

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.924 of 2014

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

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Ahileshwar Jha (Proprietor of Divya Prakash Sanitation Work), Son of Jai Kant Jha
Resident of Mohalla - Binu Nagar Sahbazpur, P.S. - Ahiyapur, District –
Muzaffarpur Petitioner

Versus

1. The State of Bihar through D.I.G. Vigilance, Government of Bihar.
 2. The Superintendent of Police, Vigilance, North Bihar, Muzaffarpur
 3. The Dy. S.P. Vigilance, North Bihar Muzaffarpur
 4. The State of Bihar through the Secretary, Vigilance, Public Health Engineering
Department, Patna
 5. Baleshwar Singh then Engineer - in - Chief, P.H.E.D., Bihar, Patna
 6. Vijay Prakash, Superintending Engineer, P.H.E.D., Circle Officer, Muzaffarpur
 7. Nageshwar Sharma then Executive Engineer, P.H.E.D. cum Member Secretary
"Prakalp" P.H.E.D. Pramandal Office, Muzaffarpur
 8. Balmiki Paswan, Awar Pramandal Padadhikari, P.E.E. Awar Pramandal,
Mushari, Muzaffarpur
 9. Beda Nand Jha, Junior Engineer, Awar Pramandal Saraiya, Muzaffarpur
 10. Neel Kamal Sinha, Junior Engineer, Awar Pramandal, Mushari, Muzaffarpur
 11. Md. Kamal Azad then Junior Engineer, Awar Pramandal, Paroo, Muzaffarpur
 12. Jitendra Kumar Singh, Awar Pramandal Padadhikari, P.H.E. Awar Pramandal,
Mushari, Muzaffarpur
 13. Raj Kumar Singh then Junior Engineer, Award Pramandal, Marwan,
Muzaffarpur
 14. Bachhu Prasad Singh, Junior Engineer, Award Pramandal, Marwan,
Muzaffarpur
 15. Pankaj Kumar Jha, Assistant P.H.E. Pramandal Office, Muzaffarpur
 16. Sarbjeet KUMar, Assistant P.H.E. Pramndal Office, Muzaffarpur
 17. The Branch Manager, Canara Bank, Motijheel Branch, Muzaffarpur
 18. The Branch Manager, Syndicate Bank, Bhagwanpur Branch, Muzaffarpur
- Respondents
- =====

Appearance :

For the Petitioner/s : Mr. Nachiketa Jha, Advocate

For the Respondent/s : Mr. Pushkar Narayan Shahi, AAG-10

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 26-03-2015

There was an agreement between District Water and Sanitation Committee, Muzaffarpur and Divya Prakash Sanitation Works, a production centre for carrying on activities as directed by District Water and Sanitation Committee, Muzaffarpur from time to time in assigned area. The petitioner claiming himself to be the proprietor of the firm, namely, Divya Prakash Sanitation Works filed a complaint case vide Complaint Case No. 157 of 2012 before the learned Special Judge, North Bihar, Muzaffarpur against several public servants including the Chief Engineer and the Executive Engineer of the Public Health Engineering Department (hereinafter referred to as "P.H.E.D."), Muzaffarpur, inter alia, for the offence punishable under Section 13 of the Prevention of Corruption Act, 1988. It has been alleged that the accused persons entered into conspiracy with each other and defalcated a huge amount by misusing and abusing their official position.

Learned Special Judge, Vigilance, North Bihar, Muzaffarpur in exercise of power conferred under section 202 of the



Code of Criminal Procedure (hereinafter referred to as “the Code”) sent a copy of the complaint to the Deputy Superintendent of Police, Vigilance and called for an inquiry report from him in respect of the allegations made in the complaint. The Deputy Superintendent of Police did not find the allegations made in the complaint to be true and thus, he submitted a report before the learned Special Judge, Vigilance stating therein that the allegations were not found to be substantiated in course of inquiry.

Considering the complaint in question and the inquiry report submitted by the Dy. S.P., Vigilance, learned Special Judge dismissed the complaint in exercise of power conferred under Section 203 of the Code vide order dated 2nd July, 2014.

