

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.783 of 2014

Arising Out of PS.Case No. -70 Year- 2013 Thana -Vigilance District- MUZAFFARPUR

1. Sakal Deo Paswan S/o Late Moti Lal Paswan Resident of Village-Atardah, P.S.-
Sadar, District-Muzaffarpur, the then Revenue Karamchari, Halka No.-03, Jalalpur
Kachahari, Block-Saraiya, Dist.-Muzaffarpur.

.... Petitioner/s

Versus

1. The State of Bihar through Director General, Vigilance, Bihar, Patna.
2. Devendra Thakur S/O Late Ramashish Thakur Resident of Village-Ratanpura
(Jaitpur O.P), Panchayat-Gopidhanwat, P.S.-Saraiya, District-Muzaffarpur.

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Abhimanyu Sharma, Adv.
Ms Prakritita Sharma, Adv.
For the Vigilance : Mr. Rama Kant Sharma, Sr. Adv.
Mr. Santosh Kumar Pandey, Adv.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
CAV JUDGMENT

Date: 25-06-2015

This application under Articles 226 and 227 of the Constitution of India has been filed on behalf of the petitioner to quash the order dated 15th April, 2013 passed in Complaint Case No. 161 of 2008 by the learned Special Judge, Vigilance, North Bihar, Muzaffarpur, whereby and whereunder the learned Judge has ordered for institution of the First Information Report (for short 'FIR') against four persons including the petitioner. The petitioner also seeks quashing of the FIR of Vigilance P.S.Case No.70 of 2013 dated 30th October, 2013 corresponding to Special Case No. 41 of 2013 registered under sections 467, 467-A, 468, 471, 420, 409, 120-B of

the Indian Penal Code and 13(1)(d) of the Prevention of Corruption Act.

2. On 1st September, 2008 the opposite party no.2, namely, Devendra Prasad Thakur filed Complaint Case No.161 of 2008 in the court of Special Judge, Vigilance, North Bihar, Muzaffarpur. The said complaint case was adjourned for hearing on 09.09.2008, and thereafter, to 20.09.2008, 15.10.2008, 12.11.2008, 05.01.2009, 30.01.2009, 10.02.2009, 19.03.2009, 18.04.2009, 26.06.2009 and 22.08.2009. On 22.08.2009 the complaint petition along with the appended documents were sent to the Superintendent of Police (Headquarter), Vigilance Investigation Bureau, Patna for preliminary investigation and report. The Vigilance Investigation Bureau submitted its report before the Special Judge, Vigilance, North Bihar, Muzaffarpur on 03.05.2012. Thereafter, the case was further adjourned from one day to another and ultimately on 15th April, 2013, after hearing the complainant and perusing the enquiry report, the learned Special Judge came to a finding that there was no material to proceed against Kumar Devendra Projjwal, Block Development Officer-cum-Circle Officer, Saraiya, Muzaffarur and Sushil Kumar Srivastava, Block Agriculture Officer, Saraiya, Muzaffarpur and hence, he directed for deletion of their names from the complaint petition and referred the complaint petition to the Vigilance

Investigation bureau, Patna for investigation, pursuant to which the FIR in question has been instituted.

3. The case of the prosecution, in brief, is that in the light of declaration made by the Government to compensate the farmers for damages of crops in flood in the year 2007, the informant Devendra Prasad Thakur filed land possession certificate and application for compensation of paddy crops of about 6 acres land pertaining to different khatas and khesras recorded in Jamabandi Nos.40, 72, 73, 89, 213 and 363, which was in the Register at serial no.96, before the petitioner, who was the then Halka Karamchari at Halka No.3, Saraiya, Muzaffarpur. The petitioner entered the application in Receipt Register at serial no.96.

4. The two sons of the informant, namely, Akhileshwar Thakur and Rajeshwar Thakur also claimed compensation separately in the office of the petitioner. When the compensation for damages was being paid by the Anchal, the complainant made an enquiry and came to know that at serial no.96 one Devendra Prasad Thakur son of Late Ganga Sagar Thakur had already received compensation of Rs.7200/- for 5 acres of land through cheque no.038922 dated 28.12.2007. It has further been alleged that on the basis of information received under the R.T.I. Act by one Dasai Roy it came to light that Devendra Prasad Thakur son of Late Ganga Sagar Thakur claimed



compensation with respect to 7.17½ decimals of land under Jamabandi No. 235, which was approved by the petitioner and cheque signed by one Vishwanath Bhagat, the then Panchayat Secretary, was delivered to him. On verification, the complainant came to know that only 2 acres 49 decimals of land are mentioned in Jamabandi No.235 and rest of the land mentioned in the land possession certificate were either recorded in the name of the State or the other land owners. When the complainant disclosed the irregularities and misappropriation in the Anchal Office, the petitioner, in order to cover up the offence, prepared the compensation claim application in the name of the complainant and his two sons and handed over a copy of the same to each one of them with a direction to submit the original before the Block Agriculture Officer Sushil Kumar Srivastava. The complainant did accordingly but nothing was done.

