IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1084 of 2016

Arising Out of Special Vigilance Unit, Patna Case No. -01, Year- 2015 District- Patna

Amrita Singh, daughter of Sri Surendra Pratap Singh, wife of Shardendu Bhushan, resident of House No. E/3, Phase-2, Ashiana Nagar, Patna – 800025.

.... Petitioner

Versus

1. The State of Bihar, Through Chief Secretary, Bihar, Old Secretariat, Patna
2. The Principal Secretary, Home Department, Government of Bihar, Patna.
3. The Director General, Vigilance Investigation Bureau, Patna.
4. The Inspector General Special Vigilance Unit, Patna.
5. The Superintendent of Police, Special Vigilance Unit, Patna.
6. The Principal Secretary, Cabinet Vigilance Department, Government of Bihar, Patna.

.... Respondents

Appearance :

For the Petitioner/s : Mr. Jitendra Singh, Sr. Advocate
For the Respondent/s : Mr. Anjani Kumar, Sr. Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

C.A.V. JUDGMENT

Date: 28-09-2018

This writ application has been preferred seeking following reliefs:

> "(i) For a declaration that the assets, both movable and immovable, of which the petitioner/proprietorship firm of the petitioner in the name and style of M/s Siddhi Vinayak is the sole owner having acquired them out of the income, duly declared and accepted under the applicable laws of India, from the business carried out by her in the name and style of the said firm cannot without any basis be alleged to be the assets, both movable and immovable,

acquired by the husband of the petitioner, namely, Shardendu Bhushan, Assistant Engineer, Road Construction Department, Government of Bihar, Patna by misuse of his said government office in the facts and circumstances of the case to be included in the F.I.R. bearing Special Vigilance Unit, Patna Case No. 1/2015 dated 30.06.2015 instituted against him under sections 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act, 1988 as the same is a violation of her constitutional right to property under Article 300A of the Constitution of India.

(ii) For a declaration that even in the given facts of the case where amongst others, the entry into the above said government service of the husband of the petitioner being much subsequent to the establishment of petitioner's proprietorship firm and a robust business carried out thereunder, payments received from reputed firms and semi government organizations through cheques for the work awarded to the petitioner's firm in writing, cannot be permitted to be alleged to be the assets of the husband of the petitioner for starting a prosecution against him and the laid back investigation in Special Vigilance Unit, Patna Case No. 1/2015 dated 30.06.2015 which only requires a verification of documents cannot be countenanced by rule of law and the same is violative of her rights conferred inter alia under Article 19(1)(a) and 300A of the Constitution of India, apart from the continued prejudicial impact on the business and affairs of the petitioner and her proprietorship firm.

(iii) For issuance of a writ in the nature of Mandamus, as a consequence to the above, directing the respondents to exclude the above assets, both movable and immovable, of the petitioner from the F.I.R. bearing Special Vigilance Unit, Patna Case No. 1/2015 dated 30.06.2015 which have been wrongly mentioned and shown to be a part of the assets of her husband, Mr. Shardendu Bhushan, alleged to be substantially disproportionate to his known source of income having been amassed by corrupt and illegal means.

(iv) For issuance of a writ in the nature of Mandamus, as a consequence to the above, directing the respondents not to touch the assets and properties, movable or immovable, of the petitioner as wrongly shown and included in the FIR bearing Special Vigilance Unit, Patna Case No. 1/2015 dated 30.06.2015, as stated above, and not to interfere with the business being carried on by her through her proprietorship firm M/s Sidhi Vinayak in future in the name of carrying out investigation of the above case and to return all the documents, etc. of the said firm seized by them in connection with the said case."

(v). Any other relief(s) that the petitioner may be found to the entitled to.

2. Mr. Jitendra Singh, learned senior counsel representing the petitioner has argued that the First Information Report being Special Vigilance Unit Patna Case No. 1/2015 dated 30.06.2015 has been instituted against Mr. Shardendu Bhushan, Assistant Engineer, Road Construction Department, Government of Bihar, Patna who is husband of this petitioner. The offences alleged against the husband of this petitioner are under Section 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act, 1988 by the Special Vigilance Unit, Patna of the Cabinet Vigilance Department, Government of Bihar.

3. It is submitted that so far as the present petitioner is concerned, she is not named in the First Information Report but the properties which are exclusively earned, owned and possessed by this petitioner have been sought to be investigated in connection with the F.I.R. lodged against the husband of this petitioner.

