

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
MCRC No. 14026 of 2024

(SHIVRAJ SINGH CHOUHAN AND OTHERS Vs VIVEK KRISHNA TANKHA)

Dated : 03-04-2024

Shri R.N. Singh - Senior Advocate assisted by Shri Akshat Arjaria - Advocate for the petitioners.

Shri Shivendra Pandey - Advocate for the respondent.

Learned counsel for the petitioners is heard on the question of admission and also on interim relief.

2. Petitioners have filed this petition under Section 482 of the Code of Criminal Procedure questioning the legality and validity of the orders dated 22.03.2024 (Annexure A/3) and 02.04.2024 (Annexure P/5) passed by the Special Judicial Magistrate (MP/MLA Court), Jabalpur in case No. SC PPM/01/2024.

3. By order dated 22.03.2024, the trial court has considered the applications filed by the petitioners under Section 205 read with Section 317 of the Code of Criminal Procedure seeking exemption from personal appearance. Although the trial court partly allowed the said application and exempted the personal appearance of the petitioners for the said date only, but in respect of permanent exemption from personal appearance of the petitioners, the trial court directed the petitioners to submit their personal undertaking and the case was directed to be fixed for 02.04.2024 for submitting the undertaking and also for considering the said applications on the point of permanent exemption from personal appearance.

4. On 02.04.2024, the matter was listed before the trial court for consideration of the applications earlier filed on behalf of the petitioners seeking permanent exemption from personal appearance and submitting undertakings, however, since the undertaking could not be submitted by the petitioners, the trial court rejected the applications filed by

the petitioners under Section 205 read with Section 317 of Cr.P.C. and also preponed the date of personal appearance of the petitioners and instead of 07.06.2024 fixed the case for the said purpose for 07.05.2024. Not only this, the trial court further directed to issueailable warrants against the petitioners for securing their presence before the court on 07.05.2024.

5. The trial court in its order dated 02.04.2024 observed that on 22.03.2024 also the petitioners did not appear in the court and moved applications for exemption from their personal appearance and the court accepting the said request exempted their personal appearance and directed them to submit their undertaking on the said date, but since the petitioners failed to submit undertaking, this conduct of the petitioners was not felt proper by the court and treated the same as disregard towards the order of the Court. Consequently, the Court observed that the status or position of the petitioners does not make any difference in the eye of law and as such their conduct of not submitting undertaking, as per the court below amounts to violating the order of the court and as such not acceptable. Taking note of the said fact, the court below rejected the applications of the petitioners filed under Section 205 Cr.P.C. and preponed the date of their personal appearance from 07.06.2024 to 07.05.2024 and also directed to issueailable warrants against the petitioners for securing their appearance.

6. Shri Singh, learned senior counsel, appearing for the petitioners submits that on 02.04.2024 it was duly apprised to the court below by moving an application that the petitioners are the senior leaders of ruling party. They are also contesting the Parliamentary Election from their respective constituency as they have been declared candidates by the party to contest the election and as such they are very busy in fulfilling the requirements of submitting their candidature (nomination form) and for that reason they could not submit their personal undertaking before the court.

7. Shri Singh further submits that petitioner No. 1 is a former Chief Minister of the

State and contesting Lok Sabha Election from Vidisha constituency and the voting in the said constituency is scheduled on 07.05.2024. As far as petitioner No. 2 is concerned, he is also contesting the election from Khajuraho constituency and he is also holding the post of State President of the ruling party. Shri Singh Submits that when the court below had already fixed the matter for further proceeding for 07.06.2024 and the matter is ceased by the High Court, therefore there was no reason for the court below to prepone the date and ask personal appearance of the petitioners.

8. Shri Singh submits that the complaint in question is apparently politically motivated which has been filed to malign the political career of the petitioners and the said action of the complainant is an outburst of the same owing to the forthcoming Lok Sabha Election. He submits that the petitioners have all respect towards the order of the court and they will comply the same and appear before the Court as and when directed. He submits that the petitioners have sought exemption from personal appearance looking to their busy schedule on account of forthcoming election.

9. Shri Singh, at the last, submits that considering the fact situation put forth before this Court, the impugned orders may be quashed or in alternative, as an interim measure, the said orders may be stayed.

10. Shri Pandey appearing for the respondent submits that the trial court in the light of the observation made by the Supreme Court in the case of **Satender Kumar Antil vs. Central Bureau of Investigation and another** reported in **(2021) 10 SCC 773** has very specifically directed the petitioners to submit undertaking and as such nothing wrong has been committed by the court. He submits that it is a mandatory requirement of law and as such the petitioners are under obligation to comply the same.

11. I have heard the arguments advanced by the learned counsel for the parties at length and also perused the record, especially the impugned orders dated 22.03.2024 and

02.04.2024 and after examining each and every aspect of the matter, this Court is of the opinion that in the present fact situation of the present case, at present it would be appropriate to stay the impugned orders as an interim measure for the following reasons:

(i) The matter has already been travelled up to the High Court and is ceased by the Court.

(ii) After taking into account the existing circumstances the petitioners were earlier exempted from their personal appearance.

(iii) The trial court had also extended the date of personal appearance of the petitioners upto 07.06.2024 and hence under the circumstances the provision of sub-section (2) of Section 205 of Cr.P.C. can be avoided, which is based upon the discretion of the court.

(iv) Looking to the fact that petitioner Nos. 1 and 2 are contesting Lok Sabha Election and their constituencies from where they are contesting the election are very far from the Jabalpur Court and when counsel appeared and moved an application showing helplessness to get undertaking then the petitioners could be exempted from furnishing their undertaking.

(v) This Court has also fixed the connected case i.e. MCRC No. 12558/2024 for 23rd of April, 2024 for considering the interim relief. Therefore, there was no occasion for the court below to issueailable warrants against the petitioners.

12. Accordingly, as an interim measure, the impugned orders dated 22.03.2024 (Annexure A/3) and 02.04.2024 (Annexure A/5) are directed to be stayed and it is also directed that warrants as directed to be issued against the petitioners shall not be issued till the next date of hearing.

13. **List this case on 23.04.2024** alongwith MCRC No. 12558/2024.

(SANJAY DWIVEDI)

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