

**IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR**

**BEFORE**

**HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA**

**ON THE 26<sup>th</sup> OF APRIL, 2024**

**MISC. CRIMINAL CASE No. 29113 of 2023**

**BETWEEN:-**

1. GARUNADWAJ OJHA S/O SHRI MOHANRAM OJHA, AGED ABOUT 53 YEARS, OCCUPATION: AGRICULTURIST R/O VILLAGE KHANDHU THANA PANWAAR DISTRICT REWA (MADHYA PRADESH)
2. RINKI @ ANTIMA OJHA D/O SHRI GARUNADWAJ OJHA, AGED ABOUT 18 YEARS, OCCUPATION: STUDENT R/O VILLAGE KHANDHU, THANA PANWAAR, DISTRICT REWA (MADHYA PRADESH)
3. RAJKUMARI OJHA W/O SHRI GARUNADWAJ OJHA, AGED ABOUT 50 YEARS, OCCUPATION: AGRICULTURIST R/O VILLAGE KHANDHU, THANA PANWAAR, DISTRICT REWA (MADHYA PRADESH)

**....PETITIONER**

***(BY SHRI SHEETAL TIWARI - ADVOCATE)***

**AND**

1. THE STATE OF MADHYA PRADESH THROUGH POLICE STATION PANWAAR DISTRICT SIDHI (MADHYA PRADESH)
2. SMT. SHAKUNTLA OJHA W/O SHRI RAMPRASAD OJHA R/O

VILLAGE KHANDHU, THANA  
PANWAAR, DISTRICT REWA  
(MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI DILIP PARIHAR – PANEL LAWYER)

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*This application coming on for admission this day, the court passed the following:*

**ORDER**

1. This application under section 482 Cr.P.C. has been filed seeking the following reliefs :-

It is therefore prayed that this Honourable Court be pleased to quash the FIR No.284/2022 registered at Police Station Panwar, District Rewa MP on 16.10.2022 and subsequent proceedings in the interest of justice

2. It is submitted by counsel for the petitioner that a parallel enquiry was done by the S.D.O.(P) Sirmour, District Rewa and from his report dated 30.1.2023 submitted to the S.P. Rewa, it is clear that the FIR in question lodged by the respondent is false, and thus it is submitted that the FIR lodged by the respondent should be quashed.
3. Heard the learned counsel for the parties.
4. It is fairly conceded by counsel for the applicant that S.D.O.(P) Sirmour, District Rewa is not the Investigating Officer of FIR in Crime No.284/2022 registered at Police Station Panwar, District Rewa.
5. The only question for consideration is as to whether a parallel enquiry can be conducted by a Senior Police Officer or not ?
6. This Court in the case of **Mahendra Kumar Vaidya Vs. State of Madhya Pradesh and others, decided on 3.11.2022 in**

**W.P.No.23876/2022 (Gwalior Bench)**, has held that a parallel enquiry under section 36 Cr.P.C. by a Senior Officer is not maintainable during the pendency of the regular investigation and this Court has passed the following order :-

This petition under Article 226 of the Constitution of India has been filed seeking following relief.

7.1 That, the respondent/police authority concerned may kindly be directed to file/submit FR report (final-report) before the court concern within a stipulated period of one month.

7.2 That, the respondent/police authority concern further may kindly be directed not to interfere in the life and liberty of the petitioner directly or indirectly in the name of pendency of the matter in the issues.

7.3 That, any other relief during justice in to the matter may kindly be awarded to the petitioner in the interest of justice.

It is submitted by the counsel for the petitioner that the prosecutrix / respondent no. 4 lodged FIR on 07.09.2021 alleging offence under Sections 376, 450 of IPC by the petitioner. Although the investigation is going on, but the SDO(P), Lahar, District Bhind on the instructions given by the S.P., Bhind submitted his report dated 13.01.2022 and came to a conclusion that the FIR lodged by the prosecutrix is false. Accordingly, it is submitted that the Investigating Officer should be directed to file closure report.

Per contra, the petition is vehemently opposed by the counsel for the State. It is submitted that it is well established principle of law that the parallel enquiry even under Section 36 of CrPC is not maintainable. In spite of that, the S.P., Bhind on his own authorized the SDO(P), Lahar, 3 District Bhind to conduct parallel enquiry. Since the parallel enquiry is not permissible, therefore, the report dated 13.01.2022 is also a nullity and the Investigating Officer cannot look into the same.

