

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.4642 of 2015

Arising Out of PS.Case No. -8 Year- 2012 Thana -ECONOMIC OFFENCES, BIHAR District-
PATNA

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Doman Ram S/o Musafir Ram Resident of Village Bhatauliya, P.O. & Police
Station- Goroul, District Vaishali at Hajipur.

.... Petitioner

Versus

1. The State of Bihar through Vigilance.
2. S. P. Economic Offence Unit, Bihar, Patna.

.... Opposite Parties.

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Appearance :

For the Petitioner/s	:	Mr. Shashi Anugraha Narayan, Sr. Advocate Mr. Bindhyachal Singh, Advocate Mr. Ram Binod Singh, Advocate Mr. Rajeev Ranjan, Advocate
For the Opposite Party/s	:	Mr. Vishwa Nath Prasad Singh, Sr. Advocate Ms. Soni Srivastava, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
C.A.V. JUDGMENT
Date: 24-11-2015

This is a petition under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') seeking the quashing of the order dated 20.08.2014, passed by the learned Special Judge, Vigilance, (Trap), Patna in Special Case No. 25A/2012, which arises out of Economic Offence Patna P.S. Case No. 08 of 2012, whereby and whereunder for the reasons recorded in the impugned order, the prayer of the petitioner for his discharge from the criminal case was rejected.

2. The prosecution case, in brief, is as follows:-

(a) One Manoj Kumar Singh submitted a written complaint on 06.07.2012 to the Superintendent of Police, Economic Offence Unit, Bihar Patna alleging therein that the petitioner, who was posted as the Deputy Collector, Land Reforms, Katihar at the relevant time had reserved order in B.T. Case No. 430/08-09 filed under Section 48(e) of the Bihar Tenancy Act way back on 18.08.2011 and since thereafter, despite requests and reminders, no final order was passed and in order to get the case disposed of the petitioner was demanding a sum of Rs.50,000/- with additional instruction that the same be paid to his bench-clerk, namely, Birendra Sinha @ Birendra Kumar Srivastava. Thereafter, he met with the said bench clerk, who demanded an additional sum of Rs.10,000/- towards his share in addition to Rs.50,000/- to be paid to the petitioner.

(b) On receipt of the aforesaid complaint from Manoj Kumar, an Officer, namely, Chandrabhushan Mishra was deputed to verify the complaint, who held verification and reported on 22.07.2012 that it is a case of demand of bribe at the hands of the petitioner through his bench-clerk as also at the hands of the bench-clerk

independently while acting in conspiracy and 24.07.2012 was the date fixed for payment of Rs.6000/- towards advance for start of the work in which Rs.5000/- was to be paid to the petitioner and Rs.1000/- was the share to the bench-clerk.

- (c) After receipt of the aforesaid verification report, Economic Offence Patna P. S. Case No. 08 of 2012 was registered under Sections 7 and 9 of the Prevention of Corruption Act, 1988. On 23rd July, 2012, a team was constituted for laying the trap. Thereafter, phenolphthalin powder was applied over six GC notes of Rs.1,000/- each and handed over to the complainant with an instruction to give these notes to the accused persons only upon demand. A pre-trap memorandum was prepared with the number of GC notes to be given as bribe money. The pre-trap memorandum was read over and signed by two independent witnesses. The same GC notes were recovered from the possession of co-accused Birendra Kumar Srivastava and numbers were matched with the numbers mentioned in the pre-trap memorandum in presence of independent witnesses. All the numbers mentioned in the pre-trap memorandum and recovered



GC notes were found to be the same. Accordingly, the post-trap memorandum was also prepared. Since the GC notes were seized from the back right pocket of the trouser of co-accused Birendra Kumar Srivastava, after washing of his hands and his back pocket of the trouser the solution of sodium carbonate turned into pink colour thereby establishing the recovery of tainted money. On interrogation, the bench-clerk specifically pointed out that out of Rs.6000/- so recovered, Rs.5000/- was the share of the petitioner.

3. After completion of the investigation, charge-sheet was submitted against the petitioner and his bench-clerk Birendra Sinha @ Birendra Kumar Srivastava pursuant to which cognizance of the offence was taken. At the stage of framing of charge, an application under Section 239 Cr.P.C. was filed on behalf of the petitioner seeking discharge from the criminal case which has been dismissed by the learned Special Judge vide impugned order dated 20.08.2014.

