IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.10002 of 2013

Arising Out of PS.Case No. -1 Year- 2009 Thana -C.B.I CASE District- -Patna

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1. Prem Kumar Sharma Son Of Late Gauri Shankar Sharma Resident Of Village Post Sihi P.S. Dulhin Bazar, District Patna .... Petitioner

Versus

1. The State Of Bihar Through C.B.I .... Opposite Party

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Appearance :

For the Petitioner : Mr. Yogesh Chandra Verma, Sr. Adv. with Mrs. Mira Kumari, Adv.

For the Opposite Party : Mr. Bipin Kumar Sinha (SCCBI)

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CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD

CAV JUDGMENT

Date : 26-08-2015

Heard the learned counsel for the petitioner and the Central Bureau of Investigation.

2. This is a petition for quashing the order, dated 29.01.2013, passed in Special Case No. 1 of 2009 arising out of R.C. 1(A) of 2009, by the Special Judge, III, Patna, by which the petition of the petitioner, dated 12.11.2012, under Section 239 of the Criminal Procedure Code for discharge, has been rejected.

3. The prosecution case, as alleged in the written report by one Manoj Kumar, an Officer of Central Bureau of Investigation, CVI Accounts, O/O the G.M. (Vigilance), East Central Railway, Hajipur, to the Superintendent of Police, ACB/CBI, Dr. S.K. Singh Path, Patna 800 001, alleging therein that during the preventive check conducted by the Vigilance Organization, Danapur Division, it has been detected that serious fraud has been committed in

preparation and passing of the salary bills in certain units. In three bill units, namely, B.U. – 05488, B.U. – 05477 and B.U. – 05429, bills have been prepared in fake names by Bill Section of the Personnel Department in connivance with some staff of Electronic Data Processing Center, Danapur Division. Such manipulated salary bills were processed to Bill Section of Accounts Department, which in turn passed such bills without proper scrutiny and check. Such bills were passed and funds were provided by Bill Passing Section to Cash and Pay Office for payment of such staff. Accordingly, payment has been done and bill has been submitted back to the Accounts Department for post audit of the paid voucher. Preliminary investigation by the Vigilance Organization for January 2008 to August 2008 of referred bill unit has indicated that such irregular payment have done on the said period and the amount of fraudulent payment work out to be Rs.77,12,287/-. The detailed investigation for remaining period and in the bills unit may bring out further element of fraud that might have been committed and on the said written report, first information report lodged and charge submitted, after due investigation, on which the cognizance taken.

4. A petition has been filed under Section 239 of the Criminal Procedure Code for discharge of the petitioner. The trial Court after taking into

consideration the submissions of the parties that the charge sheet has been submitted without proper investigation. The petitioner did not supervise the preparation of the bill of the Loco Shed Department. There is no evidence on record of meeting of mind of the petitioner with other accused persons. No offence is made out of the evidence collected under the Penal Code or under the Prevention of Corruption Act, 1988. The further submission that sanction has been obtained from unauthorized authority who has not applied his mind to the effect and circumstance and the material collected during the investigation. The General Manager, East Central Railway, Vaishali at Hajipur, is the proper authority for sanction. The excess bill never passed through the petitioner and the signature were fake and the witnesses have stated that the bill used to be prepared by Dilip Kumar, co-accused, through computer system in centralized manner and only the Electronic Data Process Center is required to check the bill and not the Officer of the Personnel Department. The Court is not required to accept the opinion of the prosecution agency at the time of framing of charge, but, required to look the material collected. There is no material for conspiracy, taking into consideration the submission and contra argument by the Central Bureau of Investigation that admittedly a fraud has been committed. The petitioner was the Office Superintendent of the Pay

Bill Section and was responsible for creating preparation and raising of the pay bill under the supervision of Office Superintendent. The further fact that Smt Chandra Pandey was under the Office Superintendent has already signed the bill. The petitioner is not required to be removed by the Government and so the sanction under Section 197 of the Criminal Procedure Code is not applicable.

