

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.43669 of 2014

Arising out of P.S. Case No.1 Year 2007 Thana C.B.I CASE District MUZAFFARPUR

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Dr. Satya Naryan Sharma, Son of Late R.C. Sharma, Resident of Kanti, P.S. Kanti,
Muzaffarpur, District Muzaffarpur

.... Petitioner

Versus

The State of Bihar through Additional Director General of Police (ADG) Vigilance
Investigation Bureau, Bihar, Patna

.... Opposite Party

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Appearance :

For the Petitioner : Mr. Anand Kumar Ojha, Advocate
Mr. Ashok Kumar, Advocate

For the Vigilance : Mr. Rama Kant Sharma, Senior Advocate
Mr. Santosh Kumar Pandey, Advocate

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 16-10-2017

The petitioner seeks quashing of the impugned order dated 12.09.2014, passed by learned Special Judge, Vigilance, Muzaffarpur in Special Case No.01 of 2007, arising out of Vigilance P.S. Case No.1 of 2007 whereby application filed by the petitioner under Section 239 Cr.P.C. for discharge.

2. A short fact of the case, as per the written information made in Vigilance P.S. Case No.1 of 2007, registered under Sections 467/468/ 471/409/109/120(B) of the Indian Penal Code and Sections 13(2) read with Section 13(1)(D) of the Prevention of Corruption Act, is that on enquiry on the complaint filed by one Premchand Ojha finding, the informant, an official of the Vigilance Department found material regarding corruption against one Dr. Ramyash Ram, the then Civil Surgeon, Muzaffarpur as well as against one Ramnandan



Choudhary, Head Clerk in the office of the Civil Surgeon, Muzaffarpur. It is alleged that against non-existing units, employees were shown posted there and thereafter transferred to some other places and in that way their services got regularized and in that criminal conspiracy one Dr. K.N. Kedia the then Civil Surgeon, Muzaffarpur, presently retired, and one Ravindra Tiwary, again a retired Clerk of the Civil Surgeon Office were also found involved. The specific allegation with regard to the petitioner is that he got posted such person in the unit, not sanctioned by the government, and payment was made to that person accordingly, the government money has been misappropriated by the petitioner Dr. Satya Narayan Sharma who at the relevant point of time was Medical Officer Incharge of the Primary Health Centre, Kanti. One Manoj Kumar, the then Clerk of the Primary Health Centre was also found involved *prima facie* in this matter.

3. Learned counsel appearing on behalf of the petitioner submits that the petitioner was a Medical Officer Incharge of the Primary Health Centre, Kanti and only allegation is that he paid four months' of salary to one Pushpa Lata Kumari, A.N.M., posted at Additional Primary Health Centre, Panapur. It is not the case that the appointment of Pushpa Lata Kumari was made by this petitioner. The salary was paid by the Civil Surgeon Office, the total amount of salary



for the four months is Rs.12,350/-. The said Pushpa Lata Kumari is still working. The learned trial court without looking to the evidence collected during investigation against the petitioner has rejected the discharge petition. The trial court should have considered the evidence collected during investigation only in order to get satisfied whether a *prima facie* case is made out or not raising strong suspicion against the petitioner for framing of charge. Learned counsel for the petitioner in support of his contention has placed reliance on some decisions as (2002) 2 SCC 135 (Dilawar Balu Kurane v. State of Maharashtra), (2003) 2 SCC 711 (State of Orissa v. Debendra Nath Padhi), (2010) 9 SCC 368 (Sajjan Kumar v. C.B.I.) and (1979) 3 SCC 4 (Union of India v. Prafulla Kumar Samal).

4. Contrary to that the learned counsel appearing on behalf of the Vigilance submits that there is no dispute that petitioner was not posted at the relevant point of time as Medical Officer Incharge of Primary Health Centre, Kanti, Muzaffarpur. Being a Medical Officer Incharge, he was the Drawing and Disbursing officer and the evidence in the case diary shows that Pushpa Lata Kumari was made payment being shown posted at Additional Primary Health Centre, Panapur under the Primary Health Centre, Kanti and four months' salary was paid to her and the said money has been misappropriated as no Additional Primary Health Centre, Kanti was



ever created by the government in fact it was not in existence, so there was no occasion for posting any A.N.M. there, even no document was produced by the concerned office of the Primary Health Centre, Kanti relating to the payment and the posting as well as creation of that Additional Primary Health Centre, so strong suspicion is made out against the petitioner being involved in the scam of illegal appointment of employees and making payment. Learned counsel appearing on behalf of the Vigilance refers paras 61, 118 and 119 of the case diary.

5. Having considered rival submissions of both sides and on perusal of the record, the Court finds that the petitioner is one of the named accused in the case having specific allegation that showing one A.N.M. posted at Additional Primary Health Centre, Panapur though not sanctioned or functional or in other words not in existence made payment to her of four months' salary. There is general allegation against the then Civil Surgeon of Muzaffarpur also regarding allegation of making forged appointment by showing persons placed and deputed at non-existing unit against unsanctioned post and later on making their services regularized indicating a scam prevalent in the office of the Civil Surgeon, Muzaffarpur regarding illegal appointments and making payment to those persons. Section 227 of the Code of Criminal Procedure reads as such:



“**227. Discharge.**—if, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.”

6. It is explicitly clear that at the time of considering the discharge petition, the court has to look into the record of the case, primarily the evidence collected by the investigating agency during the investigation and after hearing the accused as well as the prosecution has to come to a finding whether sufficient ground exists against a particular accused or not for framing charge against the accused. In other words, court is required to weigh evidence and form opinion only on limited question of whether a *prima facie* case is made out or not, so there is series of judgments in this regard. The learned counsel for the petitioner also has placed reliance to those decisions cited above that the ultimate conclusion of the decision is that charge should not be framed unless grave or strong suspicion is made out against the accused. The order passed by the trial court while disposing of the application must reflect the application of mind. The Court finds after considering the rival submissions of both sides and in particular considering paragraphs nos.61, 118 and 119 of the case diary referred by the learned counsel for the Vigilance



showing that Additional Primary Health Centre, Panapur was never established or sanctioned by the government and it was never functional, no one was deputed there but the allegation is that one Pushpa Lata Kumari, A.N.M., was shown posted there for a short period of four months and also salary was paid to her and the petitioner at the relevant point of time was the Medical Officer Incharge under which the said Additional Primary Health Centre is shown to be functional, so in the opinion of the Court, a grave suspicion is raised against the petitioner on the *prima facie* case under Sections 467, 468, 471, 109 and 120B of the Indian Penal Code as well as under Sections 13(2) read with 13(1)(d) of the Prevention of Corruption Act being made out against him, so he is required to be put on trial after framing of charge against him, so finding no merit, the quashing application stands dismissed.

(Arun Kumar, J.)

S.Kumar/-

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