Heard the learned counsel for the parties.

This Court in the case of **Deepak @ Preetam Verma and another vs. State of M.P. and another by order dated 11/9/2018 passed in M.Cr.C. No.12592/2018** has held that parallel enquiry under Section 36 of CrPC during the pendency of investigation is not maintainable. The said order has been affirmed by the Supreme Court by order dated **18/1/2022 passed in SLP (Criminal) No.1345/2019 (Surendra Singh Gaur vs. State of M.P. and others)** and held as under:-

“The present petitioners have approached in their own rights to question the observations/remarks which have been recorded by the learned Judge in the order impugned in reference to the manner in which an inquiry was conducted parallel to the investigation which was undertaken by the Investigating Officer in reference to FIR in Crime No. 75/2017.

We have heard the learned Counsel for the parties at length and we are of the view that neither Section 36 of the Code nor the circulars of which a reference has been made during the course of arguments in any way provides for holding an independent and parallel inquiry along with the investigation going ahead in reference to the FIR in Crime No. 75/2017.

In the instant case, a complaint was made for holding fair investigation in reference to the FIR in Crime No. 75/2017, we find no reason the officers under whose instructions an independent inquiry was initiated apart from the investigation which was going ahead in reference to the crime, in contravention of the procedure prescribed by law.

After the matter is examined at length by the High Court under the impugned judgment(s) for which reference has been made that an independent inquiry which was conducted in reference to the FIR in Crime No. 75/2017 was in no manner contemplated by law and in this reference observations have been made in regard to the conduct of the officers in holding an inquiry in reference to the FIR in Crime No. 75/2017.

The learned Counsel appearing on behalf of the State filed their counter affidavit and has placed on record a circular dated 26th June, 2010 under the instructions of the Inspector General of Police, Madhya Pradesh. We find that the circular of the State Government is in conformity with Section 36 of the Code, but the procedure which was followed by the officers in holding inquiry was not in consonance with the circular of which a reference has been made by the High Court under the impugned judgment.

After hearing the learned Counsel for the parties and taking note of the material on record, we find no error being committed by the High Court in the judgment impugned, which may call for our interference under Article 136 of the Constitution. Consequently, both the petitions fail and are dismissed.

Pending application(s), if any, shall stand disposed of.”

Thus, it is clear that the parallel enquiry under Section 36 of CrPC is not maintainable during the pendency of investigation. In spite of clear judicial pronouncement, it is surprising that S.P., Bhind again directed the SDO(P), Lahar, District Bhind to conduct a parallel enquiry. This action of S.P, Bhind cannot be appreciated. However, since the parallel enquiry during pendency of investigation is not maintainable, therefore, the report submitted by SDO(P), Lahar, District Bhind is a nullity and cannot be made a part of the police case diary or the investigation and thus, the Investigating Officer cannot be directed to look into the report submitted by the SDO(P), Lahar, District Bhind. Therefore, it is directed that the 5 Investigating Officer shall not include the report dated 13.01.2022 submitted by SDO(P), Lahar, District Bhind in the police case diary and if it has already been taken on record, then it shall not be considered at all for any purpose and shall not be made a part of the final report.

It is next contended by the counsel for the petitioner that as per the mandate of Section 173(1) of CrPC, the Investigating Officer has to conclude the investigation without any unnecessary delay.

It appears that it was the petitioner who was creating all sorts of hurdles in the investigation by approaching the senior officer for conducting the parallel inquiry.

Be that whatever it may.

Since this Court has already directed that the enquiry report submitted by the SDO(P), Lahar, District Bhind dated 13.01.2022 shall not be taken into consideration for any purposes, therefore, the Investigating Officer is directed to conclude the investigation and file the final report / charge-sheet / closure report as per the mandate of Section 173(1) of CrPC.

With aforesaid observations, the petition is dismissed”.

7. Thus it is clear that the enquiry report on which the applicant wants to place reliance has no legal sanctity in the eyes of law.
8. It is well established principle of law that this Court in exercise of power under section 482 Cr.P.C. can quash the FIR only if uncontroverted allegations do not make out an offence. Since the allegations made in the FIR do make out a cognizable offence, accordingly no case is made out warranting interference.
9. The application fails and is hereby **dismissed**.

**(G.S. AHLUWALIA)**  
**JUDGE**

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