5. The complainant further alleged that his co-villagers Rajeshwar Thakur, Akhileshwar Thakur and Bishwanath Thakur had also claimed compensation but it was neither paid nor any reason for non-payment has been disclosed and on query the petitioner threatened to file case under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. On the basis of the aforesaid allegations made in the complaint petition, the complainant claimed that the accused persons in conspiracy among one another

embezzled the compensation amount by fabricating forged documents.

6. Mr. Abhimanyu Sharma, learned counsel for the petitioner has sought to question the order passed by the learned Special Judge, inter alia, on the grounds that such complaint at the instance of a private individual could not have been acted upon in absence of valid sanction for prosecuting the public servants against whom the charges have been made. He has further submitted that the learned Special Judge could not have invoked the powers conferred under section 156(3) of the Code of Criminal Procedure (for short 'Cr.P.C.') after taking cognizance of the offence under section 190(1)(a) Cr.P.C. According to him, after taking cognizance of the offence under the procedure prescribed in Chapter XV Cr.P.C., the learned Special Judge could not have switched back to the pre-cognizance stage and directed the police for institution of FIR.

7. Mr. Rama Kant Sharma, learned senior counsel for the Vigilance has submitted that there is no illegality in the order passed by the learned Special Judge. According to him, a private individual has locus to file a complaint alleging corruption charges against the public servants and if the learned Special Judge has thought it proper that the matter needs investigation by the police and referred the complaint to the police for investigation in exercise of powers

conferred under section 156(3) Cr.P.C., no fault can be found with such order.

8. I have heard respective counsel for the parties at length. The facts, which are not in dispute in the present case, are as follows :-

- (a) Initially, a complaint was filed by the complainant Devendra Prasad Thakur against altogether six persons.
- (b) The complaint was adjourned to several dates from time to time for hearing the complainant.
- (c) Learned Special Judge, Vigilance directed the complaint petition along with the documents to be sent to the Superintendent of Police (Headquarter), Vigilance Investigation Bureau by order dated 22.08.2009 for preliminary investigation and report.
- (d) On 03.05.2012, the preliminary investigation report was received and thereafter notice was issued to the complainant for hearing on enquiry report.
- (e) On 15.04.2013, after hearing the complainant and perusing the said investigation report, the learned Special Judge came to a finding that there was no material to proceed against Kumar Devendra Projjwal, Block Development Officer-cum-Circle Officer, Saraiya,



Muzaffarur and Sushil Kumar Srivastava, Block Agriculture Officer, Saraiya, Muzaffarpur and thus directed for deletion of their names from the complaint and referred the complaint to the Vigilance Investigation Bureau for investigation pursuant to which the FIR was registered.

9. It is not in dispute that a Special Judge is deemed to be a Magistrate under section 5(4) of the Prevention of Corruption Act. Therefore, in order to examine the questions of law raised by the learned counsel for the petitioner, it would be appropriate to consider the relevant provisions of Cr.P.C. under which a Magistrate can order for investigation.

10. Being clothed with all magisterial powers provided under the Cr.P.C., when a private complaint is filed before a special Judge, he has two options- (a) he may take cognizance of the offence under section 190 Cr.P.C., or (b) he may proceed further for enquiry or trial. A special Judge, who is otherwise competent to take cognizance, may, without taking cognizance under section 190 Cr.P.C., direct for investigation under section 156(3) Cr.P.C.

11. Section 156(3) Cr.P.C. falling under Chapter XII under the caption 'Information to the Police and their Powers to investigate' and Section 202 Cr.P.C. falling under Chapter XV, bearing the



heading 'Complaints to Magistrates', operate in distinct spheres and at different stages and there is a clear distinction between the two. Any Judicial Magistrate before taking cognizance of the offence, can order investigation under section 156(3) Cr.P.C. If he does so, then, he is not to examine the complainant on oath because he does not take cognizance of any offence therein. Hence, the powers under section 156(3) Cr.P.C. are exercisable at pre-cognizance stage. On the other hand, the powers under section 202(1) Cr.P.C. can be invoked at the post-cognizance stage when the Magistrate/special Judge deemed to be a magistrate is in seisin of the case.