4. It has been contended by Mr. Shashi Anugrah Narayan, learned Senior Counsel for the petitioner that the complainant had made complaint with regard to B.T. Case No. 430/08-09 which is related to bataidari right relating to Khata No. 458, Plot No. 276, 278 and 279 and Khata No. 460, Plot No. 273. In the said case, one Kunj



Bihari Singh is the plaintiff while Ajit Kumar Mitra is the defendant. The case was heard by the petitioner and it transpired during hearing that with regard to the same land two mutation appeals vide Mutation Appeal No. 126/08-09 and Mutation Appeal No. 103/08-09 are pending. Mr. Narayan has submitted that in the aforesaid appeals, the complainant Manoj Kumar Singh is the intervenor. Both these cases were fixed for hearing on 30.07.2012 and if the petitioner would have been interested in taking undue favour from the complainant, he would not have allowed them to be impleaded as intervenor. He has further contended that the petitioner did not pass any order in B.T. Case No. 430/08-09 as with regard to the same land mutation appeals were also pending. He has submitted that Bataidari right was dependent upon the decision of mutation appeals as it would have resulted into the change of raiyat. The petitioner felt it proper that any order in the Bataidari case should only be passed upon the decision of mutation appeals.

5. Mr. Narayan, learned Senior Counsel has further contended that there was no recovery of any tainted money from the possession of the petitioner and hence he cannot be prosecuted for the offence alleged. He has further contended that from perusal of the proceedings of Mutation Appeals No. 126/08-09 and 103/08-09, it would be apparent that the case remained pending due to the time



being taken by the various parties including the complainant. He has further contended that the complainant had instituted the case with ulterior motive just to put pressure on the petitioner and his office to pass order in the Bataidari case first and to decide the mutation appeals later. Since the complainant failed in his design, he filed the complaint before the Superintendent of Police, Economic Offence Unit. He has further contended that there is absolutely no material to constitute a case against the petitioner under Sections 7, 9 and 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988. He has further contended that the order of the Court below against the petitioner is a case of total non-application of mind as the trial Court has failed to appreciate the facts and circumstances of the case.

6. Per contra, Mr. Vishwanath Prasad Singh, learned Senior Counsel for the respondents has submitted that there is neither any illegality nor any wrong procedure adopted in proceeding with the complainant in question. The complaint made by the complainant was found to be true on verification. Accordingly, a trap was held and co-accused Birendra Kumar Srivastava was arrested with the tainted money paid in advance for showing favour to the complainant. He has further contended that the present case is an apparent case of corruption wherein money was demanded from the complainant for disposing of the case in which the petitioner had reserved the order.

He has submitted that the verification report furnished by the duly appointed verifier would reveal that the petitioner had directed the complainant to pay the amount of bribe to his bench-clerk. According to him, the present case is an example of taking bribe by the government official through some other person.

7. Mr. Singh, learned Senior Counsel has further contended that installment of bribe was accepted and was in conscious possession of the bench-clerk of the petitioner at his behest since the work was pending with him. In course of investigation, on interrogation, Mr. Birendra Kumar Srivastava has admitted that out of Rs.6000/- so recovered, Rs.5000/- was the share of the petitioner. He has further contended that after considering the relevant materials on record, competent authority accorded sanction order for prosecuting the petitioner and there is no infirmity in the order impugned passed by the learned trial Court.

8. I have heard respective learned Senior Counsel for the parties and perused the record.

9. The ambit and scope of power to be exercised by a Magistrate under Section 239 Cr.P.C. is well settled. In exercise of such power, the Magistrate may discharge an accused, if, upon considering the police report and the document sent with it under Section 173 Cr.P.C., he considers the charge against the accused to be

groundless. However, if upon such consideration the Magistrate is of the opinion that there is ground for presuming that the accused has committed an offence, he shall frame charge against the accused. At this stage, the sufficiency of ground and effect of evidence which the prosecutor proposes to adduce are not to be meticulously judged. Further, the Court is not expected at this stage to hold roving inquiry into the pros and cons of the case by weighing the evidence.

10. In the present case, after evaluating the materials produced by the prosecution and after considering the probability of the case, the trial Court, being satisfied by the existence of sufficient grounds against the petitioner and another-accused rejected the application filed under Section 239 Cr.P.C. by a reasoned order. The reasons assigned by the trial Court are clear, cogent, and convincing. In view of the allegation made and the materials collected during investigation, I am of the opinion that it cannot be claimed that there is no sufficient ground for proceeding against the petitioner and hence he must be discharged.

11. Accordingly, the application, being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J.)

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