

1. Ajoy Kumar Chaudhary Vs U.O.I. thru its Secy. Civil Appeal No. 1912 of 2015
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5. St. of Har. Vs Bhajan (1992) Supp (1) SCC 335 :1992 SCC (Cri) 426
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10. S. Pratap Singh Vs St. of Punj. (1964) 4 SCR 733: AIR 1964 SC 72

11. E.P. Royappa Vs St. of T.N.(1974) 4 SCC 3: 1974 SCC (L&S) 165
12. Indian Rly. Cons. Co. Ltd. Vs Ajay Kumar (2003) 4 SCC 579
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14. St. of Punj. Vs Ajit Singh (1997) 11 SCC 368
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(Delivered by Hon'ble Alok Mathur, J.)

1. Heard Sri Anoop Trivedi, Senior Advocate assisted by Sri Vibhu Rai for the petitioner as well as learned Additional Chief Standing counsel Sri Shrawan Kumar dubey for the respondents.

2. By means of present writ petition the petitioner has assailed the charge sheet dated 27.7.2021 issued by Director General (Jail Administration and Reforms).

3. The brief conspectus necessary for adjudication of the present controversy is that the petitioner was initially appointed on the post of Deputy Jailer in 1994 and was promoted to the post of Jailer in 1999 and subsequently to the post of Jail Superintendent in 2010 but was reverted to the post of Jailer after the judgment of Hon'ble Supreme Court in the year 2015.

4. At the time when the petitioner was posted as Jailer in District Jail, Meerut sometime in October, 2000 an incident of rioting took place between two groups of jail inmates in the intervening night of 11/12 October, 2000 in Barack No.3-B, subsequent to which a First Information Report was lodged against the petitioner. It is submitted by learned counsel for the petitioner that the entire proceedings including filing of the First Information Report were malafide at the behest of the then District Magistrate, Meerut who presently is holding the office of Principal/Additional Chief Secretary, Jail Administration and Reforms, U.P., Lucknow. It has been stated that the arrest of the petitioner was stayed pursuant to the aforesaid First Information Report, the petitioner had made a complaint against the then District Magistrate before National Commission for S.C./S.T. on 26.12.2000 where the proceedings were initiated and respondent No.1 was also called for personal appearance and since then it is stated that he is inimical towards the petitioner. It is further submitted that in the year 2017 the departmental proceedings were sought to be initiated against the petitioner and he was placed under suspension by means of order dated 3.11.2017. Aggrieved by the aforesaid order the petitioner preferred a writ petition before this Court and this Court stayed the suspension by means of order dated 16.11.2017 in Writ A No.5472 of 2017. He challenged the charge sheet and the departmental inquiry before this Court by means of Writ petition No.16313 of 2018 and by means of order dated 18.8.2018 this Court had stayed the further proceedings in pursuance of the said charge sheet. It is stated that the petitioner was again placed under suspension by means of order dated 30.4.2020 and this Court after adverting to the orders passed in all earlier writ petitions preferred by the petitioner provided that no coercive action shall be taken against the petitioner passed in Writ A No.4947 of 2020. Subsequently the said writ petition was finally allowed by means of the judgment and order dated 22.9.2021 relying upon the judgment of Hon'ble Supreme Court in the case of **Ajay Kumar Chaudhary Vs. Union of India through its Secretary (Civil Appeal No.1912 of 2015)** where Hon'ble Supreme Court had observed that *"the currency of a Suspension Order should not extend beyond three months if within this period the Memorandum of Charges/Chargesheet is not served on the delinquent officer/employee; if the Memorandum of Charges/Chargesheet is served a reasoned order must be passed for the extension of the suspension."*

5. It has been further submitted that in the meanwhile the petitioner made several representations against Mr. Umesh Singh, Jail Superintendent, District Jail, Moradabad and also preferred a writ petition before this Court being writ petition No.2998 of 2021 praying for expeditious disposal of the inquiry on the basis of the multiple complaints made by the petitioner.

