

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.31307 of 2016

Along with

Interlocutory Application No. 746 of 2017

Arising Out of PS. Case No.-44 Year-2006 Thana- C.B.I CASE District- Patna

Ahmad Mahmood son of Late Abdul Moghni, Resident of New Azimabad Colony Sanichara, Police Station- Sultanganj, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through Vigilance Investigation Bureau, Muzaffarpur.
2. The Deputy Superintendent of Police cum Station House Officer Vigilance Bihar 6, Circular Road, Patna.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. P. K. Shahi, Sr. Advocate with
Mr. Ritesh Kumar,
Mr. Md. Aslam Ansari,
Mr. Shahab Khalil and
Mr. Wasi Akhter, Advocates

For the Vigilance : Mr. Anjani Kumar, Sr. Advocate with
Mr. Sanjay Kumar, Advocate

For the State : Mr. Jharkhandi Upadhyay, APP

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date : 12-12-2018

Heard Mr. P. K. Shahi, learned senior counsel along with
Mr. Ritesh Kumar, learned counsel for the petitioner and Mr.
Anjani Kumar, learned LOI for the Vigilance.

2. The petitioner has moved the Court under Section 482
of the Code of Criminal Procedure, 1973 (hereinafter referred to as
the ‘Code’) for the following relief:

*“That this is an application for quashing First
Information Report in Vigilance P.S. Case no. 44*



of 2006 on behalf of the petitioner, who has been falsely implicated in connection with Vigilance P.S. Case No. 44 of 2006, dated 05.08.2006 arising out of Complaint Case No. 16 of 2005 dated 24.03.2005, giving rise to Special Case no. 28 of 2006 for the alleged offences under Sections 420, 465, 467, 468, 471 477(A), 120-B of the Indian Penal Code and under sections 13(1)9(d) R/W 13(2) of the P.C. Act, 1988 pending in the court of Special Judge Vigilance (North Bihar), Muzaffarpur.”

3. During the pendency of the proceeding, upon submission of chargesheet, cognizance has also been taken by the Court below which the petitioner has assailed by way of Interlocutory Application No. 746 of 2017 seeking quashing of the order taking cognizance under Sections 420, 465, 467, 468, 471, 477A, 120B of the Indian Penal Code and 13(2) read with Sections 13(1) (d) of the Prevention of Corruption Act and issuance of summons against him dated 13.02.2017 passed by the Special Judge, Vigilance, North Bihar, Muzaffarpur in Special Case No. 28 of 2006/Vigilance P.S. Case No. 44 of 2006.

4. Having considered the matter, as the amendment sought is connected to the original relief sought and is a continuing cause of action, the prayer in the Interlocutory Application stands allowed. The order dated 13.02.2017 taking cognizance and issuance of summons against the petitioner shall also form part of the relief sought in the main application.



5. Interlocutory Application No. 746 of 2017 stands disposed off.

6. The petitioner was posted as Block Development Officer, Saraiya in the district of Muzaffarpur when on 26.03.2003 a complaint was received alleging that four quintals in eight bags of rice, which was meant for the Public Distribution System, had been sold by the Mukhiya to a private person from whom it was seized and kept in the house of the complainant with regard to which enquiry was requested. The petitioner, upon receipt of the same, endorsed the matter to the Block Animal Husbandry Officer on 27.03.2003 for submitting a report. However, the report was not submitted and in the meantime, the petitioner was transferred from there on 21.07.2003. The new incumbent then sent the matter for investigation to the Block Cooperative Extension Officer who submitted a report on 10.08.2003 and thereafter matters proceeded. In the meantime, the complainant had also moved before the Special Judge Vigilance, North Bihar, Muzaffarpur who sent the complaint to the Vigilance Department for enquiry and based on that the present proceeding was instituted. The Vigilance, upon concluding the enquiry, submitted chargesheet against the petitioner and 10 others based upon which the Court has taken



cognizance against 10 persons as one accused had died by that time.

