IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.32977 of 2014
Arising Out of PS.Case No. -35 Year- 2011 Thana -C.B.I CASE District- PATNA
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Gyanti Kumari, Wife of Shyam Narayan Singh, Resident of Mohalla L-75, Anugrahpuri Colony, P.S. Rampur, District Gaya.
.... Petitioner
Versus
The State of Bihar through the Vigilance.
.... Opposite Party
==
Appearance :
For the Petitioner : Mr. Shashi Anugrah Narayan, Sr. Advocate
For the Vigilance : Mr. Rama Kant Sharma, Senior Advocate
Mr. Kedar Singh, Advocate
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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR
ORAL JUDGMENT
Date: 01-08-2017

This application has been filed by the petitioner under Section 482 Cr.P.C. for setting aside order dated 14.05.2014, passed by Special Judge, Special Court No.1, Patna in Special Case No.32 of 2011 (Arising out of Vigilance P.S. Case No.35 of 2011) whereby he has framed charge against the petitioner under Section 109 IPC.

2. A brief fact giving rise to the case is that Vigilance P.S. Case No.35 of 2011, was lodged under Sections 13(2) read with 13(1)(e) of the Prevention of Corruption Act, 1988 as well as under Section 109 IPC against Shyam Narayan Singh and Smt. Gyanti Devi, wife of Shyam Narayan Singh, the petitioner in the present case. The informant of the case is the Deputy Superintendent of Police, Vigilance Investigation Bureau, Patna who conducted the enquiry in view of letter no.624, dated 09.05.2011, issued by Superintendent of

Police, Vigilance Investigation Bureau, Patna. After making enquiry he submitted his report thereafter this FIR was lodged. Shyam Narayan Singh was the Inspector of Mines and the allegation is that during the check period i.e. from 21.04.1982 to 14.04.2011, he has amassed Rs.6,57,55,202/- disproportionate to his known source of income after deducting 1/3 from his total income from the check period. During the check period total investment worth Rs.75,17,860/- was found made by him during enquiry; out of which Rs.60,00,000/- approximately deposits in his name and the name of his wife, son also purchased 4 Kathas of land in Patna and a house at Gaya as declared by the accused worth of Rs.5,00,000/-. Though the total salary amount during the check period is Rs.28,27,973/-. The majority of investments are in the name of Smt. Gyanti Kumari, his wife and on his name. During the enquiry, no explanation was given by the accused persons with regard to the cash and property standing in their name.

3. Learned counsel for the petitioner submits that the Special Court of the Vigilance has framed charge against the petitioner under Section 109 IPC only and no charge has been framed under the Prevention of Corruption Act, therefore, the said court has no jurisdiction to put the petitioner-accused on trial. In support of his contention, reliance is placed in case of *Ahmad Ashfaque Karim vs.*

State of Bihar, reported in 2015 (1) PLJR 178 and refers paragraph 163 of the judgment. He further elaborates that if no offence is alleged to have been committed by the accused under the Prevention of Corruption Act, 1988 then in such case the Special Judge, Vigilance has no jurisdiction to try offences punishable under the Indian Penal Code.

4. The next contention of the learned senior counsel of the petitioner is that *prima facie* there is no material to show that the petitioner has abetted the alleged offence. The abetment means to instigate or to urge or incite which means a positive act on the part of the instigator and such ingredient of the offence is missing. He further places reliance in case of Lalita Devi v. State of Bihar, reported in 2010 (1) PLJR 731 and submits that the facts of the said case are very similar to the present case in which wife was also prosecuted for abatement under Section 109 IPC and other Sections of IPC read with Sections 5(1)(e) and 5(2) of the Prevention of Corruption Act, 1947 and in the said case the husband of the petitioner had also purchased the properties in the name of his wife so at best the allegation in the present case is that the petitioner's husband has deposited money in the name of his wife so the husband is liable to explain the source of income.