6. In pursuance to the complaints made by the petitioner the respondents instituted an inquiry, which was conducted by Deputy Inspector General of Police (Jail) Agra/Meerut Zone. The enquiry was conducted on the basis of the complaint submitted by the petitioner and in the exhaustive 81 page report dated 9.3.2021 was submitted finding the petitioner to be involved in certain acts of misconduct apart from other officials. All the allegations made by the petitioner have been duly enquired into and all the documents in this regard have been considered and the allegations against Umesh Singh, the then Superintendent of Jail District Jail, Moradabad were found proved with regard to not properly maintaining the Superintendent Order Book, did not look after the maintenance of administration and security of the Jail, did not properly look into the recommendations made by the doctors, did not take interest in sending regular reports to the office of Inspector General Of Police (Jail) etc. while the petitioner along with Umesh Singh, Superintendent of Jail have been found to be involved in taking money from the Jail inmates for exempting them from assigning hard duties, money was taken to give the inmates the benefit of independent sleeping place in light of the overcrowding, not taking care to allot the duties of the Jail Warder, and despite being overall in charge of Jail the petitioner did not take care to stop the illegal activities.

7. A perusal of the enquiry report indicates that the enquiry was conducted on the basis of complaints made by the petitioner, and even during the enquiry he was associated and also produced documents along with his letter dated 26/09/2020 before the enquiry officer. His statement was also recorded during the said enquiry. A number of under trial prisoners have deposed before the enquiry where they have said that they had to pay money for being allotted a new Barrack having less number of prisoners, gambling was prevalent in the Jail for which money was paid, money was taken for meeting the prisoners by the relatives, the attitude of the officers were extremely bad and the under trial prisoners were regularly abused.

8. It has also been taken note that the District Judge when visited the Jail on 23/05/2020 has recorded that the petitioner was not present during the said visit, and no cooperation was given by him and therefore recorded that he should improve his work.

9. The enquiry report further indicates that there are serious allegations against the petitioner which deserves a regular enquiry. The details and the manner in which the enquiry officer has considered the charges belies the allegations with regard to the proceedings being malafide. There are statements of various inmates who have deposed before the enquiry officer and supported the allegations made therein. Various documents have been looked into and findings recorded, and it cannot be said that the said enquiry was a sham or has been done in an objective to implicate the petitioner.

10. The impugned charge sheet dated 27/07/2021 contains 3 charges against the petitioner, the first charge relates to Jailer Report Book, which according to the Jail manual should have been handed over to his successor, but the same was not done by him as informed by his successor in his statement, and consequently he has been charged with dereliction of official duty and the same is also violative of the service rules governing the conduct of the petitioner. In support of the said charges and the statement of his successor Mritunjaya Panday and the statement of the petitioner himself recorded in the said enquiry has been relied.

11. In the charge No.2 it has been alleged that the jail authorities used to receive illegal gratification from the jail inmates for showing favour for not imposing any punishment while those who could not pay had to suffer punishment, and the petitioner did nothing to stop this corrupt practice. In evidence of the said charges various documents maintained and the Jail are said to be the evidence of the aforesaid charge.

12. That third charge relates to the posting of two Bandirakshaks to the canteen of the jail, and money was extorted by them from the inmates for providing canteen services and the petitioner, who was incharge had posted the two persons and, therefore, was deliberately negligent in his duties.

13. In the present writ petition the prayer has been made for quashing charge sheet as well as all the proceedings in pursuance of the charge sheet dated 27/07/2021.