12. In *Rameshbhai Pandurao Hedau Vs. State Of Gujarat [(2010)4 SCC 185]*, while dealing with the difference between an investigation ordered by the Magistrate under Chapter XII containing 'Section 156(3) Cr.P.C.' and under Chapter XV containing 'Section 202 Cr.P.C.', the Supreme Court held as under in para 23 to 25 :-

“23. Reference was also made to the decision of this Court in *Mohd. Yousuf vs. Afaq Jahan [(2006) 1 SCC 627]*, where it has been held that when a Magistrate orders investigation under Chapter XII of the Code, he does so before he takes cognizance of the offence. Once he takes cognizance of the offence, he has to follow the procedure envisaged in Chapter XV of the Code. The inquiry contemplated under Section 202(1) or investigation by a police officer or by any other person is only to help the Magistrate to decide whether or not there is sufficient ground for him to proceed further on account of the fact that cognizance had already been taken

by him of the offence disclosed in the complaint but issuance of process had been postponed.

24. The law is well-settled that an investigation ordered by the Magistrate under Chapter XII is at the pre-cognizance stage and the inquiry and/or investigation ordered under Section 202 is at the post-cognizance stage. What we have to consider is whether the Magistrate committed any error in refusing the appellant's prayer for an investigation by the police under Section 156(3) of the Code and resorting to Section 202 of the Code instead, since both the two courses were available to him.

25. The power to direct an investigation to the police authorities is available to the Magistrate both under Section 156(3) Cr.P.C. and under Section 202 Cr.P.C. The only difference is the stage at which the said powers may be invoked. As indicated hereinbefore, the power under Section 156(3) Cr.P.C. to direct an investigation by the police authorities is at the pre-cognizance stage while the power to direct a similar investigation under Section 202 is at the post-cognizance stage.”

13. In *Dharmeshbhai Vasudevbbhai & Ors Vs. State Of Gujarat & Ors. [(2009) 6 SCC 576]*, while considering the power of the Magistrate to recall an order passed by him under section 156(3) Cr.P.C., the Supreme Court observed that before taking cognizance the Magistrate can invoke his powers under section 156(3) but once he takes cognizance, he has to proceed in accordance with the procedure involved in Chapter XV thereof including the power to take enquiry or investigation under section 202 Cr.P.C.

14. In *Suresh Chand Jain Vs. State of M.P. & Anr.* [(2001)2 SCC 628], while considering the powers of a Magistrate under section 156(3), the Supreme Court held that such power is vested in the Magistrate before taking cognizance of the offence and not thereafter.

15. What I find in the present case is that the learned Special Judge has chosen to adopt the procedure prescribed under Chapter XV Cr.P.C. while dealing with the complaint. He thereafter proceeded under section 202(1) Cr.P.C. and directed the Vigilance Investigation Bureau to conduct a preliminary investigation and submit report and kept the matter with himself for enquiry in the facts of the case. When the Vigilance Investigation Bureau submitted its report, the learned Special Judge considered the same and heard the counsel for the complainant and thereafter directed for deletion of names of two accused persons against whom the Vigilance Investigation Bureau had found no materials in its preliminary investigation and directed for institution of FIR against rest of the accused.

16. As noted above, on receipt of a complaint under section 200 Cr.P.C., the Magistrate may (a) take cognizance of the offence under section 190(1)(a) Cr.P.C. and issue processes, or (b) postpone the issue of processes under section 202 Cr.P.C., and (i) enquire into the case himself, or (ii) direct investigation by the police without



taking cognizance of the offence. Thus, the discretion lies with the Magistrate either to enquire into the matter himself or direct investigation by the police. It is also open to the Magistrate to issue or postpone the issue of process.

17. This raises an incidental question as to what is meant by 'taking cognizance of an offence' by the Magistrate in contemplation of section 190 Cr.P.C. The word 'cognizance' has not been defined in Cr.P.C. but the said expression has been considered by the Courts several times. The conditions in which cognizance can be taken are stated in Clauses (a), (b) and (c) of Section 190(1) Cr.P.C. Whether the Magistrate has or has not taken cognizance will depend on the circumstances of a particular case including the mode in which the case is sought to be instituted and the nature of action, if any, taken by the Magistrate. When on receiving a complaint the Magistrate applies his mind for the purpose of proceeding under section 200 Cr.P.C. and proceeds in terms of the procedures prescribed in Chapter XV Cr.P.C., he is stated to have taken cognizance within the meaning of Section 190(1)(a) Cr.P.C. If, instead of proceeding under Chapter XV, he has, in judicial exercise of discretion, taken action of some other kind ordering investigation by the police under section 156(3) Cr.P.C., he cannot be said to have taken cognizance of the offence.

