

## IN THE HIGH COURT OF JUDICATURE AT PATNA

### Criminal Miscellaneous No.24509 of 2013

Arising Out of PS.Case No. -297 Year- 1998 Thana -KATIHAR District- KATIHAR

- =====
1. Vinay Kumar @ Vinay Kumar Shrivastav S/o Late Maheshwar Pd. Shrivastava, Professor's colony, Rambagh PS Rambagh Sadar District & Town Purnea
  2. Nasim Akhtar Idrisi, S/o Late Md. Siddique, Resident of Imli tola, Line Bazar, PS K. Hat, District and Town Purnea

.... .... Petitioners

Versus

1. The State of Bihar Through Vigilance Department, Secretariat Patna
  2. Vigilance Investigation Bureau through Additional Director General, Bihar, Patna
  3. The Superintendent of Police, Katihar
  4. The Officer-in-charge, Katihar Town PS District Katihar.... Opposite Parties
- =====

#### Appearance :

For the Petitioners : Mr. Rashid izhar, Advocate  
Mr. Tabish Sharfuddin, Advocate  
For the Vigilance : Mr. Kedar Singh, Advocate  
For the State : Mr. Sanjay Kr. Singh, Advocate

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**CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI**

ORAL JUDGMENT

**Date: 10-05-2016**

Heard learned counsel for the petitioners as well as learned counsel representing the Vigilance.

Yesterday, i.e. on 09/05/2016 while Cr. Misc. No. 24468 of 2013 along with this petition was listed, the petitioners skipped, taking an adjournment, while, Cr. Misc. No. 24468 of 2013 had already been disposed of.

This petition as well as Cr. Misc. No. 24468 of 2013 arose against common order dated 29.04.2013 whereby and whereunder the prayer made on behalf of the respective accused in terms of Section 227 of the Cr. P. C. had been rejected by the of learned lower court in

Special case No. 3 of 1999.

Two fold arguments have been raised on behalf of the petitioners at the present stage.

First one is challenging the propriety of the investigation and for that, learned counsel for the petitioners submits that in terms of Section 17 of Prevention of Corruption Act, the competent authority to investigate the case happens to be Dy S.P. In the present case the investigation has not been conducted by the Dy S.P. That being so, the whole investigation happens to be perfunctory, illegal and consequent thereof the status of the report submitted in terms of Section 173 of the Cr. P. C. would not be liable for consideration at the stage of framing of charge.

Second leg of argument made on behalf of the petitioners is that there happens to be no material to justify framing of charge and so learned counsel submitted that order impugned happens to be perverse and is fit to be set aside.

Learned counsel for the vigilance has opposed the prayer.

Facts of the case as is evident from the FIR, recorded by the police official himself is that a raid was conducted on being receipt of confidential information over that practices being conducted by the concerned, whereunder a lady was apprehended along with items so detailed under seizure list. Further more, on query she

confessed her guilt and also disclosed the part played by the different accused including the petitioners.

In a criminal trial there happens to be different stages prescribing different modes of appreciation as well as acknowledgement of the material which begins right from registration of a case in terms of Section 154 Cr. P. C. or filing of the complaint in terms of Section 200 Cr. P.C., whichever may be. Whenever, FIR is registered against the accused, the accused has option available to file quashing in terms of Section 482 of the Cr. P.C or in terms of Article 226 of the Constitution of India and for that parameters so prescribed in Bhajanlal's case still commands the area. Subsequently, thereof, comes the stage of cognizance against which, again the same principle happens to be applicable. Then thereafter comes the stage of framing of charge.

At the present stage, with regard to Session triable cases, two options have been made available.

As per Section 227 of the Cr. P. C, the accused may pray for discharge and for that the court has to make appraisal of the materials available on the record and would infer that the same are not making out any case against the accused or are not sufficient enough to allow further prosecution, then on that score, the court would discharge the accused failing which, the Sessions Judge proceed in



terms of Section 228 Cr. P. C where again two options are available. If the offence, in the opinion of the Sessions Judge, is not at all exclusively triable by the Court of Sessions, he will frame charge and remit the matter while, if it finds that the materials are sufficient to proceed with would frame charge under appropriate section. That means to say, the court shares an obligation to properly scrutinize the material available on record to come to definite finding. The aforesaid exercise should not be mechanical one, rather judicious one, what should be the ultimate finding, and in what manner while appreciating the material at the stage of framing of charge, has been discussed.

Recently in a decision in the case of Sonu Gupta Vs. Deepak Gupta & Ors. Reported in 2015(2) PLJR 321 (SC), wherein it has been held as under:-

*“8. Having considered the details of allegations made in the complaint petition, the statement of the complainant on solemn affirmation as well as materials on which the appellant placed reliance which were called for by the learned Magistrate, the learned Magistrate, in our considered opinion, committed no error in summoning the accused persons. At the stage of cognizance and summoning the Magistrate is required to apply his judicial mind only with a view to take cognizance of the offence, or, in other words to find out whether prima facie case has been made*



*out for summoning the accused persons. At this stage, the learned Magistrate is not required to consider the defence version or materials or arguments nor is he required to evaluate the merits of the materials or evidence of complainant, because the Magistrate must not undertake the exercise to find out at this stage whether the materials will lead to conviction or not''*

Further more, the charge is to be framed against an accused with regard to the part having been played at his end during the course of commission of the crime along with whenever there happens to be common intention in terms of Section 34 of the IPC and sharing, common object with the aid of Section 149 IPC. Further more, joint trial of so many accused having participated during the course of commission of crime at the same stage or different stage in the same manner or different manner is permissible and so, submission made on behalf of the petitioners that as there happens to be deficiency having the case investigated by a police officer below the rank of Dy S.P. in violation of mandate under Section 17 of the P. C. Act though found out consideration at the present stage, even then, would not be considered to have its application in the background of fact that the court is still to form an opinion with regard to proper head of penal provisions attracted against the accused

for the offences having been alleged against them.

Further more, it is evident from the order impugned that the learned lower court had gone through the materials and had found the same to be sufficient to proceed with the trial. This court while exercising extra-ordinary power would not substitute its own finding replacing the finding recorded by the learned lower court.

Hence this petition sans merit and is rejected.

**(Aditya Kumar Trivedi, J)**

BKS/-

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