

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.911 of 2014

Arising Out of PS.Case No. -null Year- null Thana -null District- PATNA

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1. Pravin Kumar @ Praween Kumar Son of Late Baidyanath Prasad Resident of Village-Gopalpur, P.S.-Warsaliganj, District-Nawada, At present, Assistant Director, Office of Deputy Director-I, Monitoring & Evaluation Cell, Building Construction Department, BishweshraiyaBhawan, Patan.

.... Petitioner/s

Versus

1. The State of Bihar through Vigilance
2. Shri Sanjay Kumar Singh, Deputy Secretary, Vigilance Department, SuchnaBhawan, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Abhay Kumar Singh, Sr. Advocate
With Mr. Manager Sah

For the Respondent/s : Mr. Ramakant Sharma, Sr. Advocate(Vig)

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date: 11-08-2017

Heard learned counsel for the parties.

2. Petitioner is aggrieved by the order, dated 05.05.2014, passed in Special Case No. 12/2009 by learned Special Judge, Vigilance, Ist, Patna, whereby a petition filed on behalf of the petitioner, dated 17.05.2013 for his discharge has been rejected.

3. The petitioner is an accused of offence punishable under Sections 467,468,471,477A,419,120B of the Indian Penal Code and Sections 13(2) read with 13(1) (d) of the Prevention of Corruption Act.

4. This is to be noted at the outset that during the pendency of this application, the charges have been framed by order dated 16.07.2015, by the Court below for the



offences punishable under Sections 467,468,471,120B,419,477A, 120B of the Indian Penal Code and Sections 13(2) read with section 13(1) (d) of the Prevention of Corruption Act despite an order of this Court dated 04.12.2014 passed in this case which reads thus:-

"The present criminal revision application is directed against the order, dated 05.05.2014 passed by the learned Special Judge, Vigilance Ist, Patna in Special Case No. 12 of 2009, whereby the petitioner's application for discharge has been rejected.

Learned counsel for the Vigilance prays for two weeks time to file counter affidavit.

Put up this matter on 22nd of December, 2014.

In the meantime, if the charge has not been framed, it will not be framed."

6. Apparently, there was a restraint order passed by this Court in the present proceeding, whereby no charge was to be framed, if not already framed. The said order of the Court below framing charge is sought to be challenged by seeking amendment through I.A. No. 1680 of 2015.

7. I.A. No. 1680 of 2015 seeking amendment in the application in order to challenge the order framing charge is, hereby, allowed.

8. Argument has been advanced at length by Mr.Abhay Kumar Singh, learned Senior Counsel on behalf of the petitioner, asserting that even if the materials available



before the Court below were to be taken to be true, no offence either under the provisions of the Indian Penal Code or under the Prevention of Corruption Act could be said to be made out. Elaborating his contentions, referring to the prosecution's case, he has gone to the extent of submitting that the said allegations do not even constitute misconduct warranting disciplinary action, let alone, criminal prosecution.

9. I need, therefore, to briefly take note of prosecution's case. According to the case of the prosecution, on 12.03.2009 one Raju Yadav and Ramashray Singh (Contractors) made complaint before the Vigilance Department alleging that they had visited the office of the Executive Engineer, Patna, West Building Division, Danapur for purchase of tender papers but none of the officers were present there. There was no notice regarding cancellation of tender in question and allegedly the officials were trying to award tender of the works to their own men. An enquiry was thereafter conducted jointly by the Deputy Secretary, Vigilance Department and Engineer-in-Chief on 12.03.2009 on the same day, whereupon the First Information Report was registered. The petitioner, was then posted as Executive Engineer, Patna West, Building Division, Danapur. What emerged on the basis of enquiry held jointly by the Deputy Secretary, Vigilance Department Baijnath Prasad and the Engineer-in-Chief was that a single day i.e. 12.03.2009,



(between 10 A.M. to 1 P.M) was fixed for selling bills of quantities (B.O.Q) for 9 works worth Rs. 4,14,15000/- in breach of Clause 159 of the P.W.D. Code. The petitioner, who was the then Executive Engineer; Cashier; Accountant and Estimating Officer were not present in the office for selling the BOQs. The petitioner, the Superintending Engineer, the Divisional Accountant, Cashier and the Estimating Officer did not sell the tender document relating to work of Rs. 4,14,15000/- with an intent to extend undue favour to some contractor(s) of their choice for wrongful gain.