14. It was submitted by the counsel of the petitioner that the charge sheet deserves to be set aside inasmuch as the copy of the report has neither been furnished to the petitioner nor the petitioner was afforded an opportunity before submission of the said report. The argument raised by the petitioner is misconceived, apart from being contrary to the facts on record. There is no provision in the service rules, nor any legal provision could be shown by the counsel of the petitioner that there is the requirement of handing over of the preliminary enquiry report to the delinquent employee before submission of the charge sheet. The documents required by the petitioner can be sought from the enquiry officer during inquiry subject to his demonstrating that the said documents are necessary and relevant for his defence. Considering the fact that the petitioner participated in the preliminary enquiry and adduced evidence which has been duly considered by the enquiry officer it cannot be said that the enquiry has been done behind his back or that he has not been given any opportunity, coupled with the fact that a copy of the enquiry report is already annexed along with the writ petition it cannot be pleaded that he was not supplied with a copy of the said report and hence the argument of the petitioner in this regard are without merit and hence rejected.

15. The second argument raised was that the entire proceedings are vitiated in as much as they have been initiated at the behest of Principal Secretary/Additional Chief Secretary (Jail Administration and Reform Service Uttar Pradesh again. It is the case of the petitioner that whenever departmental proceedings have been initiated against the petitioner the same have been initiated at the behest of respondent no.1 while no material is placed before us so as to indicate as to how respondent No.1 was responsible for the same so as to conclude that he was responsible for initiation of the said Department proceedings. In order to sustain an allegation of malafide there should exist sufficient evidence in this regard clearly pointing out towards his conduct, which can demonstrate that he has acted malafidely. Merely, alleging that a person has acted malafidely is not sufficient to sustain any such allegation.

16. The subsequent disciplinary proceedings were also subjected to challenge before this court and by means of an order dated 29/06/2005 passed in writ petition No.4656 of 2005 and interim protection was granted to the petitioner. A perusal of the said order indicates that the Court considered the fact that similar proceedings/inquiry have culminated in favour of the petitioner earlier and no opportunity was given to the petitioner before reinitiating the proceedings. A perusal of the previous orders of this Court indicates that the grounds of malafide against respondent no.1, were neither pleaded nor considered and it seems that whenever disciplinary proceedings were initiated against the petitioner he has raised the bogey of malafide referring to the incident occurring in the year 2000 when respondent No.1 was posted as District Magistrate, Meerut where the petitioner was also posted as Jailer. There is no details disclosed by the petitioner as to how respondent No.1 is responsible for the proceedings initiated against the petitioner.

17. In the present case, this Court has perused the repeated complaints made by the petitioner against his superior, the Jail Superintendent. He did not move just one complaint, but repeatedly continued to make such complaints to all the higher authorities, which clearly indicates that the petitioner has a personal grudge against him, which he wanted to vindicate, rather than uphold the rule of law.

18. Presently, undoubtedly respondent no.1 is posted as Principal Secretary, Additional Chief Secretary (Jail Administration and Reform Services) and signed the impugned charge sheet, but Avnish Kumar Awasthi has not been made a party in the writ petition which is the foundation of such allegation, is missing in the writ petition and consequently, they cannot be as such considered. In this regard as per the judgement of the Hon'ble Supreme Court in the case of ***Ratnagiri Gas and Power (P) Ltd. v. RDS Projects Ltd. [Ratnagiri Gas and Power (P) Ltd. v. RDS Projects Ltd., (2013) 1 SCC 524]***, it was held that when allegations of mala fides are made, the persons against whom the same are levelled need to be impleaded as parties to the proceedings to enable them to answer the charge. A judicial pronouncement declaring an action to be mala fide is

a serious indictment of the person concerned that can lead to adverse civil consequences against him. The Court held as under: (SCC p. 538, para 27):

"27. There is yet another aspect which cannot be ignored. As and when allegations of mala fides are made, the persons against whom the same are levelled need to be impleaded as parties to the proceedings to enable them to answer the charge. In the absence of the person concerned as a party in his/her individual capacity it will neither be fair nor proper to record a finding that malice in fact had vitiated the action taken by the authority concerned. It is important to remember that a judicial pronouncement declaring an action to be mala fide is a serious indictment of the person concerned that can lead to adverse civil consequences against him. Courts have, therefore, to be slow in drawing conclusions when it comes to holding allegations of mala fides to be proved and only in cases where based on the material placed before the Court or facts that are admitted leading to inevitable inferences supporting the charge of mala fides that the Court should record a finding in the process ensuring that while it does so, it also hears the person who was likely to be affected by such a finding."

