

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.11451 of 2013

Arising Out of PS.Case No. -45 Year- 2011 Thana -NOONSARAI District- -

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Arbind Kumar Ghosh S/O Balram Prasad R/O Village /Mohalla Balia Bujurg, P.S. Akbarpur, District Nawada.

.... Petitioner/s

Versus

The State Of Bihar Through Cabinet Vigilance, Bihar, Patna.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.

For the Opposite Party/s : Mr. Ramakant Sharma (L.O.(I/C Vig.))

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO
ORAL ORDER

2 07-05-2015 (1) Heard the learned senior counsel, Mr. B.B. Pandey on behalf of the petitioner and the learned counsel, Mr. Arvind Kumar, for Vigilance.

(2) This application under Section 482 Cr.P.C. has been filed by the petitioner for quashing the order dated 16.06.2012 passed by Special Judge, Vigilance, Patna in Special case No.14 of 2011 whereby the Court below has taken cognizance under the Prevention of Corruption Act against the petitioner.

(3) It appears that the Public Grievance Officer was informed by the District Magistrate, Nalanda that the present petitioner demanded Rs.2000/- from Binda Paswan for the purpose of allowing him to remove the defect in nomination paper



of Smt. Malti Devi, wife of Binda Paswan. The money of Rs.2000/- was to be paid on 10.03.2011 within 2 P.M., and thereafter the amount was paid by Binda Paswan after signing on the currency note to the petitioner which was recovered from the pocket of the present petitioner. On the basis of this information, the Officer in-charge of the concerned police officer investigated the case and found it to be true and then filed the chargesheet. The Special Judge on the basis of the case diary and on the basis of the allegation made in the application filed by the Public Grievance Officer took cognizance under the Special Act, i.e., Prevention of Corruption Act.

(4) The learned senior counsel appearing on behalf of the petitioner submitted that procedure for seizure and search has not been followed by the prosecution in the present case. In fact all the persons who searched and seized the amount are private persons who have no authority under any law to search and seize. The learned senior counsel further submitted that under the Prevention of Corruption Act, there is special procedure for trap and in the present case that procedure has not been followed. All the witnesses are either candidate of Mukhiya or the relation of that candidate. The learned senior counsel further submitted that the civil authorities have no right to search and seize anything and,

therefore, also the procedure adopted by the prosecution is bad and thus the order taking cognizance is liable to be quashed.

(5) On the other hand, the learned counsel appearing on behalf for the Vigilance submitted that the allegation in the FIR is that the petitioner demanded Rs.2000/- as bribe. The bribe was paid. Now, therefore whether it was recovered or not recovered, whether any procedure was followed or not followed the offence is made out and, therefore on the basis of irregularity in the procedure the substantive offence which is disclosed in the FIR cannot be wiped out.

(6) Recently, the Hon'ble Supreme Court in the case of *P.S. Meherhomji Vs. K.T. Vijay Kumar 2015 (1) SCC 788* has held that '**Section 482 of the Code of Criminal Procedure empowers the High Court to exercise its inherent powers to prevent abuse of the process of Court and quash the proceeding instituted on complaint but such power could be exercised only in cases where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which the cognizance is taken by the Magistrate, it is open to the High Court to quash the same in exercise of power under Section 482.**' In the present case from perusal of



the impugned order whereby the Court below has taken cognizance, it appears that the Court below after applying mind found that there is prima facie sufficient material to proceed against the petitioner under the Special Act. Now, therefore, only on the basis of some irregularity said to have been committed, the cognizance order cannot be quashed.

(7) It is settled principle of law that at the stage of taking cognizance, it is not necessary that there may be a meticulous analysis of the case, before the trial to find out whether the case would end in conviction or not. The complaint has to be read as a whole. If it appears that on a consideration of the allegation, in the light of the statement on oath of the complainant that ingredients of the offence/ offences are disclosed, and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court. Reference may be made to the case of ***Dhanlakshmi Vs. R. Prasanna Kumar 1990 (Supp) SCC 686.***

(8) In the present case so far the submission of the learned senior counsel for the petitioner that the procedure adopted by the prosecution is illegal or is contrary to law or that the private civil authorities have got no jurisdiction to search and seize are concerned, those are the matters to be considered finally but on

that ground the offence which is disclosed in the FIR / complaint cannot be quashed at the very initial stage. I, therefore, find no merit in this application and accordingly, it is dismissed. However, the petitioner is permitted to raise this question at the time of framing charge.

(Mungeshwar Sahoo, J)

Sanjeev/-

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