5. In the case of *Ahmad Ashfaque Karim* (supra) sanction

was not obtained in view of Section 19 of the Prevention of Corruption Act and the Court had directed that requisite sanction be obtained for taking cognizance of offences under the Prevention of Corruption Act, 1988. However, in the present case the cognizance has been taken of the offence under Section 13(1)(e) of the Prevention of Corruption Act after obtaining sanction, therefore, ratio applied in the case of *Ahmad Ashfaque Karim* (supra) is not applicable in the present case as the facts of both the cases are on different footing.

6. Whereas the learned senior counsel appearing on behalf of the Vigilance submits that in the present case cognizance of the offence has been taken by the court under Section 13(1)(e) and the cognizance is taken of the offence and not of the accused. The petitioner's husband is also charged under Section 13(2) read with 13(1)(e) of the Prevention of Corruption Act.

7. Having considered rival submissions and perusal of the records, the Court finds *prima facie* material against the petitioner also as per allegation she is holding substantial portion of properties and deposit in the bank in her name, moreover as per the FIR the accused persons were not able to satisfactorily account for the quantum of disproportionate assets. However, at the time of framing of charge the scope is limited and the court is required to come to a logical conclusion on examination of the material available on the

record whether the charge can be said to be groundless or not. The Supreme Court in the case of *Dilawar Balu Kurane v. State of Maharashtra, (2002) 2 SCC 135* has made following observations with regard to exercising powers by the court under Section 227 Cr.P.C., 1973, which is as follows:

> *"12. Now the next question is whether a prima facie case has been made out against the appellant. In exercising powers under Section 227 of the Code of Criminal Procedure, the settled position of law is that the Judge while considering the question of framing the charges under the said section has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out; where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained the court will be fully justified in framing a charge and proceeding with the trial; by and large if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully justified to discharge the accused, and in exercising jurisdiction under Section 227 of the Code of Criminal Procedure, the Judge cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court but should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial"*

8. So it is the settled principle of law that at the stage of framing of charge when strong suspicion finding the material on record, the court forms the presumptive opinion as to the existence of

the factual ingredients constituting the offence alleged would justify the framing of charge against the accused. Sections 3 and 4 of the Prevention of Corruption Act read as such:

*"**3. Power to appoint special Judges.**–(1) The Central Government or the State Government may, by notification in the Official Gazette, appoint as many special Judges as may be necessary for such area or areas or for such case or group of cases as may be specified in the notification to try the following offences, namely:-*

(a) any offence punishable under this Act; and

(b) any conspiracy to commit or any attempt to commit or any abetment of any of the offences specified in Clause (a).

(2) A person shall not be qualified for appointment as a special Judge under this Act unless he is or has been a Sessions Judge or an Additional Sessions Judge or an Assistant Sessions Judge under the Code of Criminal Procedure, 1973 (2 of 1974).

***4. Cases triable by Special Judges.**–(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), or in any other law for the time being in force, the offences specified in sub-section (1) of section 3 shall be tried by special Judges only.*

(2) Every offence specified in sub-section (1) of section 3 shall be tried by the special Judge for the area within which it was committed, or, as the case may be, by the special Judge appointed for the case, or, where there are more special Judges than one for such area, by such one of them as may be specified in this behalf by the Central Government.

(3) When trying any case, a special Judge may also try any offence, other than an offence specified in section 3, with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), a special Judge shall, as far as practicable, hold the trial of an offence on day-to-day basis."

9. On perusal of Sections 3 and 4 of the Prevention of Corruption Act, 1988 it is clear that a Special Judge appointed for trial got the power to try offence relating to any offence punishable under this Act and also any conspiracy to commit or any attempt to commit or any abatement of any of the offences specified in Clause (a) of Section 3 of the Act. In view of Section 4 of the Act, the Special Judge has got the jurisdiction to do trial of offences specified in sub-section (1) of Section 3 of the Act. The petitioner is wife of another accused Shyam Narayan Singh, a public servant, charged for committing offence under Section 13(2) and 13(1)(e) of the Prevention of Corruption Act, 1988 and his wife the petitioner is charged with abatement of those offences, so there is no illegality in framing of charge against her for abetting of offences under Sections 13(1)(e) of the Prevention of Corruption Act.

10. The petition stands dismissed.

(Arun Kumar, J.)

S.Kumar/-

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