

Hariom @ Chhotu Raikwar (Kevat) vs The State Of Madhya Pradesh on 20 January, 2022

Author: Gurpal Singh Ahluwalia

Bench: Gurpal Singh Ahluwalia

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THE HIGH COURT OF MADHYA PRADESH

MCRC-45232-2021

Hariom @ Chhotu Raikwar (Kevat) Vs. State of MP and anr.

Through video conferencing

Gwalior, Dated : 20.01.2022

Shri Deepak Shrivastava, Counsel for the applicant.

Shri A.K. Nirankari, Counsel for the State.

In compliance of previous order of this Court, a fresh affidavit of Director General of Police, State of Madhya Pradesh, Bhopal has been filed along with enquiry report dated 08.01.2022 prepared by Additional Director General of Police, PTRI, Police Headquarters, Bhopal.

2. This report reveals shocking state of affairs in RFSL, Sagar. The most shocking aspect of the matter is that the Inquiry Officer has given a specific finding that the Director, State FSL, Sagar had submitted false affidavit dated 08.12.2021 before this Court.

3. Before considering the other findings given by the Inquiry Officer, this Court thinks it apposite to consider the enquiry report to the effect that Smt. Harsha Singh, Director, State FSL, Sagar had submitted false affidavit before this Court.

4. On 09.12.2021 Smt. Harsha Singh, Director, State FSL, Sagar had submitted her affidavit dated 08.12.2021. Paragraphs 5 and 6 of

the said affidavit read as under:-

"5. That, in response to the reminder instructions received from Police Headquarters (Vide letter no. PU.MU./Sa.Ma.Ni./Budget/46/2021 Bhopal

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dated 29.6.21) (Please see enclosure. 2) for this financial year (2021-22) the proposed demand list of essential kits and other consumables was submitted to Police Head Quarters vide letter from Director FSL on 29.6.21 vide our letter dated FSL/Stores/174/2021. (Please see enclosure. 3) in person to Addl. Director General of Police, Technical Services, Bhopal on 30.6.21.

6. That as per instructions received from Addl. Director General of Police, Technical Services, Bhopal, the same list along with their technical specifications and after approval of departmental Technical committee was sent again to PHQ on 19.7.21 vide letter from Director FSL FSL/Stores/193/21 dated 19.7.21. (Please see enclosure. 4)."

5. However, in the enquiry report, it has been mentioned that the letter dated 29.06.2021 referred in paragraph 5 of the affidavit and letter dated 19.07.2021 referred in paragraph 6 of the affidavit were never sent by Director, State FSL, Sagar and Smt. Harsha Singh by filing those documents before this Court has created a situation of confusion. It is also mentioned that since, there were certain lapses in specifications sought to be submitted along with these letters, therefore, they were taken back by Smt. Harsha Singh.

6. Under these circumstances, where the Additional Director General of Police, PTRI, Police Headquarters, Bhopal in his report dated 08.01.2022 has clearly given a finding that letters which were never sent to the office of ADG, Technical Services were placed before this Court, this Court is of the considered opinion that it

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appears to be a clear attempt on the part of Smt. Harsha Singh, Director, State FSL, Sagar to mislead this Court on oath. This Court is already considering the non-availability of consumables and kits required for conducting DNA test in RFSL, Sagar and at the same time, the Officers, instead of correcting their mistakes, have gone to the extent of misleading the Court by filing false affidavit.

7. Accordingly, issue notice to Smt. Harsha Singh, the then Director, State FSL, Sagar, as to why she may not be punish for contempt of Court for having filed false affidavit dated 08.12.2021 before this Court.

8. Office is directed to register a separate case. Issue Notice to Smt. Harsh Singh, the then Director, State FSL, Sagar. The notices shall be served through the Director General of Police, Bhopal.

9. Office is directed to list the contempt case along with present case on 07.02.2022.

10. Another shocking fact which has been revealed in the enquiry report, is that when a surprise inspection was conducted on 01.11.2021

and 20.11.2021, then the autosomal STR kits and Y-STR kits were found. Accordingly, the same were seized on 24.12.2021 and were got tested and it was found that those were contaminated and were not fit for DNA test. Apart from that, it was also found that the additional kits which were not purchased by the department were THE HIGH COURT OF MADHYA PRADESH MCRC-45232-2021 Hariom @ Chhotu Raikwar (Kevat) Vs. State of MP and anr. used unauthorizably on run genetic analyzer. From the month of April to August, unauthorized kits were found which were run on genetic analyzer. Even the Incharge DNA Lab, Mr. Pankaj Shrivastava had admitted about the said fact. When it was inquired from Additional Director General of Police, Technical Services, then he informed that the vendor of the product (SF kit) in formed that they are cheap and are in accordance with the Indian population and, accordingly, direction has been given to ascertain the fitness of said unauthorizably purchased kits. It is also mentioned that Mr. Pankaj

Shrivastava had run four kits without any permission from the Senior Officer and has also not submitted his report to the Senior Officer, which is indicative of the gross misconduct. A detailed report has also been given about the delay in purchasing the consumables and kits.

