

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.258 of 2015

Arising Out of PS.Case No. -22 Year- 2015 Thana -Kankarbagh District- PATNA

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Alka Jha D/o Shri Balbir Jha R/o D-II/70, Pandara Road, New Delhi - 110003 at present working as Chief Vigilance Officer, Employees Provident Fund Organisation, Bhavisya Nidhi Bhawan, 14-Bhikaji Cama Place, New Delhi - 110066.

.... Petitioner

Versus

The State of Bihar through the Vigilance.

.... Respondent

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Appearance :

For the Petitioner : Mr. Jitendra Singh, Sr. Advocate

Mr. Pranav Kumar Jha, Advocate

Mr. Suraj Samdarshi, Advocate

For the Vigilance : Mr. Ramakant Sharma, Sr. Advocate

Mr. Santosh Kumar Pandey, Advocate

For the Informant : Mr. M.P. Srivastava, in person

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

CAV JUDGMENT

Date: 04-07-2016

The petitioner has preferred the present writ application for quashing of the First Information Report (for short 'FIR') giving rise to Kankarbagh P.S. Case No.22 of 2015 registered on 11.1.2015 under Sections 109, 120B, 218 and 420 of the Indian Penal Code (for short 'IPC') and under Section 13(1)(d) of the Prevention of Corruption Act, 1988 (for short 'PC Act, 1988'). By way of filing a supplementary affidavit, the petitioner has also assailed the order



dated 5.1.2015 passed by the learned Chief Judicial Magistrate, Patna, under Section 156(3) of the Code of Criminal Procedure (for short 'CrPC') in Complaint Case No.30105(C) of 2014, as contained in Annexure-2 to the present application, pursuant to which the aforesaid FIR was registered and investigation was taken up.

2. At the outset, let it be noted that initially after hearing the parties, vide order dated 26.03.2015, this Court had stayed the further proceedings of Kankarbagh P.S. Case No. 22 of 2015 and had adjourned the case at the request of the informant (for the sake of convenience 'complainant') of the case for filing of counter affidavit. Later on, apart from filing several counter affidavits, the complainant has filed an interlocutory application vide I.A. No. 748 of 2015 for vacating the interim order of stay granted on 26.03.2015 by this Court. The writ application and the interlocutory application have been heard together and are being disposed of by this order.

3. The aforesaid complaint was filed by one M.P. Srivastava in the court of Chief Judicial Magistrate, Patna, alleging irregularities in Employees' Provident Fund Organization (for short 'EPFO') with regard to ad hoc promotions of the employees of the EPFO. In brief, the grievance of the complainant is that the employees of the EPFO are involved in corrupt practices for which the complainant time to time made complaints vide different letters.



Reference is made to letter dated 27.7.2014, wherein specific allegation against few officers involved in corrupt practices, has been made and upon inaction on the part of the authority, a legal notice dated 26.10.2014 was issued to all the five accused persons including the petitioner named in the complaint. The said legal notice dated 26.10.2014 forms part of the complaint. It is alleged that the officers promoted to the post of Assistant Provident Fund Commissioners from the post of Enforcement Officers/Accounts Officers on ad hoc basis have been allowed to avail ad hoc promotions beyond one year from the date of their initial promotions and they have been allowed to draw higher scale and other privileges, which resulted into loss to the State exchequer. It is alleged that no ad hoc promotion could have been extended beyond a period of one year without approval of the Department of Personnel and Training (for short 'DoPT'), Government of India, whereas the accused no.1, K.K. Jalan, Central Provident Fund Commissioner had been extending ad hoc promotions beyond one year in many cases in absence of approval of the DoPT. It is further alleged that despite more than fifty complaints sent to the authorities of the EPFO, no action has been taken to set the things right and, as such, it is alleged that the accused named in the complaint with intent to cheat and misuse the public fund have been acting in violation of the various

instructions/laws.

4. As noted above, the learned Chief Judicial Magistrate, Patna, referred the aforesaid complaint to the police under Section 156(3) of the CrPC for investigation, vide order dated 5.1.2015, pursuant to which the FIR, in question, has been instituted.

