

**HIGH COURT OF CHHATTISGARH, BILASPUR****Cr.M.P.No.1461 of 2023**

Rajkumar Tamboli, Aged About 54 years, Son of B.P.Tamboli, (at present posted as Joint Collector, Pamgarh, District-Janjgir-Champa), resident of Village-Chhatauna, Tahsil-Sakri, District-Bilaspur (CG)

---- **Petitioner**

**Versus**

1. State of Chhattisgarh, through the Station House Officer, Police Station-Darri, District-Korba (CG)
2. Indrapal Singh Kanwar son of late Bandhan Singh, Caste-Kanwar, resident of Sirki, Tahsil-Katghora, District-Korba (CG)

---- **Respondents**

And

**Cr.M.P.No.1903 of 2023**

Ashok Kumar Marble S/o Shri P.R. Marble aged about 55 years R/o Gitanjali Enclave H.No.46 Ring Road No.2 Tahsil and District Bilaspur (CG) presently posted as Deputy Collector Kanker, District Kanker (CG)

---- **Petitioner**

**Versus**

1. Station House Officer of Police Station Darri, Tahsil Katghora, District Korba (CG)
2. Indrapal Singh Kanwar S/o Late Bandhan Singh R/o Village Sirki Police Station Darri, Tehsil Katghora, District Korba (CG)
3. Mankeshwar Lal S/o Masatram R/o Village Jamnipali, Tehsil Katghora, District Korba (CG)





4. Rajkumar Tambli S/o Shri B.P. Tamboli, aged about 45 years, R/o Vill. Chhatauna Tahsil Sakari, District Bilaspur (CG) present posted Joint Collector Pamgarh, District Janjgeer Champa (CG)

---- Respondents

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Mr.Mr.Anil S. Pandey, learned counsel for the Petitioner in

CRMP1461/2023 and Respondent No.4 in CRMP No.1903/2023

Mr.Anand Mohan Tiwari, learned counsel for the Petitioner in CRMP

No.1903/2023

Mr.R.S.Marhas, learned Additional Advocate General for the Respondent-State.

None present for Complainant-Indrapal Singh Kanwar. Even no return has been filed though Mr.Aditya Khare, Advocate has filed his Vakalatname on behalf of Complainant-Indrapal Singh Kanwar

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**Hon'ble Mr. Ramesh Sinha, Chief Justice**

**Hon'ble Mrs. Rajani Dubey, Judge**

**Order on Board**

**Per Ramesh Sinha, Chief Justice**

**29.04.2024**

1. Since common question of law and facts are involved in present two petitions, they were clubbed and heard together and are being disposed of by this common order.
2. By way of petition under Section 482 CrPC petitioner-Rajkumar Tamboli has prayed for following relief:-

*"It is therefore most respectfully prayed that this Hon'ble Court may kindly be pleased to quash impugned FIR bearing No.30/2014 and final report No.124/2023 submitted by the Police of Police Station Darri before the learned JMFC, Katghora, District Korba for the offence punishable under Sections 420, 467, 468, 471, 120-B, 34 of Indian*



*Penal Code, against the petitioner and entire criminal proceedings pending in Criminal Case No.1278/2023 pending before the learned JMFC, Katghora, District-Korba (CG) against the petitioner, in the interest of justice.”*

3. By way of petition under Section 482 CrPC petitioner-Ashok Kumar Marbal has prayed for following reliefs:-

*“a. The Hon’ble Court may kindly be pleased to call the entire records pertaining to the impugned criminal case No.1278/2023 parties namely the State of Chhattisgarh through Police Station Darri Vs. Mankesharlal others initiated by the Learned Judicial Magistrate First Class Katghora, District Korba (CG)*

*b. The Hon’ble Court may kindly be pleased to quash the entire charge sheet No.124/2023 (Annexure P-1) submitted by respondent No.1 before the learned Judicial Magistrate First Class, Katghora District Korba (CG), particularly in relation to the present petitioner.*

*c. The Hon’ble Court may kindly be pleased to quash the impugned Criminal proceeding initiated by the learned Judicial Magistrate First Class, Katghora District Korba (CG) in Criminal Case No.1278/2023 parties namely State of Chhattisgarh through Police Station Darri Vs. Mankesharlal others (Annexure P-1).”*