4. In course of argument, learned senior counsel has referred a large number of documents showing formation of the proprietorship firm by this petitioner in the year 2006 in the name and style of M/s Sidhi Vinayak, the works contract awarded to the said firm of the petitioner over the period and the turnover achieved by the firm during the period 2006 to the year 2015. It is submitted that the petitioner was engaged in construction work business and because of her flourishing business she earned a total income of Rs. 228.42 Lakhs during the period September 2006 to 2015. The petitioner has filed income tax return and paid income tax right from the day of first allotment and those returns have been duly accepted by the Income Tax Department. It is submitted that the petitioner has paid total income tax of Rs. 62.9772 Lakhs during the period 2006-2007 to the year 2014-2015. In sum and substance, the submission of learned counsel for the petitioner is that the petitioner has got the properties mentioned at serial no. 1, 5, 6, 7, 8 and 10 from her self-acquired income through legitimate means. The petitioner has explained in the petition with support of certain documents that she has acquired the assets purely from her own income and therefore according to the petitioner those properties cannot be subject matter of investigation.

5. Learned senior counsel further submits that the petitioner is not a public servant, her husband came to be in public service only on 18.12.2007 when he joined as Assistant Engineer under the Government of Bihar. It is submitted that the proprietorship firm registered by this petitioner in the name and style of M/s Sidhi Vinayak under the Bihar Shops and Establishment

Act is in the year 2006. Certificate of registration under Section 19 of the Bihar Value Added Tax Act, 2005 has been enclosed as Annexure-3 to the writ application to show that the firm of the petitioner was registered under the Bihar Value Added Tax Act and was allotted tax payer identification number 10124843026. The Certificate has been issued on 27.09.2006.

6. Learned senior counsel has taken this court through the contents of the First Information Report wherein it is alleged that the husband of the petitioner being Assistant Engineer in Road Construction Department, Government of Bihar has while working as public servant in the aforesaid position by corrupt and illegal means and by abusing his position as a public servant has amassed wealth both in form of moveable and immovable assets in his and in name of his wife and children which are substantially disproportionate to his known source of income. The First Information Report contained the details of the properties which would show that some of the properties are being held by this petitioner in the joint name with her husband. Some properties are standing exclusively in the name of this petitioner. Properties standing at serial no. 6, 7 & 8 were acquired by this petitioner in the year 2008-09, whereas other properties have been acquired during different period of time. There are description of moveable properties also showing that there were investment in FD/NSC in the name of her husband and this petitioner worth Rs. 23,32,840/-, there were three cars and two motorcycles worth Rs. 46,98,902/-, jewelries of Rs. 29,80,260/-, and in this way the total value of the moveable and immovable assets included in the F.I.R. have been calculated at Rs. 2,77,79,000.00. Learned senior counsel submits that even though the investigation was started as back as on 30.06.2015, till date it has not been concluded by the investigating agency.

7. Learned senior counsel has further submitted that as per the manual/guidelines of the Vigilance Investigation Bureau, in terms of Clause 3.1 when the complaint was received, it was required to be placed before the Superintendent of Police who had to obtain order from the senior-most officer in the organization for consideration. If preliminary enquiry could be felt necessary on the basis of the nature of the complaint, then an officer in the rank of an Inspector is to be given such a task. The contention of learned senior counsel is that no preliminary enquiry has been held in this case before lodging of the First Information Report or while including the assets of this petitioner.

8. In course of argument, learned senior counsel has relied upon the judgment of the Hon'ble Apex Court in the case of **Chairman, Indore Vikas Pradhikaran Vs. Pure Industrial Coke & Chemicals Ltd. and others** reported in **(2007) 8 SCC 705;** wherein the Hon'ble Supreme Court has held that the right to property is now considered to be not only a constitutional right but also a human right.

9. Learned senior counsel submits that by involving the properties earned by the present petitioner in the scope of investigation of the case which has been lodged against the husband of the petitioner, the investigating agency has cast a doubt on the genuineness of the property itself and this is likely to effect the business of the petitioner to a large extent. It is submitted that prior to subjecting the properties of the petitioner to the investigation, no preliminary enquiry was held by the investigating agency. Referring to paragraph 55 of the judgment in the case of **Chairman, Indore Vikas Pradhikaran (supra)** learned senior counsel submits that the Hon'ble Supreme Court has held that earlier human rights were existed to the claim of individuals right to health, right to livelihood, right to shelter and employment, etc. but now human rights have started gaining a multifaceted approach. Now property rights are also incorporated within the definition of human rights. Even claim of adverse possession has to be read in consonance with human rights.

