WEB COPY NOT OFFICIAL

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No. 854 of 2014

==========

1. Dinesh Singh @ Dinesh Kumar, son of Late Shyam Nandan Singh, resident of Village : Rohua, P.S. : Mushhari, District : Muzaffarpur

.... Petitioner

Versus

1. The State of Bihar through the Vigilance Department

.... Respondent

==========

Appearance :
For the Petitioner : Mr.
For the Respondent : Mr. Rama Kant Sharma, Sr. Advocate
Mr. Rabindra Kumar, Advocate

==========

CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD
ORAL ORDER

5 30-04-2015 This writ application has been filed for quashing the Vigilance P.S. Case No. 34 of 2006 lodged under Sections 420, 467, 468, 471 of the Indian Penal Code, Sections 13(2) and 13(1)(d) of the Prevention of Corruption Act, 1988 and Section 7(e)(c) of the Essential Commodities Act.

Learned counsel for the petitioner, however, submits that three cases have been lodged with regard to the same occurrence. The first case (Annexure-4) bearing Nagar P.S. Case No. 307 of 2004 was lodged by the Supply Inspector, East Sub. Division, Muzaffarpur in which the petitioner is not shown an accused. The second case is a complaint case bearing Complaint Case No. 02 of 2005 (Annexure-5) in which the petitioner is not shown as accused. The third case (Annexure-1) is Vigilance P.S. Case No. 34 of 2006 for the offences under Sections 420, 467,

468, 471 of the Indian Penal Code, Sections 13(2) and 13(1)(d) of the Prevention of Corruption and Section 7(e)(c) of the Essential Commodities Act in which the petitioner is accused.

Learned counsel for the petitioner submits that with regard to one occurrence petitioner is accused in two cases. One is Complaint Case No. 02 of 2005 and second is Vigilance P.S. Case No. 34 of 2006. Two cases going against him has caused prejudice.

However, with regard to the two proceedings the answer is Section 210 of the Code of Criminal Procedure which provides “procedure to be followed when there is a complaint case and police investigation in respect of the same offence”. It provides that when a case instituted otherwise than on a police report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate, during the course of the inquiry or trial held by him, that an investigation by the police is in progress in relation to the offence which is the subject-matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police officer conducting the investigation. On receipt of report if a report is made by the investigating police officer under section 173 and on such report cognizance of any offence is taken by the

Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report".

Hence, having regard to the fact that since the First Information Report has been lodged and investigation is going on the investigation is not required to be quashed or interfered with by this Court as the police has right to investigate the cognizable offence and the State has right of superintendence. Hence, there is no merit in the submission for quashing the Vigilance P.S. Case No. 34 of 2006. However, the petitioner is required to approach the Magistrate in seisin of the complaint case to proceed in accordance with Section 210 of the Cr.P.C.

It is submitted that one more case at Annexure-4 for which First Information Report has been lodged but in that case the petitioner has not been named as an accused, hence, two cases with regard to the same occurrence may be permissible if the two versions are different with different set of accused as held in the case of Upkar Singh Vs. Ved Prakash & Ors. reported in 2005(1) BLJ 285.

Hence, having regard to the aforesaid fact, I am not inclined to quash the Vigilance P.S. Case No. 34 of 2006 as even a complaint case is going on and petitioner is an accused in both

then the vigilance case is not required to be quashed but the petitioner may move in complaint case to proceed in accordance with Section 210 Cr.P.C.

It is hereby observed that the petitioner may move before the learned Court below in the complaint case and the learned Magistrate will proceed in accordance with Section 210 of the Code of Criminal Procedure.

With the observation, the writ petition is disposed of.

(Gopal Prasad, J.)

Kundan

U		T	