

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.304 of 2015

Arising Out of PS.Case No. -87 Year- 2007 Thana -C.B.I CASE District- KISANGANJ

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Nagdeo Prasad @ Nagendra Prasad, Son of Late Kailash Prasad, Resident of
Village - Singhwa, P.S.- Dev, District - Aurangabad.

.... Petitioner

Versus

1. The State of Bihar.
2. Ram Kumar, Son of Onkar Nath, Resident of Village and P.O. - Masaurhi, P.S. -
Masaurhi, District - Patna.

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Avanindra Kumar Jha, Advocate

For the Opposite Party/s : Mr. Navin Kumar Pandey, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 18-08-2015

Heard learned counsel for the petitioner and learned
counsel for the State.

2. The present application under Section 482 of the
Code of Criminal Procedure (For short 'the Code') has been filed
for quashing the order dated 19th July, 2014 passed by the learned
Additional Sessions Judge-II, Patna in Special Case No. 56 of 2007
arising out of Vigilance Case No. 87 of 2007 by which the
application dated 09.09.2013 filed by the petitioner under the
provision of Section 239 of the Code for discharge has been

rejected, holding that there are sufficient material to frame charges against the petitioner for committing offences under Sections 7 and 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988.

3. It is a trap case in which the petitioner was caught red-handed while accepting a bribe of Rs. 1,000/- from the complainant of the case who was an owner of a truck.

4. While disposing of the application of the petitioner filed under Section 239 of the Code, the court below observed as under:-

“From perusal of the case record and case diary available on the record it transpires that on the petition of Ram Kumar the complainant that his truck 407 registration no. BR 20G-9391 loaded with woods was seized by forest department in which after hearing, a fine of Rs. 10,000/- was imposed upon him and he deposited fine amount on 23.07.07 but Surya Ram Manjhi and Nagdeo Prasad demanded Rs. 500 and Rs. 1000 respectively to issue release order in his favour. So complainant on 24.07.07 filed information before officer in charge Vigilance police station Patna. On the order of officer in charge an inquiry was made by constable Hans Kumar regarding truthfulness of petition dated 24.07.07. On verification report of Hans Kumar who found that fact of petition dated 24.07.07 of Ram Kumar true. So a trap team was



constituted to proceed further. On 25.07.07 a pre trap memorandum was prepared in which three G.C. Notes of Rs. 500/- were produced by complainant. Phenolphthalein powder was mixed with these currency note and it was handed over to complainant with a direction that on demand of accused persons he will give these currency notes. Trap team on the same day proceeded at Combined Forest Divisional Office of Nehru Nagar, Patna along with complainant and Hans Kumar met with Surya Ram Manjhi and Nagdeo Prasad and on demand made by the accused persons he gave Rs. 500 and Rs. 1000 respectively to them. Receiving signal from Hans Kumar trap team apprehended both the accused persons and search the body of both the accused persons and in presence of independent witnesses Rs. 1000/- from the possession of Nagdeo Prasad and Rs. 500/- from possession of Surya Ram Manjhi was seized. The hands of both accused persons were washed in solution of sodium carbonate and due to chemical reaction the colour of sodium carbonate turned into pink due to presence of phenolphthalein. All these solutions were sealed on place of occurrence and post trap memorandum was prepared. Sealed solution were examined by F.S.L. and F.S.L. report available on the record. Sanction report for prosecution against Surya Ram Manjhi and Nagdeo Prasad was obtained by I.O. which is available on

the record.

From perusal of para 1,2, 3, 9, 10, 11, 12, 15, 19, 21, 23, 25, 28 of case diary and F.S.L. report it is clear that prosecution witnesses and the F.S.L. report supports the case of prosecution.

From perusal of annexure I to X filed on behalf of the defence it is clear that truck no. BR20G-9391 along with sisum wood was seized by Divisional Forest Officer and document relating to registration certificate shows that this truck was registered in the name of Amit Kumar son of Binod Kumar and according to photo copy of sale letter this truck was sold by Amit Kumar in favour of Ram Kumar Gupta on 10.11.06 and alleged truck was seized by Forest Department on 10.04.2007.

Considering the facts and material available on record, I am of the opinion that there is sufficient material to frame charges against Nagdeo Prasad and Surya Ram Manjhi for committing offence U/s 7/13(2) read with Section 13(1)(d) of the Prevention of Corruption Act. So petition of this petitioner dated 18.02.2012 is hereby rejected. Put up on 16.08.2014 for framing of charge.”

5. Learned counsel for the petitioner submits that in case of bribery, three ingredients must necessarily be established. Firstly, it must be shown that the official was in a position to perform certain official acts by which the aggrieved party would have received some benefit; secondly, the official had agreed to



perform those acts and had also agreed to accept money as reward and; lastly, the money had been paid to the official as bribe and recovered from his possession. He further submits that there was no occasion with the petitioner to demand any amount from the complainant of the case for the purpose of release of truck as he was not authorized in law to issue release order. He places reliance in this regard on some defence documents.

6. On the other hand, learned counsel for the State seriously opposes the application filed by the petitioner. He submits that there is sufficient evidence against the petitioner to put him on trial. According to him, the court below has passed a reasoned order discussing the nature of evidence collected against the petitioner during investigation of the case.

7. I have heard learned counsel for the petitioner, learned counsel for the State and perused the record carefully.

8. It is well settled that at the stage of passing the order in terms of Section 239 of the Code, the court has merely to peruse the evidence in order to find out whether or not there is sufficient ground to proceed against the accused. If prima facie case is made out, charges have to be framed and, if not, an order of discharge has to be passed. At this stage, meticulous consideration of evidence and other materials are not required to be done. The court has to see

whether a prima facie case is made out on the broad probabilities of the case and not to test the probative value of the materials or that, there is sufficient ground for conviction.

9. On perusal of the record, I find that the court below has given clear, cogent and convincing reasons for rejecting the application filed on behalf of the petitioner.

10. In that view of the matter, I find no merit in this application. Accordingly, the application is dismissed.

(Ashwani Kumar Singh, J.)

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