IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.27256 of 2014

Arising Out of PS.Case No. -23 Year- 2000 Thana -C.B.I CASE District- PATNA

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Fakhre Alam, son of Late Qamruddin Ahmad, resident of Kishanganj Bazar, Police Station - Kishanganj, District - Kishanganj, at present resident of Mohalla - Samanpura, Police Station - Shastri Nagar, District - Patna

.... Petitioner

Versus

The State of Bihar through Vigilance Department, Bihar, Patna

.... Opposite Party

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Appearance :

For the Petitioner	:	Mr. N.A. Shamsi, Advocate
	:	Mr. Rashid Rais, Advocate
For the Vigilance	:	Mr. Ramakant Sharma, Sr. Advocate
	:	Mr. Santosh Kr. Pandey, Advocate
	:	Mr. Rakesh Sharma, Advocate

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL ORDER

5 08-09-2016 Heard learned counsel for the petitioner as well as learned Senior Counsel representing Vigilance.

Petitioner, who happens to be an accused in connection with Vigilance Case no. 23 of 2000 leading to Special Case no. 29 of 2000, is aggrieved by an order dated 20.05.2014 passed by Special Court no.1, Vigilance, Patna whereby and whereunder prayer, having been made on behalf of petitioner under Section 239 of the Code of Criminal Procedure, has been rejected.

It has been submitted on behalf of petitioner that Vigilance, on its own, had not registered a case rather having been informed by the Income-tax department who had conducted raid at the premise of the petitioner informed the Vigilance and the work having been perceived at the end of the Income-tax department was communicated to the Vigilance, expecting further investigation, at their end, whereupon vigilance case was registered and then thereafter, preliminary enquiry was made and finding prima facie substance and treating it sufficient for institution of the case, drawn up a special case wherein, after concluding investigation, chargesheet has been submitted. It has further been submitted that the Investigating Officer had acted in a mechanical manner relying upon the steps having been taken by the Income-tax authority without proceeding independently to ascertain the allegation whether justify the allegation and further, there was any kind of material having visible before the Investigating Officer to conclude that there happens to be accumulation of the properties disproportionate to the income, more particularly, for the check period 1965 to 1998. Had there been an independent source and further, independent finding supported by prima-facie authentic evidence having been collected during course of the investigation by the Investigating Officer, then in that event, one could have perceived that there happens to be possession of the property disproportionate to the income justifying instant Vigilance case. It has also been submitted that Income-tax authorities after perceiving the alleged seizure to be duly accountable, exonerated the petitioner, against which, an appeal was filed by the State which they lost and further, the aforesaid content having been collected and recorded in the case diary at para 126, then in that event, the learned lower court should have considered its repercussion upon the fate of the prosecution case in the background of the fact that no independent material has been collected by the Investigating Officer during course of investigation, save and except baring his finding over activities of the Income-tax department.

It has further been submitted that once a proceeding under Income-tax Act the mother proceeding proceeded, concluded exonerating the petitioner, then in that event, the ancilliary proceeding, the present one should not have been allowed to continue in the background of the fact that by such activity, petitioner has fallen victim of double jeopardy. So submitted that the learned lower court should have considered the charge to be groundless whereupon, should have discharged the petitioner/ accused. To substantiate such plea, the learned counsel for the petitioner relied upon ***2005(5) SCC 568 relevant para 21, 2009(1) SCC (Crl.) 721 para 20***, wherein, para 29 of above-referred decision had been taken into consideration, ***2012(1) SCC pg. 520, 2014 (14) SCC pg. 40 and 2012 (7) SCC pg. 621***.

In its continuity, it has also been submitted on behalf of learned counsel for the petitioner that from perusal of the aforesaid decisions, the principle whatever emerges out is that the High Court, while exercising inherent power in terms of Section 482 of the Code of Criminal Procedure is quite competent to set aside the order impugned and during course thereof, could scrutinize the material to any extent.

So, in sum and substance relying upon the principle so laid down under the aforesaid circumstances, it has been submitted that the order impugned happens to be contrary to the spirit of law on account thereof, is fit to be set aside.

The learned Senior Counsel representing the Vigilance has submitted that the instant petition has become infructuous in the background of the fact that charge had already been framed against the petitioner. Furthermore, it has been submitted that from perusal of the order impugned, it is evident that learned lower court had considered the prayer of the petitioner in its entirety and further, to appreciate the same, gone through the legal provisions along with the materials having been collected by the Investigating Officer during course of investigation and then, assigning cogent, plausible and legal reasons discredited the submission having been made on behalf of petitioner and submitted that ambit and scope of both the decisions that means to say, the exercise followed-up by the Income-tax authorities as well as Vigilance are independent to each other, having no scope of overlapping. The learned Senior Counsel for the Vigilance has relied upon ***2016 (3) PLJR page 921***.

