

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.42748 of 2013

Arising Out of PS.Case No. -15 Year- 2013 Thana -C.B.I CASE District- PATNA

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Narendra Kumar Mishra, S/O Late Raghubansh Mishra, Resident Of Bakro, P.S-
Bakro, P.S- Bodh Gaya, District- Gaya.

.... Petitioner/s

Versus

1. The State Of Bihar through the Cabinet Vigilance(Investigation Bureau)
Department, Patna
2. Md. Salik Nizami, S/O Late Nizamuddin, Resident Of Village Khasganj, P.S-
Sohsarai, District- Nalanda At Present Clerk in Referral Hospital, Asthawan,
District- Nalanda.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Raju Giri, Adv.

For the Opposite Party no.1 : Mr. Rakesh Kumar Sharma, Adv.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

Date: 09-08-2017

Heard learned counsel for the petitioner and learned
Assistant Counsel for the Vigilance.

The petitioner, in the present case, is seeking quashing of
the order taking cognizance dated 03.06.2013 by which the learned
Special Judge, Vigilance has found a prima facie case against him
under Section 7/13 (2) read with 13(1)(d) of the Prevention of
Corruption Act, 1988.

A perusal of the First Information Report would show
that this petitioner was arrested while receiving bribe of Rs.4500/- in a
trap lay down by the Vigilance.



Learned counsel for the petitioner, at the first instance, submits that the order taking cognizance has been passed by the learned Special Judge, Vigilance by merely putting word 'cognizance' in the order as the whole order appears to have been written in a different handwriting by a clerk. Submission of the learned counsel is that there is no application of mind by the learned Special Judge, Vigilance to the materials available on the record.

Learned counsel has further relied upon a judgment of the Hon'ble Supreme Court in the case of **State of Punjab & Haryana Vs. Madan Mohan Lal Verma reported in 2013(4) PLJR (SC) 109**. Paragraph 7 of the said judgment has been specifically referred to, to submit that this Court can look into the motive and intention behind the crime alleged against the petitioner at this stage. Learned counsel has also placed reliance on an order dated 22.08.2016 passed in Cr.Misc.No.54199 of 2013 wherein a coordinate Bench in paragraph 10 has taken note of the fact that the order taking cognizance was passed on a printed format by filling up the blanks.

On the other hand, learned Assistant Counsel representing the Vigilance has submitted that the order taking cognizance has been passed by the learned Special Judge, Vigilance after looking into the investigation report and the materials available on the record. It is further submitted that the learned Special Judge,



Vigilance has recorded his satisfaction by specifically showing that there are sufficient materials available on the record for taking cognizance against the accused. It is also submitted that in the present case the order taking cognizance has not been passed on any cyclostyled copy and so far as the writing of the order by clerk is concerned, the same is totally irrelevant submission made on behalf of the petitioner. According to learned AC for the Vigilance, this Court at this stage, would not go into the issue of intention and motive and the judgments cited on behalf of the petitioner would not come to his rescue for a simple reason that in the said case the Hon'ble Supreme Court was considering an appeal arising out of the judgment and order passed in a criminal appeal by the High Court of Punjab & Haryana and in the said case the appraisal of the evidences brought in course of trial were subject matter of consideration.

Having heard learned counsel for the parties and upon perusal of the record, this Court is of the considered opinion that the order taking cognizance need not be an elaborate and well discussed order at this stage. I am afraid, the submission is totally misconceived. In the present case, there is neither any use of printed form nor any other submissions which were made in the said case are available to the petitioner. A prima facie view expressed by the learned Special Judge, Vigilance, after perusal of the case diary and the materials



available on the record, is sufficient to uphold the order. So far as the materials available on the record are concerned, it is not in dispute that there is a complaint petition, pre-trap memorandum and that the petitioner was caught red-handed while accepting the bribe, these are allegations and there are evidences in support thereof, this Court is not supposed to go into the evidentiary value of those evidences at this stage and therefore, this Court will refrain from doing so.

The application has no merit and the same is dismissed.

(Rajeev Ranjan Prasad, J)

Arvind/-

AFR/NAFR	
CAV DATE	
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