

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.8040 of 2012

Arising Out of PS.Case No. -0 Year- null Thana -null District- PATNA

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Navin Kuamr, s/o late Kishori Prasad Singh, resident of village Kundawapar, P.S. Ekangar Sarai, District Nalanda, At Present Junior Engineer, Narega Makhdumpur, District Jehanabad.

.... Petitioner/s

Versus

1. The State of Bihar through the Department of Vigilance.
2. Ajit Kumar, s/o Ram Bali Singh, resident of village Khojpura, P.O. Paibigaha, P.S. Makhadumpur, District Jehanabad.

.... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Damodar Prasad Tiwari, Advocate. Mr. Kaushal Kishor, Advocate. Mr. Braj Bhushan Mishra, Advocate.
For the Vigilance	:	Mr. Ramakant Sharma, Sr. Advocate. Law Officer, Incharge Vigilance. Mr. Rakesh Kr. Sharma, A.C. to Law Officer

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 17-05-2018

1. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 25.02.2009 passed by the learned Special Judge, Vigilance-I, Patna, in Vigilance P.S. Case No. 110 of 2008/Spl. Case No. 68 of 2008, Trial No. 24 of 2009 by which the learned Special Judge, Vigilance took cognizance against the petitioner for the offences under Sections 7/13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988.

2. Heard learned counsel for the petitioner and learned counsel for the vigilance.



3. The main ground taken by the petitioner is that sanction as required under Section 19 (C) of Prevention of Corruption Act has not been taken at the time of cognizance.

4. Learned counsel for the petitioner has relied on a decision reported in **2015 (3) BBCJ page 253 (Sakaldeo Paswan Vrs. State of Bihar)**. He has also relied on a decision reported in **2010 (2) BBCJ, Page 269 (Bijendra Prasad Vrs. The State of Bihar through Vigilance)**, in support of his submission.

5. It has been submitted by the learned counsel for the petitioner that in aforesaid judgments the Hon'ble Court had held that cognizance order was bad because there was no sanction as required under Section 19(C) of Prevention of Corruption Act.

6. Learned counsel for the vigilance has appeared and submitted that sanction has already been granted under Section 19 (C) of Prevention of Corruption Act in the case. He has filed counter affidavit wherein it has been mentioned in paragraph-18 and 19 of the counter affidavit that sanction for prosecution under Section 197 of the Criminal Procedure Code was obtained through the Principal Secretary, Rural Development Department, vide Memo No. 981 dated 20.2.2009. Further, sanction was granted by the competent authority under Section 19 of the Prevention of Corruption Act, 1988 vide Memo No. 156 dated 31.01.2012 for prosecuting the petitioner under



Sections 7, 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 which has been submitted in the Court of learned Special Judge, Vigilance, Patna. The investigation has been completed and charge sheet has also been submitted in the case. Thereafter cognizance has been taken. The counsel for Vigilance has further submitted that requirement of sanction under Section 19 (1) is a matter of Procedure and does not go to the root of the jurisdiction.

7. Learned counsel for the Vigilance has relied on a decision of Hon'ble Supreme Court reported in *AIR 2001 page 3818 (Satyanarayan Sharma Vrs. State of Rajasthan)* wherein the Hon'ble Supreme Court has held that error, omission or irregularity in sanction should not normally be a ground to grant stay. Merely, because objection regarding sanction was raised at early stage is not a ground to hold that there was failure of justice. Overruling objection on ground of sanction does not result in failure of justice.

8. The learned counsel for Vigilance has also relied on decision reported in *2011(3) PLJR 566 (Dinesh Prasad Vrs. State of Bihar)* wherein this Hon'ble Court has held that "it is difficult to absolve a person who has blatantly done something which is punishable in law, merely on the basis of procedural lapse".

9. The court below on the basis of allegation against the petitioner as well as charge sheet submitted by the Vigilance



Investigation Bureau after completion of investigation, has found *prima facie* case against the petitioner and took cognizance by the impugned order.

10. It appears from the complaint that it is a trap case on the basis of allegation made against the petitioner by the complainant. Thereafter, First Information Report was lodged on the basis of written report submitted by Deputy Superintendent of Police, Vigilance Investigation Bureau.

11. The Hon'ble Supreme Court in the case of *Prakash Singh Badal and another Vrs. State of Punjab and Others* reported in (2007) 1 SCC, Page 1 has held in para 29 of aforesaid Judgment that "the effect of sub-sections (3) and (4) of Section 19 of the Act are of considerable significance. In sub-section (3) the stress is on "failure of justice" and that too "in the opinion of the Court". In sub-section (4), the stress is on raising the plea at the appropriate time. Significantly, the failure of justice is relatable to error, omission or irregularity in the sanction. Therefore, mere error, omission or irregularity in sanction is (sic not) considered fatal unless it has resulted in failure of justice or has been occasioned thereby.

12. In the facts and circumstances stated above, this Court at this stage is not inclined to interfere with the impugned order passed by the court below.



13. The Criminal Miscellaneous application is accordingly dismissed.

14. The petitioner is given liberty to raise all the points as raised in this petition in the court below at the appropriate stage either at the time of framing of charge or during trial which will be considered by the court below in accordance with law without being prejudiced by this order.

15. The stay granted to the petitioner vide order dated 09.04.2012 passed by a coordinate Bench of this Court in connection with Vigilance P.S. Case No. 110 of 2008/Special Case No. 68 of 2008 corresponding to Trial No. 24 of 2009 is hereby vacated.

16. The court below will proceed in the case in accordance with law.

(Sanjay Priya, J)

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AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	27/05/2018
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