5. Mr. Jitendra Singh, learned Senior Counsel for the petitioner has sought to question the order passed by the learned Chief Judicial Magistrate, Patna, inter alia, on the ground that such complaint at the instance of private individual could not have been acted upon in absence of valid sanction for prosecuting public servant against whom charges have been made. He has further submitted that the learned Chief Judicial Magistrate could not have invoked the power conferred under Section 156(3) of the CrPC in view of the law laid down by the Supreme Court in **Anil Kumar and Others vs. M.K. Aiyappa and Another**, [(2013) 10 SCC 705]. He has urged that the law laid down in **Anil Kumar and Others** (supra) has been referred to with approval in **Ramdev Food Products Private Limited vs. State of Gujarat** [(2015) 6 SCC 439]. Advancing his argument, learned Senior Counsel has submitted that the decisions rendered by the Supreme Court in **Anil Kumar and Others** (supra) as well as **Ramdev Food Products Private Limited** (supra) have been referred to with approval in the



case of **Priyanka Srivastava and Another** vs. **State of Uttar Pradesh and Others** [(2015) 6 SCC 287]. He has submitted that in addition, the Supreme Court in the case of **Priyanka Srivastava and Another** (supra) has laid down that a complaint should not be entertained and is not maintainable unless the complaint carries with it clear pleadings that the complainant had approached the police to institute an FIR and the said assertion is supported by the materials and proof of the same. It has been contended that in the instant case, the complaint is totally bereft of any pleading to the said effect much less any material to demonstrate that the complainant had ever approached to the police.

6. It is next contended that the petitioner, who is the Chief Vigilance Officer (for short 'CVO') of the EPFO does not have any role to play in the procedure of ad hoc promotions. This being a purely administrative matter is dealt with in the Human Resources Management Division by the Regional Provident Fund Commissioners and the Additional Central Provident Fund Commissioners. It has been submitted that the CVO is barred from participating in the functions which have vigilance sensitivity. Hence, the CVO can not be held responsible or accountable for any administrative lapses on the part of Human Resources Management Division and, therefore, the question of corrupt practices and

abetment of personal gain does not arise.

7. Mr. Ramakant Sharma, learned Senior Counsel appearing on behalf of the vigilance, has submitted that the FIR has been instituted pursuant to the order passed by the learned Chief Judicial Magistrate, Patna, in exercise of power conferred under Section 156(3) of the CrPC. He has submitted that in view of the order passed by the court, the vigilance was left with no option, but to institute an FIR and investigate the allegations made therein. However, he concedes that in view of the fact that the petitioner is a public servant under the IPC and the PC Act, 1988, a private complaint against her could not have been referred for investigation under Section 156(3) of the CrPC without an appropriate sanction order in this regard in view of the decision of the Supreme Court in **Anil Kumar and Others** (supra).

8. Mr. M.P. Srivastava, the complainant on whose complaint the FIR has been instituted and, who has appeared in person to oppose the application, has argued that the contentions of the petitioner are unsustainable and the case laws referred to by the petitioner are not relevant for the purpose of impugned controversy. He has urged that the main ground to challenge the order of the learned Chief Judicial Magistrate, Patna, is that no prior sanction has been obtained from the competent authority for initiating



investigation, as required under Section 197 of the CrPC and Section 19 of the PC Act, 1988, is not tenable in the eye of law in view of the fact that the petitioner is the appointee of the Central Board of Trustees, EPFO constituted under Section 5-A of The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (for short 'EPF and MP Act, 1952'). Therefore, she cannot be treated as an officer of the Central Government. He has urged that even if she was holding any post of the government prior to her deputation in EPFO, she cannot be treated to be an officer of the Central Government serving on deputation. He has further contended that the ratio of the decision of the **Anil Kumar and Others** (supra) is not tenable in the instant case because the petitioner is not a 'public servant' within the four corners of the definition of 'public servant' as contained in Section 2(c) of the P.C. Act, 1988 or Section 21 of the IPC. He has contended that in view of the decisions of the Supreme Court in **Chandan Kumar Basu vs. State of Bihar** [(2014) 13 SCC 70]; **P.K. Pradhan vs. State of Sikkim** [(2001) 6 SCC 704]; **Prakash Singh Badal and Another vs. State of Punjab and Others** [(2007) 1 SCC 1]; **Matajo Dobey vs. H.C. Bhari** [AIR 1956 SC 44] and **Inspector of Police and Anr. vs. Battenapatla Venkata Ratnam & Anr.**, [(2015) 3 PLJR 32(SC)], prior sanction under Section 197 of the CrPC is not necessarily to be considered as soon as the

complaint is lodged and on the allegations contained therein and this question may arise at a subsequent stage of the proceeding.

