



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

BEFORE

HON'BLE SHRI JUSTICE PRANAY VERMA

WRIT PETITION No. 12475 of 2024

QASIM ALI

Versus

***(DELETED AS PER COURT ORDER DATED 09/05/2024) THE STATE
OF MADHYA PRADESH AND OTHERS***

Appearance:

Shri Ibrahim Kannodwala - Advocate for the petitioner.

Shri Vaibhav Jain, learned counsel for the respondents No.2 & 3.

Shri R.S. Chhabra, learned Senior counsel with Shri Manas Kumar Kashiv and Shri Moinudding Algaus Shaikh, learned counsel for the respondent No.4.

ORDER

(Reserved on 23/9/2024)

(Pronounced on 14/10/2024)

1. This petition under Article 226 of the Constitution of India has been preferred by the petitioner being aggrieved by the order dated 12/10/2023 (Annexure P/1) passed by the Lokayukt, Madhya Pradesh, respondent No.2



whereby the complaint made by him has been declined to be entertained on the ground that the same has been made a private person which is beyond the purview of Section 7 of the M.P. Lokayukt Evam Up-lokayukt, Adhiniyam, 1981 (hereinafter referred to as the 'Adhiniyam, 1981') and that the same is also barred by time.

2. The petitioner made a complaint on 13/9/2023 before respondent No.2 in respect of certain illegalities having been committed by various office bearers of respondent No.4. Therein it was stated by him that a sale deed has been executed by them on 27/11/2015 in respect of property of the Wakf illegally. The sale consideration of Rs.20,20,000/- has been misappropriated by them. He acquired knowledge of the same on 4/2/2023 itself hence has filed the complaint. Prayer was made for taking suitable action against office bearers of respondent No.4. The said complaint has been dismissed by the impugned order for the reasons as aforesaid.

3. Learned counsel for the petitioner submits that respondent No.2 has failed to appreciate that the accused person namely Mulla Hasan Nawab is Mutamalli / Manager of respondent No.4 Wakf and is a public servant as per sub-section (2) of Section 101 of the Wakf Act. The period of limitation would commence from the date of acquiring knowledge of the offence as per the limitation provided under the criminal law and not as per the provisions of the Adhiniyam, 1981. The petitioner acquired knowledge of the fraudulent sale



deed on 23/1/2022 hence the complaint made by him was well within time. The illegal acts of respondent No.4 and its office bearers ought not to be permitted to go unpunished.

4. Reliance has been placed by him on the decision of this Court in **Dev Vrath Mishra V/s. State of M.P. & Anr. (2011) 2 MPLJ 365**, order dated 12/10/2022 passed in Writ Appeal No.995/2022 (**Smt. Meera Devi Saxena V/s. State of M.P. & Ors.**), order dated 30/10/2017 passed in W.P.No.2964/2017 (**Smt. Jyoti Narvariya & Ors. V/s. State of M.P. & Ors**) and of the Apex Court in **State of Rajasthan V/s. Sanjay Kumar & Ors. (1998) 5 SCC 82** and **Purushottam Bhai Magan Bhai Patel & Ors V/s. State of Gujarat & Ors. (2005) 7 SCC 431.**

5. Per contra, learned counsel for respondents No.2 and 3 as well as learned Senior counsel for respondent No.4 have submitted that the period of limitation for filing a complaint is five years from the date when the offence is alleged to have been committed and not from the date of acquiring knowledge. The Adhinyam, 1981 is a special enactment and would over ride general criminal law. The respondent No.4 and its office bearers are not public servants for the purpose of the Adhinyam, 1981 though they may be so under the Wakf Act hence proceedings against them cannot be initiated and continued under the Adhinyam, 1981. Reliance has been placed on the decision of **State of Maharashtra V/s. Laljit Rajshi Shah (2000) 2 SCC 699,**



Mujeebunissa Begum v/s. Government of A.P. (2014) SCC Online A.P. 189, Punjab Land Development & Reclamation Corporation Ltd. V/s. Presiding Officer Labour Court (1990) 3 SCC 682, Indira Uppal V/s. Union of India (2022) SCC Online Del 4889, Dev Vrat Mishra V/s. State of M.P. (2010) SCC Oline M.P. 388 and the order dated 12/5/2022 passed in W.P.No.1628/2020 (*Rupesh V/s. Commissioner, Lokayukt Bhawan, Bhopal & Ors.*).

