

STATE OF MADHYA PRADESH

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v.

RAKESH MISHRA

(Criminal Appeal No. 498 of 2015 etc.)

MARCH 23, 2015.

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[PINAKI CHANDRA GHOSE AND R.K. AGRAWAL, JJ.]

Code of Criminal Procedure, 1973 – s.397 r/w s.401 – Criminal Revision – Against the framing of charges u/ss. 13(2) and 13(1)(d) of Prevention of Corruption Act r/w s.120B IPC – Order of framing of charges set aside by High Court – Held: There is sufficient material to make out – prima facie case against the accused persons – Prevention of Corruption Act, 1988 – ss.13(2) and 13(1)(d) – Penal Code, 1860 – s. 120B.

Delay – In disposed of cases – Held: Delay in justice delivery system not only renders justice ineffective, but also leads to erosion of evidence.

Allowing the appeals, the Court

HELD: 1. Only charge-sheet along with the accompanying material is to be considered at the stage of framing of charges, so as to satisfy whether a *prima facie* case is made out. It has to be the subjective satisfaction of the Court framing charges. In the present case, the High Court has only examined the material before it against the prevailing law to reach its conclusions. [Para 7] [770-D-E]

2. The revised building plan, which was sanctioned in the guise of the revision of sanction of the building

A permission, was a complete departure from the original plan. When such major changes are made to the plan, the approvals for fire safety devices, electricity, water supply and sewage, granted as per original plan would become irrelevant. Also, the completion certificate was merely 7 days after the revision of building permission. Although, the completion certificate was only in relation to the Club and not the Hotel, yet it is difficult to fathom as to how even a Club could be completely built, with all compliances within 7 days of building permission, especially when the revised building plan consisted major changes from initial plan. Further, the accused not only granted the revision without approval of any committee, but also accepted the honorary membership of the Club. Thus, there exists sufficient material to make out a *prima facie* case against the accused. [Paras 10, 11 and 13] [771-B-C, E-H; 772-C]

3. Such extended litigation at the pre-trial stage itself, is disappointing. The delay in justice delivery system not only renders justice ineffective but also ill-founded as it leads to erosion of evidence. [Para 14] [772-D-E]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 498 of 2015 etc.

From the Judgment and Order dated 18.05.2007 of the High Court of Madhya Pradesh at Indore in Criminal Revision No. 636 of 2007.

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Criminal Appeal No. 499 of 2015.

Arvind Varma, Deepika Shori, C. D. Singh for the Appellant.

Sumit kumar Sharma, Niraj Sharma, Brajesh Kumar for
the Respondent. A

The Judgment of the Court was delivered by

PINAKI CHANDRA GHOSE, J. 1. Leave granted in both
the matters. B

2. These appeals arise out of the judgment and order
dated 18th May, 2007 passed by the High Court of Madhya
Pradesh (Indore Bench), disposing of Criminal Revision
Petition Nos.636/2007, 610/2007 and 566/2007 which were
filed under Section 397 read with Section 401 of the Code of
Criminal Procedure, 1973. By the impugned judgment the High
Court of Madhya Pradesh has allowed the three revision
petitions, setting aside the orders of the First Additional Judge/
Special Judge, Indore, for framing charges against three
accused persons, namely, Rakesh Mishra, Gyanendra Singh
Jadon and Sajid Dhanani. It may be noted that the State has
assailed the impugned judgment only against Rakesh Mishra
and G.S. Jadon. C
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3. The brief facts of the case are that Sajid Dhanani is the
Managing Director of the Sayaji Hotel situated at Scheme
No.54, Near Meghdut Gardan, Vijay Nagar, Indore. Gyanendra
Singh Jadon was working at the relevant time as Building
Officer posted at Municipal Corporation, Indore and Rakesh
Mishra was working as Sub-Engineer, Municipal Corporation,
Indore. It is alleged that these three accused hatched a criminal
conspiracy in which G.S. Jadon and Rakesh Mishra illegally
granted a Building Certificate and a Completion Certificate to
Sayaji Hotel in Indore. Allegedly, as illegal gratification, Sayaji
Hotel provided free lifetime honorary membership to G.S.
Jadon and his family members in the Sayaji Club. The original
Building Permission was given to the applicant Shajid Dhanani F
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A for construction of multi-storied hotel and adjoining club by the then Building Officer Shri J.M. Avasiya vide letter dated 23-12-1993. This permission was to remain valid for one year and the letter granting permission mentioned that, if required, renewal application must be made before 22-11-1994. G.S. B Jadon became the Building Officer in 1994 and a revised plan was submitted to him in the capacity of Building Officer, which was approved vide letter 12-01-1995 along with the renewal of building permission. Also the completion certificate of the C Club adjoining the Hotel was granted on 19-01-1995. On 18-01-1998 an FIR was lodged at the Police Station – S.P.E., Lokayukta Office, Bhopal, against G.S. Jadon alleging irregularities by the accused persons in giving clearances for development of Sayaji Hotel and the said Club. After D investigation the police filed charge-sheet against the three accused persons. The First Additional Sessions Judge/ Special Judge, Indore, after perusing the charge-sheet and accompanying documents ordered framing of charges against the three accused for the offences under Sections 13(2) and E 13(1) (d) of Prevention of Corruption Act read with Section 120B of the Indian Penal Code, 1960. The three accused moved to the High Court by filing revision petitions against the order of the Addl. Sessions Judge framing charges. The High Court allowed the Revision Petitions and set aside the order F of framing charges passed by the Addl. Sessions Judge, Indore.