18. In the present case, apparently after receiving the



complaint petition the learned Special Judge did not refer the matter to the Vigilance Investigation Bureau for investigation under section 156(3) Cr.P.C. He decided to proceed with the complaint and adjourned the case to different dates for hearing the complainant. Thereafter, he referred the complaint to the Superintendent of Police, Vigilance Investigation Bureau with a clear direction to submit a report after holding a preliminary investigation. When the Vigilance Investigation Bureau submitted its report, the learned Special Judge again adjourned the matter to different dates for hearing the complainant. The entire exercise being conducted by the learned Magistrate can be termed to be an enquiry being conducted in terms of the provisions prescribed under Chapter XV Cr.P.C. When the learned Special Judge had called for a report from the Superintendent of Police, Vigilance Investigation Bureau, he was certainly exercising his powers conferred under section 202(1) Cr.P.C., which reads as under :-

“202. Postponement of issue of process

(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit, postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding”

(Emphasis supplied)



19. Thus, in the present case the learned Special Judge was exercising his powers at the post-cognizance stage under Chapter XV Cr.P.C. Under such circumstances, he was not competent to switch back to the pre-cognizance stage and to issue a direction under section 156(3) Cr.P.C. for investigation. An order made under sub-section (3) of Section 156 is in the nature of reminder or intimation to the police to exercise their power of investigation under section 156(1) Cr.P.C. In such an event, the complaint made to the court metamorphoses into an FIR and the investigation so ordered by the court culminates with the police report under section 173 Cr.P.C., whereas section 202 Cr.P.C. comes in at the stage when some evidence has been collected by the Magistrate in a proceeding under Chapter XV Cr.P.C. but the same is deemed to be insufficient to take a decision as to the next stage in the prescribed procedure. In such a situation, the Magistrate is empowered under section 202 Cr.P.C. to direct, within the limits prescribed, an investigation for the purpose of deciding whether or not there is sufficient ground for proceeding. Hence, the object of investigation under section 202 Cr.P.C. is not to initiate a fresh case on the police report but to assist the Magistrate in completing the proceedings already instituted by the complainant before him.

20. In view of the discussions made hereinabove, I am of the

considered opinion that the impugned order dated 15th April, 2013 passed by the learned Special Judge, Vigilance, North Bihar, Muzaffarpur was wholly illegal and untenable in the eye of law.

21. Coming to the next point argued by the learned counsel for the petitioner in respect of the locus to file a complaint by a private individual, I am of the view that there is nothing in the Cr.P.C. which prohibits filing of a complaint by a private individual alleging corruption charges against public servants but there are essential pre-requisites in such special cases under the Prevention of Corruption Act, which need to be satisfied before the Special Judge trying special cases may proceed with the same.

22. An identical issue had come up for consideration before the Supreme Court in *Anil Kumar & Ors. Vs. M.K.Aiyappa & Anr. [(2013) 10 SCC 705]*, where the issue framed was “whether the Special Judge/Magistrate is justified in referring a private complaint made under Section 200 CrPC for investigation by the Deputy Superintendent of Police, Karnataka Lokayukta, in exercise of powers conferred under Section 156(3) CrPC without the production of a valid sanction order under Section 19 of the Prevention of Corruption Act, 1988”. The Supreme Court, taking note of the judicial pronouncements rendered on the issue in *Subramanian Swamy Vs. Manmohan Singh [(2012) 3 SCC 64]*, *State of U.P. Vs. Paras Nath*



Singh [(2009) 6 SCC 372], State of W.B. Vs. Mohd. Khalid [(1995) 1 SCC 684] and Additional Director General, Army Headquarter Vs. C.B.I. [(2012) 6 SCC 228], while upholding the right of an individual to file complaints under the Prevention of Corruption Act (for short 'the Act') has proceeded to clarify that in absence of a previous sanction for prosecution of the public servants charged with acts of corruption, the Magistrate concerned can neither take cognizance and hold enquiry under Section 202 of the Code nor can order for investigation against the public servant, under Section 156(3) Cr.P.C. Thus obtaining a sanction to prosecute public servants charged with acts of corruptions was held an essential pre-condition for filing of a complaint by a private individual under the provisions of the Act.

23. Admittedly, in the present case the complaint was not accompanied with sanction order. Hence, in view of the law laid down by the Supreme Court in Anil Kumar (Supra), the learned Special Judge, Vigilance, North Bihar, Muzaffarpur should not have entertained the complaint and proceeded with the same either under Chapter XII or under Chapter XV Cr.P.C. without there being a valid sanction order to prosecute the public servants.

24. For the reasons aforementioned, this application is allowed. The impugned order dated 15.04.2013 passed by the learned Special Judge, Vigilance, North Bihar, Muzaffarpur in Complaint

Case No. 161 of 2008 is hereby set aside resulting into quashing of the FIR of Vigilance P.S.Case No. 70 of 2013 corresponding to Special Case No. 41 of 2013 pending before the learned Special Judge, Vigilance, North Bihar, Muzaffarpur.

(Ashwani Kumar Singh, J)

Pradeep/-

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