7. Learned counsel for the petitioner submitted that the entire prosecution is misconceived, malicious and in fact frivolous. It was submitted that in the entire investigation the only thing which the Vigilance could find against the petitioner was his alleged lack of action and based upon the same, he has also been chargesheeted as being party to such delay which according to the prosecution had resulted in shielding the accused and also helped them in destroying the evidence. It was submitted that the petitioner being the Block Development Officer had immediately endorsed the complaint to a responsible officer, i.e., the Block Animal Husbandry Officer, for making an enquiry. It was submitted that thereafter the petitioner was not required to keep on pursuing the matter on a day to day basis as there was no occasion for him to distrust or not await the report from the Block Animal Husbandry Officer. Learned counsel submitted that thereafter, within a period of a few months, when the petitioner was still posted there, neither any reminder nor any fresh application was submitted before him by any party and, thus, he also was not aware of the development. Learned counsel submitted that the vital aspect which the Court would keep in mind is the fact that the



original complaint itself was endorsed and sent to the Block Animal Husbandry Officer and, thus, there being no copy retained in the office, neither was there any occasion nor it was required under any law that the petitioner being the Block Development Officer had to personally monitor on a day to day basis and exert pressure and compel the Block Animal Husbandry Officer to submit the report within any specified period. Learned counsel submitted that in the general course of administration when an officer endorses any matter to any other person for enquiry, it is presumed that the officer to whom the enquiry is entrusted shall do so without any undue delay keeping in mind his overall duties and priorities attached to his office. In the present case also, it was contended that the petitioner was never informed with regard to any damage being caused to any cause or there being any adverse impact of the report not being submitted by the Block Animal Husbandry Officer and soon thereafter the petitioner, within a few months only, was transferred. Learned counsel submitted that if at all there was any delay or dereliction of duty on his part then even the District Magistrate and the Sub Divisional Officer to whom also such complaint was made were equally responsible, as normally they are the persons who are responsible for taking action in the matter, being the head of the District and Sub division



respectively. It was further submitted that the charge against the petitioner of abetting in the destruction of evidence is totally frivolous and unfounded for the simple reason that as per the allegation itself, the so called seized rice was kept in the house of the complainant and, thus, if the article seized was with the complainant, there cannot be any charge or allegation of any attempt being made for destroying the evidence as the so called evidence is already in the custody of the complainant as per his own showing. Learned counsel submitted that the petitioner having acted in a normal way with regard to discharge of his duty is also borne out from the fact that his successor had also not conducted the enquiry and endorsed it to the Block Cooperative Extension Officer who had submitted a report and the successor of the petitioner not being made an accused clearly is an admission on the part of the prosecution itself that what the petitioner did by endorsing the complaint to the Block Animal Husbandry Officer for enquiry was the normal procedure to be followed and there was nothing wrong muchless any criminal complicity of the petitioner in doing so. Learned counsel took the Court to various paragraphs of the police papers on which the prosecution has relied for submitting the chargesheet against the petitioner in which the only allegation is of the petitioner delaying the matter which, according



to the prosecution, discloses his complicity to save the accused and destroy the evidence. Learned counsel submitted that besides this there is no other allegation of any kind against the petitioner.

8. Learned counsel for the Vigilance submitted that once the Court has taken cognizance under Section 190 of the Code the Court would not interfere as the law permits the Court concerned to be *prima facie* satisfied with regard to the offence having been committed and at that time, it is not required to meticulously weigh the evidence and consider the defence of the accused. Learned counsel submitted that in such view of the matter, even this Court under Section 482 of the Code would not interfere as the petitioner would have ample opportunity to present his defence during the trial. Learned counsel submitted that the law with regard to interference under Section 482 of the Code has been spelt out in detail in the decision of the Hon'ble Supreme Court in the case of **State of Haryana v. Bhajan Lal** reported as **1992 Supplementary (1) Supreme Court Cases 335**. It was submitted that paragraph No. 102 of the same clearly indicates that only where the allegations made either in the F.I.R. or the complaint, even if they are taken at the face value and accepted in their entirety do not *prima facie* constitute any offence or make out a case against the accused, the Court would interfere under its



present jurisdiction. However, he could not controvert the fact that the only allegation against the petitioner is that he did not take action promptly.

9. Learned counsel for the petitioner, by way of reply, submitted that the stand taken with regard to the Court not competent to interfere in the matter once the cognizance has been taken, he would also rely upon the same judgment in the case of **State of Haryana** (supra) which still holds the field and has further been clarified in the latest judgment of the Hon'ble Supreme Court dated 15th November, 2018 in **Criminal Appeal No. 1395 of 2018 (Arising out of SLP (Crl.) No. 3730 of 2016)** in the case of **Anand Kumar Mohatta and Anr. Vs. State (Govt. of NCT of Delhi), Department of Home and Anr.** Learned counsel drew the attention to the Court to paragraphs no. 15 and 26 of the same to contend that the Court is within its power to examine whether the offences alleged to have been committed by the accused were *prima facie* made out from the complainant's F.I.R., chargesheet, documents etc. or not.

