

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.42722 of 2012

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Ram Prit Rai S/O Late Baldev Rai R/O Village- Narepur (West), P.S.-
Bachchwara, Distt.- Begusarai

..... Petitioner/s

Versus

The State Of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Akhileshwar Pd. Singh
Sr. Advocate

For the Opposite Party/s : Mr. Vikash Kumar
Mr. Anil Pd. Singh, APP

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CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL ORDER

3 21-05-2015

The petitioner is working as an Assistant Engineer in Public Works Division of the State of Bihar. The complaint was filed against him as well as the Land Acquisition Officer in the Vigilance Wing of the Government alleging fraud in the matter of determining payment of compensation for acquiring the lands. Offences referable to Sections 467, 468, 471, 477A, 409, 420 and 120B of the Indian Penal Code were alleged and FIR in Vigilance PS Case No. 42/2008 was registered. The court of Special Judge, Vigilance, Muzaffarpur has taken cognizance of the offence.

This Petition under Section 482 Cr.P.C. is filed challenging the order dated 6.10.2010 through which cognizance was taken.

Heard Sri Akhileshwar Prasad Singh, learned Sr. Counsel for the petitioner, and the learned Addl. Public

Prosecutor.

Two grounds are urged in the Petition. The first is that the sanction to prosecute the petitioner was accorded by the Law Secretary and in view of the judgment of a learned Single Judge of this Court in Cr. Misc. No.44151 of 2008 (Shankar Prasad vs The State of Bihar through the Department of Cabinet Vigilance) the same is not tenable. The second ground is that the petitioner had no role to play in the acquisition of land and he has been named in the complaint without any basis.

The sanction to prosecute a Government servant is to be accorded by the concerned authority. In other words, the sanction must have the approval of the Governor. If the sanction is accorded by any Secretary of any Department in his official capacity and not in the name of Governor, the same cannot be treated as valid. In the instant case, sanction was accorded by and in the name of Governor. The mere fact that the sanction letter was signed by the Secretary cannot be a factor to invalidate the sanction.

Coming to the second aspect, it may be stated that an Assistant Engineer in Public Works Department is not assigned any role under the provisions of the Land Acquisition Act. However, if any acts of omission or commission on his part has resulted any loss to the Government, the matter needs to be examined. This is not a case in which it can be said that even if the allegations contained in the complaint are true no case is made out.

This Cr. Misc. Petition is dismissed.

It shall be open to the petitioner to raise all these contentions in course of trial.

This order shall not be construed as an expression
of final view on the points urged by the petitioner.



(L. Narasimha Reddy,CJ)

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