19. Despite the fact that respondent no.1 personally has not been made a party, there was no requirement of further examination of the contention of the petitioner with regard to the malafide, but this Court on persuasion by the counsel for the petitioner has considered the said allegations and it is noticed that respondent no.1 was summoned by the National Commission for SC/ST at the behest of the petitioner, but there is no mention in the entire writ petition as to whether any adverse comments were made by the said Commission on respondent No.1 or that he suffered on account of being summoned by the said Commission. Merely because a person is summoned by a Commission cannot by itself have any adverse effects on the said person unless some observations are made against him by the Commission. It was also very well known that Commission are also vested with powers of enquiry, and in exercise of the said power they are routinely required to summon officials to produce documents or record their statements with regard to any incident. Merely because a person is summoned at the behest of any individual, it cannot be said that the person so summoned would become inimical to the person at who's instance he was summoned. There is no averment in the entire petition that respondent No.1 subsequent to the year 2000 has taken any steps, or passed any orders against the petitioner so as to conclude that he has developed inimical relations to the petitioner, and would take all steps necessary to harm his career. Merely because in his official capacity as District Magistrate, the respondent No.1 has lodged an FIR and taken cognizance of an incident which occurred in the year 2000 in the premises of the Jail, which was clearly his responsibility, it cannot be concluded that respondent no.1 has become inimical to the petitioner. There is no averment that he had personally intimidated the petitioner, or any other fact has been brought on record indicating how respondent no.1 acted beyond the colour of his office so as to show that he had acted malafide against the petitioner. The test laid down by the Hon'ble Supreme Court for considering the allegations of malafide/personal bias has to be considered on the facts and circumstances of each case. In the case of **Rajneesh Khajuria v. Wockhardt Ltd., (2020) 3 SCC 86** this aspect of the matter was considered and observed:-

"16. The act of transfer can be unfair labour practice if the transfer is actuated by mala fide. The allegations of mala fides have two facets -- one malice in law and the other being malice in fact. The challenge to the transfer is based upon malice in fact as it is an action taken by the employer on account of two officers present in Conference. In a judgment in State of Bihar v. P.P. Sharma [State of Bihar v. P.P. Sharma, 1992 Supp (1) SCC 222 : 1992 SCC (Cri) 192] , this Court held that mala fide means want of good faith, personal bias, grudge, oblique or improper motive or ulterior purpose. The plea of mala fides involves two questions, namely (i) whether there is a personal bias or an oblique motive, and (ii) whether the administrative action is contrary to the objects, requirements and conditions of a valid exercise of administrative power. As far as second aspect is concerned, there is a power of transfer vested in the employer in terms of letter of appointment. Even in terms of the provisions of the Act, the transfer by itself cannot be said to be an act of unfair labour practice unless it is actuated by mala fides. Therefore, to sustain a plea of mala fides, there has to be an element of personal bias or an oblique motive. This Court held as under: (SCC pp. 260 & 264-65, paras 50-51 & 59)

"50. *Mala fides* means want of good faith, personal bias, grudge, oblique or improper motive or ulterior purpose. The administrative action must be said to be done in good faith, if it is in fact done honestly, whether it is done negligently or not. An act done honestly is deemed to have been done in good faith. An administrative authority must, therefore, act in a bona fide manner and should never act for an improper motive or ulterior purposes or contrary to the requirements of the statute, or the basis of the circumstances contemplated by law, or improperly exercised discretion to achieve some ulterior purpose. The determination of a plea of *mala fides* involves two questions, namely (i) whether there is a personal bias or an oblique motive, and (ii) whether the administrative action is contrary to the objects, requirements and conditions of a valid exercise of administrative power.