4. The prosecution story, in brief, is that complainant-Indrapal Singh Kanwar filed an application under Section 156(3) of the CrPC before the Judicial Magistrate First Class, Katghora alleging therein that at the relevant point of time the present petitioner was posted and working as Tahsildar. Accused Mankeshwar Lal has sold out the



land bearing khasra No.230/1 situated at village Jamunapali, P.H.No.17 through registered sale deed to different persons and the purchasers filed application for mutation and on the basis of registered sale deed, the petitioner while discharging the duties of revenue Court, has ordered for mutation of the subject land in the name of purchasers (co-accused) as per then provisions contained in Sections 109 & 110 of the Chhattisgarh Land Revenue Code, 1959 (hereinafter called as 'Code'). It is alleged that said Mankeshwar Lal had filed an appeal No.15/A-23/2006-07 before the Additional Collector, Korba in respect of subject land, which was dismissed by order dated 19.11.2007 and directed for acting as per the provisions contained in Section 177 of the Code. On the basis of complaint of complainant-Indrapal Singh Kanwar, vide order dated 15.01.2014 learned JMFC, Korba directed the concerned Police Station Darri for conducting investigation into the complaint and submit report. On the basis of direction of the learned JMFC, Katghora, the police station Darri has registered the FIR against the accused persons including the present petitioners. Hence, these petitions.

5. Mr.Anil S. Pandey and Mr.Anand Mohan Tiwari, learned counsel for the petitioners would submit that that the petitioners at the relevant point of time were Tahsildar and acted as revenue officer within the meaning of Sections 11 and 31 of the Code and therefore, their order deemed to be an order of the revenue Court and order passed



in quasi-judicial capacity was judicially appealable under Section 44(1) of the Code, as such, he cannot be subjected to be criminal prosecution as order passed in quasi-judicial capacity in view of provisions contained in Section 2 read with Section 3 of the Provisions under the Judges (Protection) Act, 1985 (hereinafter called as “Act of 1985”) and there is no evidence on record of collusion with other accused persons in whose favour the land came to be mutated, as such, the prosecution launched against the petitioners for aforesaid offences is clearly illegal, arbitrary and contrary to the settled principle of law in this regard, as such, initiation of prosecution by registering the FIR and consequent submission of charge-sheet is bad in law. They would further submit that 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, as such, it deserves to be set aside in the light of judgment of the Supreme Court in the matter of State of **Haryana and others v. Bhajan Lal and others**<sup>1</sup>, as such, the petitions be allowed and entire criminal proceeding emanated from registering the FIR and subsequent charge-sheet, which is subject-matter of Criminal Case No.1278/2023 (State of Chhattisgarh through Police Station Darri v. Mankesharlal and others) pending in the Court of Judicial Magistrate First Class, Katghora, District-Korba deserves to be quashed.

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1 1992 Supp (1) SCC 335



6. Mr.R.S.Marhas, learned Additional Advocate General appearing for respondent-State, would however support the registration of FIR, subsequent investigation and submission of charge-sheet stating inter-alia that complaint filed by respondent-Indrapal Singh Kanwar was thoroughly investigated and upon investigation, it was found prima-facie case against the petitioners for submission of charge-sheet against the petitioners and other co-accused persons and consequently, charge-sheet has been filed and as such, the petitions under Section 482 of the CrPC deserve to be dismissed.

7. We have heard learned counsel for the parties and considered their rival submissions made hereinabove and also went through the records with utmost circumscription.

8. In order to perfectly understand the dispute, it would be appropriate to notice the provisions contained in the Code and the Act of 1985 relating to status of Revenue Officer.

9. Section 11 of the Code defines classes of the Revenue Officers which states as under:-

**“11. Revenue Officers.**-There shall be the following classes of the Revenue Officers, namely:-  
Commissioners (including Additional Commissioners);  
Settlement Commissioner (including Additional Settlement Commissioners);  
Collectors (including Additional Collectors);  
Settlement Officers;  
Sub-Divisional Officers;  
Assistant Collectors;  
Joint Collectors (including Deputy Collectors);  
Deputy Settlement Officers;  
Assistant Settlement Officers;  
Tahsildars (including Additional Tahsildars);



Superintendents of Land Records;  
Naib Tahsildars;  
Assistant Superintendents of Land Records.”