9. Advancing his argument, Mr. Srivastava has further contended that even if it is found that the petitioner is a 'public servant', although it is not admitted prior sanction is not required as per the settled principle of law decided by the Supreme Court in the matter of **Subramanian Swamy vs. Director, Central Bureau of Investigation and Another [(2014) 8 SCC 682]**. He has further contended that the allegations made in the complaint petition leading to institution of the FIR do attract ingredients of a cognizable offence and in that view of the matter an investigation into the allegations made in the complaint is legally warranted in this case.

10. In reply to the submissions made by the complainant, Mr. Jitendra Singh, learned Senior Counsel for the petitioner, has submitted that the submissions made by the complainant that the petitioner is not a 'public servant' and, as such, provision of Section 197 of the CrPC and Section 19 of the PC Act, 1988, are not applicable to her, are self-contradictory and, thus, flawed. He has submitted that the complainant in his complaint filed before the Chief Judicial Magistrate, Patna, has, inter alia, levelled charge under Section 13 of the PC Act, 1988, which deals with criminal misconduct by a public servant. The charge under Section 13 of the



PC Act, 1988 can only be levelled against a person who is a 'public servant'. Thus, the complainant has alleged in the complaint that the petitioner is a 'public servant' and while making submission before the court, he has taken a diametrically opposite view to allege that the petitioner is not a 'public servant'. He has further submitted that the petitioner has not been appointed by the Central Board constituted by the Central Government under Section 5-A of the EPF and MP Act, 1952 as alleged by the complainant rather he is an appointee of the Central Government. He has submitted that the Central Board is not the competent authority under the EPF and MP Act, 1952 to appoint or recruit a CVO. He has further contended that the petitioner is a 'public servant' and, as such, fully protected under Section 197 of the CrPC and Section 19 of the PC Act, 1988 and no criminal proceeding can be initiated against her without approval from the Central Government.

11. Having heard the parties at length, I find force in the submissions made on behalf of the petitioner.

12. In order to appreciate the controversy in the present case, it would be relevant to take note of definition of 'public servant' as contained in Section 2(c) of the PC Act, 1988 and Section 21 of the IPC, which define the term 'public servant'.

13. The relevant provisions of Section 2(c) of the PC Act,

1988 are extracted as under:-

“2. Definitions.- In this Act, unless the context otherwise requires,-

(c) “public servant” means, -

- (i) any person in the service or pay of the Government or remunerated by the Government by fees or commission for the performance of any public duty;
- (ii) xxxx xxxxx;
- (iii) any person in the service or pay of a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);
- (iv) any Judge, including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;
- (v) xxxx xxxxx;
- (vi) xxxx xxxxx;
- (vii) xxxx xxxxx;
- (viii) any person who holds an office by virtue of which he is authorized or required to perform any public duty;
- (ix) any person who is the president, secretary or other office-bearer of a registered co-operative society engaged in agriculture, industry, trade or banking, receiving or having received any

financial aid from the Central Government or a State Government or from any corporation established by or under a Central, Provincial or State Act, or any authority or body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);

- (x) xxxx xxxxx;
- (xi) xxxx xxxxx;
- (xii) any person who is an office-bearer or an employee of an educational, scientific, social, cultural or other institution, in whatever manner established, receiving or having received any financial assistance from the Central Government or any State Government, or local or other public authority.

Explanation 1. - Persons falling under any of the above sub-clauses are public servants, whether appointed by the Government or not.

Explanation 2. - Wherever the words “public servant” occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.”

14. While understanding the true purport and effect of Section 2(c) of the PC Act, 1988, the meaning of the expression “office-bearer” therein as well as “public duty” which is defined by Section 2(b) of the PC Act, 1988 has also to be understood.

15. Section 2(b) of the PC Act, 1988 which defines 'public duty' is reproduced hereunder:-

“2(b). “public duty” means a duty in the discharge of which the State, the public or the community at large has an interest;

Explanation.- In this clause “State” includes a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956).”

