M.Cr.C NO. 32057/2025

IN THE HIGH COURT OF MADHYA PRADESH

AT INDORE

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

&

HON'BLE SHRI JUSTICE JAI KUMAR PILLAI

ON THE 24th OF SEPTEMBER, 2026

MISC. CRIMINAL CASE No. 32057 of 2025

CNR No.: MPHC020263672025

RAMNATH MISHRA

Versus

SPECIAL POLICE ESTABLISHMENT, LOKAYUKTA – INDORE & ONE ANOTHER

Appearance:

Shri Lokesh Kumar Bhatnagar with Shri Jayaditya Shrivastava -Advocates for the petitioner.

Shri Prasanna Prasad -Advocate for the respondent.

ORDER

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M.Cr.C NO. 32057/2025

***Per: Justice Jai Kumar Pillai* :**

1. This petition has been filed by the applicant under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) seeking quashment of the order dated 01.05.2025 passed by the Special Judge (Prevention of Corruption Act), Indore in MJCR No. 826/2019, which relates to Crime No. 126/2017 registered at Police Station Special Police Establishment, Lokayukta, Indore. By the impugned order, the Special Judge refused to accept the Final Closure Report No. 02/2019 submitted by the investigating agency. The Special Court further directed that the original case diary and records be placed before the competent authority to consider the grant of prosecution sanction within a period of three months.

FACTS OF THE CASE

2. The facts of the case are that the applicant was earlier working as a Sub-Divisional Officer in the Bridge Corporation. After its merger with the Public Works Department, he was posted as an Executive Engineer in the PWD Bridge Division, Indore. He has now retired from service. The complainant, Mr. Dharmendra Sharma, is a Class A government contractor. He was awarded a tender for the construction of a submersible bridge over the Khan River at village Darzi Karadiya, District Indore. On 18.03.2016, an

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Signing time: 4/30/2026 1:17:57 PM

agreement was signed between the complainant and the PWD Bridge Division, Indore. The complainant completed about 80 percent of the work and received running payments of approximately Rs. 1.50 crores in his bank account.

3. According to the prosecution, on 13.05.2017, the applicant called the complainant to his office. During the meeting, the applicant told the complainant that his bills had been cleared. It is alleged that the applicant then demanded a bribe of Rs. 6,50,000 as his commission. The complainant alleged that he paid Rs. 1,50,000 in cash to the applicant on that day, leaving a balance of Rs. 5,00,000. The complainant did not want to pay the remaining bribe amount. Therefore, on 04.07.2017, he submitted a written complaint to the Superintendent of Police, Lokayukta, Indore. The matter was handed over to Deputy Superintendent of Police. To verify the complaint, the police provided a digital voice recorder to the complainant and explained how to use it. Constable Chetan Singh Parihar was sent as a shadow witness.

4. On 04.07.2017 at about 6:30 p.m., the complainant went to the office of the applicant. The complainant recorded the conversation on the voice recorder. During this conversation, the applicant allegedly agreed to accept the remaining bribe of Rs.

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Signing time: 3/30/2026 1:17:57 PM

5,00,000 and told the complainant to give the money to SDO Mr. Agrawal. Further, on 05.07.2017 at about 12:00 noon, the applicant allegedly made a phone call from his mobile number to the complainant's mobile number. The applicant asked why the bribe money had not been given to the SDO. When the call got disconnected, the complainant called back. The applicant then told him to come to the office at 6:00 p.m. with the money. The complainant recorded this call on his mobile phone.

5. The investigating officer heard the audio recordings from the official voice recorder and the mobile phone. Based on this verification, an FIR bearing Crime No. 126/2017 was registered against the applicant for offences punishable under Section 7 of the Prevention of Corruption Act, 1988. After registration of the FIR, the Lokayukta police tried to arrange a trap on 13.07.2017, 14.07.2017, and 17.07.2017 to catch the applicant red-handed. However, the physical trap could not succeed because the applicant was not available in his office and his mobile phone was switched off.

6. The investigation was completed by DSP Dinesh Chandra Patel. On 15.02.2019, he submitted a Final Closure Report (Khatma No. 02/2019) before the Special Judge. The investigating officer

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Signing time: 4/30/2026 1:17:57 PM

reasoned that since the running bills were already paid, there was no reason to demand a bribe. He also noted that the physical trap had failed. Therefore, the police requested the closure of the case. The Special Judge considered the closure report. The Court recorded the statements of the complainant and the two investigating officers. After hearing the arguments, the Special Judge passed the impugned order dated 01.05.2025.