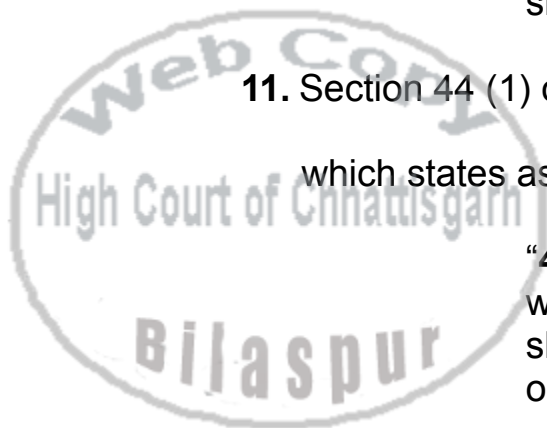
10. By Section 31 of the Code, the revenue Court has been conferred with the status of the Court and a Revenue Officer while exercising the power under Section 31 shall be a Revenue Court. Section 31 of the Code states as under:-

**“31. Conferral of status of Courts on Board and Revenue Officers.-** The Board of a Revenue Officer, while exercising power under this Code or any other enactment for the time being in force to enquire into or to decide any question arising for determination between the State Government and any person or between parties to any proceedings, shall be a Revenue Court.”

11. Section 44 (1) of the Code provides appeal and appellate authorities which states as under:-

**“44. Appeal and appellate authorities.-**(1) Save where it has been otherwise provided, an appeal shall lie from every original order under this Code or the rules made thereunder-

- (a) if such order is passed by any Revenue Officer subordinate to the Sub-Divisional Officer, whether or not the officer passing the order is invested with the powers of the Collector to the Sub-Divisional Officer;
- (b) if such order is passed by the Sub-Divisional Officer, whether or not invested with the powers of the Collector to the Collector;
- (c) if such order is passed by any Revenue Officer subordinate to the Settlement Officer to the Settlement Officer;
- (d) if such order is passed by the Revenue Officer in respect of whom a direction has been issued under sub-section (3) of section 12 or sub-section (2) of section 21 to such Revenue Officer as the State Government may direct;
- (e) if such is passed by a Collector whether exercising the powers of Collector or Settlement





Officer, during the currency of the term of settlement to the Commissioner;

(f) if such order is passed by a Settlement Officer, whether exercising the powers of Settlement Officer or the powers of a Collector in connection with any settlement operation unless otherwise expressly provided to the Settlement Commissioner;

(g) if such order is passed by the Commissioner or the Settlement Commissioner to the Board.”

12. Thus, it is quite vivid that Tahsildar is a Revenue Officer within the meaning of Section 11 of the Code and while exercising powers under this Code or any other enactment for the time being in force while deciding the *lis* between the parties, he will have the status of “Revenue Court” and order passed by the Revenue Officer including that of Tahsildar would be judicially appealable under Section 44(1) of the Code.

13. The Judicial Officer's Protection Act, 1850 protects Judicial Officers against being sued in any Civil Court for official acts done or orders passed by them in good faith under Section 1 of the Act of 1850, not only a Judge, Magistrate or Justice of Peace, a Collector or other person acting judicially are also protected against such civil action.

14. In the matter of **S.P.Goel v. Collector of Stamps, Delhi**<sup>2</sup> the Supreme Court while considering the provisions in Section 1 of the Judicial Officers (Protection) Act, 1850 held as under:-

“35. This section contains the common law rule of immunity of Judges which is based on the principle that a person holding a judicial office should be in a position to discharge his functions with complete independence and, what is more important, without there being in his mind fear of consequences. The scope and purpose of this Act has already been





explained by this Court in Anowar Hussain v. Ajay Kumar Mukherjee<sup>3</sup> in which the old decision in Teyen v. Ram Lal<sup>4</sup> was approved. The position of Judges, Judicial Officers and Magistrates has since been made more secure by the enactment of Judges (Protection) Act, 1985.”

15. Under Section 1 of the Act of 1985, not only a Judge, Magistrate or Justice of Peace, a Collector or other person acting judicially are also protected against such civil action. The Judges (Protection) Act, 1985 goes a step ahead and provides additional protection to Judges against any civil or criminal proceeding against them for any act, thing or word committed, done or spoken by them when, or in the course of, acting or purporting to act in discharge of their official or judicial duty or function.

16. Section 2(a) of the Act of 1985 defines meaning of Judge as under:-

**2. Definition.-** In this Act, “Judge” means not only every person who is officially designated as a Judge, but also every person-

(a) who is empowered by law to give in any legal proceeding a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive, or

(b) xxx                      xxx                      xxx.”

From the above-stated definition of “Judge”, it is quite vivid that every person who is required to law to give in any proceeding a judgment is a Judge, notwithstanding he is officially designated as a Judge.

17. In **S.P. Goel** (supra), Their Lordships have held that provisions of

3     AIR 1965 SC 1651

4     ILR (1890) 12 All 115



the Act of 1850 will also be available to Collector of Stamps as Collector has been specifically mentioned along with Judges, Magistrates and Justices of Peace in the Act of 1850.

