

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.56959 of 2018

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

=====

Kaushal Kumar S/o Late Ishwar Chand Prasad, resident of village- Pajawapar, near
Kali Mandir, Ward No. 20, P.S.- Barh, District- Patna.

.... Petitioner/s

Versus

The State of Bihar through Vigilance.

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Vijay Anand, Advocate

For the Opposite Party/s : None

=====

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 31-10-2018

Heard learned counsel for the petitioner.

2. No one appears on behalf of the opposite party.

3. This application under Section 482 of the Code of Criminal Procedure (for short 'the Cr.P.C.') has been filed for restoration of Cr. Misc. No.1857 of 2018 which was dismissed for want of prosecution on 30.08.2018.

4. Having regard to the submissions made by the learned counsel for the petitioner and the averment made in the petition, prayer is allowed.

5. Cr.Misc. No.1857 of 2018 is restored to its original file.

Cr. Misc. No.1857 of 2018



Heard learned counsel for the petitioner.

2. No one appear on behalf of the opposite party.

3. The instant application under Section 482 of the Cr.P.C. has been filed by the petitioner challenging the order dated 27.11.2017 passed by the learned Special Judge, Vigilance-1, Patna, in Special Case No.22 of 2205 arising out of Vigilance Case No.13 of 2005 whereby he has rejected the discharge application filed by the petitioner under Section 227 of the Cr.P.C.

4. The FIR of the case was initiated on 17.09.2005 on the basis of a written report submitted by one Sheo Kumar Jha, the Deputy Superintendent of Police, Vigilance. It was alleged by the informant of the case that on enquiry it was found that the then District Magistrate, Patna in conspiracy with other accused persons has released huge amount in favour of non-governmental organization under the Swarn Jayanti Shahri Rojgar Yojna (for short 'SJSRY') flouting the guidelines of the scheme.

5. It is submitted by the learned counsel for the petitioner that name of the petitioner was not mentioned in the FIR and his name transpired in course of investigation. He contended that there was no material on the basis of which the petitioner could have been sent up for trial, but without application of judicial mind while taking cognizance of the offence the petitioner was also summoned to



face trial and at the stage of framing of charge also when an application under Section 227 of the Cr.P.C. was filed and pressed, the learned Special Judge erroneously dismissed the same without appreciating the fact that there was no material on the basis of which the petitioner could have been put on trial. He contended that as far as the petitioner is concerned, it is not the case of the vigilance that non-governmental organization run by the petitioner was non-existent. The only material against the petitioner, which could be collected in course of investigation was that the beneficiaries of the scheme had stated that although they were given training for the period of four to five months, but not a single penny was paid to them by the petitioner. He contended that merely on the basis of non-payment of stipend to the trainees, the petitioner cannot be prosecuted for the offences punishable under Section 420, 465, 467, 468, 471, 477A and 120B of the Indian Penal Code and Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act.

6. Since learned counsel for the Vigilance has not turned up on repeated calls, I personally look into the materials available on record. I find that the petitioner was Secretary of Yuva Bahumukhi Berojgar Kalyan Sansthan, Balmichak, Anisabad, Patna and in its favour an amount of rupees fourteen lacs fifty five thousand was released under the SJSRYS scheme. It would further appear that



though in the name of providing training to the trainees the petitioner was given a huge sum of rupees fourteen lacs fifty five thousand, he did not pay any amount to the trainees. Apparently, there are materials to show that the petitioner was actively conspiring together with other accused persons including the then District Magistrate, Patna in defalcation of public money. In my opinion, on the basis of the materials available on record, it cannot be said that there is no sufficient ground for proceeding against the petitioner.

7. In that view of the matter, if the learned Special Judge, Vigilance-1, Patna has refused to discharge the petitioner from the case, no illegality can be found with the order impugned.

8. The application, being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	05.11.2018
Transmission Date	05.11.2018

