

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA
ON THE 5th OF JULY, 2024
MISCELLANEOUS CRIMINAL CASE No. 11930 of 2013**

(I.M. SIDDIQUI AND OTHERS

Vs

THE STATE OF MADHYA PRADESH AND OTHERS)

Appearance:

(SHRI K.N. PETHIA – ADVOCATE FOR THE APPLICANTS)

*(SHRI GAJENDRA PARASHAR – PANEL LAWYER FOR THE RESPONDENTS
NO.1 TO 3/STATE)*

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"Reserved on : 03.07.2024"

"Pronounced on : 05.07.2024"

This application having been heard and reserved for order, coming on for pronouncement this day, the court passed the following:

ORDER

This application under Section 482 of Cr.P.C. has been filed seeking following reliefs:

“It is, therefore, most humbly prayed that this petition may kindly be allowed and the impugned F.I.R. registered against the petitioners by complainant Ashok Tiwari at P.S. Dhooma, Dist. Seoni which is apparent from the information contained in Annexure P-2 may kindly be quashed in the interest of justice.”

2. It is submitted by counsel for applicants that on the report lodged by complainant Ashok Kumar Tiwari, Police Station Dhuma, District Seoni has lodged FIR No.134/2013 against the applicants for offence under Sections 431, 283, 290, 336, 427 of IPC. It is submitted that complainant Ashok Kumar Tiwari lodged a report that on 31.08.2013 he

had gone to village Banjari on his private motor cycle bearing registration No.MP 49B 7841. While he was coming back to his house, his motor cycle fell in a ditch on account of big ditches on the NH-7 road, as a result he has sustained injuries on his right leg and hand and his motor cycle also got damaged. It was further alleged that the responsibility of maintaining the NH-7 road is of NHAI and the Project Director is applicant No.1, and for maintenance applicant No.2 has been appointed but for the last several years, the NH-7 road from village Banjari to Dhuma has not been repaired and leveling has not been done, as a result he has suffered injury. It was further alleged that in case if he was not driving his motor cycle carefully, then he would have lost his life also.

3. The applicants have filed **I.A. No.289/2014** for taking the charge sheet on record.

4. Thus, it is clear that the Police after completing investigation has filed the charge sheet also.

5. This Court by interim order dated 19.02.2014 has stayed the criminal proceedings arising out Crime No.134/2013 pending before the JMFC Lakhnadon, District Seoni, therefore, it is clear that no further proceedings must have taken place and the trial is stayed.

6. Challenging the FIR lodged against the applicants, it is submitted by counsel for applicants that as per the provisions of Section 28 of the National Highways Authority of India Act, 1988, applicants No.1 and 2 are exempted from criminal prosecution and therefore, no legal proceedings shall lie against the Authority or any member or officer or employee of the Authority for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under

this Act or the rules or regulations made thereunder. To buttress his contentions, counsel for applicants has also relied upon order dated **22.09.2015** passed by a Coordinate Bench of this Court in the case of **Iqbal Mohammed Siddhiqui and Others Vs. State of Madhya Pradesh and Others** in **M.Cr.C. No.4197/2014**.

7. Heard the learned counsel for the applicants.

8. The main thrust of the arguments of counsel for the applicants is that since they had acted in a good faith, therefore they are exempted from civil suit, prosecution or other legal proceedings. This Court has gone through the order passed by a Coordinate Bench of this Court in the case of **Iqbal Mohammed Siddhiqui (supra)**. The proceedings were quashed by the Coordinate Bench only on the ground that under Section 28 of the National Highways Authority of India Act, 1988, the officers are protected for action taken by them in good faith. However, the facts of the case were not considered in detail and there is no finding as to whether the action of the officers was done in good faith or not? Therefore, this Court is of considered opinion that applicants would not get any benefit of the order passed by a Coordinate Bench of this Court passed in the case of **Iqbal Mohammed Siddiqui (supra)**.

9. Good faith has been defined under Section 52 of Indian Penal Code, which reads as under:

““Good faith”. —Nothing is said to be done or believed in “good faith” which is done or believed without due care and attention.”

10. Thus, in order to take advantage of defence, the suspect/accused must plead and prove that he had taken due care and attention before performing a particular act. Undisputedly, the accident took place on National Highway No.7.

11. Section 4 and 5 of the National Highways Act 1956 reads as under:

“4. National highways to vest in the Union.- All national highways shall vest in the Union, and for the purposes of this Act “highways” include-

- (i) all lands appurtenant thereto, whether demarcated or not;
- (ii) all bridges, culverts, tunnels, causeways, carriageways and other structures constructed on or across such highways; and
- (iii) all fences, trees, posts and boundary, furlong and milestone of such highways or any land appurtenant to such highways.

5. Responsibility for development and maintenance of national highways.- It shall be the responsibility of the Central Government to develop and maintain in proper repair all national highways; but the Central Government may, by notification in the Official Gazette, direct that any function in relation to the development or maintenance of any national highway shall, subject to such conditions, if any, as may be specified in the notification, also be exercisable by the Government of the State within which the national highway is situated or by any officer or authority subordinate to the Central Government or to the State Government.”