The petitioner has filed this application under Articles 226 and 227 of the Constitution of India seeking the following reliefs in paragraph 1:-

“1. That, the present writ application has been filed with prayer for the grant of the following reliefs:-

(I) for issuance of direction to lodge a Vigilance cases against the Respondent no. 4 to 18 who misappropriated the Government Money.

(II) For Quashing the order dated 2.7.2014 passed by Special Judge, Vigilance North Bihar, Muzaffarpur passed in C. No. 157/2012 whereby the Vigilance court rejected the petition of the petitioner.

(III) For issuance of any other relief or reliefs which may be found proper and just.”

Learned counsel for the petitioner has submitted that the complaint filed by the petitioner under Sections 190 and 200 of the Code ought to have been referred under Section 156(3) of the Code by the learned Special Judge, Vigilance for investigation but the learned Special Judge erroneously proceeded with the complaint filed under Sections 190 and 200 of the Code and started holding an inquiry. According to him, the inquiry report submitted by Dy. S.P Vigilance was erroneous on facts and, hence, no reliance should have been placed on it by the learned Special Judge.

On the other hand, learned counsel for the State has submitted that it was the discretion of the Judge either to hold inquiry under Section 202 of the Code or to send the complaint to the Special Judge in exercise of power conferred under Section 156(3) of the Code for investigation. He has submitted that in absence of any positive material against the public servants, the learned Special Judge has rightly dismissed the complaint in exercise of power conferred under Section 203 of the Code.

It would be relevant to note here that on enquiry made by the Court, learned counsel for the petitioner has fairly conceded that no sanction for prosecution has been obtained from the competent

authority for prosecuting the public servants who have been made accused in the complaint case prior to the complaint or even after filing of the complaint.

In order to examine the issue involved in the present case, it would be relevant to consider the ambit and scope of Section 202 of the Code. In section 202 of the principal Act, in sub-section (1), after the words “may”, if he thinks fit,” the following words have been inserted, -“and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction.” The aforesaid amendment in Section 202 of the Code has come into force with effect from 23.06.2006. This amendment was brought in order to see that innocent persons are not harassed by unscrupulous persons. The aforesaid amendment in sub-section (1) of Section 202 of the Code make it obligatory upon the Magistrate that before summoning the accused residing beyond his jurisdiction he shall enquire into the case himself or direct investigation to be made by a police officer or by such other officer as he thinks fit, for finding out whether or not there was sufficient ground for proceeding against the accused. This section empowers a Magistrate, if he sees reason to distrust the truth of a complaint of an offence, to postpone the issue of process for compelling the attendance of the person complained against and to direct a local

investigation to be made by a police officer for the purpose of deciding whether there is sufficient ground for proceeding.

In the present case, I find that the Engineer-in-chief of the P.H.E.D. posted at Patna has also been made accused in the complaint case. His place of posting is at Patna whereas the complaint is filed at Muzaffarpur. In order to finding out the truth or otherwise of the allegations made in the complaint, if the learned Special Judge, Vigilance, North Bihar, Muzaffarpur sent the complaint to the Deputy Superintendent of Police, Vigilance for investigation and report, there is absolutely no illegality in it. It is not the purpose of the criminal justice system to encourage false complaints filed against the persons residing at far off place simply to harass them.

Moreover, it is no longer *res integra* and well settled that the requirement of sanction is a pre-requisite to present a private complaint in respect of a public servant, concerning the alleged offence, said to have been committed in discharge of his public duty.

The Hon'ble Supreme Court taking note of provision of Section 2(c) and 19(c) of the Prevention of Corruption Act, has held in the matter of **Anil Kumar & Ors. vs. M.K. Aiyappa & Anr.**, reported in **2013 (10) SCC 705**, that the Magistrate/Special Judge

cannot order investigation while invoking power under Section 156(3) of the Code in absence of a sanction by competent authority in the case of a private complaint.

Under such circumstance, in absence of a sanction by the competent authority, the learned Special Judge could not have issued process against the accused persons.

For the reasons stated hereinabove, I find no illegality in the impugned order passed by the learned Special Judge, Vigilance, North Bihar, Muzaffarpur.

Accordingly, the application, being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J.)

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