Taking into consideration the respective submissions that in course of preventive check conducted by the Vigilance Organization that a fraud having been committed in preparation and passing of the salary bills in certain bill units and found the bill prepared in fake names and in place of 105 employees, the bill was prepared and passed for 119 employees in bill unit 05429 Loco Pilot and, further, in bill unit 05448 in place of 44 employees the bill was prepared and passed for 52 employees, and in bill unit 05477 Loco Pilot in place of 118 employees the bill was prepared and passed for 133 employees and the investigating officer has submitted charge sheet against five persons, including this petitioner, who was the then Office Superintendent, Pay Bill Section, and the witnesses have stated in their statements on several Pilot Sheds in three above mentioned units there are fake signature of the petitioner and several Pilot Sheds Unit there are genuine signature of the petitioner and there is also allegation of conspiracy.

Hence, the Court below found sufficient material against the accused persons, including the petitioner. It is pertinent to mention that the stage of framing of the charge it is not required to go meticulously marshaling the facts and charge can be framed on strong suspicion. The trial Court further taken into consideration the material that Dilip Kumar was transferred to Welfare Section in the year 2005, but, the petitioner went on with the pay bill related work pertaining to Bill Units allotted to Smt. Chandra Pandey and obtaining the signature of Smt. Chandra Pandey on pay bill and, further, took into consideration that this petitioner is removable not by the Government, hence, sanction under Section 197 of the Penal Code is not required and rejected the petition for discharge.

5. The learned counsel for the petitioner submits that at the stage of framing of the charge the Court is not mere post office or a mouth piece of a prosecution to frame a charge, but, required to apply it's mind and has placed reliance on a decision reported in **2011(1) P.L.J.R. S.C.), 33 (Sajjan Kumar Vrs. Central Bureau of Investigation)** as well as on the decision reported in **2011 (3) P.L.J.R., 199 (Sridhar Prasad, S/O Sri Ram Vrs. The State of Bihar through the CBI)** and **(2006) 1 S.C.C., 557 (Rakesh Kumar Mishra Vrs. The State of Bihar))** for the proposition that the sanction of proper authority has not been taken and

it is, further, contended that no reason has been assigned for rejecting the petition under Section 239 of the Criminal Procedure Code.

6. The learned counsel for the Central Bureau of Investigation, however, submits that the trial Court has well considered and passed the order with due application of mind.

7. However, going into the respective submissions, it is apparent that a petition has been filed under Section 239 of the Criminal Procedure Code for discharge. However, Section 239 of the Criminal Procedure Code is required to be read jexta-position to Section 240 of the Criminal Procedure Code. Section 239 of the Criminal Procedure Code provides when accused shall be discharged whereas Section 240 of the Criminal Procedure Code provides framing of charge. However, Section 239 of the Criminal Procedure Code provides that if on considering the police report and the document sent with it under Section 173 of the Criminal Procedure Code, and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considered the charge against the accused to be groundless, he shall discharge the accused and <u>record his reason for doing so</u>. Hence, the most significant word in the Section that "if the Magistrate had taken into consideration the charges against the accused to be <u>groundless</u>" then in that exigency he has to give reason. However, Section

240 of the Criminal Procedure Code provides that if on consideration of the material the Magistrate is of the opinion that there is a ground for presuming that the accused has committed an office, then, he shall frame in writing a charge and while framing a charge he is not required to give any reason. Hence, under Section 240 of the Criminal Procedure Code the opinion of the Magistrate that there is ground for presuming that accused has committed the offence shall prevail. However, word "opinion" of the Magistrate is of significance. The Supreme court has reportedly held that at this stage not giving details of pros and cons of matter is not alleged because at this stage the Court is not required to meticulously examine or consider the evidence of material witness and what is required to see whether prima facie case is made out or not, whereas under Section 239 of the Criminal Procedure Code provides that if the Magistrate considered the charge against the accused to be groundless, then, he is required to be discharged and in case of discharging the accused, he is required to give reason for discharging the accused.