16. The definition of 'public duty' in Section 2(b) of the PC Act, 1988 is very wide. Discharge of duty in which the State, the public or the community at large has an interest, has been brought within the meaning of expression 'public duty'. Performance of such duty by a person who is holding an office which requires or authorizes him to perform such duty is a *sine quo non* of the definition of public servant contained in Section 2(c) of the PC Act, 1988.

17. In this regard the relevant provisions of Section 21 of the IPC are reproduced hereunder:-

“21. “Public servant”. – The words “public servant” denote a person falling under any of the descriptions hereinafter following; namely:-

First. - Omitted

Second. – xxxx xxxxx;

Third. – Every Judge including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;

Fourth. - Every officer of a Court of Justice (including a liquidator, receiver or commissioner) whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the Court, and every person specially authorized by a Court of Justice to perform any of such duties;

Fifth.–Every juryman, assessor, or member of a panchayat assisting a Court of Justice or public servant;

Sixth. - Every arbitrator or other person to whom any cause or matter has been referred for decision or report by any Court of Justice, or by any other competent public authority;

Seventh.–Every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;

Eighth. - Every officer of the Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience;

Ninth. - Every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf

of the Government, or to make any survey, assessment or contract on behalf of the Government, or to execute any revenue process, or to investigate, or to report, on any matter affecting the pecuniary interests of the Government, or to make, authenticate or keep any document relating to the pecuniary interests of the Government, or to prevent the infraction of any law for the protection of the pecuniary interests of the Government;

Tenth. - xxxx xxxxx;

Eleventh. - xxxx xxxxx;

Twelfth. - Every person-

(a) in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty by the Government;

(b) in the service or pay of a local authority, a corporation established by or under a Central, Provincial or State Act or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956).”

18. From perusal of clauses 8 and 9 of Section 21 of the IPC, it would be evident that every officer who investigates or reports in any matter affecting pecuniary interest of the government is covered by the said clauses.

19. At this stage, it is of salience to note that the sanction required under Section 197 of the CrPC is materially different from



that under Section 19 of the PC Act, 1988 in several respects. Under Section 197 of the CrPC, sanction of the Central or of a State Government is necessary for the prosecution of a 'public servant', as defined under Section 21 of the IPC not removable from his officer save by or with the permission of the Government. No sanction is required under this section to prosecute a 'public servant' removable by an authority lower than the Government, whereas under Section 19 of the PC Act, 1988, sanction is required of the competent authority, whether the public servant, as defined under Section 2(c) of the PC Act, 1988, is removable by the Government or by an authority lower than the Government. Sanction is not required under Section 19 of the PC Act, 1988, if the public servant is no longer in service at the time the court takes cognizance of the offence, but is required under Section 197 of the CrPC even where the public servant is no longer in service at the time of the court taking cognizance of the offence. While under Section 197 of the CrPC, sanction is required for an offence committed while acting or purporting to act in the discharge of official duty, and not otherwise, under section 19 of the PC Act, 1988, sanction is required for an offence punishable under Sections 7, 10, 11 and 15 of the PC Act, 1988.

20. Keeping the aforesaid provisions of the CrPC and the

PC Act, 1988 in mind, when I look to the facts of the present case, I find that the main allegation of the complainant in the FIR is relating to the ad hoc promotions in the Department of EPFO. The act of giving promotion to an employee is certainly an act in the discharge of official duty and not otherwise.

21. The submission made by the complainant that the petitioner is not a 'public servant' either within the meaning of Section 21 of the IPC or Section 2(c) of the PC Act, 1988 so as to require sanction for her prosecution is apparently erroneous both on facts and in law. The EPFO is a statutory body of the Government of India under the Ministry of Labour and Employment. It administers a Compulsory Contributory Provident Fund Scheme, Pension Scheme and Insurance Scheme. The Constitution of India under directive principles of state policy provides that the State shall within the limits of its economic capacity make effective provision for securing the right to work, to educate and to public assistance in cases of unemployment, old age, sickness and disablement and undeserved want. The EPF and MP Act, 1952 was enacted by the Parliament of India and came into force with effect from 4th March, 1952 as part of series of a legislative interventions made in this direction. The EPFO has the dual role of being the enforcement agency to oversee the implementation of the EPF and MP Act, 1952 and as a service



provider for the covered beneficiaries through out the country. To this end, the Commissioners of the organization are vested with vast powers under the statute conferring quasi-judicial authority for search and seizure of records, assessment of financial liability on the employer, levy of damages, attachment and auction of a defaulter's property, prosecution and arrest and detention in civil prison. The duty assigned to the EPFO is certainly a 'public duty' as it serves the interest of community at large.