51. The action taken must, therefore, be proved to have been made *mala fide* for such considerations. Mere assertion or a vague or bald statement is not sufficient. It must be demonstrated either by admitted or proved facts and circumstances obtainable in a given case. If it is established that the action has been taken *mala fide* for any such considerations or by fraud on power or colourable exercise of power, it cannot be allowed to stand.

59. Malice in law could be inferred from doing of wrongful act intentionally without any just cause or excuse or without there being reasonable relation to the purpose of the exercise of statutory power. Malice in law is not established from the omission to consider some documents said to be relevant to the accused. Equally reporting the commission of a crime to the Station House Officer, cannot be held to be a colourable exercise of power with bad faith or fraud on power. It may be honest and bona fide exercise of power. There are no grounds made out or shown to us that the first information report was not lodged in good faith. *State of Haryana v. Bhajan Lal* [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] is an authority for the proposition that existence of deep seated political vendetta is not a ground to quash the FIR. Therein despite the attempt by the respondent to prove by affidavit evidence corroborated by documents of the *mala fides* and even on facts as alleged no offence was committed, this Court declined to go into those allegations and relegated the dispute for investigation. Unhesitatingly, I hold that the findings of the High Court [Prem Prakash Sharma v. State of Bihar, 1990 SCC OnLine Pat 105 : (1990) 2 PLJR 404 (2)] that FIR gets vitiated by the *mala fides* of the Administrator and the charge-sheets are the results of the *mala fides* of the informant or investigator, to say the least, is fantastic and obvious gross error of law."

19. In another judgment in ***Prabodh Sagar v. Punjab SEB* [Prabodh Sagar v. Punjab SEB, (2000) 5 SCC 630 : 2000 SCC (L&S) 731]**, it was held by this Court that the mere use of the expression "*mala fide*" would not by itself make the petition entertainable. The Court held as under: (SCC p. 640, para 13)

"13. ... Incidentally, be it noted that the expression "*mala fide*" is not meaningless jargon and it has its proper connotation. Malice or *mala fides* can only be appreciated from the records of the case in the facts of each case. There cannot possibly be any set guidelines in regard to the proof of *mala fides*. *Mala fides*, where it is alleged, depends upon its own facts and circumstances. We ourselves feel it expedient to record that the petitioner has become more of a liability than an asset and in the event of there being such a situation vis-à-vis an employee, the employer will be within his liberty to take appropriate steps including the cessation of relationship between the employer and the employee. The service conditions of the Board's employees also provide for voluntary (sic compulsory) retirement, a person of the nature of the petitioner, as more fully detailed hereinbefore, cannot possibly be given any redress against the order of the Board for voluntary retirement. There must be factual support pertaining to the allegations of *mala fides*, unfortunately there is none. Mere user of the words "*mala fide*" by the petitioner would not by itself make the petition entertainable. The Court must scan the factual aspect and come to its own conclusion i.e. exactly what the High Court has done and that is the reason why the narration has been noted in this judgment in extenso. ..."

20. In a judgment in ***HMT Ltd. v. Mudappa* [HMT Ltd. v. Mudappa, (2007) 9 SCC 768]**, quoting from earlier judgment of this Court in *State of A.P. v. Goverdhanlal Pitti* [State of A.P. v. Goverdhanlal Pitti, (2003) 4 SCC 739], it was held that "legal malice" or "malice in law" means "something done without lawful excuse". It is an act done wrongfully and wilfully without reasonable

or probable cause, and not necessarily an act done from ill feeling and spite. The Court held as under: **(HMT Ltd. case [HMT Ltd. v. Mudappa, (2007) 9 SCC 768] , SCC pp. 775-76, para 24)**

"24. The Court also explained the concept of legal mala fides. By referring to Words and Phrases Legally Defined, 3rd Edn., London Butterworths, 1989 the Court stated: (Goverdhanlal case [State of A.P. v. Goverdhanlal Pitti, (2003) 4 SCC 739] , SCC p. 744, para 12)

"12. The legal meaning of malice is "ill will or spite towards a party and any indirect or improper motive in taking an action". This is sometimes described as "malice in fact". "Legal malice" or "malice in law" means "something done without lawful excuse". In other words, "it is an act done wrongfully and wilfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite. It is a deliberate act in disregard of the rights of others."

