to infer some sinister motive behind initiating the criminal proceedings.
>
> 26.While inordinate delay in itself may not be ground for quashing of a criminal complaint, in such cases, unexplained inordinate delay of such length must be taken into consideration as a very crucial factor as grounds for quashing a criminal complaint.
>
> *(Emphasis supplied)*

28. So far as the contention of learned counsel for the respondent that payment to MNREGA workers were never considered in departmental enquiry is concerned, in para 13 of the departmental enquiry though it is stated that there was no charge against delinquent officers with regard to irregularity and corruption in distribution of wages, but the entire para is to be looked for its true meaning. It is stated in para 13 that 86.16% of total gross amount is paid to

MNREGA workers which is apparent from the figures of expenditure and in this view the scheme was totally successful. Para 13 of the departmental enquiry report is relevant and same is reproduced as under :-

> ''13. वस्तुतः जैट्रोफा पौधारोपण का कार्य मनरेगा योजना के अंतर्गत लिया गया जिसका मुख्य उद्देश्य मजदूरी श्रमिकों को रोजगार उपलब्ध कराना था। जैट्रोफा पौधारोपण योजना में प्राक्कलन एवं प्रशासकीय स्वीकृति के अनुसार 84.39 प्रतिशत राशि मजदूरी पर व्यय की जानी थी इस विषयक व्यय के आंकडों से यह स्पष्ट है कि सकल व्यय राशि का 86.16 प्रतिशत मजदूरों पर व्यय किया गया। इस हिसाब से यह योजना पूर्णतया सफल स्वीकार की जा सकती है। किसी भी अपचारी पर मजदूरी वितरण में अनियमितता या भ्रष्टाचार का आरोप नहीं है। पौधों का क्रय प्रतिष्ठित शासकीय संस्था से किया जाना पाया गया। योजना की समाप्ति के पश्चात् पौधों की रखरखाव की व्यवस्था प्रशासकीय स्वीकृति आदेश में न होने के कारण रौपित पौधों की देखरेख की कोई भी व्यवस्था न होने तथा श्योपुर जिले की मृदा तथा भौगौलिक एवं जलवायु (Agroclimatic Conditions) जैट्रोफा पौधों के अनुकूल न होने के जैसे कारणों से योजना समाप्ति के पश्चातवर्ती वर्षों में जैट्रोफा पौधे की उत्तरजीविता नगण्य प्रतिवेदित होने के लिये अपचारियों को अपव्यय के लिये उत्तरदायी ठहराया जाना उचित नहीं माना जा सकता। प्रशासनिक स्वीकृति त्रुटिपूर्ण होने से अपचारियों का उत्तरदायित्व निर्धारण किया जाना तर्कसंगत नहीं होगा एवं किसी भी अपचारी पर अधिरोपित आरोप प्रमाणित नहीं होता। मध्यप्रदेश सिविल सेवा (वर्गीकरण नियंत्रण तथा अपील) नियम 1966 के नियम 14 (23) के अनुसार यह जांच प्रतिवेदन दो प्रतियों में सक्षम प्राधिकारी/शासन को इस निष्कर्ष के साथ प्रस्तुत है कि किसी भी अपचारी पर अधिरोपित आरोप प्रमाणित होना नहीं पाया गया। ''

29. Para 13 of the enquiry report as well as the other points contained in the report reflect in unequivocal terms that payment of wages to MNREGA workers was also considered in departmental

enquiry, therefore, the said argument is of no help to the respondent.

30. After conduction and closure of full-fledged DE and exoneration in the matter, no criminal proceeding can be launched against petitioner on the same set of facts and material. In this regard, the case of **Ashoo Surendranath Tewari (supra)** is referable, para 12 & 13 of which reads as follows:-

> **"12.**After referring to various judgments, this Court then culled out the ratio of those decisions in para 38 as follows: (*Radheshyam Kejriwal case* [*Radheshyam Kejriwal* v.*State of W.B.*, (2011) 3 SCC 581 : (2011) 2 SCC (Cri) 721] , SCC p. 598)
>
> > "*38*. The ratio which can be culled out from these decisions can broadly be stated as follows:
> >
> > (*i*) Adjudication proceedings and criminal prosecution can be launched simultaneously;
> >
> > (*ii*) Decision in adjudication proceedings is not necessary before initiating criminal prosecution;
> >
> > (*iii*) Adjudication proceedings and criminal proceedings are independent in nature to each other;
> >
> > (*iv*) The finding against the person facing prosecution in the adjudication proceedings is not binding on the proceeding for criminal prosecution;
> >
> > (*v*) Adjudication proceedings by the Enforcement Directorate is not prosecution by a competent court of law to attract the provisions

of Article 20(2) of the Constitution or Section 300 of the Code of Criminal Procedure;

