

## IN THE HIGH COURT OF JUDICATURE AT PATNA

### Criminal Writ Jurisdiction Case No.399 of 2015

Arising Out of PS.Case No. -null Year- null Thana -null District- PATNA

- =====
1. Mantu Sharma @ Praduman Sharma, Son of Rai Kishore Sharma, R/o Village- Bahlapur, P.S.- Parsa. District- Patna.
  2. Shambhu Singh @ Shambhu Sharma, Son of Babri Singh @ Ram Kumar Singh, R/o Village- Dhanaur, P.S.- Katra, District- Muzaffarpur.

.... .... Petitioners

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Chief Secretary, Government of Bihar, Patna.
3. The Secretary, Home Department, Government of Bihar, Patna.
4. The I.G., Economic Offence Unit, Bihar, Patna.
5. The Principal Secretary, Home Department, Government of Bihar, Patna.
6. The Deputy Superintendent of Police-cum-S.H.O., Economic Offence, P.S.- Bihar, Patna, Patna.

.... .... Respondents

=====

#### Appearance :

For the Petitioner/s : Mr. Dinu Kumar, Advocate  
Mr. Arvind Kumar Sharma, Advocate  
Mrs. Ritika Rani, Advocate  
For the Respondent/s : Mr. Sita Ram Yadav, GP-16  
For the Economic Offence: Mr. Bishwanath Prasad Singh, Sr. Advocate

=====

**CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR**

CAV JUDGMENT

**Date: 30-05-2017**

The petitioners are accused in Economic Offence Police Station Case No.4 of 2012. They have invoked the writ jurisdiction of this Court, under Articles 226 and 227 of the Constitution of India, to quash the F.I.R. of aforesaid case registered under Sections 387/420/120B of the Indian Penal Code vide Annexure-4.

2. It appears that after investigation the police has already submitted charge sheet in Economic Offence P.S. Case No.4 of 2012 against the petitioners. Hence, second prayer is for quashing



of the cognizance order, dated 25.07.2014, passed by the learned Sub-Divisional Judicial Magistrate, Patna, vide Annexure-5. Further prayer is for quashing the notification dated 25.03.2013 issued by respondent No.3, Special Secretary, Home (Police Department), Government of Bihar, whereby Economic and Cyber Crime Unit has been changed into Economic Offence Police Station with retrospective date from 15.12.2011 vide Annexure-2.

3. The challenge is on the ground that the government cannot declare Economic Offence P.S. with retrospective date from 15.12.2011 vide Gazette Notification dated 26.03.2013 at Annexure-2. In the circumstances, institution of the F.I.R. and investigation of the case by Economic Offence Police Unit is without jurisdiction and vitiated in law. Reliance has been placed on the case of **Smt. Ram Deni Devi v. State of Bihar** reported in **2011(1) PLJR 1097**.

4. Further challenge is on the ground that the F.I.R. discloses no offence, which is fit to be investigated by Economic Offence Police. Reliance has been placed on Annexure-1 for what type of offences may be investigated by the Economic Offence Police.

5. The respondents have filed a detailed counter affidavit resisting the prayer of the petitioners inter alia on the ground that for mere technicalities the executive act cannot be faulted. The issue



regarding creation of Economic Offence Unit especially with retrospective effect was under consideration before a larger Bench of this Court in Cr.W.J.C. No.563 of 2013, Md. Yunus V. The State of Bihar and others along with other connected criminal writ applications and the majority view of the Hon'ble Bench is that there is no infirmity or lack of competency in creation of the Economic Offence Unit. Respondents further asserted that the quashing of the F.I.R. should only be resorted to when the F.I.R. discloses no offence or the same suffers from malicious prosecution. In the present case the F.I.R. discloses the criminal acts alleged against the petitioners and after investigation charge sheet had already been submitted and, accordingly, cognizance taken against the petitioners.

6. In Cr. W.J.C. No.563 of 2013, the majority view came after opinion of the third Hon'ble Judge expressed in his judgment dated 08.03.2017 wherein at para-3 the Court stated the question involved for consideration as follows;

*“The primal question involved in these group of writ petitions is, whether the exercise carried on by the State Government in establishing “Economic Offence Police Station” is an exercise in futility or not, because based thereon what would be the effect on the F.I.R. so registered, police investigation, charge-sheet, trial and conviction?”*



7. After considering the different provisions of the Cr.P.C., the Police Act and the different notifications, (which are under challenge in this writ application also), the Hon'ble Bench concluded in paragraphs-28 and 29 as follows;

*“28. The only issue left is, whether this exercise done by the State would amount to valid declaration within the meaning of Section 2 (s) of the Cr.P.C. I see no reason to hold otherwise. Section 2 (s) of the Cr.P.C. clearly confers jurisdiction upon the State to make a declaration either generally or specifically in relation to creation of a Police Station. It is purely an administrative act and the consequences which follow are stipulated in the Cr.P.C. itself. The order of the State Government dated 01.12.2011 read with that of 15.12.2011 is a clear declaration in terms of Section 2 (s) of the Cr.P.C. It is not denied that these decisions were taken by the Secretary, Department of Home (Police), Government of Bihar, who under the Rules of the Executive Business of the State of Bihar, was competent to take. Both these decisions were put on the website of the State Government and accessible to public at large. As already held that there is no requirement in law that such a Police Station can only be created by a gazette notification. That being so, the requirements of Section 2 (s) of the Cr.P.C. having been complied, it is futile*



