

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.49409 of 2015

Arising Out of PS.Case No. -59 Year- 2012 Thana -C.B.I CASE District- PATNA

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Dr. Binod Singh Son of Late Jagdish Singh Resident of Mohalla - Ashok
Nagar, Road No. 11 Flat No. 304, Raja Ram Apartment, P.S. Kankarbagh,
District - Patna

.... Petitioner/s

Versus

The State of Bihar through the Vigilance Investigation Bureau, Patna

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. B.P. Pandey, Sr. Advocate
Mr. Radha Mohan Singh

For the Opposite Party/s : Mr. Ramakant Sharma(L.O,I/C Vigi)

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**CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR
SINGH**
ORAL ORDER

2 02-05-2017

Heard learned counsel for the parties.

The present application has been filed for quashing the order dated 17.9.2014 passed by the learned Special Judge I, Patna in Special Case No. 24 of 2012 arising out of Vigilance PS Case No. 59 of 2012 whereby process has been directed to be issued after cognizance being taken for the offences under sections 467,468 and 120B of the Indian Penal Code and section 13(2) read with section 13(1)(d) of the Prevention of Corruption Act.

The prosecution case is that the petitioner being Registrar Incharge of Bihar State Homoeopathic Board, Kadamkuan, Patna allowed Yamuna Ram who, before being suspended was working as Registration Clerk, to work as



Correspondence Clerk in the Board. It is further alleged that employees of the Board demanded Rs.2500 and Rs.2300 respectively for registration of Homeopathic doctors, leading to registration of Vigilance PS Case No. 59 of 2012 under sections 467,468 and 120B of the Indian Penal Code and section 13(2) read with section 13(1)(d) of the Prevention of Corruption Act.

On conclusion of investigation, the police submitted final report(chargesheet) under sections 467,468 and 120B of the Indian Penal Code and section 13(2) read with section 13(1)(d) of the Prevention of Corruption Act. Consequently, the learned Special Judge I, Patna vide order dated 17.9.2014 after perusing the police report and sanction order, found a prima facie case being made out and hence directed for issuance of process after cognizance being taken under sections 467,468 and 120B of the Indian Penal Code and section 13(2) read with section 13(1)(d) of the Prevention of Corruption Act.

Learned Senior counsel for the petitioner confines his argument to the effect that neither there is any accusation in the FIR nor there is any material collected during investigation that the petitioner ever demanded money (illegal gratification) for registration of the doctors with Homoeopathic Board which is a sine qua non for constituting offence under section 13(2) read with



section 13(1)(d) of the Prevention of Corruption Act. Reliance has been placed to the case of Krishan Chander Vs. State of Delhi AIR 2016 Supreme Court 298 and the case of N. Sunkanna Vs. State of Andhra Pradesh 2015(8) Supreme 1.

A supplementary affidavit dated 2.5.2017 has been filed stating therein that the matter has not travelled beyond the cognizance level.

Learned counsel for the Vigilance submits that the accusation is specific against the petitioner in the FIR and during investigation enough materials being collected leading to submission of charge sheet against the petitioner and consequently the process has been directed to be issued by the learned Special Judge.

Considering the rival submission of the parties, in view of this court, at the stage exercising jurisdiction under Section 190(1)(b) Cr.P.C., the Magistrate has only to see the prima facie case. The only added advantage at this stage to the Magistrate is that he has occasion to go through the police report submitted under section 173 (2) Cr.P.C. which contains the materials collected during investigation. This is not the stage when the Magistrate is supposed to consider the defence version as has been held in the case of State of Orissa Vs. Devendra Nath Padhi



(2005) 1 Supreme Court Cases 568. Paragraph 23 reads as follows:

“23. As a result of aforesaid discussion, in our view, clearly the law is that at the time of framing charge or taking cognizance the accused has no right to produce any material. Satish Mehra's case holding that the trial court has powers to consider even materials which accused may produce at the stage of Section 227 of the Code has not been correctly decided.”

Hence, at this stage, this Court is not inclined to interfere. The present quashing application is disposed of with liberty to the petitioner to raise all the contentions at the appropriate stage of proceeding. It is expected from the learned court below to consider all the contentions of the petitioner in its true perspective without being prejudiced by this order.

(Dinesh Kumar Singh, J)

Anil/-

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