

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.38644 of 2012

Arising out of PS.Case No.-1 Year- 2007 Thana-Vigilance District- PATNA

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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

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Appearance :

For the Petitioner : Sri Sunil Kumar Verma, Advocate
Sri Suman Kumar Verma, Advocate

For the Opposite Party : Sri Jharkhandi Upadhyay, APP

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CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA

ORAL JUDGMENT

Date: 26-02-2015

Heard.

2. The petitioner has filed the present petition seeking quashing of order dated 27.07.2011, passed by the learned Special Judge (Vigilance), North Bihar, Muzaffarpur in Vigilance P.S. Case No. 01 of 2007 (Special Case No. 01 of 2007) by which he summoned the present petitioner and others to stand their trial for committing different offences, like, 467 etc. IPC and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 (in short 'the P.C. Act, 1988). While passing the order impugned herein, the learned judge had perused the records of investigation and had heard the parties and had also perused the sanction order. On perusal of the case diary and other documents,

the learned judge was of the view that grounds existed for proceeding against the petitioner and others for committing offences noted in the impugned order.

3. By citing before me the Supreme Court decision in Anil Kumar & Ors. Vs. Ratnamala reported in 2014 (1) PLJR 4 (SC), the learned counsel has submitted that before sending the matter for preliminary enquiry, it was required by law that previous sanction in that behalf ought to have been obtained from the appropriate authorities as per Section 19 of the P.C. Act, 1988. The relevant part of the judgment appearing in paragraphs 8 and 14 were read out to me for impressing me upon the point that the investigation very much was suffering from inherent illegality and, as such, the launching of the prosecution by passing the impugned order and issuing the summons was bad in law.

4. Section 19 of the P.C. Act, 1988 requires the previous sanction of appropriate Governments as per clauses (a) (b) and (c) of sub-section (1) to that Section if the court was likely to take cognizance of the offence. What appears from perusal of that provisions is that the previous sanction is necessary only for taking cognizance of offences under the P.C. Act, 1988 and that has to be produced at the very threshold of the proceedings, i.e., at the time of taking cognizance. Before that or after cognizance

order has been passed, as may appear from provision, it does not require the previous sanction to be produced before the competent court, i.e., the Special Judge under the P.C. Act.

5. In Anil Kumar & Ors. (supra) the fact was that a complaint petition was filed by a private person and a copy of the same was directed by the Special Judge to be referred for investigation under Section 156(3) Cr.P.C. The investigation was carried out but that was challenged on the ground that before directing the institution of a case for investigation on the basis of a petition of complaint, it was desirable for the Special Judge to have before him the sanction order permitting the prosecution of the appellant. While considering that question in paragraphs 10 and 11 of the judgment, the Apex Court was holding after considering the previous decision of the Apex Court in the State of West Bengal & Anr. Vs. Mohd. Khalid & Others (1995) 1 SCC 684 and the meaning of the term "taking cognizance", was pointing out that the meaning of the term was to apply the application of the mind by the Judge to the facts of the complaint petition or to the police report and upon information received from any other person, (the three conditions in Section 190 Cr.P.C.) and thereupon to form an opinion regarding the commission of an offence. The issuance of process was an act subsequent to the stage of considering the



material before it to find that a that a prima facie case is made out. The Apex Court was pointing out the distinction between the term "taking cognizance" appearing in Section 200 Cr.P.C. and the issue of issuing process for appearance of an accused after taking cognizance either on a petition of complaint or on a police report of facts constituting the offence upon his own information so as to proceeding under Section 204 Cr.P.C. to call upon the accused to appear before him. This appears vividly clear from paragraphs 10 and 11 of the judgment and, as such, it was held that while directing the police to investigate a case upon a petition of complaint under Section 156(3) Cr.P.C., there was no taking of cognizance and, as such, the requirement of perusing or having the previous sanction of the appropriate authority did not arise. Thus, what I find is that the judgment cited before me in order to buttressing the submissions by the learned counsel for the petitioner does not appear applicable to the facts of the case.

6. The impugned order vividly mentions as to what were the materials which were perused by the learned Special Judge in passing the order of cognizance. The second paragraph of the order is very categorical as regards the question agitated before this Court. The learned Special Judge has perused the First Information Report, the charge sheet, the sanction order for

prosecution, the order sanctioning the prosecution and the entire case diary and thereafter had come to the conclusion as to what offence had been committed and who was the offender. Thus, what I find is that the point that no sanction order was placed before the learned Special Judge at the time of taking cognizance appears misplaced.

7. In view of the above discussions of the materials and relevant law, I find no merit in the petition and the same is dismissed.

(Dharnidhar Jha, J.)

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