

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No. 288 of 2016

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

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1. Dipendra Bhushan, Son of Late Parmeshwar Dayal, The then C.O., Mushahri, Muzaffarpur, The then C.O. Dulhin Bazar, At present posted as Labour Enforcement Officer, Block - Pandarak, District - Patna, Resident of P.O. & P.S. - Sohsarai, Biharsharif, District - Nalanda
 2. Suresh Ram, S/o Late Muneshwar Ram, At present Revenue Karmachari, Anchal - Mushahri, P.S. - Brahmapura, District - Muzaffarpur, Resident of P.O. - Ramna, P.S. - Sadar, District - Muzaffarpur

.... Petitioners

Versus

1. The State of Bihar through the Director General of Vigilance, Bihar, Patna
2. Murari Singh, Son of Sri Madho Singh, Resident of Mohalla - Brahmpura Chandani Chowk, P.O. - M.I.T., P.S. - Brahmpura, District - Muzaffarpur

.... Respondents

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Appearance :

For the Petitioners : Dr. Ratan Kumar, Advocate

For the Respondents : Shri Ramakant Sharma (L.O., I/C Vig.)

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
CAV JUDGMENT

Date: 19-04-2017

The writ petitioners are accused in Complaint Case No. 45 of 2013 filed on 10.04.2013 by respondent no. 2 Murari Singh in the Court of learned Special Judge, Vigilance, North Bihar, Muzaffarpur for the offences, allegedly, committed by the petitioners under Sections 467, 468, 406, 120B of the Indian Penal Code as well as under Sections 7, 8, 9 and 13 of the Prevention of Corruption Act.

2. The learned Special Judge called for a preliminary inquiry report from the Station House Officer, Vigilance,



Investigation Bureau, Bihar, Patna. The preliminary report was submitted that the offences alleged against the petitioners are, prima facie, established and an FIR requires to be instituted. Accordingly, FIR was lodged and registered as Vigilance P.S. Case No. 77 of 2015 on 11.09.2015 under Sections 420, 467, 471, 477A/120B of the Indian Penal Code as well as under Sections 7, 10, 13(2) read with Sections 13(1) (d) of the Prevention of Corruption Act, 1988. All the aforesaid documents i.e. the complaint petition, preliminary enquiry report and FIR are at Annexure-1 series.

3. According to the prosecution allegation petitioner no. 1, at the time of occurrence, was posted as Circle Officer, Musahari and petitioner no. 2 was Revenue Karmchari posted in the Anchal Musahari in the district of Muzaffarpur. In the matter of mutation proceeding relating to the referred land, the petitioners had demanded bribe from the respondent no. 2 and on non-payment of the same mutation was refused in spite of supporting document that the complainant was having title and possession over the referred land.

4. The petitioners have invoked the writ jurisdiction of this Court to quash the FIR as well as order of the learned Special Judge directing institution of the FIR on two grounds; i.e. (i) once the learned Special Judge who, undisputedly, exercises the power of a Judicial Magistrate-1st Class, took cognizance on the basis of



complaint case, he could not have directed institution of the FIR as the FIR could have been lodged at the pre-cognizance stage only i.e. soon after receipt of the complaint petition. (ii) secondly without prior sanction under Section 19(1) of the Prevention of Corruption Act, the petitioners, who are, admittedly, public servants, could not have been prosecuted rather cognizance should not have been taken. Reliance has been placed on the judgment of the Hon'ble Apex Court in **Anil Kumar & Ors. vs. M.K. Aiyappa & Anr.** reported in **2013(10) SCC 705** and judgment of a coordinate Bench of this Court dated 10.12.2015 passed in Cr.W.J.C. No. 181 of 2015 (**Ashok Kumar Sinha & Anr. Versus The State of Bihar & Ors.** along with connected writ applications).

5. No one appeared on behalf of respondent no. 2 in spite of service of notice. However, the State-respondents have filed their counter affidavit resisting the prayer of the petitioners on the ground that during investigation of the case sufficient evidence have been found against the writ petitioners and the investigation is still going on in impartial manner. Moreover, the refusal of mutation vide order dated 06.11.2012 by the petitioners is based on the material not supported by the record, rather suffers from perversity i.e. against the material available on the record. Therefore, the petitioners deserve prosecution.



6. However, during course of argument, learned counsel for the State-respondent does not dispute that the present case is squarely covered by the judgment of the Hon'ble Apex Court in **Anil Kumar's** case and of this Court (supra). In **Anil Kumar's** case (supra) the Hon'ble Apex Court categorically examined the issues involved, referred earlier judgments of the Hon'ble Apex Court and held that the Special Judge, Vigilance, who exercises power of a Magistrate, could not act in a mechanical and casual manner while considering the complaint case. The Magistrate takes cognizance of the case on the complaint under Section 190(1)a of the Cr.P.C. on receipt of the complaint as soon as he decides to proceed with the case.

7. In the present case, the learned Special Judge on receipt of the complaint decided to proceed further by calling for preliminary inquiry report, therefore, he would be deemed to have taken cognizance of the complaint case and in the light of judgment in **Anil Kumar's** case (supra), he could not have sent the complaint case for registration of the FIR.

8. Furthermore, in the present case, the required previous sanction under Section 19(1) of the Prevention of Corruption Act is not there. Since, the learned Magistrate took cognizance of the offence on private complaint without prior sanction, the same is not



sustainable in law in view of the ratio decided in the referred cases.

Therefore, for both the aforesaid counts, the impugned order and the FIR are not sustainable in law, hence, the same are quashed hereby and this writ application stands allowed.

(Birendra Kumar, J)

Kundan

AFR/NAFR	N.A.
CAV DATE	11.04.2017
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