22. Under Section 20 of the EPF and MP Act, 1952, the Central Government is vested with the power to give direction for efficient administration of the said Act.

23. It would be relevant to note here that the report of the Committee of Prevention of Corruption, popularly known as 'Santhanam Committee' resulted in setting up the Central Vigilance Committee (for short 'CVC'). The establishment of the CVC was considered essential for evolving and applying common standards in deciding cases involving lack of probity and integrity in administration. The CVC, thus, came into being through Government of India Resolution, dated 11.02.1964 as an apex body for exercise and general superintendence and control over vigilance administration. Subsequently, as a result of the directions given by the Supreme Court in a Public Interest Litigation in **Vineet Narain**



& Ors. vs. Union of India [(1996) 2 SCC 199], the Government of India promulgated an ordinance in 1998, on 25.08.1998, vide the Central Vigilance Commission Ordinance, 1998, whereafter, the Commission was accorded statutory status. Subsequently, the CVC Bill was passed by both Houses of Parliament in 2003 and the President gave its assent on 11th September, 2003. Thus, the Central Vigilance Commission Act, 2003 (No. 45 of 2003) (for short 'CVC Act') came into effect from that date.

24. In terms of the provisions made in the CVC Act, the Commission would consist of a Central Vigilance Commissioner (Chairperson) and not more than two Vigilance Commissioners (Members).

25. The CVC Act provides for constitution of a Central Vigilance Commission to inquire or cause inquiries to be conducted into the offences alleged to have been committed under the PC Act, 1988 by certain categories of 'public servants' of the Central Government, corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by the Central Government or for matters connected therewith or incidental thereto. The functions and powers of the CVC, as defined in the CVC Act, are to exercise superintendence over the functioning of Delhi Special Police Establishment (for short



‘DSPE’) insofar as it relates to investigation of offences alleged to have been committed under the PC Act, 1988 or an offence with which a public servant belonging a particular category i.e., members of All India Services serving in connection with the affairs of the Central Government; or Group ‘A’ Officers of the Central Government; or officers of the corporations established by or under any Central Act, Government companies, societies and other local authorities, owned or controlled by the Central Act, as the Government may, by notification in the official Gazette, specify in this behalf.

26. It would be apparent from the record that the petitioner is an officer of Indian Postal Service and he has been appointed as CVO in the EPFO on deputation basis. The EPFO, being one of the 100 selected organizations of the CVC, was required to have full time CVO and upon the direction of the Central Government, i.e., the Ministry of Labour and Employment, the petitioner was appointed as the CVO of the EPFO in the Joint Secretary level as per the laid down procedure of the DoPT for selection and appointment of CVO’s. The letters, which are contained in Annexures 12 and 13, brought on record by the petitioner in the present application clearly go to show that the petitioner has been appointed by the Government of India, Ministry of Labour and Employment and not by the trustee



as alleged by the complainant. She can be removed from the post of CVO by none other than the Appointment Committee of the Cabinet which is the competent authority to do so in the case of Joint Secretary level officers of the Central Government. Hence, there is no iota of doubt in my mind that the petitioner is a 'public servant' in view of Section 2(c) (i) (viii) (xii) read with its explanations and Clauses 8th, 9th, 12th of Section 21 of the IPC. Apart from the aforesaid, the petitioner is discharging a 'public duty' in terms of Section 2(b) of the PC Act, 1988 read with its explanations.

27. Hence, the petitioner cumulatively satisfies all the pre-requisites of Section 19(1)(d) of the PC Act, 1988 and Section 197 of the CrPC.

28. In my considered opinion, the case of the petitioner is squarely covered by the decision of the Supreme Court in the case of **Anil Kumar & Others** (supra). In the aforesaid case, the issue framed by the Supreme Court was "whether the Special Judge/Magistrate is justified in referring a private complaint made under Section 200 CrPC for investigation by the Deputy Superintendent of Police, Karnataka, Lokayukta in exercise of powers conferred under Section 156(3) CrPC without the production of a valid sanction order under Section 19 of the Prevention of Corruption Act".