6. I have heard the learned counsel for the parties and have perused the record.

7. The contention of the learned counsel for the petitioner that the complaint of the petitioner ought to have been treated to be within time is based upon decision of this Court in the case of *Dev Vrat Mishra* (supra) wherein challenge was made by the petitioner to an FIR registered against him. The same was on the ground that FIR cannot be registered and no investigation can be done after a period of five years from the date of incident. In that context it was held that once FIR has been registered the police would be free to investigate the matter. The aforesaid judgment has been considered by this Court in *Rupesh* (supra) decided on 12/5/2022 and it has been held as under :-

"In support of his contention, counsel for the petitioner has referred on a judgment passed by the Division Bench of this Court in the case of Dev Vrat Mishra Vs. State of M.P. and another reported in 2011(2)M.P.H.T 474(DB). Counsel for the petitioner has referred to para 15 of the case which reads as under:-



“15. In section 10 of Lokayukt Adhiniyam, it has been provided that Lokayukt or Up-Lokayukt shall, in each case before it, decide the procedure to be followed for making the enquiry and in so doing ensure that the principles of natural justice are satisfied. Since in the case in hand, Special Police Establishment registered a F.I.R. and proceeded for investigation, it cannot be held that it was an inquiry by Lokayukt. Had Lokayukt proceeded to inquire into the allegations made in the complaint in Form-I by the complainant, it would have been incumbent on him to ensure that the principles of natural justice were satisfied. In our opinion merely on the ground of expiry of five years after the date on which the conduct complained against a public servant, as alleged to have been committed, it cannot be held that even on disclosure of the commission of a crime, Lokayukt or Up-Lokayukt was debarred to refer the matter to Special Police Establishment for verification. If Special Police found that a crime had been committed it was well in its power to register the F.I.R. and investigate the same. Once the first information report is registered by the police, it would be free to investigate the matter and conclude it by filing final report under section 173 of the Code of W.P.2431/2010 M.Cr.C.848/2010 Criminal Procedure. The jurisdiction of Lokayukt to inquire into the allegations made against a public servant on receiving a complaint or other information is altogether different. Even for inquiry, investigation by police agency put at the disposal of Lokayukt can be sought. The inquiry by Lokayukt culminates into a report under section 12 of the "Lokayukt Adhiniyam" to the 'competent authority' defined under section 2(h) of "Lokayukt Ahiniyam".

Facts of the aforesaid case are distinguishable from the present case as the said petition was filed seeking quashment of FIR registered on 06.01.2010 by the Special Police Establishment Lokayukt on the ground, that the incident took place beyond 5 years, therefore, no investigation can be done by registering an FIR. The Division Bench of this Court has held up that once the FIR has already been registered by the Special Police Establishment, the police would be free to investigate the matter. The jurisdiction of Lokayukt to inquire into the allegations made against the public servant on receiving a complaint or other information is altogether different.

Sections 8,10 and 11 of the Adhiniyam, 1981 is as under:-

8. Matters not subject to enquiry. - The Lokayukt or an Up-



Lokayukt shall not inquire into any matter,-

(a) in respect of which a formal and public inquiry has been ordered under the Public Servants (Inquiries) Act, 1950 (No. 37 of 1950);

(b) which has been referred for inquiry under the Commission of Inquiry Act, 1952 (No. 60 of 1952); or

(c) relating to an allegation against a public servant, if the complaint is made after expiration of a period of five years from the date on which the conduct complained against is alleged to have been committed.

