

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.380 of 2015

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

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Maharshi Ram Son of Sri Ram Naresh Ram Resident of Village - Sareya - Rampur,
P.S. Darauli, District - Siwan at present posted as Additional Collector Nawada

.... Petitioner

Versus

1. The State of Bihar through Department of Vigilance
2. Ajay Kumar Suman Son of Sri Kameshwar Kunwar Resident of village -
Tehwara, P.S. Katra, District - Muzaffarpur

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Akhilesh Dutta Verma, Advocate
For the State : Mr. Kedar Singh, AC to Law Officer
For Vigilance : Mr. Ramakant Sharma, Sr. Advocate
For the informant : Mr. Pramod Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 31-01-2017

Heard learned counsel for the petitioner and learned
counsel for the State.

2. By way of the present application preferred under
Articles 226 and 227 of the Constitution of India, the petitioner
seeks a direction to be issued to the respondent no.1 to drop the
enquiry which was initiated pursuant to the order dated 06.07.2005
passed under Section 202 of the Code of Criminal Procedure (for
short 'CrPC') by the learned Special Judge Vigilance (P.C.Act),
North Bihar, Muzaffarpur in Complaint Case No. 17 of 2005



whereby the complaint filed by the private respondent was ordered for investigation for the offences under different Sections of Prevention of Corruption Act, 1988 (for short 'PC Act, 1988').

3. One Ajay Kumar Suman had filed Complaint Case No. 17 of 2005 in the court of Special Judge Vigilance, North Bihar, Muzaffarpur on 04.04.2005 against the petitioner alleging therein that due to serious apprehension of breach of peace relating to a piece of plot between the complainant and one Basant Kumar Singh, the petitioner, who was Sub-Divisional Magistrate, East, Muzaffarpur, issued notice to both the parties under Section 144 of the CrPC vide order dated 12.02.2005 and fixed the next date on 02.03.2005 for filing show cause, but after taking bribe from said Basant Kumar Singh, the petitioner obtained an application from him and after proponing the date he dropped the proceeding on 16.02.2005 without hearing the complainant.

4. According to the complainant, the aforesaid act of the petitioner was an act of criminal misconduct by a public servant. Upon receiving the complaint from the private respondent on 04.04.2005, the learned Special Judge Vigilance, North Bihar, Muzaffarpur heard the complainant on various dates and on 06.07.2005 directed the Superintendent of Police (Headquarter), Vigilance Investigation Bureau, Patna to investigate the case and



submit a report before the court. Thereafter, police investigation remained pending for several years and for the first time on 04.02.2015, one Ranjan Kumar Singh, Police Inspector-cum-Enquiry Officer, Vigilance Investigation Bureau, called for an explanation from the petitioner regarding the allegations made in the complaint vide letter no. 133/2015.

5. It has been contended by the learned counsel for the petitioner that the order dated 06.07.2005, as contained in Annexure-3 to the present application whereby the complaint has been referred to the Vigilance Investigation Bureau for investigation as also the show cause notice issued to the petitioner vide impugned letter no.133/2015 dated 04.02.2015, as contained in Annexure-4 to the present application whereby explanation has been sought for from the petitioner are vitiated in law as the learned Special Judge in absence of any proper and valid sanction order under Section 19 of the PC Act, 1988 could not have entertained the complaint or referred the same to the police for investigation in exercise of power conferred under Section 202(1) of the CrPC.

6. In support of above contentions, learned counsel for the petitioner placed reliance on the judgment of the Hon'ble Supreme Court in the matter of *Anil Kumar & Ors. Vs. M.K. Aiyappa*, reported in (2013) 10 SCC 705 and the decisions of this



Court in *Sakaldeo Paswan Vs. The State of Bihar through Director General, Vigilance & Anr.* reported in 2015 (3) PLJR 790 and *Alka Jha Vs. The State of Bihar through the Vigilance* reported in 2016 (4) PLJR 207.

7. On the other hand, learned Senior Counsel for the Vigilance submitted that the present application is pre-mature, as only an enquiry is going on against the petitioner on the explanation sought from him relating to certain allegations made by the complainant by way of filing the complaint, which have been referred to the Vigilance Investigation Bureau for investigation. He submitted that since the investigation is being made by the Vigilance Investigation Bureau pursuant to the direction of the Court, no illegality can be found with the show cause notice issued to the petitioner by an officer of the Vigilance Investigation Bureau.

8. I have heard respective counsel for the parties and perused the record.

9. I find substance in the argument made by the learned counsel for the petitioner. The case is squarely covered by the decision of the Supreme Court in *Anil Kumar & Ors. Vs. M.K. Aiyappa* (supra) relying upon which this Court has passed orders in the matters of *Sakaldeo Paswan* (supra) and *Alka Jha* (supra).

10. In *Anil Kumar & Ors. Vs. M.K. Aiyappa* (supra), the



issue framed by the Supreme Court was “whether the Special Judge/Magistrate is justified in referring a private complaint made under Section 200 of the CrPC for investigation by the Deputy Superintendent of Police, Karnataka, Lokayukta in exercise of powers conferred under Section 156(3) of the CrPC without the production of a valid sanction order under Section 19 of the PC Act, 1988”.

11. 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 complaint 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 he 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.

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

13. In that view of the matter, Complaint Case No. 17 of 2005 and the entire proceedings arise therefrom, including order dated 06.07.2005 passed by the Special Judge Vigilance (P.C.Act), North Bihar, Muzaffarpur are quashed. Consequently, Vigilance Investigation Bureau, Bihar, Patna is directed to drop the proceeding against the petitioner initiated pursuant to the order dated 06.07.2005 passed in Complaint Case No. 17 of 2005.

14. The writ application stands allowed.

(Ashwani Kumar Singh, J.)

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AFR/NAFR	NAFR
CAV DATE	...
Uploading Date	04.02.2017
Transmission Date	