- 18.** Thus, it is well settled ever since that no action is maintainable against a Judge for anything said or done by him in exercise of a jurisdiction which vest to him. The words he speaks are protected by an absolute privileges. It was well stated by Lord Tcntcrden C.J. in Gamett Vs. Ferrand<sup>5</sup>:

“This freedom from action and question at the suit of an individual is given by the law to the Judges, not so much for their own sake as for the sake of the public, and for the advancement of justice, that being free from actions, they may be free in thought and independent in judgment, as all who are to administer justice ought to be.” (Excerpts from “The Due Process of Law’ by Lord Denning).”

As such, this statement of law would apply to the Judges of all rank (High or Low) as provided under the Act of 1850 and the Act of 1985.

- 19.** Section 2(a) of the Act of 1985 defines meaning of Judge:-

**“2. Definition.-** In this Act, “Judge” means not only every person who is officially designated as a Judge, but also every person-

(a) who is empowered by law to give in any legal proceeding a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive, or

(b) xxx xxx xxx.”

- 20.** Section 3 of the Act of 1985 provides as under:-

**“3. Additional protection to Judges.-(1)**

<sup>5</sup> (1827) 6 B & C 611



Notwithstanding anything contained in any other law for the time being in force and subject to the provisions of sub-sec.(2), no Court shall entertain or continue any civil or criminal proceeding against any person who is or was a Judge for any act, thing or word committed, done or spoken by him when, or in the course of, acting or purporting to act in the discharge of his official or judicial duty or function.

(2) Nothing in sub-sec.(1) shall debar or affect in any manner the power of the Central Government or the State Government or the Supreme Court of India or the High Court or any other authority under any law for the time being in force to take such action (whether by way of civil, criminal, or departmental proceedings or otherwise) against any person who is or was a Judge.”

21. Section 4 of the Act of 1985 provides as under:-

**“4. Saving.**-The provision of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force providing for protection of Judges.”

From perusal of Section 4 of the Act of 1985, it is quite vivid that the provisions of the Code is in addition to and not in derogation of the provisions of any other law for the time being in force providing for protection of Judges.

22. Reverting to the facts of the case, it is quite vivid from definition of Section 2 of the Act of 1985 that the petitioner was empowered to give definite judgment in revenue proceeding. The petitioner at the relevant point of time was empowered to pass an order of mutation of subject land in the names of purchasers (co-accused) under Sections 178 and 110 of the Code respectively and he would fall within the meaning of person under Section 2(a) of the Act of 1985



who is empowered by law to give definitive judgment in revenue proceeding.

23. The question for consideration would be, whether the petitioners are entitled for protection under Section 3 of the Act of 1985 ?

24. In Union of India v. Upendra Singh<sup>6</sup> the Supreme Court held that even an officer, while discharging judicial or quasi-judicial duties, is amenable to the disciplinary proceedings into his conduct in discharge of the duty.

25. The Supreme Court in the matter of Zunjarrao Bhikaji Nagarkar v. Union of India and others<sup>7</sup> has held that if the revenue officer in quasi-judicial adjudication has wrongly exercised his jurisdiction that wrong can be corrected in appeal. That cannot always form a basis for initiating disciplinary proceedings against an officer while he is acting as a quasi-judicial authority. It must be kept in mind that being a quasi-judicial authority, he is always subject to judicial supervision in appeal.

26. The Division Bench of this Court in the matter R.A. Khandelwal v. State of Chhattisgarh & Others (M.Cr.C.No.1209 of 2004), decided on 1<sup>st</sup> August, 2005 quashed criminal proceedings initiated against the petitioner therein who while acting as competent authority under the Madhya Pradesh (Ceiling on Agricultural Holdings) Act, 1960 passed certain order in that capacity was prosecuted for offences under Sections 13(1)(d) and 13(2) of the

6 (1994) 3 SCC 257

7 (1999) 7 SCC 409



Prevention of Corruption Act, 1988 and Sections 120-B, 467 and 468 of the Indian Penal Code and held as under:-

“19. Section 1 of the Judicial Officer's Protection Act, 1850, Section 3(2) of the Act, 1985, and Sections 45 and 48 of the Ceiling Act, 1960 do not provide for absolute bar from civil/criminal proceedings against a person who has performed judicial functions, except in case of good faith, done or intended to be done. The Central Govt. or the State Govt. or the Supreme Court of India or the High Court or any other Authority under any law which is competent can take action by way of civil, criminal or departmental or otherwise against a person who has performed a function in exercise of his judicial/quasi judicial proceedings. The provisions of the Act 1850 and the Act 1985 and the provisions of the Ceiling Act are to prevent unnecessary harassments and frivolous prosecution of the officers for exercising his judicial/quasi judicial powers at the instance of a private party or a member of the public.”

