

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.725 of 2014

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1. Ravi Kumar S/o Sri Surendra Thakur Postman, Presently posted as H.P.O., Muzaffarpur and resident of Vill. + P.O. - Ratnauli, P.S. - Maniyari, Dist. - Muzaffarpur.
2. Raj Kumar Sahni S/o Late Ram Kishun Sahni Mukhiya, Gram Panchayat Raj, Ratnauli, P.O. - Ratnauli, P.S. - Maniyari, Dist. - Muzaffarpur.
3. Vijay Kumar Das S/o Asheshwar Das Panchayat Rojgar Sevak, Ratnauli, P.S. - Maniyari, Dist. - Muzaffarpur.
4. (Smt), Jaimala Kumari W/o Sir Hari Kishore Thakur Panchayat Shikshak Ratnauli, P.S. - Maniyari, Distt. - Muzaffarpur.
5. Raghuni Sahni S/o Late Pyarelal Sahni Retired Panchayat Sachiv, Ratnauli, resident of at P.O. and P.S. - Mushahri, Dist. - Muzaffarpur.
6. Ashwini Kumar Jha S/o Rewati Raman Jha Block Programme Officer, Auri, at P.O. AND P.S. - Aurai, Dist. - Muzaffarpur.
7. Ashok Kumar Singh S/o Rudra Deo Prasad Singh Panchayat Sachiv, Ratnauli, resident of Mohalla - Mazholia in the town and District of Muzaffarpur.

.... Petitioner/s

Versus

1. The State of Bihar through I.G. Vigilance, Patna.
2. Sandeshwar Sahani son of late Ramdev Sahani, resident of Village Rathauli, P.S. Maniyari, District Muzffarpur

.... Respondent/s

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Appearance :

For the Petitioners : Mr. A. B. Ojha, Sr. Advocate with
Mr. Srinivas Jha and
Mr. Nitesh Kumar, Advocates

For the Vigilance : Mr. Rama Kant Sharma, Sr. Advocate with
Mr. Satish Kumar Pandey, Advocate

For the Respondent no. 2 : Mr. Sunil Kumar Pandey, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

8 24-07-2015

Heard Mr. A. B. Ojha, learned senior counsel assisted by Mr. Srinivas Jha, learned counsel for the petitioners, Mr. Rama Kant Sharma, learned senior counsel assisted by Mr. Satish Kumar Pandey, learned counsel for the Vigilance and Mr. Sunil Kumar Pandey, learned counsel for the opposite party no. 2 (complainant).

It transpires from the records that the serial number of order dated 16.07.2015 has been typed as '5' though the same should have been '7'. Accordingly, let serial number of order dated 16.07.2015 be read as '7' instead of '5'.

The present application under Articles 226 and 227 of the Constitution of India has been filed for quashing of the F.I.R. of Vigilance P.S. Case No. 22 of 2014 dated 26.03.2014 registered for offences punishable under Sections 406/409/420/467/471/477A/120B/468 of the Indian Penal Code and 13(2) read with 13(1) (d) of the Prevention of Corruption Act, 1988 (hereinafter referred to as the 'Act').



Learned counsel for the petitioners submits that the allegations levelled against the petitioners relate to their functioning as public servants at the relevant time. It is submitted that the respondent no. 2 had filed a complaint before the Special Judge Vigilance, North Bihar at Muzaffarpur alleging certain irregularities against the petitioners in various government schemes and to their conduct in the discharge of their official duty as public servants. The said complaint was registered as Complaint Case No. 34 of 2012. The learned Special Judge Vigilance sent the same for inquiry to the Vigilance Investigation Bureau which was registered as Vigilance P.S. Case No. 22 of 2014. Learned counsel has submitted that he need not advert to the merits of the case on facts since in law such procedure for lodging of a criminal case against any public servant without the production of a valid sanction order under Section 19 of the Act, is barred. It is submitted that the law has been well settled by the various pronouncements of the Courts including the Hon'ble Supreme Court that even when directing for investigation relating to allegations made under the Act, the Magistrate is supposed to apply his mind and further as per the provisions of Section 19 of the Act, prior and valid sanction for prosecution is required from the Competent Authority. It is submitted that the admitted position



in the present case is that without such sanction being obtained, the matter was referred for inquiry by the Vigilance resulting in lodging of the F.I.R. For such proposition, learned counsel has relied upon a decision of the Hon'ble Supreme Court in the case of **Anil Kumar v. M. K. Aiyappa** reported in (2013) 10 Supreme Court Cases 705, the relevant being at paragraph 11 as well as in the case of **Ramdev Food Products Private Limited v. State of Gujarat** reported in (2015) 6 Supreme Court Cass, 439, the relevant being at paragraph 20.

Learned counsel for the Vigilance has also supported the contention of learned counsel for the petitioners and submits that the Vigilance itself is overburdened with matters like the present which after investigation are ultimately held to be not in accordance with law and the entire effort gone into investigating such cases goes waste. He submits that in the decisions which have been relied upon by the learned counsel for the petitioners, other decisions have also been referred to which have clearly expounded the law that sanction is a pre-requisite for the Magistrate to direct the police to register any such case in terms of Section 19 of the Prevention of Corruption Act. He submits that the law has been summed up in the case of **Anil Kumar** (*supra*) at paragraph 22 which may be useful to quote below:

“ **22.** Further, this Court in *Army Headquarters v. CBI* opined as follows:
(SCC p. 261, paras 82-83)

“82. Thus, in view of the above, the law on the issue of sanction can be summarized to the effect that the question of sanction is of paramount importance for protecting a public servant who has acted in good faith while performing his duty. In order that the public servant may not be unnecessarily harassed on a complaint of an unscrupulous person, it is obligatory on the part of the executive authority to protect him...

83. If the law requires sanction, and the court proceeds against a public servant without sanction, the public servant has a right to raise the issue of jurisdiction as the entire action may be rendered void ab initio.....”

Learned counsel for the respondent no. 2 though has argued that it is a case where public servants have defalcated public money and they should not be let scot-free but is unable to show to the Court that the law as is stands now justifies the action of the learned Special Judge directing the Vigilance to hold a preliminary inquiry resulting in lodging of the present case.

Upon considering the facts and circumstances of the case and submissions of learned counsel for the parties, this Court finds that the initial order of the learned Special Judge dated 14.03.2012 sending the complaint to the Vigilance for preliminary inquiry as well as the consequential lodging of the F.I.R. of Vigilance P.S. Case No. 22 of 2014 on 26.03.2014 cannot be sustained. Accordingly, the same stand quashed.

The application stands allowed.

(Ahsanuddin Amanullah, J)

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