*on the part of the writ petitioners to urge that Economic Offence Police Station was not legally established with effect from 15.12.2011, when the decision was communicated to other persons, departments and on the website, and once the order was sent out, it became a final order/decision of the government. No doubt, it would have been better if they were notified in the official gazette, but as already indicated that, not being requirement of law and the requirement of law being mere declaration and that having been complied with, the establishment of Economic Offence Police Station cannot be questioned.*

*29. Needless to say that it is not a rank illegality, for, in my view, it is not even an irregularity, for the compliance of law being there, no objections could be taken by the writ petitioners. Moreover, it is well settled even otherwise that an irregularity in investigation would not vitiate the trials unless serious prejudice is shown by the writ petitioners. The writ petitioners do not have the liberty of choice of investigating agency, which is the prerogative of the State, in its sovereign function to control and investigate criminal offences and ensure prosecution of the offenders.”*

8. Considering the aforesaid binding precedent, this

Court is of the view that there is no infirmity in creation of Economic



Offence Unit by the State-respondents with retrospective effect. In view of the finding in para-29 of the judgment (supra) there is no merit in the ground of in-competency of the investigation of the case by Economic Offence Police. The Court has harmoniously reconciled the notifications vide Annexures 1, 2 and 3 of this application in the judgment aforesaid. Therefore, this writ application has got no merit so far prayer for quashing of the aforesaid notification vide Annexure-1 and Annexure-2 is concerned.

9. Now the second point for consideration is whether the First Information Report of Economic Offence Police Station Case No.4 of 2012 discloses any offence against the petitioners. In paragraphs-8 and 9 of the writ application, the petitioner has reproduced the contents of the F.I.R. and its institution as follows:

*“8. That on 11.07.2012 Anand Kumar Sub-Inspector S.T.F. Bihar, Patna wrote to the Station House Officer, Economic Offence Unit Police Station Bihar Patna mentioning therein that he got secret information on 11.07.2012 at 12:30 PM about the tender of 10 crores for building construction is going to be finalized on 11.07.2012 itself same is going to be influenced by notorious Shambhu-Mantoo Group. It also came to know that Shambhu-Mantoo Group earns 5% of total contract amount in getting allotment of contract in favour of own contractor with the connivance of CPWD*



*Officials and employees. The informant also got information that Shambhu-Mantoo Group have also threatened to kill to the contractors so that the contractor may not participate in order to hurdle to the contractor in whose favour. Shambhu-Mantoo Group intended to allotment of tender. Shambhu-Mantoo Group has also created tense situation in order to see the tender be allotted in wrong person. For that work employee and official of CPWD directly or indirectly helps to the Shambhu-Mantoo Group resulting offence attracting to the economic offence indirectly which requires to enquire into the matter after going in deep so that the government money and government scheme be protected.*

*9. That on the basis of the aforesaid written complaint police registered Economic Offence P.S. Case No.04/12 dated 11.07.2012 for the offences under Sections 387, 420, 120B Indian Penal Code against the petitioners and official and employee of CPWD. After investigation police has submitted charge sheet against the petitioners also for the offences under Sections 387, 420,120B and aforesaid case is pending in the Court of S.D.J.M., Patna Economic Offence Case No.04/12.”*

10. A bare perusal of Annexure-4, i.e., the F.I.R. of Economic Offence P.S. Case No.4 of 2012, would reveal that



informant Anand Kumar, Sub-Inspector of Police, got confidential information on 11.07.2012 that on the same day a tender of rupees ten crores is going to be finally decided for construction of the building by building construction department. The veteran criminal group of Shambhu-Mantoo (petitioners) were likely to influence the tender. It has also been alleged that the group of the petitioners in collusion with the officers and employees of the Central Public Works Department get tender accepted in favour of their favourable contractors and the petitioners get 5% of the same as extortion money. The informant further disclosed that there is definite information that other contractors participating in the tender are likely to be murdered by the group of the petitioners. Hence, others are terrorized. In the circumstances, there is likelihood of the public money going into the wrong hands and in the way a big economic offence is likely to be committed.

11. A bare perusal of the aforesaid complaints as well as the averment of the petitioners aforesaid, apparently discloses commission of the cognizable offence against the petitioners affecting the economy of the State. Hence, it cannot be argued that the Economic Offence Unit of the police cannot institute and investigate the case.

12. Moreover, as reproduced in para-29 of the referred



judgment above, the investigation already conducted by some police authority cannot be faulted on the ground that he had no authority to investigate as the State has prerogative to choose the Investigating Agency and not the alleged offenders. The ratio decided in **Ram Deni Devi** case (supra) is not helping the claim of the petitioners that the impugned notifications cannot have retrospective operation. In para-16 of **Ram Deni Devi** case (supra) a Division Bench of this Court observed as follows:

*“16. There is no gainsaying that the Parliament or a State Legislature has power to enact laws and also to specify the date from which such law shall become applicable. The operation of such law may be made retrospective by an express provision or by necessary implication. But how far such law can be made retrospective in operation has to be decided in the context of the matter.”*

11. Hence, there is no merit in this application and, accordingly, it stands dismissed.

**(Birendra Kumar, J)**

Mkr./-

|                   |            |
|-------------------|------------|
| AFR/NAFR          | NAFR       |
| CAV DATE          | 24.04.2017 |
| Uploading Date    | 30.05.2017 |
| Transmission Date | 30.05.2017 |