27. Similarly, the Madhya Pradesh High Court in the matter of **Balram and Ors. v. Aswani Kumar Yadav and Ors.**<sup>8</sup> has held that the petitioner therein-Naib-Tahsildar/Revenue Officer who has been given status as revenue Court while exercising the power under Code/other enactment is entitled for protection under Section 3 of the Act of 1985 for an order which he passed in quasi-judicial capacity.

28. In the matter of **Om Prakash v. Surjan Singh**<sup>9</sup> the High Court of Madhya Pradesh has held that the revenue officer/Tahsildar therein is entitled for protection for passing an order in capacity of revenue Court by provisions of Section 2 and 3 of the Act of 1985. It was

8 2001 (3) MPLJ 363

9 2004(1) MPJR 244



also held that even if he has passed the order without jurisdiction he cannot be prosecuted by way of filing criminal complaint.

**29.** The High Court of Madhya Pradesh in the matter of **State of M.P. v. Rajeev Jain**<sup>10</sup> has clearly held that prosecuting agency cannot be allowed to sit in judgments or orders passed in judicial or quasi-judicial side by a Judge. May be that he has mistaken or grossly mistaken, yet he acted judicially and for that, no action shall lie against him. The wrong, if any, could be corrected in appeal. That cannot always form a basis for initiation of criminal prosecution.

**30.** This Court in the matter of **Sushil Kumar Jerom Tigga v. Ganesh Ram Gyanbandhu Patel and others**<sup>11</sup> has held that Deputy Registrar of Co-operative Society exercising his powers under Section 64 of the Chhattisgarh Co-operative Societies Act, 1961 functions as 'Court' subordinate to High Court and therefore, protection under Section 3 of the Act of 1985 is available to him.

**31.** Thus, the order passed by the petitioner under Section 178 read with Section 110 of the Code has become final. The said order was appealable/correctable before the appellate authority in terms of Section 44(1) of the Code, but it was not appealed against. The petitioner may have mistaken or grossly mistaken in exercise of his quasi-judicial power and jurisdiction in passing orders on the said application and no action will lie against him and he is fully protected by Section 3 of the Act of 1985 as he acted as quasi-

10 2001 (4) MPHT 58

11 ILR 2018 Chhattisgarh 703



judicial authority / Revenue Court. It must be kept in mind that he being a quasi-judicial authority is always subject to judicial supervision in appeal or by this Court under Article 226/227 of the Constitution of India as held by the Supreme Court in **Zunjarrao Bhikaji Nagarkar** (supra), therefore, prosecuting agency cannot be permitted to sit over a judgment or order passed on quasi-judicial side by the petitioner while presiding the Revenue Court under Section 31 of the Code. Even otherwise, in the entire charge-sheet there is no allegation that he in collusion with beneficiaries passed an order of mutation of subject-land in the names of purchasers (co-accused) or he involved in the commission of alleged offences. Consequently, initiation of prosecution by lodging the FIR, further investigation and further submission of charge-sheet is ex-facie illegal and without authority of law in view of para-102(6) of the judgment of the Supreme Court in **Bhajan Lal** (supra).

**32.** In view of the aforesaid analysis, initiation of criminal case against the petitioners for passing an order of mutation in the capacity of Revenue Officer who have a status of the Revenue Court while entertaining the application under Section 178 of the Code is fully protected by the provisions contained in Sections 2 and 3 of the Act of 1985 and as such, prosecution launched against them being Criminal Case No.1278/2023 (State of Chhattisgarh through Police Station Darri v. Mankesharlal and others) for offences under Sections 420, 467, 468 and 471 and 120B/34 of the IPC are hereby



quashed so far as it relates to the present petitioners only. However, prosecution will continue against remaining accused persons.

33. The petitions under Section 482 CrPC are allowed to the extent indicated hereinabove.

**Sd/-**

**(Rajani Dubey)  
Judge**

**Sd/-**

**(Ramesh Sinha)  
Chief Justice**

Bablu







Head-Note

The revenue officer / Tahsildar is entitled for protection for passing an order in capacity of Revenue Court by provisions contained in Sections 2 and 3 of the Provisions under the Judges (Protection) Act, 1985.