12. Therefore, it is clear that the National Highways shall vest in the Union of India and the responsibility for development and maintenance of National Highways shall be of the Central Government and under some circumstances, the Central Government by notification in official gazette may delegate such power to the State Government. The National Highways Authority of India Act, 1988 provides for creation of an autonomous National Highways Authority.

13. Section 16 of the National Highways Authority of India Act, 1988 reads as under:

“16. Functions of the Authority.— (1) Subject to the rules made by the Central Government in this behalf, it shall be the function of the Authority to develop, maintain and manage the national highways and any other highways vested in, or entrusted to, it by the Government.

(2) Without prejudice to the generality of the provisions contained in sub-section (1), the Authority may, for the discharge of its functions—

- (a) survey, develop, maintain and manage highways vested in, or entrusted to, it;
- (b) construct offices or workshops and establish and maintain hotels, motels, restaurants and rest-rooms at or near the highways vested in, or entrusted to, it;
- (c) construct residential buildings and townships for its employees;
- (d) regulate and control the plying of vehicles on the highways vested in, or entrusted to, it for the proper management thereof;
- (e) develop and provide consultancy and construction services in India and abroad and carry on research activities in relation to the development, maintenance and management of highways or any facilities thereat;
- (f) provide such facilities and amenities for the users of the highways vested in, or entrusted to, it as are, in the opinion of the Authority, necessary for the smooth flow of traffic on such highways;
- (g) form one or more companies under the Companies Act, 1956 (1 of 1956) to further the efficient discharge of the functions imposed on it by this Act;
- (h) engage, or entrust any of its functions to, any person on such terms and conditions as may be prescribed;

- (i) advise the Central Government on matters relating to highways;
 - (j) assist, on such terms and conditions as may be mutually agreed upon, any State Government in the formulation and implementation of schemes for highway development;
 - (k) collect fees on behalf of the Central Government for services or benefits rendered under section 7 of the National Highways Act, 1956 (48 of 1956), as amended from time to time, and such other fees on behalf of the State Governments on such terms and conditions as may be specified by such State Governments; and
 - (l) take all such steps as may be necessary or convenient for, or may be incidental to, the exercise of any power or the discharge of any function conferred or imposed on it by this Act.
- (3) Nothing contained in this section shall be construed as—
- (a) authorising the disregard by the Authority of any law for the time being in force; or
 - (b) authorising any person to institute any proceeding in respect of a duty or liability to which the Authority or its officers or other employees would not otherwise be subject under this Act.”

14. Thus, it is clear that it is the duty of the National Highways Authority of India to develop, maintain and manage the National Highways and any other Highways vested in, or entrusted to, it by the Government. Thus, it is the duty of the applicants to maintain the National Highway No.7. In the FIR, it is specifically mentioned that there are big ditches in the road, which have not been repaired by the applicants. Maintaining the Highway would mean that the National Highways Authority of India must keep the Highway in a motorable

condition and in case if the National Highways Authority of India realizes that the condition of the Highway is not motorable or is unsafe for vehicular or pedestrian traffic by reason of damage or otherwise, then it may either close the Highway or such part thereof to all traffic or to any class of traffic or regulate the number and speed of vehicles to be used on the Highway or such part thereof, as the case may be, in the manner as it may deem fit.

15. Sections 31, 33 and 34 of the Control of National Highways (Land and Traffic) Act, 2002 authorized the National Highways Authority of India to either close the Highway or such part thereof to all traffic or to any class of traffic. It is not the case of the applicants that because of the ditches in the road the traffic was either closed or it was regulated as per the provisions of Section 31 of the Control of National Highways (Land and Traffic) Act, 2002. If the Highway was damaged and was not motorable and still if the applicants did not take any step to maintain the same or did not take any step to close the Highway or such part thereof or did not take any step to regulate the traffic by restricting the number and speed of vehicles, then this Court is of considered opinion that *prima facie* it cannot be said that applicants had acted in a good faith.

16. Under these circumstances, this Court is of considered opinion that applicants are not entitled for the protection given under Section 28 of the National Highways Authority of India Act, 1988. However, it is made clear that the aforesaid finding shall remain confined to these proceedings only because whether a person had acted in a good faith or not will necessarily a question of fact also, which can be decided by the trial Court after recording evidence. Therefore, the finding with regard

to non-availability of protection under Section 28 of the National Highways Authority of India Act, 1988 shall remain confined to these proceedings only and shall not prejudice the mind of the trial Court in any manner and the trial Court shall decide the same after considering the evidence, which would come on record.

17. The Police had filed the charge sheet in the month of December, 2013 and on account of interim order passed by this Court, the further proceedings before the trial Court have remained stayed. Approximately, 11 years have passed after the interim order was passed by this Court. Therefore, the applicants are directed to appear before the trial Court **on 31.07.2024** and the trial Court is directed to finally dispose of the trial within a period of one year from thereafter i.e. 31.07.2025.

18. It is made clear that in case if the applicant(s) fail(s) to appear before the trial Court on 31.07.2024, then the trial Court shall issue warrant of arrest against them for securing their presence.

19. The application fails and is hereby **dismissed**.

(G.S. AHLUWALIA)
JUDGE

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