

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.33520 of 2013

Arising Out of PS.Case No. -24 Year- 2012 Thana -ECONOMIC OFFENCES, BIHAR District-
PATNA

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Madhwendra Kumar Singh, son of Late Baidya Nath Singh, permanent resident of
Village- Narendrapur, P.S.- Ziradei, District- Siwan, at present residing at Village-
Sonepur, Nakhas, P.S.- Sonepur, District- Saran.

.... Petitioner

Versus

The State of Bihar

.... Opposite Party

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Appearance :

For the Petitioner/s : Mr. Janardan Pd. Singh, Sr.Advocate with
M/S Niraj Kumar, Shailendra Kumar
Singh, Advocates

For the Opposite Party No.2: Mr. V.N.P. Singh, Sr.Advocate with
Mr. Vijay Anand, Advocate

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 30-01-2017

This application has been preferred by the petitioner under Section 482 of the Code of Criminal Procedure for quashing the order dated 14.5.2013 passed by learned Chief Judicial Magistrate, Patna by which he has been pleased to take cognizance against the petitioner under Sections 420, 467, 468 and 120B of the Indian Penal Code in connection with Economic Offence P.S.Case No.24 of 2012 dated 20.10.2012.

The prosecution case, in short, is that on 20.10.2012 the Assistant Director, Tourism Directorate, Patna lodged a written report with Economic Offence Unit Police Station alleging, inter alia, therein that the State of Bihar, Department of Revenue and Land Reforms by its Notification dated 14.9.2012 informed that the State decided to transfer the management of Sonepur Mela to the Tourism Department



for a period of five years and for that the Tourism Department decided to appoint Event Management Agency for its empanelment and thereafter five Firms showed their interest and out of which three firms, namely, Madho Singh & Sons, Sonapur, Adland Publicity Pvt. Ltd., Kolkata and Impact Communications, New Delhi filed their tenders and each of the Firms deposited Rs. 5 lacs by way of Demand Draft as per terms of R.E.P. and as per Clause 14(b) of the R.F.P. for evaluation of presentation a 6 Member High Level Committee was constituted and it was decided that who have obtained 60 marks their financial bid will be opened and thereafter technical bid was opened on 17.10.2012 with respect to two firms out of three, namely, Madho Singh & Sons, Sonapur and Impact Communications, New Delhi and the Committee recommended the tender in favour of Impact Communication, New Delhi as Event Manager for the Sonapur Mela, 2012. The further case is that on 19.10.2012 Madho Singh & Sons had filed a complaint before the Minister against the Director, Tourism alleging, inter alia, that the tender of the petitioner being highest bidder was ignored and favour another bidder as he failed to take note of 2 points in financial bid; firstly 2% extra on quoted price and secondly in addition all taxes would be paid by the Firm and after examination of the complaint of the petitioner by 5-Member Departmental Committee came to a conclusion that after opening of Financial Bid the two quotations were interpolated by the petitioner-Firm in connivance with the employees of the office after the



recommendation of the 6-Member Committee.

Thereafter the Economic Offence Unit after investigation submitted charge-sheet has been submitted and after submission of charge-sheet learned Chief Judicial Magistrate has taken cognizance under Sections 420, 467, 468 and 120B of the Indian Penal Code.

Now the petitioner has challenged the aforesaid order taking cognizance.

The first submission of learned counsel for the petitioner is that the whole prosecution is mala fide and mischievous prosecution as the petitioner has made a complaint against the Director, Tourism Department.

Second submission advanced on behalf of learned counsel for the petitioner is that on the date of FIR there was no Economic Offence Unit Police Station and as such the whole institution of case as well as investigation is bad in law. However, later on Government by Gazette has created Economic Offence Unit Police Station and to make the previous action legal, made it retrospective, whereas it is well settled principle that no Notification can be effected retrospectively unless there is anything provided in the statute itself but instead of no such provision, retrospective effect has been given to the notification.

Third submission on behalf of the petitioner is that even from perusal of the materials collected during investigation it appears that no case is made out against the petitioner as admittedly the



document was not in the custody of the petitioner and hence if there is any allegation of interpolation that has not been done by the petitioner and even from the materials collected during course of investigation there is nothing available in the case diary that such file has come in the custody of the petitioner or there is nothing to show that the petitioner got the file brought from the other accused persons and as even after investigation the charge-sheet has not been submitted against any other accused persons to show that the petitioner in collusion with others had made interpolation. It has further been submitted that even if the whole allegation is accepted for the sake of brevity, on the face value, only suspicion has been raised against the petitioner that he made the interpolation and there is well established principle that when there is strong suspicion, the suspicion however so strong, cannot be taken as legal evidence.