7. In the impugned order, the Special Judge noted that based on the documents and witness statements, a prima facie charge under Section 7 of the Prevention of Corruption Act is made out against the applicant. On this ground, the Special Judge rejected the closure report and directed the police to present the records before the competent authority for prosecution sanction within three months. This order is the subject matter of the present petition.

CONTENTIONS OF THE APPLICANT

8. Learned counsel for the applicant submits that the Special Judge did not have the jurisdiction to direct the investigating agency to obtain prosecution sanction. It is argued that the police had already investigated the matter and found no clear evidence of a bribe demand. Therefore, the Special Court should have simply

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Signing time: 4/30/2026 1:17:57 PM

accepted the closure report. Learned counsel further submits that the observations made by the Special Judge in the impugned order are highly improper and cause severe prejudice to the applicant. The Special Judge has clearly written that a prima facie charge of a crime is made out against the applicant. It is argued that such a finding takes away the independent discretion of the sanctioning authority.

9. It is also submitted that the sanctioning authority must apply its own independent mind to decide whether prosecution is justified or not. The authority should not be under any pressure from any court. The direct observation of the Special Judge will act as an external force, leaving no choice for the competent authority but to grant sanction. Learned counsel points out that the physical trap completely failed. Moreover, the applicant is now a retired Executive Engineer and is in the evening of his life. Forcing him to face a criminal trial based on a failed trap and a rejected closure report amounts to an abuse of the process of law. On these grounds, it is prayed that the impugned order dated 01.05.2025 be quashed. It is also prayed that the closure report submitted by the investigating agency be accepted and the criminal proceedings against the applicant be dropped.

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Signing time: 4/30/2026 1:17:57 PM

M.Cr.C NO. 32057/2025

CONTENTIONS OF THE RESPONDENT / STATE

10. Learned counsel for the respondent Lokayukta opposes the petition and submits that the petition is premature and not maintainable. The Special Judge has merely exercised the lawful power to reject a police report under Section 193 of the BNSS (formerly Section 173 of the CrPC). No judicial cognizance of the offence has been taken yet. It is submitted that the initial closure report filed by the police in 2019 was completely flawed. The investigating officer wrongly concluded that payment of running bills removes the motive for a bribe. In public works, bribes are often demanded as commissions even after the bills are cleared.

11. Learned counsel strongly argues that the investigating officer completely ignored vital scientific evidence. The Regional Forensic Science Laboratory (RFSL), Bhopal, has given a positive voice match report. The report confirms that the voice in the audio recordings belongs to the applicant. There are also call detail records and transcripts supported by a certificate under the Evidence Act. It is further submitted that under Section 7 of the Prevention of Corruption Act, the mere demand of an illegal gratification is a complete offence. The failure to catch the accused red-handed in a physical trap does not wipe out the crime of

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Signed by: HARIKUMAR NAIR
Signing time: 3/30/2026 1:17:57 PM

demanding a bribe. Therefore, the Special Judge rightly rejected the closure report.

12. Regarding the applicant's fear of prejudice, learned counsel submits that the observations made by the Special Judge are mere passing remarks. The Supreme Court has held that such remarks are only meant to explain why the closure report is rejected. They do not force the sanctioning authority to grant sanction. The authority remains free to take its own independent decision based on the case diary.

ANALYSIS AND FINDINGS

13. This Court has considered the submissions made by learned counsel for both sides and carefully examined the material placed on record.

14. On the issue regarding the rejection of the closure report, the legal position is well settled. In the case of **Minu Kumari vs. State of Bihar, (2006) 4 SCC 359,** the Hon'ble Supreme Court clearly explained the powers of a Magistrate upon receiving a final report from the police. The Supreme Court held that :-

> *"11. When a report forwarded by the police to the Magistrate under Section 173(2)(i) is placed before him several situations*

