

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.30262 of 2012

Arising Out of PS.Case No. -549 Year- 2000 Thana -null District- PATNA

=====

1. Dr. (Captain) Akhouri Ramesh Chandra Sinha S/O Late Akhouri Chandra Bhushan Singh, R/O Village + Post - Churamanpur, Police Station-Buxar (Industrial), District - Buxar

.... Petitioner/s

Versus

1. The State Of Bihar

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Ms. Madhuri Lata, Advocate

For the Opposite Party/s : Mr. C. Jawahar, APP

=====

CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

ORAL JUDGMENT

Date: 04-05-2015

The Petitioner, who was the then Director of Health Services, seeks quashing of the order of cognizance dated 25.11.2011 passed by the Chief Judicial Magistrate, Patna in Gardanibagh (Sachivalay) P.S. case No.549 of 2000 so far as he is concerned.

The case of the Informant, who was the Health Commissioner-cum-Secretary, is that an attempt was made by the authorities to appoint 24 candidates to the post of A.N.M. against the appointment Rules.

The Petitioner was not named in the First Information Report. He was examined in Paragraph 167 of the case diary on 19.10.2001 wherein he had enumerated as to how B.P.S.C. had forwarded a list of 1271 candidates for the post. While the matter was still pending before him, it was detected that additional names of 24 candidates were sought to be included. So the appointment process was stopped at that stage itself.



About 7 years later the Petitioner was not sought to be arrayed an accused in the present case. In the year 2008 a departmental proceeding was initiated against him wherein one charge was proved and his pension was stopped. As against this he preferred a writ application, which set aside the order observing that the Petitioner had been made scape-goat by the interested Parties. The State was also fined a sum of Rs.10,000/- As against this order, the State preferred an L.P.A., which was also dismissed with a further penalty.

In the year 2009 the Petitioner was sought to be arrested, so he made an application for Anticipatory Bail, which was allowed. It appears that on 31.7.2011 a charge sheet was submitted wherein the Petitioner was named as a witness at Serial No.10 even while his name was included in the list of Accused.

It is under these circumstances that the Petitioner seeks quashing of the order dated 25.11.2011 on the ground that the order of cognizance is bad in law, inasmuch as the Magistrate should have examined the case diary to ascertain as to under what circumstances even though the Petitioner was not named in the First Information Repot and also mentioned as a witness therein he was sought to be prosecuted and should have satisfied itself on the nature of material which had transpired against him during investigation before proceeding against him.

The case diary has been called for, which has been

thoroughly examined by Mr. C. Jawahar, learned A.P.P. for the State. He submits that no doubt the Petitioner in Paragraph 167 of the case diary had explained his stand but subsequently the persons who had named by him as being involved in an attempt to insert the names of 24 persons when examined stated that the Petitioner was also involved in the transaction. However, apart from oral allegations that the Petitioner was involved there is not a single document to substantiate that the Petitioner had forwarded the names of these 24 persons.

Evidently in absence of such documentary proof, it would not be possible for the prosecution to even prima facie satisfy the Court with regard to the involvement of the Petitioner since a person's involvement in an official matter can be ascertained when there is some indication by way of document and bald allegation would not be enough.

Hence, the application is allowed and the proceeding so far as the Petitioner is concerned including the order of cognizance dated 25.11.2011 passed by the Chief Judicial Magistrate, Patna in Gardanibagh (Sachivalay) P.S. case No.549 of 2000 is hereby set aside.

Let the case diary be remitted to the Court below immediately.

(Anjana Prakash, J)

Narendra/-

U		T	
---	--	---	--