4. At this stage it would be appropriate to refer to order of the Addl. Sessions Judge which framed the charges. The G charges framed against G.S. Jadon are that as the Building Officer (a public servant), he cleared and issued the revised building plan of the Sayaji Hotel without sanction, approval and clearance from High Rise Committee in violation of Rule 12 of H Bhumi Vikas Niyam, 1984 and also without electricity, water

supply and sewage clearance to the said project. Further, the charge against G.S. Jadon is for issuing completion certificate without necessary electricity, water, sewage and fire fighting clearances thereby causing illegal gains to Sajid Dhanani, proprietor of Sayaji Hotel. It is also alleged that he did not inform about the completion certificate to the Property Tax Department of Indore Municipal Corporation leading to evasion of tax by the Hotel amounting to Rs.5,49,000/-. The order further charged G.S. Jadon for accepting free lifetime membership in the club of the Sayaji Hotel for himself and five family members. This constituted the illegal gratification to him.

5. As against Rakesh Mishra, the charge was of criminal conspiracy, for the reason that he was the Sub-Engineer at the relevant time in the Building Permission Branch and he made certain notings in the Note Sheet favouring Sajid Dhanani. The charges against Sajid Dhanani were that in the capacity of applicant for revision of the building plan and issuance completion certificate, he was charged for criminal conspiracy for offences under the Prevention of Corruption Act by providing illegal gratification to G.S. Jadon and evading property tax.

6. The High Court allowed the revision petitions on the findings that the original building permission was granted by J.M. Awasiya and it was granted after approval from High Rise Building Committee vide letter dated 09-12-1993. The accused had merely granted a revision of the building plan which did not require any fresh approval from the High Rise Building Committee. Also, the High Court found that the approval of Fire Department had been taken vide letter dated 18.10.1994. It was only later, that vide letter dated 19.10.1997 the fire authorities withdrew their NOC. The High Court found that the Completion Certificate was also granted while the Fire

- A NOC was in force and it was in conformity with Rule 31 of Madhya Pradesh Bhumi Vikas Niyam, 1984. The High Court concluded that the Building Officer was under no obligation to inform the property tax department of the Indore Municipal Corporation about the completion certificate. In fact, in regard
- B to property tax evasion, the alleged amount of Rs.5,49,000 was paid by Hotel Sayaji when it was demanded by the department.

7. The major argument advanced by the State of Madhya Pradesh before us has been that the High Court traversed beyond the permissible limit while deciding the legality of order framing charges, being a pre-trial stage. Various authorities have been cited before us to prove that point. However, it would suffice to say that the law on this point is crystal clear that only
- D charge-sheet along with the accompanying material is to be considered at the stage of framing of charges, so as to satisfy whether a prima facie case is made out. It has to be the subjective satisfaction of the Court framing charges. In our
- E opinion, the High Court has only examined the material before it against the prevailing law to reach its conclusions. Thus, the impugned judgment may not be assailable on this ground.

8. However, the question that arises is whether the material
- F available against the accused persons at this stage makes out a prima facie case that the alleged offence could have been committed by them. The offences charged against the accused are the offences under Section 13(2) and Section 13(1)(d) of the Prevention of Corruption Act and Section 120B
- G of the Indian Penal Code.

9. Learned counsel appearing for the accused persons has argued that G.S. Jadon was in the office of Building Officer from 31.10.1994 to 16.10.1996. He cannot be held liable for
- H any act/omission done prior to or after this period. It is

contended that building permission was granted to Sayaji Hotel prior to his appointment as the Building Officer. It has been further contended that the revision jurisdiction of the High Court also includes the inherent jurisdiction under Section 482 of Cr.P.C..

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10. It is worth noting here that the revised building plan, which was sanctioned in guise of the revision of sanction of the building permission, was a complete departure from the original plan. We do not have detailed building plans of the original and revised building permission. However, from the limited information available with us, it can be fished out that built up area in the original plan was 1810.04 Sq. Mtrs. on Ground Floor, while in the revised plan it was increased to 3476.25 Sq. Mtrs.. Similarly, for the Club the proposed built up area for Ground Floor was decreased from 4759.11 Sq. Mtrs. to 1810.62 Sq. Mtrs..

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11. The above are only two illustrations of the changes that were sought to be approved in the revised building plan. It goes without saying that when such dramatic and major changes are made to the plan, the approvals for fire safety devices, electricity, water supply and sewage, granted as per original plan would become irrelevant. Also, the completion certificate which was granted on 19.01.1995 was merely 7 days after the revision of building permission. Although, it may be noted that the completion certificate was only in relation to the Club and not the Hotel, yet it is difficult to fathom as to how even a Club could be completely built, with all compliances within 7 days of building permission, especially when the revised building plan consisted major changes from initial plan. Further, the accused not only granted the revision without approval of any committee, but also accepted the honorary membership of the Sayaji Club.

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A 12. Having said so, it would be relevant to point out that evasion of property tax being attributed to the Building Officer; we do not find merit in this argument as we do not find any law where the Building Officer is required to inform the property tax department of the Municipal Corporation.

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C 13. Although we do not wish to comment on the merits of the case as this is the pre-trial stage, yet we are of the view that there exists sufficient material to make out a prima facie case against the accused. Therefore, these criminal appeals are allowed, the order passed by the High Court is set aside and the order of the Addl. Sessions Judge framing charges is restored.

D 14. We may, however, express our disappointment of such extended litigation at the pre-trial stage itself. The delay in justice delivery system not only renders justice ineffective but also ill-founded as it leads to erosion of evidence. In the light of this observation, we request the Trial Court to conduct the trial in the most expeditious manner.

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Kalpana K. Tripathy

Appeals allowed.

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