10. Learned Senior counsel appearing on behalf of the petitioner has vehemently argued that the allegations do not constitute any case of causing wrongful loss to the State exchequer or wrongful gain to the petitioner and, therefore, no offence under the provisions of the Indian Penal Code can be said to be made out. He has also submitted that despite there being no material sufficient for framing of charge, the Court below whimsically, arbitrarily and without due application of mind, rejected application seeking discharge. According to him, in the absence of any allegation that the petitioner obtained for himself or any other person any valuable thing or pecuniary advantage, no offence under Section 13(1) (d) of the Prevention of Corruption Act can be said to be made out. He has added that even the materials collected in course of investigation, do not disclose



commission of offence nor an attempt to commit offence by obtaining pecuniary gain within the meaning of Section 15 of the Prevention of Corruption Act, is made out.

11. I find it difficult to sustain the submissions made by the learned Senior Counsel on behalf of the petitioner in view of a recent decision of a co-ordinate Bench of this court in case of **Devendra Singh Vs. State of Bihar through Vigilance Department reported in 2016(4) BBCJ 184**. The said decision arises out of the same Vigilance P.S. Case No. 18 of 2009. Petitioner of that case, a co-accused, was Cashier at the relevant point of time. It is difficult to distinguish the case of the petitioner with that of the petitioner Devendra Singh (supra) of that, who at the relevant point of time was Cashier in the same office. Allegation against the petitioner and him are similar. In case of Devendra Singh (supra) also, an order passed by the learned Special Judge arising out of Vigilance P.S. Case No. 18 of 2009 refusing to accept the plea of discharge was under challenge, which has been dismissed by the co-ordinate Bench after taking note of the case of the prosecution, as is evident from paragraph 8 of the said judgment.

12. Learned Senior counsel has, however, attempted to distinguish the case of the petitioner with that of Devendra Singh (supra), on the ground that plea that was taken before this Court in case of Devendra Singh (supra)



of *alibi* and reliance on Supreme Court's decision that since the petitioner of that case was exonerated of the charge under departmental proceeding, criminal proceeding should also not be allowed to continue, in view of Supreme Court's decision in case of P.S. Raja; was rejected. He has submitted that in the present case the petitioner has taken a plea that no offence is made out even if all the materials relied on by the Vigilance Department are taken to be true, no offence can be said to be made out.

13. I am afraid, I cannot accept this plea in view of what has been discussed in the said judgment and order in case of **Devenedra Singh** (supra).

14. However, I take serious note of the other aspect. As has been noticed above, this Court by interim order, dated 04.12.2014, had made it clear that if the charge had not been framed, it shall not be framed. Despite the said restraint order of this Court, dated 04.12.2014, the Court below has framed charge by the impugned order, dated 16.07.2015. On perusal of the original records, I am satisfied that the order of this Court, dated 04.12.2014 was duly communicated to the Court below. The fact that such order had been passed was taken note of by the Court below. A certified copy of the said order was also filed by the petitioner before the Court below along with a petition dated 16.07.2015, when charge came to be framed.

15. When I noticed this aspect in course of hearing



of the present case, I had called for a report from the learned Special Judge, Vigilance Ist, Patna by an order dated 18.07.2017. A report has accordingly been submitted by learned Special Judge Vigilance, Ist, Patna, which has been placed at Flag-C, from which it appears that the order dated 04.12.2014 passed in this case had been received by the Court of Special Judge Vigilance, Patna on 06.12.2014 itself. The Court fails to understand in what circumstance, learned Special Judge Vigilance Ist, Patna ventured to frame the charge in disobedience of the interim order of this Court, dated 04.12.2014.

16. Learned Senior counsel appearing on behalf of the petitioner has rightly placed reliance on Supreme Court's decision in case of Manohar Lal Vs. Ugrasen and ors reported in 2010 (11)SCC 557 in support of his plea that framing of charge by the Court below in defiance of this Court's restraint order is a nullity in the eye of law. Any action taken subsequent to passing of the interim order in its breach is a nullity and for the sole reason, the impugned order framing charge needs interference.

17. The Impugned order dated, 05.05.2014, framing charge is, accordingly, set aside.

18. The Court below is directed to pass an order afresh on the question of framing of charge after giving the petitioner adequate opportunity of hearing.

19. Let this order be placed before the Standing



Committee of the High Court, in view of the observations made in paragraphs 14 and 15 above.

20. This application is, accordingly, allowed to the extent as indicated above.

(ChakradhariSharan Singh, J)

ArunKumar/-

AFR/NAFR	NAFR
CAV DATE	N/A
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