10. Procedure in respect of enquiry. - *The Lokayukt or Up-Lokayukt shall, in each case before it, decide the procedure to be followed for making the enquiry and in so doing ensure that the principles of natural justice are satisfied.*

11. Applicability of Evidence Act and Code of Criminal Procedure. - *The general principles of powers conferred by Evidence Act, 1872 (No. 1 of 1872), and Criminal Procedure Code, 1973 (No. 2 of 1974), shall as nearly as may be apply to the procedure of inquiry before Lokayukt or Up-Lokayukt in the matter of,-*

(a) summoning and enforcing the attendance of any person and his examination on oath;

(b) requiring the discovery and production of documents and proof thereof;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copy thereof, from any Court or office;

(e) issuing commission for examination of witness or documents;

and such other matters as may be prescribed :

Provided that no proceeding before the Lokayukt or Up-Lokayukt shall be invalidated only on account of want of formal proof if the principles of natural justice are satisfied :



[Provided further that where it is necessary to summon any Government servant in his official capacity, his statement on affidavit shall be deemed to be sufficient evidence.]

(2) Any proceeding before Lokayukt or Up-Lokayukt shall be deemed to be a Judicial proceeding within the meaning of Section 193 [and Section 228] of the Indian Penal Code, 1860 (No. 45 of 1860).

(3) The Lokayukt or Up-Lokayukt shall be deemed to be Court within the meaning of Contempt of Courts Act, 1971 (No. LXX of 1971)

In the present case, no such FIR has been registered by the Special Police Establishment. The M.P. Lokayukt and Up Lokayukt are governed under the provisions of Section 8 of the Adhiniyam, 1981 which prohibits the Lokayukt and Up-Lokayukt to inquire on any complaint made after expiration of 5 years from the date on which complaint against is alleged to have been committed. It is not in dispute that whether the complaint was made to respondent no.1 after 6 years from the date of alleged commission of crime. Therefore, we do not find any illegality in the order, hence, complaint at the instance of the present complainant/petitioner has rightly been closed rather being entertained.”

8. In the present case also no FIR has been registered by respondent No.2 who is governed by the provisions of Section 8 of the Adhiniyam, 1981 which prohibits him to enquire on any complaint made after expiration of five years from the date of the offence. The complaint has been made by the petitioner to respondent No.2 after a period of five years from the date of alleged commission of offence. The judgment in the case of Rupesh (supra) is hence squarely applicable to the facts of the present case in view of which the complaint made by the petitioner has rightly been closed by respondent No.2 as barred by time.



9. The case of *Purushottam Bhai Magan Bhai Patel & Ors.* (supra) was in respect of a proceeding under the provisions of Land Acquisition Act, 1894, the provisions of which are entirely different to the provisions of the Adhiniyam, 1981 hence the said judgment is wholly inapplicable to the facts of the present case. Similar is the situation with respect to the case of *State of Rajasthan V/s. Sanjay Kumar* (supra) which was arising out of proceedings under the Drugs and Cosmetics Act, 1940 the provisions of which are entirely different. The case of *Smt. Jyoti Shah Narvariya & Ors.* (supra) was also under the provisions of the Drugs and Cosmetics Act. Reliance therein was placed upon the decision in the case of *Dev Vrat Mishra* (supra) which is distinguishable in view of the decision in the case of *Rupesh* (supra).

10. Reliance placed by the learned counsel for the petitioner upon the decision in *Smt. Meera Devi Saxena* (supra) to contend that the legal advisor to the Lokayukt is not the competent authority hence could not have passed the impugned order is wholly misplaced as in that case communication was made by the legal advisor and not by the Lokayukt and in such circumstances, it was held that it was Lokayukt or Up-lokayukt who is required to make communication as per procedure prescribed under Section 12 of the Adhiniyam, 1981. However, in the present case the impugned order specifically states that the same has been passed in compliance of an order dated 27/9/2023 passed by respondent No.2. It hence cannot be said that the



impugned order has been passed by legal advisor of respondent No.2 and not by respondent No.2 himself.

11. Since the complaint preferred by petitioner has been found to be barred by time, it is not necessary for this Court to dwell upon the other issues raised by learned counsel for the petitioner including the issue as to whether office bearers of respondent No.4 would be public servant within the meaning of Section 7 of the Adhinyam, 1981.

12. As a result of the aforesaid discussion, no illegality or infirmity is found in the impugned order. The petition hence being devoid of merits is hereby dismissed.

(PRANAY VERMA)
JUDGE

SS/-