IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.38292 of 2013
Arising Out of PS.Case No. -115 Year- 2009 Thana -C.B.I CASE District- PATNA

Devendra Kumar Sinha Son of Late Kedarnath Ambastha, Resident of A-8, Ashirvad, Anand Vihar, P.O. Anishabad, P.S. Phulwari Sharif, District Patna.

.... Petitioner

Versus

1. The State of Bihar
2. The D.G., Vigilance Department, Patna. Bihar

.... Opposite Parties

Appearance :

For the Petitioner : Mr. Jagjit Roshan, Advocate
Mr. Om Prakash Singh, Advocate
Mr. Rajeev Ranjan, Advocate
Mr. Apul, Advocate

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

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR
ORAL JUDGMENT
Date: 18-07-2017

This application for quashing has been filed against order dated 01.08.2013, passed by Special Judge, Vigilance-II, Patna in Special Case No.42 of 2009, arising out of Vigilance P.S. Case No.115 of 2009 whereby he has taken cognizance of the offence under Sections 420, 467, 468, 471, 477(A), 109 and 120(B) of IPC as well as under Sections 13(2) read with 13(1)(d) and 15 of the Prevention of Corruption Act, 1988.

2. The present FIR in Vigilance Case No.115 of 2009, dated 09.11.2009 was lodged by a Police Inspector of Vigilance Investigation Bureau, Saharsa Division on the direction of the D.S.P. of Vigilance Investigation Bureau after finding in preliminary enquiry

corrupt practices being adopted by public servant and Contractors in purchase of cements for construction of Indira Awas in the year 1993.

3. Allegation in brief is that Rural Development Department, Government of Bihar by various letters had given direction for purchase of cements and other materials for developmental work under Jawahar Rojgar Yojana and for execution of projects under Indira Awas Scheme. It is alleged that the Purchase Committee did not follow those directions rather violating directions neither tenders were invited by the petitioner-District Magistrate at the relevant point of time nor financial rules were followed. It is alleged that 50,000 bags of cements was purchased and Rs.49,00,000/- was given in advance to his favourite supplier. There is no signature of members in the proceeding of meetings of the Price Fixation Committee or Purchase Committee and without inviting tenders, order was placed to M/s Scampher Agency, Bhagalpur for supplying cement so it is alleged that the then District Magistrate, Govind Kumar Sinha and In-charge Deputy Collector Chandrashekhar Prasad in connivance with supplier avoiding the directions of the Department misused their authority for giving maximum benefit to the supplier.

4. Learned counsel appearing on behalf of the petitioner submits that the petitioner was District Magistrate in the year 1993 for a short period of nine months, i.e., 24.06.1993 to 08.04.1994. The

petitioner being the District Magistrate followed the direction contained in Letter No.11030, dated 21st November, 1989, Letter No.4428, dated 10th May, 1991 and Letter No.7448, dated 10th August, 1990 issued by Rural Development Department, Government of Bihar. In view of the directions in the said letters, the Price Fixation Committee was constituted at the district level, the District Magistrate being the Chairman of the Committee, D.D.C. and Executive Engineer as members and as per requirement, fixing price of cement was purchased for developmental schemes under Jawahar Rojgar Yojana and for construction of house under Indira Awas Yojana. The other members of the said Committee were Deputy Development Commissioner and Executive Engineer of Rashtriya Gramin Niyojan, accordingly, the prices were fixed by the Committee and purchase was made. Further submission is that this petitioner retired in the year 2000 and after nine years of his superannuation, the present FIR was lodged and cognizance has been taken in this case without obtaining sanction from the Government, which is mandatory in view of Section 19 of the Prevention of Corruption Act though sanction is only taken under Section 197 Cr.P.C. It is also submitted that without any preliminary enquiry, this case has been lodged.

5. Learned counsel appearing on behalf of the Vigilance Department submits that the directions issued by the Rural

Development Department were not followed intentionally to give benefit to supplier. As per directions, contained in letters referred by the learned counsel for the petitioner, tender was to be issued and preference was to be given to the manufacturers of the cement company and if manufacturers do not participate then to wholesalers dealers of cement but in the present case only three shopkeepers submitted their quotation without any notice of tender published by the concerned rather favoured one was given the order for supplying the cement in order to get benefited himself and the petitioner at the relevant point of time was the Chairman of the Price Fixation Committee.

