

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.34788 of 2014

Arising Out of PS.Case No. -35 Year- 2014 Thana -KHAZANIHAT District- PURNIA

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Sharda Nand Chaudhary & Ors

.... Petitioner/s

Versus

The State of Bihar Through Director General, Vigilance, Bihar, Patna

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Sanjeev Kumar

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

Mr. Rabindra Kumar AC to Vigilance

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR

UPADHYAY

ORAL ORDER

3 04-08-2017 Heard learned counsel for the petitioners and the State.

Petitioner has challenged order taking cognizance dated 10.4.2014 passed by Special Judge, Vigilance-II, Patna in Special Case No. 1 of 2014 arising out of K. Hat (Purnea) P.S. Case No. 35 of 2014 for the offence punishable under sections 420, 467, 468, 471 and 120(B)/34 of the Indian Penal Code and Section 13(2) of Prevention of Corruption Act.

Counsel for the petitioner submits that petitioner is not a public servant and as such order taking cognizance under the Prevention of Corruption Act so far petitioner is concerned is unsustainable as the offence under the Prevention of Corruption Act is only relatable to the public servant. Since petitioner is not a



public servant as such order taking cognizance is not valid.

Counsel for the Vigilance submits that petitioner was involved in using seal of public authority and he was involved in the commission of crime.

Counsel for the petitioner submits that the allegation with regard to his role in matter of realizing extra money for issuance of driving license under the provision of the Indian Penal Code is concerned there is no sufficient evidence or material to proceed against him. However, he concedes that question of adequacy or inadequacy of the materials for the purpose of taking cognizance is not the subject-matter of the judicial scrutiny under section 482 of the Cr.P.C. and as such he submits that he would be raisins all issues including jurisdiction of the court with regard to order taking cognizance under the provision of Prevention of Corruption Act on the ground that the petitioner is not a public servant by way of filing appropriate application before the court below and the court below may be directed to pass appropriate order on such petition for the ends of justice.

Having regard the fair submission advanced on behalf of the petitioner and considering the totality of facts situation, the application is disposed of with liberty to the



petitioner to file appropriate application before the court below to bring all issues including the issues of applicability of Prevention of Corruption Act on the ground that the petitioner is not a public servant. He may also raise all other issues as would be admissible in law by filing such application, the court below is directed to consider all such legal issue raised in such application and pass a reasoned and speaking order addressing the issues raised in such application within a further period of two months from the date of filing of such application.

With the aforesaid observation, the application is disposed of.

(Anil Kumar Upadhyay, J)

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