From perusal of the order impugned, it is evident that learned lower court had perceived existence of proceeding under Income-tax Act as well as under Prevention of Corruption Act lying on two distinct pedestral. That proposition is found appreciable in the background of the scheme of the Income-tax Act which virtually command the income and further, tax which an assessee is liable to pay therefor. Source though is found necessary but that source is not at all within the ambit and scope of Income-tax Act. The source if it happens to be through illegal means and further, disproportionate to the income in case, an assessee is a government employee, for that, the said assessee is liable to be prosecuted and for that, the appropriate provision happens to be so ascribed under the Prevention of Corruption Act.

Identifying the asset and further having the tax paid against the aforesaid asset will not justify the contention unless and until being a government (public) servant, petitioner is found capable of proper explanation that too, prima facie in terms of requirement, for the present purpose.

From the perusal of the case diary, it is evident that the Investigating Officer had proceeded with in mechanical way wherein charge-sheet has been submitted but, instead of properly explaining the items having been so identified by the prosecution agency for which there happens to be no denial at the end of petitioner acquired, accumulated disproportionate to the income so identified during check period, and for that, certainly charge has to be framed. Though, in ordinary course of nature, no document on behalf of accused has to be entertained except being impeachable in nature as held in ***2005(5) SCC 568, 2009(1) SCC (Crl.) 721*** as relied upon by the learned counsel for the petitioner.

True it is that at the time of appreciation in terms of Section 239 of the Code of Criminal Procedure, the Magistrate has to see whether the documents so referred in terms of Section 173 of the Code of Criminal Procedure justify the further proceeding by way of framing of charge or, after perusal of the same, the charge appears to be groundless. Ultimately discharging the accused and for the purpose of appreciation of the materials, times without number, it has been held that meticulous or roving enquiry is not at all found reasonable. In ***2015(2) PLJR pg 321 (SC) Sonu Gupta vs. Deepak Gupta & ors.,*** it has been held at para 8 that -

> *Cognizance is taken of the offence and not the offender. Hence at the stage of framing of charge an individual accused may seek discharge if he or she can show that the materials are absolutely insufficient for framing of charge against that particular accused. But such exercise is required only at a later stage, as indicated above and not at the stage of taking cognizance and summoning the accused on the basis of prima facie case. Even at the stage of framing of charge, the sufficiency of materials for the purpose of conviction is not the requirement and a prayer for discharge can be allowed only if the court finds that the materials are wholly insufficient for the purpose of trial. It is also a settled proposition of law that*

even when there are materials raising strong suspicion against an accused, the court will be justified in rejecting a prayer for discharge and in granting an opportunity to the prosecution to bring on record the entire evidence in accordance with law so that case of both the sides may be considered appropriately on conclusion of trial.

So far power under 482 of the Code of Criminal Procedure is concerned, certainly the High Court found embedded with inherent power which the Court could exercise in the interest of justice but, that exercise has to be guided with the law subject to circumspect coupled with stage of the trial. While invoking Section 482 of the Code of Criminal Procedure, the Court would not embark upon and further give an elastic way of appreciation with regard to the appreciation of the materials contrary to the stage, whereunder, no little scope is found permissible.

In State of ***Tamil Nadu vs. N. Suresh Rajan & ors***. reported in ***2014(2) PLJR 49 (SC)***, after analyzing the principle applicable at the stage of Section 239 of the Code of Criminal Procedure as well as impact of order of Income-tax, it has been held in para 23 :

Bearing in mind the principles aforesaid, we proceed to consider the facts that the allegation against the accused Minister, K. Ponmudi is that while he was a Member of the Tamil Nadu Legislative Assembly and a State Minister, he had acquired and was in possession of the properties in the name of his wife as also his mother-in-law, who alongwith his other frieds, were of Siga Educational Trust, Villupuram. According to the prosecution, the properties of Siga Educational Trust, Villupuram were held by other accused on behalf of the accused Minister. These properties, according to the prosecution, in fact, were the properties of K. Ponumudi. Similarly, accused N. Suresh Rajan has acquired properties disproportionate to his known sources of income in the names of his father and mother. While passing the order of discharge, the fact that the accused other than the two Ministers have been assessed to *income tax and paid income tax cannot be relied upon to discharge the accused persons particularly in view of the allegation made by the prosecution that there was no separate income to amass such huge properties. The property in the name of an income tax assessee itself cannot be a ground to hold that it actually belongs to such an assessee. In case this proposition is accepted, in our opinion, it will lead to disastrous consequences. It will give opportunity to the corrupt public servants to amass property in the name of known persons, pay income tax on their behalf and then be out from the mischief of law. while passing the impugned orders, the court has not sifted the materials for the purpose of finding out whether or not there is sufficient ground for proceeding against the accused but whether that would warrant a conviction. We are of the opinion that this was not the stage where the court should have appraised the evidence and discharged the accused as it was* *passing an order of acquittal. Further, defect in investigation itself cannot be a ground for discharge. In our opinion, the order impugned suffers from grave error and calls for rectification.*

That being so, I do not see any cogent reason to interfere with the order impugned at the present stage whereupon, the instant petition is found non-maintainable and is accordingly, rejected. However, the order impugned should not be treated as prejudicial to the interest of petitioner who will be justified in explaining the assaults during course of trial.

(Aditya Kumar Trivedi, J.)

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