

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.15950 of 2014

Arising Out of PS. Case No.-26 Year-2008 Thana- C.B.I CASE District- Patna

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Smt. Reena Kumari W/o Sri Arun Kumar Sinha Resident of Mohalla
Jakkanpur, Police Station Garadanibagh, District Patna.

... .. Petitioner/s

Versus

The State Of Bihar Through The Vigilance Investigation Bureau, Bihar, Patna.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Arvind Kumar Tewary

For the Opposite Party/s : Mr. RAMAKANT SHARMA L.O.IC.(VIGL.)

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CORAM: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
ORAL JUDGMENT

Date : 19-12-2017

Heard learned counsels for the parties.

Petitioner, by means of this application under section 482 of the Code of Criminal Procedure, has invoked the inherent jurisdiction of this Court with prayer to quash the order dated 21.01.2014 passed by the Special Judge, Vigilance, North Bihar, Muzaffarpur in Special Case No. 26 of 2008, whereby and whereunder cognizance has been taken against the petitioner for the offence under section 420, 467, 468, 471, 477, 201, 120B of the Indian Penal Code and section 13(2) read with section 13(i)(d) of the Prevention of Corruption Act.

One Manju Kumari alleged that the accused persons i.e. Janardan Sharma, the then Mukhiya of Gram Panchayat Raj Bharthua, Reena Kumari, the present petitioner



and Anju Kumari, having conspiracy with each other manufactured wrong records and got the said Anju Kumari appointed as Anganbari Sevika in place of the complainant. Learned Special Judge sent the matter for enquiry before the Vigilance Investigation Bureau who after enquiry submitted enquiry report on 14.05.2007 stating that petitioner did not play any active role in the aforesaid appointment and no *prima facie* case was found against the petitioner. The Deputy Superintendent of Police, Vigilance, Muzaffarpur recommended for institution of case against the petitioner, Panchayat Secretary and the then Mukhiya. Thereafter the present Vigilance P.S. Case No. 26 of 2008 was registered.

Learned counsel appearing for the petitioner submits that no offence against this petitioner is disclosed and the present prosecution has been initiated with mala fide intention for the purposes of harassment. Learned counsel submits that in this connection, an enquiry was conducted by the then Block Development Officer, Aurai, Muzaffarpur (Annexure-3) in which it was found that the said Manju Kumari, the complainant, was not eligible for selection as Anganbari Sevika as she was not the resident of Poshak Kshetra No. 47, which is the essential requirement for selection as Anganbari



Sevika. Further, in connection with the same allegations, a departmental proceeding was also initiated in which District Programme Officer, Muzaffarpur submitted enquiry report (Annexure-4) to the Joint Secretary-cum-Inquiry Officer, Social Welfare Department, Government of Bihar, Patna stating therein that neither the complainant is resident of the concerned Poshak Kshetra nor she has obtained higher marks in Matriculation Examination. As per the departmental circulars/executive guidelines, it is an essential condition that the applicant should be the resident of the Poshak Kshetra where the selection is being made, and as such, selection of Anju Kumari is legal and valid and the allegations against the C.D.P.O., the present petitioner, is not tenable and she can be exonerated from the charges levelled against her.

Besides the above, learned counsel submits that complainant before filing the present complaint did not approach the police which is clear cut violation of the provisions of section 154(1) and 154(3) of the Code of Criminal Procedure. Further, the complaint petition has been filed without swearing any affidavit which also is in violation of the statutory provisions. The present complaint was forwarded for enquiry under section 156(3) Cr. P.C. without procuring a valid sanction



order which is a prerequisite under section 19 of the Prevention of Corruption Act. In support of the same, learned counsel has placed reliance on the judgment of the Hon'ble Supreme Court in the case of *Anil Kumar & Ors. Vs. M.K. Aiyappa & Anr.*, reported in **(2013) 10 Supreme Court Cases 705**.

Considering the facts and circumstances of the case and the materials available on the records, this Court finds substance in the submissions advanced by the learned counsel for the petitioner. The present complaint has been filed in the year 2005 and the first information report has been registered in the year 2008. Further, sanction of the State Government has been taken in the year 2013 and cognizance has been taken in the year 2014. The Hon'ble Supreme Court in the case of *Anil Kumar & Ors. Vs. M.K. Aiyappa & Anr.*, reported in **(2013) 10 Supreme Court Cases 705** has held that previous sanction is necessary for ordering investigation under section 156 (3) Cr.P.C. which has not been followed in the present case. Moreover, it has been found in the enquiry report submitted by the Block Development Officer, Aurai, Muzaffarpur and the enquiry report submitted by the District Programme Officer, Muzaffarpur that the complainant is not the resident of the concerned Poshak Kshetra, which is a prerequisite for selection



as Anganbari Sevika and the appointment of Anju Kumari is legal and valid.

In view of the discussions made above, this Court finds that the order dated 21.01.2014 passed by the Special Judge, Vigilance, North Bihar, Muzaffarpur in Special Case No. 26 of 2008, whereby and whereunder cognizance has been taken against the petitioner for the offence under section 420, 467, 468, 471, 477, 201, 120B of the Indian Penal Code and section 13(2) read with section 13(i)(d) of the Prevention of Corruption Act, is not tenable in the eye of law. The same is, hereby quashed.

The application, accordingly, stands allowed.

(Arvind Srivastava, J)

mcv/-

AFR/NAFR	AFR
CAV DATE	15.09.2017
Uploading Date	20.12.2017
Transmission Date	20.12.2017

