

.32IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.48075 of 2012

Arising Out of PS.Case No. -28 Year- 2006 Thana -null District- MUZAFFARPUR

Dr. Ram Yash Ram son of Kapildeo Ram, resident of village- Mangraon, P.S.-
Rajpur, District- Buxar at present residing at Mangalam Vihar Colony, House No.-
10, Arrah Garden Road, Bailey Road, P.S.- Danapur, District- Patna.

.... Petitioner

Versus

The State of Bihar through the Vigilance Investigation Bureau, Cabinet Vigilance, 6
Circular Road, Patna.

.... Opposite Party

Appearance :

For the Petitioner/s : Mr. Sunil Kumar Verma, Advocate
Mr. Suman Kumar Verma, Advocate
Mr. Krishna Prasad, Advocate
For the Opposite Party/s: Mr. Rama Kant Sharma, Sr. Advocate
Mr. Santosh Kumar Pandey, Advocate

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 10.11.2011, passed by the learned Special Judge, Vigilance, North Bihar, Muzaffarpur in Special Case No. 23 of 2006, arising out of Vigilance P.S. Case No. 28 of 2006, whereby and whereunder the petition dated 15.05.2010 filed under Section 239 Cr.P.C. for discharge has been dismissed.

2. Initially, a complaint case was filed in the Court of Special Judge, Vigilance, North Bihar, Muzaffarpur which was referred to the Vigilance Police Station pursuant to which a



preliminary inquiry was conducted. After holding preliminary inquiry, an FIR was instituted on 02.05.2006 against the petitioner and one another under Sections 465, 466, 468, 471, 201 and 120 B of the Indian Penal Code and Section 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988. In the preliminary inquiry, it was found that the petitioner, who was the then Chief Medical Officer-cum-Civil Surgeon, Muzaffarpur, conspired together with one Dr. Sakaldeep Choudhary and by abusing his official position issued a disability certificate to one Poonam Kumari without physically examining her. It was further revealed that the aforesaid certificate was granted after obtaining pecuniary advantage for himself and in order to conceal the illegal act, he tampered with the official record.

3. On completion of the investigation, the police submitted charge-sheet against the petitioner and Dr. Sakaldeep Chaudhary pursuant to which the learned Special Judge, took cognizance of the offence vide order dated 17.01.2009.

4. At the stage of framing of charge, an application under Section 239 Cr.P.C. was filed on 15.05.2010 on behalf of the petitioner seeking discharge from the case. After hearing the parties, the learned Special Judge rejected the application dated 15.05.2010 vide order dated 10.11.2011, which is under challenge in the present application.

5. It is relevant to mention here that after lapse of more than one year from the date of rejection of the application filed under Section 239 Cr.P.C., the petitioner has filed the instant application before this Court under Section 482 Cr.P.C. on 04.12.2012.

6. Mr. Sunil Kumar Verma, learned counsel for the petitioner has contended that the complaint, in question, has been filed with ulterior motive. The physical disability certificate issued in favour of Poonam Kumari by the Medical Board is neither forged nor fake. Mr. Verma has contended that the original certificate was prepared by the petitioner in discharge of his official duty and the photograph of Poonam Kumari was also attested by him and estimated percentage of handicap of Poonam Kumari was 40 percent. The Medical Board found that she was suffering from residual post polio paralysis (RPPP) of right limbs. He has further contended that during preliminary inquiry conducted by the vigilance, the petitioner and co-accused Dr. Sakaldeep Choudhary, who was a member of the Medical Board, clearly stated that the original certificate dated 30.12.2002 is based on correct physical verification of Poonam Kumari. He has submitted that the prosecution case is based on mistake of fact and there is no material on record to put the petitioner on trial.

7. On the other hand, Mr. Rama Kant Sharma, learned



Senior Counsel for the Vigilance has submitted that the petitioner is a habitual offender and has filed the petition only in order to delay the trial of the case. He has submitted that the instant application under Section 482 Cr.P.C. is fit to be rejected on the ground that the petition has been filed before this Court after examination of two prosecution witnesses during trial. He has submitted that in course of preliminary inquiry as also in course of investigation, it was clearly found that the certificate, in question, was issued to Poonam Kumari without physically examining her. It also transpired during investigation that in order to conceal their illegal act, the accused persons tampered with several official records. Mr. Sharma has also submitted that the petitioner has not only tampered with the official record but he has also forged and fabricated documents in order to conceal the crime.

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

9. The question which would be relevant at this stage is whether the impugned order rejecting the application filed by the petitioner suffers from any illegality warranting interference by this Court. Section 239 Cr.P.C. reads as under:-

“239. When accused shall be discharged –

If, upon considering the police report and the documents sent with it under section 173 and making such examination, if any, of the accused as the

Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.”

10. A plain reading of Section 239 would show that the court trying the accused can exercise jurisdiction under Section 239 Cr.P.C. only when he considers the charge against him to be groundless. At the stage, the Magistrate has only to consider the material placed before him by the Investigating Officer in considering the sufficiency of ground for proceeding against the accused. It is well settled that at the initial stage, if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence, then it can frame the charge. The Court is not required to appreciate evidence as if to determine whether the material produced was sufficient to convict the accused.

11. Coming back to the case at hand, the allegations made against the petitioner are specific. He is alleged to have misused his official position for personal gain. He is also alleged to have tampered with the official record in order to conceal his crime. Whether or not these allegations are true is a matter to be decided at the conclusion of the trial and not at the stage of framing of charges. Moreover, as noted

above, after framing of charges two prosecution witnesses have already been examined during trial. In my view, once the witnesses are being examined, the trial has to end either in acquittal or in conviction of the accused.

12. It would be apparent from the impugned order that 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 dismissed the application filed under Section 239 Cr.P.C.

13. I find no illegality in the impugned order. Accordingly, the application being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J.)

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