It was observed that where malice was attributed to the State, it could not be a case of malice in fact, or personal ill will or spite on the part of the State. It could only be malice in law i.e. legal mala fides. The State, if it wishes to acquire land, could exercise its power bona fide for statutory purpose and for none other. It was observed that it was only because of the decree passed in favour of the owner that the proceedings for acquisition were necessary and hence, notification was issued. Such an action could not be held mala fide."

21. In a judgment in *Union of India v. Ashok Kumar* [*Union of India v. Ashok Kumar*, (2005) 8 SCC 760 : 2006 SCC (L&S) 47] , it has been held that allegations of mala fides are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility. The Court held as under: (SCC p. 770, para 21)

"21. Doubtless, he who seeks to invalidate or nullify any act or order must establish the charge of bad faith, an abuse or a misuse by the authority of its powers. While the indirect motive or purpose, or bad faith or personal ill will is not to be held established except on clear proof thereof, it is obviously difficult to establish the state of a man's mind, for that is what the employee has to establish in this case, though this may sometimes be done. The difficulty is not lessened when one has to establish that a person apparently acting on the legitimate exercise of power has, in fact, been acting mala fide in the sense of pursuing an illegitimate aim. It is not the law that mala fides in the sense of improper motive should be established only by direct evidence. But it must be discernible from the order impugned or must be shown from the established surrounding factors which preceded the order. If bad faith would vitiate the order, the same can, in our opinion, be deduced as a reasonable and inescapable inference from proved facts. (S. Pratap Singh v. State of Punjab [S. Pratap Singh v. State of Punjab, (1964) 4 SCR 733 : AIR 1964 SC 72] .) It cannot be overlooked that the burden of establishing mala fides is very heavy on the person who alleges it. The allegations of mala fides are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility. As noted by this Court in E.P. Royappa v. State of T.N. [E.P. Royappa v. State of T.N., (1974) 4 SCC 3 : 1974 SCC (L&S) 165] courts would be slow to draw dubious inferences from incomplete facts placed before them by a party, particularly when the imputations are grave and they are made against the holder of an office which has a high responsibility in the administration. (See Indian Railway Construction Co. Ltd. v. Ajay Kumar, (2003) 4 SCC 579."

22. *The allegation in the complaint is that the transfer was actuated for the reason that the employee had raised voice against removal of Shri Khare from the venue of a Conference. The officers present in the said Conference were the Regional Manager or Sales Manager, whereas order of transfer was passed by Mr Suresh Srinivasan, General Manager-HR. It is an admitted fact that there is power of transfer with the employer. The allegations are against the persons present in the Conference but there is no allegation against the person who has passed the order of transfer. None of the named persons including the person present in the Conference have been impleaded as parties to rebut such allegations. Since the order of transfer is in terms of the letter of appointment, therefore, the mere fact that the employee was transferred will per se not make it mala fide. The allegations of mala fides are easier to levy than to prove.*

23. *Therefore, the allegation that the transfer of the appellant was an act of unfair labour practice without impleading the person who is said to have acted in a mala fide manner is not sustainable.*

24. The other aspect which deserves due consideration is the fact that the petitioner has challenged the charge sheet, which is akin to a show cause notice, inasmuch as the person has liberty to reply to the charges framed against him and only subsequently after consideration of the evidence and other material produced by the delinquent employee, the disciplinary authority proceeds to consider the veracity of the charges and gives his finding whether the charges are proved or not. Charge sheet by itself does not have any adverse inference to the delinquent employee and does not invite any civil consequences and consequently as such, without there being any jurisdictional issue, a challenge to the charge sheet would not normally not lie and this Court would not interfere in exercise of the powers under article 226 of the Constitution of India.