Learned counsel for the petitioner has cited decisions in the case of **M/s. McDowell & Company Ltd. vs. The State of Bihar & Ors. : 2000(3) PLJR 475** and in the case of **Nani Sha & Ors. vs. State of Arunachal Pradesh & Ors. : AIR 2007 SC 2356** in support of his contention that no Notification can be effected retrospectively and further he has cited a decision in the case of **Sujit Biswas vs. State of Assam : 2013(4) Supreme 509** in support of his contention that suspicion, if strong, cannot take place as legal evidence.

On the basis of the aforesaid, learned counsel has submitted that there is absolutely no material before the Chief Judicial



Magistrate to take cognizance against the petitioner and, as such, the order taking cognizance is bad in law and clearly an abuse of the process of the court.

Heard learned Sr.counsel for the Economic Offences.

Learned Sr. counsel appearing for the Economic Offence Unit has submitted that so far first submission of learned counsel for the petitioner that the Notification cannot be effected retrospectively is concerned, at present the said Notification is in force and the same has neither been challenged in this case nor could be challenged in the proceeding under Section 482 Cr.P.C. and unless jurisdiction is there whether such constitution is legal or illegal, it cannot be looked into at this stage by this Court. As such, the whole proceeding cannot be vitiated on the basis of the fact that there was no Economic Offence Unit Police Station at that time.

So far as another contention of the petitioner that there is nothing available on the record against the petitioner regarding interpolation is concerned, learned Sr.Counsel for the Economic Offences has drawn my attention towards paragraph 77 of the case diary to the effect that the tender document submitted by the petitioner had been sent to the Forensic Science Laboratory, Patna and the report of the Forensic Science Laboratory was received, which clearly shows that disputed writings marked 'X' and the writings marked 'A' do not appear to be written in the same sequence. Further the witnesses, who are members of the said Committee, during course of investigation,



have also stated that the aforesaid interpolation was not there at the time when tender was invited and decided.

Further it has been submitted that the petitioner is only beneficiary to such interpolation in the tender document and, as such, it can be said that the petitioner along with others conspired and made interpolation in the record.

On the basis of the above, learned Sr.Counsel for the Economic Offences has submitted that there is no merit in this application and it is fit to be dismissed.

Heard learned counsel for both sides. From perusal of the record, it appears that allegation against the petitioner is that he made some interpolation/manipulation in the tender document and in the encircled portion of the tender paper he had added 2% extra on quoted price and in order to justify his claim for acceptance of his tender and for enquiry a Committee was constituted and after the Committee has found that at the time of filing of tender, there was no manipulation but later on manipulation was done in the document by the petitioner in collusion with some staff of the Corporation and as such the complaint was sent for lodging FIR against the petitioner. From perusal of the case diary it appears that after institution of FIR, during course of investigation, the document was sent to the Forensic Science Laboratory for examination of the addition made in the document and the Forensic Science Laboratory has also found that the disputed writings do not appear to be written in the same sequence and, as



such, at present, prima facie, it appears that there is manipulation in the document.

Now the next question arises that as the petitioner is not custodian of the document, why the petitioner has been implicated in this case. However it appears that the petitioner is the beneficiary to that document and he has raised all the grievances making complaint about that and it cannot be ruled out that he in collusion with other accused persons of the Corporation has made the aforesaid interpolation, and, as such, it cannot be said that as document is not in his custody, he cannot be made accused in this case, rather there is prima facie case against the petitioner. No doubt, even after submission of charge-sheet the police could not point any other persons of the Corporation but that does not make the prosecution case false against the petitioner.

So far as contention of the petitioner that constitution of the Economic Offence Police Station was illegal and, as such, the whole proceeding is bad in law is concerned, at present there is nothing on the record to show that such constitution is illegal and, in my view, the legality of the constitution could not be challenged under Section 482 Cr.P.C. and until jurisdiction is there whether constitution is legal or illegal, the same cannot be looked into at this stage and the citations made by learned counsel for the petitioner in support of his contention are not applicable to the facts and circumstances of the present case.



So far as contention of the petitioner that there is only suspicion against the petitioner suspicion whatsoever strong is there, it cannot take place of legal evidence, is concerned, it is not so that there is only suspicion against the petitioner, rather there is manipulation in the tender document filed by the petitioner and it is the petitioner who is beneficiary due to aforesaid manipulation and, as such, prima facie there is material against the petitioner.

So far as the decisions cited by learned counsel for the petitioner is concerned, they are not applicable in the facts and circumstances of this case, as at present the petitioner has challenged the order taking cognizance in this application, where it is only to be looked into as to whether there is prima facie case against the petitioner, so far other points are concerned, they are his defence and the same may be raised at the time of trial.

In the light of the discussions made above, I find no merit in this application. Hence, this application is dismissed.

(Vinod Kumar Sinha, J)

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CAV DATE	
Uploading Date	10.02.2017
Transmission Date	10.02.2017