29. The Supreme Court taking note of judicial pronouncements rendered on the issue in cases of **Subramanian Swamy vs. Manmohan Singh & Another [(2012) 3 SCC 64]**; **State of Uttar Pradesh vs. Paras Nath Singh [(2009) 6 SCC 372]**; **State of W. B. & Another vs. Mohd. Khalid & Others [(1995) 1 SCC 684]**; **Additional Director General, Army Headquarters vs. C.B.I. [(2012) 6 SCC 228]**, while upholding the right of an individual to file complaints under the PC Act, 1988 has proceeded to clarify that in absence of previous sanction for prosecution of ‘public servant’ charged with acts of corruption, the Magistrate concerned can neither take cognizance and hold inquiry under Section 202 of the CrPC nor can order for investigation against the public servant under Section 156(3) of the CrPC. Thus, obtaining of sanction to prosecute a public servant charged for acts of corruption was held an essential for filing of the complaint by a private individual under the provisions of the PC Act, 1988.

30. Admittedly, in the present case, the complaint was not accompanied with the sanction order.

31. It is thus evident as a day of light that in absence of a valid sanction order, in view of the law laid down by the Supreme Court in **Anil Kumar & Others** (supra), the learned Chief Judicial Magistrate, Patna, could not have entertained the complaint and

referred the same to the police under Section 156(3) of the CrPC for investigation.

32. It has rightly been submitted by the learned Senior Counsel for the petitioner that the decision rendered in **Anil Kumar & Others** (supra) was referred to with approval by a three Judge Bench of the Supreme Court in **Ramdev Food Products Private Limited** (supra) at paragraph 20. It has also been rightly submitted by the learned Senior Counsel for the petitioner that decisions rendered in **Anil Kumar & Others** (supra) and **Ramdev Food Products Private Limited** (supra) have been referred to with approval in the case of **Priyanka Srivastava & Anothers** at paragraph 22. In **Priyanka Srivastava & Another** (supra) the Supreme Court has laid down that a complaint should not be entertained and is not maintainable unless the complaint carries with it clear pleadings that the complainant had approached the police to institute an FIR and the said assertion is supported by the materials and proofs of the same.

33. In the instant case, the complaint is totally bereft of any pleading to the said effect much less any material to demonstrate that the complainant had even approached the police prior to institution of the complaint before the court of the Chief Judicial Magistrate.

34. That apart, the complainant has abused the process of



law by filing a private complaint before the Chief Judicial Magistrate, Patna and the Chief Judicial Magistrate, Patna has mechanically and in a routine manner, without even looking into the complaint, has passed the order dated 05.01.2015, without even realizing that the complaint which alleged commission of an offence, inter alia, under Section 13(1)(d) of the PC Act, 1988, was not maintainable in his court in view of the provisions of Sections 3, 4 & 5 of the PC Act, 1988. It is Special Judge appointed under Section 3 of the PC Act, 1988, who alone has jurisdiction to try the offences punishable under the PC Act, 1988. The jurisdiction and competence of the Judicial Magistrate with regard to the cases containing the allegation specified in Section 3 of the PC Act, 1988, is expressly ousted under Section 4 of the PC Act, 1988. In any view of the matter, the Chief Judicial Magistrate had no competence or jurisdiction to have entertained the aforesaid complaint much less exercised the power conferred under Section 156(3) of the CrPC.

35. In so far as reliance of the complainant on the decisions of the Supreme Court noted above is concerned, I must record that the ratio laid down in those cases have no relevance to the facts of the present case.

36. For the reasons aforementioned, the impugned order dated 05.01.2015 passed by the learned Chief Judicial Magistrate,

Patna in Complaint Case No. 30105(c) of 2014 is, hereby, set aside, resulting into quashing of the FIR of Kankarbagh P.S. Case No. 22 of 2015 dated 11.01.2015 and all consequential proceedings arising therefrom.

37. In view of the aforesaid, the Interlocutory Application No. 748 of 2015 preferred by the complainant is, hereby, dismissed.

38. The writ application stands allowed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	14-07-2016
Transmission Date	14-07-2016