In the case of **Ministry of Defence v. Prabhash Chandra Mirdha, (2012) 11 SCC 565** : it has been held as under:-

24. Ordinarily a writ application does not lie against a charge-sheet or show-cause notice for the reason that it does not give rise to any cause of action. It does not amount to an adverse order which affects the right of any party unless the same has been issued by a person having no jurisdiction/competence to do so. A writ lies when some right of a party is infringed. In fact, charge-sheet does not infringe the right of a party. It is only when a final order imposing the punishment or otherwise adversely affecting a party is passed, it may have a grievance and cause of action. Thus, a charge-sheet or show-cause notice in disciplinary proceedings should not ordinarily be quashed by the court. (Vide State of U.P. v. Brahm Datt Sharma [(1987) 2 SCC 179 : (1987) 3 ATC 319 : AIR 1987 SC 943] , Bihar State Housing Board v. Ramesh Kumar Singh [(1996) 1 SCC 327] , Ulagappa v. Commr. [(2001) 10 SCC 639 : AIR 2000 SC 3603 (2)] , Special Director v. Mohd. Ghulam Ghouse [(2004) 3 SCC 440 : 2004 SCC (Cri) 826 : AIR 2004 SC 1467] and Union of India v. Kunisetty Satyanarayana [(2006) 12 SCC 28 : (2007) 2 SCC (L&S) 304] .)

25. Thus, the law on the issue can be summarised to the effect that the charge-sheet cannot generally be a subject-matter of challenge as it does not adversely affect the rights of the delinquent unless it is established that the same has been issued by an authority not competent to initiate the disciplinary proceedings. Neither the disciplinary proceedings nor the charge-sheet can be quashed at an initial stage as it would be a premature stage to deal with the issues. Proceedings are not liable to be quashed on the grounds that proceedings had been initiated at a belated stage or could not be concluded in a reasonable period unless the delay creates prejudice to the delinquent employee. Gravity of alleged misconduct is a relevant factor to be taken into consideration while quashing the proceedings.

26. Learned Counsel for the petitioner has also extensively taken this Court to various documents to indicate that the charges itself are false and in fact the erstwhile Superintendent of Jail against whom the petitioner had made a complaint, was responsible for misconduct and even the allegations have been proved to be correct in the said enquiry, while none of the charges against the petitioner can be sustained. In this regard, this Court is of the view that it is the domain of the enquiry officer to conduct the enquiry, and this Court would not go into the merits of the charges in writ petition under Article 226 of the Constitution of India. The law in this regard it is settled in the case of **In State of Punjab v. Ajit Singh, (1997) 11 SCC 368**, where the Hon'ble Supreme Court set aside the order of quashing the charge-sheet and held as under:

"We are, however, of the view that the High Court was in error in setting aside the charge-sheet that was served on the respondent in the disciplinary proceedings. In doing so the High Court has gone into the merits of the allegations on which the charge-sheet was based and even though the charges had yet to be proved by evidence to be adduced in the disciplinary proceedings. The High Court, accepting the explanation offered by the respondent, has proceeded on the basis that there was no merit in the charges levelled against the respondent. We are unable to uphold this approach of the High Court."

27. Lastly, it is submitted that the petitioner ought to be protected in light of the fact that he is exposed to the illegality in the organisation and consequently he should be given the protection as is

given to a whistleblower. It is submitted that the proceedings initiated cannot be initiated against the petitioner as it is on his complaints that the entire enquiry was undertaken and in turn he has been chargesheeted.