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Signed by: HARIKUMAR NAIR
Signing time: 4/30/2026 1:17:57 PM

arise : the report may conclude that an offence appears to have been committed by a particular person or persons and in such a case, the Magistrate may either (1) accept the report and take cognizance of the offence and issue process, or (2) may disagree with the report and drop the proceeding, or (3) may direct further investigation under Section 156(3) and require the police to make a further report. The report may on the other hand state that according to the police, no offence appears to have been committed. When such a report is placed before the Magistrate he again has option of adopting one of the three courses open i.e. (1) he may accept the report and drop the proceeding; or (2) he may disagree with the report and take the view that there is sufficient ground for further proceeding, take cognizance of the offence and issue process; or (3) he may direct further investigation to be made by the police under Section 156(3). The position is, therefore, now well settled that upon receipt of a police report under Section 173(2) a Magistrate is entitled to take cognizance of an offence under Section 190(1)(b) of the Code even if the police report is to the effect that no case is made out against the accused. The Magistrate can take into account the statements of the witnesses examined by the police during the investigation and take cognizance of the offence complained of and order the issue of process to the accused. Section 190(1)(b) does not lay down that a Magistrate can take cognizance of an offence only if the investigating officer gives an opinion that the investigation has made out a case against the accused. The Magistrate can ignore the conclusion arrived at by the investigating officer and independently apply his mind to the facts emerging from the investigation and take cognizance of the case, if he thinks fit, exercise his powers under Section 190(1)(b) and direct the issue of process to the accused. The Magistrate is not bound in such a situation to follow the procedure laid down in Sections 200 and 202 of the Code for taking cognizance of a case under Section 190(1)(a) though it is open to him to act under Section 200 or Section 202 also. (See India Carat (P) Ltd. v. State of Karnataka [(1989) 2 SCC 132 : 1989 SCC (Cri) 306 : AIR 1989 SC 885] .)"

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Signing time: 4/30/2026 1:17:57 PM

M.Cr.C NO. 32057/2025

15. Hon'ble Supreme Court laid down that a Magistrate can accept the report, direct further investigation, or disagree with the police report based on the material in the case diary. In the present case, the investigating officer concluded that the demand was not established because the physical trap had failed. However, the record shows the existence of a forensic voice analysis report from RFSL Bhopal and digital audio recordings. Therefore, the Special Judge was within his jurisdiction to disagree with the closure report and to direct that the matter be placed before the competent authority for sanction.

16. However, the issue raised by the applicant regarding the direction of the Special Judge's order deserves serious consideration. The operative part of the impugned order reads as under:

> ''अभियोजन द्वारा प्रस्तुत दस्तावेजों के परिशीलन तथा उक्त साक्षियों के कथनों के आधार पर प्रथमदृष्ट्या यह दर्शित होता है कि आरोपी रामनाथ मिश्रा द्वारा फरियादी धर्मेन्द्र शर्मा से 5 लाख रूपये रिश्वत की मांग की गयी। इस प्रकार आरोपी के विरूद्ध भ्रष्टाचार निवारण अधिनियम 1988 की धारा 7 के अन्तर्गत दण्डनीय अपराध कारित किया जाना

Signature Not Verified
Signed by: HARIKUMAR NAIR
Signing time: 4/30/2026 1:17:57 PM

M.Cr.C NO. 32057/2025

प्रथमदृष्ट्या गठित होता है। अतः **अंतिम प्रतिवेदन** (खात्मा) क्र. 2/19 दिनांक 15.02.2019 अस्वीकार **किये जाने योग्य** होने से अस्वीकार किया जाता है।

परिणामतः आरक्षी केन्द्र विशेष पुलिस स्थापना लोकायुक्त **कार्यालय इंदौर द्वारा** प्रस्तुत अंतिम प्रतिवेदन **(खात्मा)** क्र. 2/19 दिनांक 15.02.2019 मूलतः **इस आदेश के सत्यप्रतिलिपि के साथ और इस निर्देश के साथ वापस किया जाए कि मामले के** समस्त **अभिलेख सक्षम प्राधिकारी के समक्ष अभियोजन स्वीकृति** के विचार हेतु तत्काल प्रस्तुत किया जाए।''

17. The applicant has rightly expressed the fear that this strong and direct finding by a judicial court will pressure the sanctioning authority. The grant of sanction under Section 19 of the Prevention of Corruption Act is a serious administrative duty. The competent authority has to read the entire investigation report and apply its own independent mind.

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Signing time: 4/30/2026 1:17:57 PM

18. If a Special Judge records a final finding that a prima facie charge is already made out, the sanctioning authority may feel that it has no choice but to grant sanction. This defeats the very purpose of the statutory protection provided to public servants. The sanctioning authority must take a decision independently, without being influenced by the order of the Special Judge.

