

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.50192 of 2013

Arising Out of PS.Case No. -33 Year- 2012 Thana -MUZFFARPUR COMPLAINT CASE District-
MUZAFFARPUR

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1. Anil Kumar Singh, Son Of Shri Rajendra Singh, Resident Of Mohalla -
Rasulpur Jilani, Rajhauilya, P.S.- Kazimohammadpr, District - Muzaffarpur
.... Petitioner

Versus

1. The State Of Bihar
2. The Vigilance Department through Commissioner, Vigilance Department,
Bihar, Patna
.... Opposite Parties

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Appearance :

For the Petitioner : Mr. Anish Kumar, Adv.

For the Opposite Parties : Mr. Rajendra Singh Shastri, APP

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date: 25-01-2017

Heard the learned counsel for the petitioner and the State.

2. Petitioner, Anil Kumar Singh, who is an Advocate, filed a Complaint Case No. 33 of 2012 for offences under Sections 7, 8, 9 and 13 of the Prevention of Corruption Act, 1988, before the learned Special Judge, Vigilance, North Bihar, Muzaffarpur, against Kanhaiya Prasad Singh, Certificate Officer, Muzaffarpur, alleging therein that Kanhaiya Prasad Singh demanded bribe of Rs.5,000/- to recall the warrant issued in Certificate Case No. 358 of 2008-2009. The bribe was demanded through Clerk, Ashok.

3. The learned Special Judge called for a preliminary enquiry report on the complaint petition from the District Magistrate, Muzaffarpur. The District Magistrate, Muzaffarpur, authorized the enquiry to Madan Prasad, Director, NEP, Muzaffarpur. The Director submitted his report, dated 12.04.2013, vide Annexure 2, stating that the allegation of demand of bribe was not found true. Thereafter, the petitioner raised grievance before the learned Special Judge, Vigilance, North Bihar, Muzaffarpur, through protest petition, dated 29.05.2013,



that since the employees involved in bribery are officer and staff of the District Magistrate's office the report of the District Magistrate is biased one, hence, prayer was to reject the enquiry report and send the case for further enquiry by Superintendent of Police, Vigilance Department. The Court below by the impugned order, dated 31.05.2013, again, referred the matter to the District Magistrate, Muzaffarpur, for enquiry. The aforesaid finding has been challenged on the ground that the re-enquiry should not have been sent to the District Magistrate for the reason that allegation of the petitioner was that District Magistrate was biased in favour of the named accused person.

4. The factual position, aforesaid, clearly discloses that the learned Special Judge, Vigilance, has proceeded for enquiry, under Section 202 of the Criminal Procedure Code, on a complaint filed for offences under the Prevention of Corruption Act, 1988. Hence, by necessary implication, the learned Special Judge has already taken cognizance against the accused named in the complaint petition without prior sanction for prosecution. Now the point for consideration is, should this Court allow the criminal prosecution, which is certainly an abuse of the process of the Court in view of the judgment of the Hon'ble Apex Court in **Anil Kumar & Ors. Vrs. M.K. Aiyappa & Ors., reported in (2013) 10 SCC, 705.**

5. In **Anil Kumar & Ors. Vrs. M.K. Aiyappa & Ors.**, the Hon'ble Apex Court held that when a Special Judge takes cognizance of the offence on the complaint presented under Section 200 of the Criminal Procedure Code, the next step to be taken is to follow-up under Section 202 of the Criminal Procedure Code.

6. In the present case, the Special Judge has taken cognizance as soon as it decided to proceed on the basis of the complaint and has entered into the enquiry. The enquiry has been defined under Section 2(g) of the Criminal Procedure Code as follows :



“Enquiry means every enquiry, other than a trial conducted under this Code by a Magistrate or Court.”

6. In the present case, the learned Special Judge has entered into enquiry and for collection of evidence he entrusted a preliminary report from the District Magistrate, concerned. Therefore, the learned Magistrate is apparently proceeding on the basis of complaint filed for offences under the Prevention of Corruption Act, 1988, without previous sanction as required under Section 19 of the Act. Without prior sanction the learned Special Judge could not have proceeded nor should be allowed to proceed in view of the judgment in **Anil Kumar & Ors. Vrs. M.K. Aiyappa & Ors.**, aforesaid. The relevant portion of the judgment is being reproduced below :

“16 : A Special Judge is deemed to be a Magistrate under Section 5(4) of the PC Act and, therefore, clothed with all the Magisterial powers provided under the Code of Criminal Procedure. When a private complaint is filed before the Magistrate, he has two options: he may take cognizance of the offence under Section 190 CrPC or proceed further in enquiry or trial. A Magistrate, who is otherwise competent to take cognizance, without taking cognizance under Section 190, may direct an investigation under Section 156(3) CrPC.”

“21 : The learned Senior Counsel appearing for the appellants raised the contention that the requirement of sanction is only procedural in nature and, hence, directory or else Section 19(3) would be rendered otiose. We find it difficult to accept that contention. Sub-section (3) of Section 19 has an object to achieve, which applies in circumstances where a Special Judge has already rendered a finding, sentences or order. In such an event, it shall not be reversed or altered by a court in appeal, confirmation or revision on the ground of absence of sanction. That does not mean that the requirement to obtain sanction is not a mandatory requirement. Once it is noticed that there was no previous sanction, the Magistrate cannot order



investigation against a public position invoking powers under Section 156(3) Criminal Procedure Code.”

7. Considering the factual position of this case and the aforesaid judgment, this Court is of the view that the learned Special Judge is proceeding without enquiry on the basis of complaint petition which is post cognizance stage as such prior sanction for prosecution is necessary. Hence, cognizance without sanction to prosecute is bad in law, as such, an abuse of the process of the Court

8. Accordingly, entire criminal proceeding before the Court below in Complaint Case No. 33 of 2012 is hereby quashed. No relief can be granted to the petitioner, as prayed for as the proceeding before the Court below is itself found to be abuse of the process of the Court.

(Birendra Kumar, J)

SA/-

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