28. In order to consider as to whether the petitioner is entitled to be given protection as a whistleblower, it has to be seen as to whether he has made the complainant's and disclosures in public interest, and whether such disclosure was bonafide and not actuated by malice or with the intention to satisfy the personal grudge against a colleague or senior.

29. The Hon'ble Supreme Court has considered the aforesaid aspect in the case of **Manoj H.Mishra vs Union Of India & Ors (2013) 6 SCC 313** decided on 9 April, 2013 as under:-

"33.One of the basic requirements of a person being accepted as a "whistle blower" is that his primary motive for the activity should be in furtherance of public good. In other words, the activity has to be undertaken in public interest, exposing illegal activities of a public organization or authority. The conduct of the appellant, in our opinion, does not fall within the high moral and ethical standard that would be required of a bona fide "whistle blower."

34. In our opinion, the appellant without any justification assumed the role of vigilante. We do not find that the submissions made on behalf of the respondents to the effect that the appellant was merely seeking publicity are without any substance. The newspaper reports as well as the other publicity undoubtedly created a great deal of panic among the local population as well as throughout the State of Gujarat. Every informer can not automatically be said to be a bonafide "whistle blower". A "whistle blower" would be a person who possesses the qualities of a crusader. His honesty, integrity and motivation should leave little or no room for doubt. It is not enough that such person is from the same organization and privy to some information, not available to the general public. The primary motivation for the action of a person to be called a "whistle blower" should be to cleanse an organization. It should not be incidental or byproduct for an action taken for some ulterior or selfish motive.

35. We are of the considered opinion that the action of the appellant herein was not merely to highlight the shortcomings in the organization. The appellant had indulged in making scandalous remarks by alleging that there was widespread corruption within the organization. Such allegations would clearly have a deleterious effect throughout the organization apart from casting shadows of doubts on the integrity of the entire project. It is for this reason that employees working within the highly sensitive atomic organization are sworn to secrecy and have to enter into a confidentiality agreement. In our opinion, the appellant had failed to maintain the standard of confidentiality and discretion which was required to be maintained. In the facts of this case, it is apparent that the appellant can take no advantage of the observations made by this Court in the case of Indirect Tax Practitioners' Association (supra). This now brings us to the reliance placed by the appellant on the judgment in the case of Gujarat Steel Tubes Case (supra). In our opinion, the ratio in the aforesaid judgment would have no relevance in the case of the appellant. We are not satisfied that this is a case of "glaring injustice".

30. A perusal of the complaints made by the petitioner will make it abundantly clear that they have not been made in public interest but have singled out and target the Jail Superintendent posted along with the petitioner. A perusal of the complaint dated 27/04/2020 clearly indicates that he has highlighted irregularities committed by one Umesh Singh who was posted as Jail superintendent, and the complaints dated 30/04/2020 and 16.6.2020 also contains similar allegations. Considering the facts of the present case in light of the pronouncement of the Apex Court in the case of **Manoj H. Mishra (supra)**, this Court is of the considered view that the petitioner cannot be given the status or consequent protection of whistle blower.

31. The enquiry report also considers and contains sufficient material on the basis of which the petitioner had been chargesheeted, and it cannot be said at this stage that the allegations are false or not made out. The petitioner having made allegations against a particular individual cannot claim the status of a whistleblower in as much as according to the judgement of the Hon'ble Apex Court the same has not been made in bonafide manner, inasmuch as he has himself been found to be implicated in the irregularities which he himself has brought to fore. It is only when the matter is inquired into by a regular enquiry, then only the entire facts can be brought forth and this Court would not interfere to prevent the conduct of such an enquiry.

32. In light of the above discussions, the writ petition is bereft of merits and is accordingly **dismissed**. However, it is provided that the respondents shall proceed to conclude the enquiry expeditiously in accordance with law.

33. Useful assistance provided in the matter by Mr. Himanshu Mishra, Law Clerk Trainee is appreciated.