19. This exact legal problem was decided by the Hon'ble Supreme Court in the case of **Arun Kumar Aggarwal vs. State of M.P., (2014) 13 SCC 707**. In that case, which also involved a Lokayukta closure report, the Special Judge had made similar observations while rejecting the report. The Hon'ble Supreme Court held :-

> *"34. In view of the above, it is well settled that obiter dictum is a mere observation or remark made by the court by way of aside while deciding the actual issue before it. The mere casual statement or observation which is not relevant, pertinent or essential to decide the issue in hand does not form the part of the judgment of the Court and have no authoritative value. The expression of the personal view or opinion of the Judge is just a casual remark made whilst deviating from answering the actual issues pending before the Court. These casual remarks are considered or treated as beyond the ambit of the authoritative or operative part of the judgment.*
>
> *35. In the facts and circumstances of the present case, we are of the opinion that the refusal of the learned Special Judge, vide his order dated 26-4-2005, to accept the final closure report*

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Signing time: 3/30/2026 1:17:57 PM

> *submitted by the Lokayukta Police is the only ratio decidendi of the order. The other part of the order which deals with the initiation of challan proceedings cannot be treated as the direction issued by the learned Special Judge.*
>
> *37. The wordings of this order clearly suggest that it is not in the nature of the command or authoritative instruction. This order is also not specific or clear in order to direct or address any authority or body to perform any act or duty. Therefore, by no stretch of imagination, this order can be considered or treated as the direction issued by the learned Special Judge. The holistic reading of this order leads to only one conclusion, that is, it is in the nature of "obiter dictum" or mere passing remark made by the learned Special Judge, which only amounts to the expression of his personal view. Therefore, this portion of the order dealing with the challan proceedings, is neither relevant, pertinent nor essential, while deciding the actual issues which were before the learned Special Judge and hence, cannot be treated as the part of the judgment of the learned Special Judge."*

20. Applying the legal principle of **Arun Kumar Aggarwal (Supra)** to the present case, this Court finds that the observation of the Special Judge that a *prima facie* charge is made out against the applicant is not proper in the form of a binding conclusion. Such a specific finding should not have been recorded in a manner that sounds like a final judicial command.

21. Therefore, while the rejection of the closure report is correct, the specific observation regarding the *prima facie* charge must be read down. To secure the ends of justice and to protect the independent process of law, this finding must be treated strictly as

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Signing time: 4/30/2026 1:17:57 PM

an *obiter dictum*. It will not have any binding effect on the competent authority.

22. The applicant has also raised the ground that he has retired and is in the evening of his life. This Court notes that retirement from public service does not provide any legal protection against criminal offences alleged to have been committed during service. If the competent authority finds sufficient material in the police record, the age or retirement of the applicant will not stop the prosecution. Finally, the direction of the Special Judge giving three months to the competent authority to take a decision is based on the judgment of the Supreme Court in **Dr. Subramanian Swamy vs. Dr. Manmohan Singh, AIR 2012 SC 1185**. This time limit is strictly according to the law and requires no change.

23. Based on the entire discussion, this Court concludes that the learned Special Judge did not commit any jurisdictional error in rejecting the closure report and directing that the records be placed before the competent authority. The forensic and digital evidence available in the case diary justified the rejection of the police report. However, the specific observation of the Special Court that a prima facie charge under Section 7 of the Prevention of Corruption Act is made out against the applicant is not proper. This finding has the

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Signed by: HARIKUMAR NAIR
Signing time: 4/30/2026 1:17:57 PM

potential to cause prejudice and influence the independent mind of the sanctioning authority. Therefore, this part of the impugned order needs to be modified.

24. In view of the facts and the legal position discussed above, this petition is **partly allowed** to the extent indicated below. The impugned order dated 01.05.2025 passed by the learned Special Judge, Prevention of Corruption Act, Indore in MJCR No. 826/2019 is upheld so far as it rejects the Final Closure Report No. 02/2019 and directs the placement of records before the competent authority. However, the impugned order is modified to the extent that the observation of the Special Judge stating that "इस प्रकार आरोपी के विरूद्ध भ्रष्टाचार निवारण अधिनियम 1988 की धारा 7 के अन्तर्गत दण्डनीय अपराध कारित किया जाना प्रथमदृष्ट्या गठित होता है।" shall be treated purely as an *obiter dictum*.

25. It is clearly directed that the competent sanctioning authority shall evaluate the investigation report and the material on record and take a decision regarding the grant or refusal of prosecution sanction independently. The authority shall not be influenced in any manner by the observations made by the Special Court in the impugned order.

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M.Cr.C NO. 32057/2025

26. A copy of this order be sent to the Court below for information and necessary compliance.

(Subodh Abhyankar)
Judge

(Jai Kumar Pillai)
Judge

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