(*vi*) The finding in the adjudication proceedings in favour of the person facing trial for identical violation will depend upon the nature of finding. If the exoneration in adjudication proceedings is on technical ground and not on merit, prosecution may continue; and

(*vii*) In case of exoneration, however, on merits where the allegation is found to be not sustainable at all and the person held innocent, criminal prosecution on the same set of facts and circumstances cannot be allowed to continue, the underlying principle being the higher standard of proof in criminal cases**."**

13. It finally concluded: (*Radheshyam Kejriwal case* [*Radheshyam Kejriwal* v. *State of W.B.*, (2011) 3 SCC 581 : (2011) 2 SCC (Cri) 721] , SCC p. 598, para 39)

"*39.* In our opinion, therefore, the yardstick would be to judge as to whether the allegation in the adjudication proceedings as well as the proceeding for prosecution is identical and the exoneration of the person concerned in the adjudication proceedings is on merits. In case it is found on merit that there is no contravention of the provisions of the Act in the adjudication proceedings, the trial of the person concerned shall be an abuse of the process of the court."

(*Emphasis supplied)*

31. In this case a bar of Section 17A of the Act 1981 also comes into picture for prosecution. In this regard, the case of **Dr. Ashok (supra)** is referable in which it is held that Section 17A of the Prevention of Corruption Act, 1988 is introduced by an amendment to the effect that no police officer shall conduct any inquiry or investigation into any offence alleged to have been committed by a public servant under this Act, where the alleged offence is relatable to any recommendation made or decision taken by such public servant in discharge of his official functions or duties, without the previous approval of the competent authority. Therefore, if enquiry into the circumstances in which the alleged administrative or official act was done by the public servant or where malfeasance committed by the public servant which would involve an element of dishonesty or impropriety, is to be proceeded against, the approval of the competent authority is imperative under Section 17A of the Act.

32. In case of **Shri Baini Prasad Chansoriya (supra)** while discussing the impact and effect of Section 17A, it is observed by the Coordinate Bench of this Court at Jabalpur in para 6.3 as under :-

> "6.3 It is pertinent to point out that Section 17-A is attracted only when the offence alleged under the PC Act relates to the Act of "recommendation made or decision taken" but is not attracted when offence relates to demand or acceptance of bribe, taking of illegal gratification or disproportionate assets etc. Since the

> instant case involves allegations which allegedly arise from recommendation made or decision taken, the provision of Section 17-A gets attracted herein."

33. Though it is contended by learned counsel for the respondent that scope of Section 17A is *sub judice* before the Hon'ble Apex Court and that Section 17-A was introduced in the year 2018 while the matter is related to year 2006, therefore, it is not applicable in this case placing reliance on the decisions of Apex Court in the case of **Hari Har Prasad** and **Nara Chandrababu Naidu (supra)** and decision of Single Bench of High Court of Kerala in the case of **Shankara Bhat (supra)**. As a matter of fact, the aforesaid debate on S.17A need not detain us for long for the reason that the incident was of 2006-09 and complaint was made in 2013-14 but no action has been taken by M.P.S.P.E. on the complaint before 2023, after the enquiry conducted and closed by the Lokayukt in the year 2020 and during the period of 9 years from 2014 to 2023 no separate or dedicated enquiry was carried before lodging the FIR in question. Therefore, the aforesaid fact reinforces the submission of learned counsel for the petitioner for quashment of FIR in the light of decision of the Apex Court in the case of **Hasmukhlal D.Vora Vs. State of Tamil Nadu (Supra).**

34. The principles underlying the judgments relied upon by learned counsel for the respondent are beyond any cavil of doubt.

Nevertheless, regard being had to the factual matrix adumbrated in the preceding paragraphs, those judgments are of no assistance to the respondent being distinguishable on facts.

35. In view of the foregoing discussion, it is found that no offence under Sections 13(1)(d), 13(2) of the Prevention of Corruption Act, 1988 & Amendment Act, 2018 and Section 120-B of IPC is made out against the petitioner. Therefore, the FIR bearing crime No.138 of 2023 registered by Special Police Establishment for the aforesaid offences is quashed as against the petitioner. As such, the questions formulated in paragraph 12 are answered in the negative.

The petition, accordingly, stands allowed.

(ROHIT ARYA)
JUDGE

(RAJENDRA KUMAR VANI)
JUDGE

Ms/-