10. Having considered the facts and circumstances of the case, submissions of learned counsel for the parties and upon going through the materials on record, including the entire police papers served on the petitioner, which form part of the records, in



the considered opinion of the Court, a case for interference has been made out. The basic contention of learned counsel for the petitioner that from the entire episode, as narrated in the complaint followed by whatever has come during the entire investigation, does not disclose any criminal offence, save and except for a bald allegation that the petitioner had dilly-dallied the matter causing delay with the intention to save the accused and destroy evidence, is not borne out either from the sequence of events or what has come during investigation in support of such allegation is correct, for the reason, that the petitioner cannot be said to have acted in a manner which was deliberate or different from what an officer would have done in his normal course of duty. The petitioner had endorsed the matter for enquiry to another senior officer at the Block level i.e., the Block Animal Husbandry Officer and was not expected to maintain pressure on that officer to submit a report in any fixed time as it is expected that the officer to whom any enquiry is entrusted has to do so along with other works attached to his office, without any undue delay or loss of time. The said procedure has also in fact been accepted by the prosecution itself to be normal for the reason that the successor of the petitioner had also not himself conducted the enquiry and had given it to the Block Cooperative Extension Officer who had submitted a report.



Furthermore, the allegation with regard to destruction of evidence also falls flat for the simple reason that the so called evidence which is four quintals/eight bags of rice, as per the complaint itself, were seized and kept in the house of the complainant and, thus, there cannot be any question of the same being destroyed. The Court also finds the objection of learned counsel for the Vigilance with regard to jurisdiction of the Court under Section 482 of the Code with regard to non interfere in the order taking cognizance to be erroneous. In this context, the Court would only refer to the decision relied upon by learned counsel for the petitioner in the case of **Anand Kumar Mohatta** (supra), the relevant being at paragraphs no. 15, 16, 17 and 26. The same read as under:

“ 15. First, we would like to deal with the submission of the learned Senior Counsel for the Respondent No.2 that once the charge sheet is filed, petition for quashing of FIR is untenable. We do not see any merit in this submission, keeping in mind the position of this Court in Joseph Salvaraj A. v. State of Gujarat. In the case of Joseph Salvaraj A. (supra), this Court while deciding the question whether the High Court could entertain the 482 petition for quashing of FIR, when the charge sheet was filed by the police during the pendency of the 482 petition, observed: -

“16. Thus, from the general conspectus of the various sections under which the appellant is being



charged and is to be prosecuted would show that the same are not made out even prima facie from the complainant's FIR. Even if the charge-sheet had been filed, the learned Single Judge could have still examined whether the offences alleged to have been committed by the appellant were prima facie made out from the complainant's FIR, chargesheet, documents, etc. or not."

16. Even otherwise it must be remembered that the provision invoked by the accused before the High Court is Section 482 Cr. P.C and that this Court is hearing an appeal from an order under Section 482 of Cr.P.C. Section 482 of Cr.P.C reads as follows: -

"482. Saving of inherent power of the High Court.- *Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."*

17. There is nothing in the words of this Section which restricts the exercise of the power of the Court to prevent the abuse of process of court or miscarriage of justice only to the stage of the FIR. It is settled principle of law that the High court can exercise jurisdiction under Section 482 of Cr.P.C even when the discharge application is pending with the trial court. Indeed, it would be a travesty to hold that proceedings initiated against a person can be interfered with at the stage of FIR



but not if it has advanced, and the allegations have materialized into a charge sheet. On the contrary it could be said that the abuse of process caused by FIR stands aggravated if the FIR has taken the form of a charge sheet after investigation. The power is undoubtedly conferred to prevent abuse of process of power of any court.

x x x x

26. In State of Haryana and Ors. v. Bhajan Lal and Ors., this Court has set out the categories of cases in which the inherent power under Section 482 of Cr.P.C. can be exercised. Para 102 of the judgment reads as follows: -

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.



(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the omission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever



reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

11. From the aforesaid, it is clear that the primary duty of the Court under Section 482 of the Code is to ensure that the same should be exercised to prevent the abuse of the process of any court or otherwise to secure the ends of justice.

12. In view of the discussions made hereinabove, the Court finds that the present case falls under the 1st and 3rd category set out in paragraph no. 102 of the judgment in the case of **Bhajan Lal** (supra) and, thus, it is a fit case where the Court should



exercise its inherent powers under Section 482 of the Code for preventing the abuse of the process of the Court and to secure the ends of justice.

13. Accordingly, the order taking cognizance dated 13.02.2017 passed by the Special Judge, Vigilance, North Bihar, Muzaffarpur in Special Case No. 28 of 2006/Vigilance P.S. Case No. 44 of 2006, as far as it concerns the petitioner, stands quashed.

14. The application stands allowed.

(Ahsanuddin Amanullah, J)

Anjani/-

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