11. It is also merely shocking that in the financial year 2019-2020 consumables and kits were purchased, but in the financial year 2020-2021, no consumables and kits were purchased. It is mentioned that since sufficient stock was available and due to Covid-19 Pandemic, purchases were not made, as a result, in the financial year 2020-2021, the stock was constantly decreasing and Incharge Director, FSL, Sagar did not realize the importance of diminishing stock and thus did not complete the proceedings within reasonable time. It is really THE HIGH COURT OF MADHYA PRADESH MCRC-45232-2021 Hariom @ Chhotu Raikwar (Kevat) Vs. State of MP and anr. shocking that in the year 2019-2020, only 1222 tests were conducted whereas in the year 2021, 3623 cases and from the month of April, 2021 till December, 2021, i.e., 9 months, 3312 tests were conducted. Why only 1222 tests were conducted in the year 2019-2020 specifically when the DNA report plays an important role in adjudicating the involvement of the accused in a criminal case, specifically in the light of the judgment passed by the Supreme Court in the case of Hemudan Nambha Gadhvi Vs. State of Gujarat reported in (2019) 17 SCC 523. Thus, it is clear that the RFSL, Sagar was not functioning properly and they were completely negligent in discharge of their duties. If they can conduct 3623 DNA tests in the financial year 2020-2021, then why only 1222 tests were conducted in the financial year 2019-2020 ? There is no answer to this question in the enquiry report. Furthermore, when no purchases were made in the financial year 2020-2021 and the stock was diminishing at a high speed, then it appears that only for the first time, on 12.05.2021 budget was submitted for allotment. It is also mentioned that the Additional Director General of Police, had sanctioned Rs.40,00,000/- on 28.05.2021 and the Director, FSL, Sagar was directed to submit the technical specifications within a period of 10 days. However, the Technical Committee did not submit the technical specifications within time and reminders were sent from the office of Additional THE HIGH COURT OF MADHYA PRADESH MCRC-45232-2021 Hariom @ Chhotu Raikwar (Kevat) Vs. State of MP and anr. Director General of Police, Technical Services. It is also mentioned that the specifications submitted by the Director, FSL, Sagar by her letters dated 29.06.2021 and 19.07.2021 were not upto the technical specifications, therefore, they were returned for resubmitting the same with necessary amendments. The Director, FSL, Sagar could have purchased the raw material after taking permission from the Police Headquarters, but that was not done. It is also mentioned that the RFSL, Sagar instead of taking serious steps for purchase of consumables and kits, had adopted the delay tactics. Further, the DNA kits and consumables were already exhausted in the month of August, 2021. In the month of September, 2021, only 151 tests were conducted, out of which 32 tests were conducted on priority basis in the light of the letters written by the District Court and the Superintendent of Police, whereas only 119 tests were conducted on regular basis. Thus, it is also informed that RFSL, Sagar was guilty of not giving preference to those cases in which the test reports were sought by the Superior Courts.

12. Under these circumstances, it is clear that not only, the sub- standard unauthorized kits were used by RFSL, Sagar, but no attempt was made to procure consumables and kits required for conducting DNA test and delay tactics were adopted by the Director, RFSL, Sagar. Enquiry Report is completely silent on the issue that under THE HIGH COURT OF MADHYA PRADESH

MCRC-45232-2021 Hariom @ Chhotu Raikwar (Kevat) Vs. State of MP and anr. what circumstances, unauthorized kits were procured by RFSL, Sagar. The enquiry report as well as the affidavit of Director General of Police is completely silent on the issue as to whether this conduct of Director, RFSL, Sagar and Incharge DNA Unit has resulted in any corruption or is punishable under the Prevention of Corruptions Act or not ? Use of unauthorized kits would have certainly adversely effected the result. This Court has found that in various cases, the report was submitted that very low uninterpretable "Y" male chromosomes were found. It is possible that this might be the direct consequence of use of unauthorized kits. Affidavit is also silent on the issue as to whether this conduct of RFSL, Sagar in submitting defective reports on the basis of defective unauthorized contaminated kits will also be an offence under the Penal Code or any other statutes or not ?

13. Accordingly, the Director General of Police, State of MP, Bhopal, is directed to submit his supplementary affidavit along with entire documents of procedure adopted by Director, State FSL, Sagar as well as Mr. Pankaj Shrivastava for procuring unauthorized kits.

14. Let the supplementary affidavit be filed latest by 05.02.2022.

15. List this case on 07.02.2022.

(G.S. Ahluwalia) Judge Abhi ABHISHEK CHATURVEDI 2022.01.22 12:36:10 +05'30'