6. Having considered rival submissions and on perusal of the records, this Court is of the view that supply order was given for purchase of 50,000 bags of cement, to Canpher Sales Agency, Bhagalpur. There is a detailed direction contained in Letter No.11030, dated 21st November, 1989 issued by Rural Development Department, Government of Bihar for purchasing cement, iron and brick to be used in developmental work under Jawahar Rojgar Yojana and under schmes of Indira Awas Yojana. In the Chairmanship of District Magistrate a Price Fixation Committee was constituted, other two members were Deputy Development Commissioner and Executive Engineer of Rashtriya Gramin Niyojan Karyakarm. This Committee

requires to make assessment of the requirement of cement and other materials block wise and they are also required to invite tenders and first preference be given to manufacturers and if they show any inability in supplying then to wholesalers. Moreover, in general in the matters relating to purchase by the Government Departments, the purchase is done according to Bihar Financial Rules. Under these Rules the Government purchases are made and for purchasing such items more than of Rs.1,00,000/-, Purchase Committee requires to invite open tenders and thereafter lower bidder is selected considering other factors also. In the present case, there is allegation that without verifying tender a particular supplier was selected and order was placed to that firm. It is a settled proposition of law that no sanction under Section 19 of the Prevention of Corruption Act, 1988 is required against a retired public servant. This issue was decided a way back by a Constitution Bench of the Apex Court in the case of K. Veeraswamy vs. Union of India, reported in (1977) 3 SCC 440. In recent past in the case of State of Punjab vs. Labh Singh, reported in 2015 (1) PLJR 373 (SC), again the same principle has been reiterated. Two following paragraph of the said judgment is quoted hereinbelow:

> "7………….. The law on the point is quite clear that sanction to prosecute the public servant for the offences under the POC Act is not required if the public servant had already retired on the date of cognizance by the court. In **S.A. Venkataraman vs. State** while construing

Section 6(1) of the Prevention of Corruption Act, 1947 which provision is in *pari materia* with Section 19(1) of the POC Act, this court held that no sanction was necessary in the case of a person who had ceased to be the public servant at the time the court was asked to take cognizance. The view taken in **S.A. Venkataraman** (supra) was adopted by this court in **C.R. Bansi vs. State of Maharashtra** and in **Kalicharan Mahapatra vs. State of Orissa** and by the Constitution Bench of this court in **K. Veeraswamy vs. Union of India**. The High Court was not therefore justified in setting aside the order passed by the Special Judge insofar as charge under the POC Act was concerned.

8. However, as regards charges for the offences punishable under the IPC concerned the High Court was absolutely right in setting aside the order of the Special Judge. Unlike Section 19 of the POC Act, the protection under Section 197 of Cr.P.C. is available to the concerned public servant even after retirement. Therefore, if the matter was considered by the sanctioning authority and the sanction to prosecute was rejected first on 13.9.2000 and secondly on 24.9.2003, the court could not have taken cognizance insofar as the offences punishable under the Indian Penal Code are concerned. As laid down by this Court in **State of Himachal Pradesh vs. Nishant Sareen**, the recourse in such cases is either to challenge the order of the Sanctioning Authority or to approach it again if there is any fresh material."

7. In view of the said judgment sanction under Section 197 Cr.P.C. is mandatory in case of even a retired public servant for prosecuting him under alleged offences under Indian Penal Code but no sanction is required in case of a retired public servant to

prosecute him for offences under Prevention of Corruption Act. In the case at hand, the sanction under Section 197 Cr.P.C. has been obtained, so there is no legal bar in taking cognizance for offences under Sections 420, 467, 468, 471, 477(A), 109 and 120(B) of IPC; whereas no sanction is required for taking cognizance for offences under Sections 13(2) read with 13(1)(d) and 15 of the Prevention of Corruption Act, 1988 against the petitioner under Section 19 of Prevention of Corruption Act for the reason he was a retired public servant on the date of taking cognizance. The allegations levelled in the First Information Report do make out a *prima facie* case against the petitioner under Sections 420, 467, 468, 471, 477(A), 109 and 120(B) of IPC as well as under Sections 13(2) read with 13(1)(d) and 15, so finding no merit the quashing petition stands dismissed.

(Arun Kumar, J.)

S.Kumar/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.08.2017
Transmission Date	16.08.2017