However, by the impugned order the Court below took into consideration the submissions of the parties and took into consideration the material and the facts and circumstances of the case that the bills were fake, on some bills there were signature of the petitioner and on some were fake signature of the petitioner and the petitioner was the Office Superintendent of the said Bill Section which passed the said fake bills and opined that there is prima facie case made out against the petitioner, hence, while rejecting the petition and proceeding for framing of the charge his opinion shall survive as per Section 240 of the Criminal Procedure Code provides that it is the opinion of the Magistrate, which shall prevail. However, it is well settled that at the stage of framing of the charge/discharge the Magistrate has very little scope to weigh the evidence for a limited purpose to find out whether there is prima facie case made out against the accused or not and whether the material placed before the Court disclose grave suspicion against the accused, even then framing of the charge is proper. However, at the stage of framing of the charge or consideration for discharge the matrix applied for weighing the evidence is different from the matrix applied at the far end of the trial for consideration of the acquittal or conviction. The matrix applied at the stage of framing of the charge, a charge can be framed, even on grave suspicion, but, a conviction or acquittal at the fag end of the trial required to be considered judging all pros and cons of case meticulously examining the evidence and conviction can not be recorded on a grave suspicion. However, grave the suspicion may be, it can not take the place of proof.

8. Hence, at this stage of framing of charge

the Court is required to evaluate the material and document on record with a view only to find out for whether a prima facie case is made out or the fact emerging thereon taken at their face value disclose the existence of the ingredients constituting the offence. It is true that the Court at this stage can go into the question whether allegation is probable or not or whether they are repugnant to the normal common sense, but, it can not meticulously weight the evidence in material particular it is true that the Court at this stage can go into the question the broad probability and infirmities, but, can not meticulously make a roving enquiry into pros and cons this view has been supported in decision reported in **2011(1) P.L.J.R. (S.C.) 33** (supra). Hence, applying the principle testing the order, impugned, and in the light of the submissions made by the learned counsel while rejecting the petition and framing the charge the Court below is not required to give a judgment or reasoning.

9. However, on perusal of the impugned order, it is apparent that the Court below has considered the respective submissions of the parties and also taken into consideration the materials to hold that a prima facie case is made out against the petitioner and it is not a case that the trial Court has only acted as a post office or a mouth piece of the prosecution. However, there is material that the matter is concerned with the defalcation of the

public money from the office in which the petitioner was Office Superintendent and it is apparent that money has been withdrawn on the fake bills in the name of persons who were not employees as it is apparent that in place of 105 employees, the withdrawal has been made for 119 employees and in place of 44 employees, the withdrawal has been made for 52 employees and in place of 118 employees, withdrawal has been made for 132 employees and the petitioner was the Office Superintendent of Pay Bill Section and has forged signature as well as genuine signature alleged to be on the bill.

10. Further, submission is that the sanction has not been obtained by the property authority, for which the objection had been raised that the services of the petitioner are not removable by the Government, hence, no sanction is required. The reliance is placed on a decision reported in **(2006) 1 S.C.C., 557** (supra) for proposition that Court can not take cognizance of complaint against public servant in respect of offence alleged to have been committed in discharge of official duty unless sanction is obtained from appropriate authority. However, in decision reported in **A.I.R. 2014 S.C., 1674 (The State of Bihar & Ors. Vrs. Rajmangal Ram)**, it has been held that in case error, omission or irregularities in sanction which includes the competence of the authority to grant sanction has

not vitiate the eventual conclusion in the trial including the conviction and sentence, unless of course the failure of justice has occurred. It is difficult to see how at intermediary stage a criminal prosecution can be nullified or interdicted on account of any such error or omission or irregularities in the sanction order.

Hence, it is not proper at this stage to interfere with the order impugned on this ground when matter is at the stage of initiation of trial after framing charge and a move appropriate stage for reaching the said conclusion whether failure of justice has occurred or not.

10. Hence, I do not find any merit in the petition.

11. This petition is **rejected**.

(Gopal Prasad, J)

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