

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.20287 of 2013

Arising Out of PS.Case No. -29 Year- 2007 Thana -C.B.I CASE District- MUZAFFARPUR

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1. Dr. Ram Yash Ram S/O Kapildeo Ram Resident Of Village- Mangraon,
P.S- Rajpur, Distt- Buxar At Present Residing At Mangalam Vihar Colony,
House No. 10, Arrah Garden Road, Bailey Road, P.S- Danapur, District-
Patna. Petitioner/s

Versus

1. The State Of Bihar through the Vigilance Investigation Bureau, Cabinet
Vigilance, 6 Circular Road, Patna. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Sunil Kumar Verma, Advocate
Mr.Suman Kumar Verma, Advocate
Mrs. Sudha Saran, Advocate
Mr. Anish Kumar, Advocate

For the Vigilance : Mr. Ramakant Sharma, Sr. Adv,(L.O.(I/C VIG)
Mr. Santosh Kr. Pandey, Advocate

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
CAV ORDER

7 27-09-2016 Petitioner, who happens to be an accused of Vigilance

PS Case No. 29/2007 leading to Special Case No. 14/2007 has
challenged the order dated 07.01.2012 passed by Special Judge,
(Vigilance), North Bihar, Muzaffarpur whereby and whereunder
the learned lower court had framed charge under Sections 406,
409, 420, 465, 467, 468, 471, 477A of the IPC as well as under
Section 13(2) read with Section 13(i) (d) of the Prevention of
Corruption Act.

2. Complaint Case No. 7/2014 (Annexure-2) was filed
before Special Judge, Vigilance, North Bihar, Muzaffarpur by one
Ratan Kumar Verma putting different kinds of allegation as is
apparent therefrom which was sent to Vigilance for registration
and investigation of the case in accordance with Section 156(3)

Cr.P.C., whereupon Vigilance Case No.29/2007 was registered and after preliminary enquiry, Special Case No. 14/2007 was registered thereupon wherein after concluding investigation, charge-sheet was submitted.

3. Vide order dated 15.09.2008, the learned lower court took cognizance of an offence against the petitioner against which Cr. Misc. No. 32778/2009 was filed. While the aforesaid Cr. Misc. was pending, the proceeding before lower court proceeded ahead and during course thereof, a petition for discharge in accordance with Section 239 Cr.P.C. was filed on behalf of petitioner which was rejected vide order dated 29.07.2011 and the same was brought up on record of Cr.Misc.No.32778/2009 through I.A. (Criminal) No. 2363/2011 and lastly, the aforesaid Cr.Misc. No. 32778/2009 was dismissed as withdrawn giving liberty to the petitioner to challenge the order of framing of charge as, till then, charge has already been framed (Annexure-1), whereupon the instant petition has been filed.

4. Irrespective of allegation whatever may, as the same has not been questioned, it has been submitted on behalf of petitioner that as inception of case happens to be contrary to the spirit of law, on account thereof, proceeding in its entirety has become illegal. That being so, the whole of the proceeding is liable to be quashed including the order impugned dated

07.01.2012 by which charge has been framed against the petitioner.

5. To substantiate such plea, it has been submitted that in *Anil Kumar v. M. K. Aiyappa* as reported in *2014 Cri.L.J. 1* wherein the Hon'ble Apex Court was adjudicating upon the scope of Section 156(3) of the Cr.P.C. in consonance with other relevant provisions of Cr.P.C. as well as P.C. Act, it has been held that before filing of Complaint Case by an individual against a public servant with regard to allegation attracting applicability of Prevention of Corruption Act apart from other provisions of other laws, the same should be duly supported with sanction order having been granted by the competent authority. In case of absence of the sanction order, the complaint petition would not be entertainable.

6. Having armed with the aforesaid decision, it has been submitted that at the time of filing of complaint petition, the same was not carrying sanction order having been granted by the competent authority and on account thereof, the whole prosecution became *non est* in the eye of law whereupon the order impugned along with prosecution is fit to be quashed. Also referred *(2016) 4 SCC 160*. (though not applicable)

7. Learned senior counsel representing Vigilance controverted the submission made on behalf of petitioner and



submitted that principle decided in the judgment as referred above is not at all applicable in the fact and circumstances of the present case. In order to justify his submission, the learned senior counsel has submitted that the aforesaid case was decided by the Hon'ble Apex Court on 01.10.2013 on which date the order impugned had already been passed by way of framing charge against the petitioner. Furthermore, it has also been submitted that sanction is available on the record which was taken by the Investigating Authority during course of investigation. That means to say, on the day of taking cognizance, valid sanction was available on the record and so, prosecution cannot be said to be in utter violation of statutory provisions.

8. In *Anil Kumar v. M. K. Aiyappa* (Supra) the question for consideration before the Hon'ble Apex Court was directing the registration and investigation over complaint filed by an individual against a public servant under Section 156(3) of the Cr.P.C. without annexing sanction in terms of Section 19 of the P.C. Act is justified or not, and after analyzing the same, it has been concluded in para-13 as follows:-

“Learned senior counsel appearing for the appellants raised the contention that the requirement of sanction is only procedural in nature and hence, directory or else Section 19(3) would be rendered otiose. We find it difficult to accept that contention. Sub-section (3) of Section 19 has an object to achieve, which applies in circumstances where a Special Judge has already rendered a finding, sentence or order. In such an event, it shall not be reversed or

altered by a court in appeal, confirmation or revision on the ground of absence of sanction. That does not mean that the requirement to obtain sanction is not a mandatory requirement. Once it is noticed that there was no previous sanction, as already indicated in various judgments referred to hereinabove, the Magistrate cannot order investigation against a public servant while invoking powers under Section 156(3) Cr.P.C. The above legal position, as already indicated, has been clearly spelt out in Paras Nath Singh and Subramaniam Swamy cases (supra)".

9. It is evident that the aforesaid judgment was decided on 01.10.2013. That means to say, it was decided after passing of the order impugned, on which date there happens to be valid sanction for that purpose. The judgment impugned did not prescribe its applicability in retrospective manner, consequent thereupon, will be applicable prospectively.

10. That being so, impugned prosecution goes out of purview of the principle as laid down in the aforesaid judgment. As such, no adverse interference is required relating to the order impugned. Consequent thereupon, the instant petition stands Rejected.

Patna High Court
September 27th 2016
Perwez/AFR

(Aditya Kumar Trivedi, J)

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