

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No. 880 of 2016

Arising out of P.S. Case No. – null Year - null Thana - null District - PATNA

=====

Manoj Kumar Razak @ Manoj Razak, Son of Late Hiral Lal Razak, Resident of Village Raghunathpur, P.S. Raghunathpur, District - Siwan

.... Petitioner

Versus

1. The State of Bihar through the Inspector General of Police Vigilance Department, Govt. of Bihar, Patna.
2. Nirmala Kumari, D/o Sri Ramayan Ram, Resident of Village Sherhawa, P.O. Mahwa Parsi, P.S. Matiyania, District West Champaran

.... Respondents

=====

Appearance :

For the Petitioner : Mr. Bamdeo Pandey, Advocate
Mr. Jitendra Pandey, Advocate

For the Vigilance : Mr. Ramakant Sharma, Sr. Advocate
Mr. Rakesh Kumar Sharma, Advocate
Mr. Amresh Kumar, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date: 15-02-2017

The present application, under Article 226 and 227 of the Constitution of India, has been preferred for quashing the criminal proceeding as well as FIR of Vigilance Police Station Case No. 38 of 2016 arising out of private Complaint Case No. 146 of 2007 filed by Nirmala Kumari against the petitioner and others vide Annexure-1.

2. The challenge is on the ground that the petitioner is a public servant and without previous sanction prosecution of the petitioner is bad in law.

3. Learned counsel for the respondents opposed the prayer. However, concedes that in the case of **Anil Kumar and**



Others vs. M.K. Aiyappa and Another reported in **2013(10) SCC 705**, the Hon'ble Apex Court held that the entertainment of complaint for offences under the Prevention of Corruption Act by the Special Judge without prior sanction to prosecute is bad in law.

4. The record reveals that one Nirmala Kumari had filed Complaint Case No. 146 of 2007 against the petitioner and others for offences under Sections 420, 409, 467, 468 of the Indian Penal Code and 5(2) of the Prevention of Corruption Act before the Court of learned Special Judge, Muzaffarpur. The learned Vigilance Judge sent the complaint petition for inquiry and the matter was inquired by the Police Inspector and he found the allegation true vide his report dated 07.04.2016 and on the basis of that report, the Superintendent of Police, Vigilance filed the FIR which was registered as Vigilance Police Station Case No. 38 of 2016 against the petitioner and others.

5. In **Alka Jha Vs. The State of Bihar** reported in **2016(4) PLJR 207**, this Court had occasion to consider the similar facts and the Court in paragraph 28 and 29 observed thus:

*“28. In my considered opinion, the case of the petitioner is squarely covered by the decision of the Supreme Court in the case of **Anil Kumar & Others** (supra). In the aforesaid case, the issue framed by the Supreme Court was “whether the Special Judge/Magistrate is justified in referring a*



private complaint made under Section 200 CrPC for investigation by the Deputy Superintendent of Police, Karnataka, Lokayukta in exercise of powers conferred under Section 156(3) CrPC without the production of a valid sanction order under Section 19 of the Prevention of Corruption Act”.

*29. The Supreme Court taking note of judicial pronouncements rendered on the issue in cases of **Subramanian Swamy vs. Manmohan Singh & Another** [(2012) 3 SCC 64] [:2012(2) PLJR (SC)108]; **State of Uttar Pradesh vs. Paras Nath Singh** [(2009) 6 SCC 372]; **State of W. B. & Another vs. Mohd. Khalid & Others** [(1995) 1 SCC 684]; **Additional Director General, Army Headquarters vs. C.B.I.** [(2012) 6 SCC 228], while upholding the right of an individual to file complaints under the PC Act, 1988 has proceeded to clarify that in absence of previous sanction for prosecution of “public servant” charged with acts of corruption, the Magistrate concerned can neither take cognizance and hold inquiry under Section 202 of the CrPC nor can order for investigation against the public servant under Section 156(3) of the CrPC. Thus, obtaining of sanction to prosecute a public servant charged for acts of corruption was held an essential for filing of the complaint by a private individual under the provisions of the PC Act, 1988.”*

6. Apparently, in the present case, FIR is based on a private complaint and once the Vigilance Judge decided to get the complaint inquired either himself or by some other agency in view



of the provisions under Section 202 Cr.P.C., the mandatory condition of prior sanction for taking cognizance had to be complied, as such, entire criminal prosecution including the FIR is bad in law. Accordingly, the same stands quashed and this application is allowed.

(Birendra Kumar, J)

Kundan

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	22.02.2017
Transmission Date	22.02.2017