10. Learned counsel has further relied upon the judgment of the Hon'ble Supreme Court in the case of **Manohar Lal Sharma Vs. Principal Secretary and others** reported in **(2014) 2 SCC 532.** In the said case, the Hon'ble Supreme Court has held that "*What is crucial for an investigation is that it should expeditiously from the point of view of all concerned. From the point of view of the accused, a quick conclusion to the investigation will clear his name and image in society if he is innocent. This is certainly of considerable importance to a person who has been wrongly accused or framed for an offence. From the point of view of society, a quick closure to investigation is necessary so that those against whom there is evidence of the commission of a crime are tried at the earliest and punished if they are guilty. This, so far as society is* *concerned, is essential for maintaining the rule of law. And, from the point of view of the investigator, an expeditious conclusion of investigations is necessary because greater the delay, greater the chances of evidence being destroyed, witnesses being compromised or the accused being able to manipulate circumstances to his or her advantage."* Learned senior counsel submits that pendency of the investigation for over three years cannot be justified by any stretch of imagination.

11. Learned senior counsel for the petitioner has further relied upon the judgment of the Hon'ble Supreme Court in the case of **Akhilesh Yadav Vs. Vishwanath Chaturvedi and others and other connected matters** reported in **(2013) 2 SCC 1.** Learned senior counsel has drawn the attention of this court towards the views expressed by the Hon'ble Supreme Court in paragraph-29 to paragraph-35 of the judgment. In paragraph 35 in the case of **Akhilesh Yadav (supra)** the Hon'ble Supreme Court has held as under:

> "**35**. In addition, the submissions made qua Smt. Dimple Yadav merits consideration, since when the order under review was passed, she had neither held any public office nor government post and was essentially a private person notwithstanding

her proximity to Shri Akhilesh Yadav and Shri Mulayam Singh Yadav. On reconsideration of her case, we are of the view that the investigation launched against her on the issue of amassing wealth beyond her known source of income, is liable to be dropped. The review petition, so far as Smt. Dimple Yadav is concerned, is, accordingly, allowed and the investigation concluded by CBI against her should, therefore, be dropped."

It is submitted that the case of the petitioner stands on a better footing than that of the case of Smt. Dimple Yadav whose properties sought to be investigated in connection with the case.

12. Lastly learned senior counsel has relied upon the judgment of Hon'ble Apex Court in the case of **Lalita Kumari Vs. Government of Uttar Pradesh and Ors.** reported in **(2014) 2 SCC 1**. Reliance has been placed in paragraph 120.6 of the said judgment which reads as under:

> **"120.6.** As to what type and in which cases preliminary inquiry is to be concluded will depend on the facts and circumstances of each case. the category of cases in which preliminary inquiry may be made are as under:
> (a) Matrimonial disputes/family disputes
> (b) Commercial offences
> (c) Medical negligence cases
> (d) Corruption cases
> (e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over three months'

> delay in reporting the matter without satisfactorily explaining the reasons for delay.
> The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry."

13. In the aforementioned background, learned senior counsel submits that earlier a learned coordinate Bench of this court while adjourning the matter called upon the Special Vigilance Unit, Patna to consider the representation of the petitioner and to submit a report to this court. It is pointed out that a report was submitted to the learned coordinate Bench which contained the order of the Investigating Agency of Special Vigilance Unit dated 15.11.2017, whereby it was informed that the representation of the petitioner was voluminous and containing several documents which require investigation and prayer was made for further six months time. These facts have been taken note of by the learned coordinate Bench of this court in its order dated 07.12.2017.

14. This court has also been informed that when the investigation was not completed within the given period a contempt application was preferred wherein the Special Vigilance Unit prayed for sometime and given by this court to understand that the investigation in the present case shall be concluded by the 1st week of

December, 2018.

15. The learned senior counsel has in fact at one stage submitted that this case should be kept pending awaiting completion of investigation till 8th of December, 2018. Learned senior counsel has however also submitted that even though the relief prayed in the writ application may be differently couched, this court sitting in its writ jurisdiction can mould the relief in the interest of justice.

16. Learned senior counsel for the petitioner has also relied upon the judgment of the Hon'ble Supreme Court in the case of **D.S.P., Chennai Vs. K. Inbasgaran** reported in **AIR 2006 SC 552**. Paragraph 15 of the judgment has been read over to this court to impress that once the petitioner has satisfactorily answered that all money belonged to her and she has been assessed to the income tax for the said income, in absence of any categorical evidence to believe that these properties have been earned by the husband of the petitioner, they cannot be fastened on the husband.

17. On the other hand, Mr. Anjani Kumar, learned senior counsel representing the Special Vigilance Unit submits that this writ application is totally misconceived inasmuch as the petitioner is trying to scuttle the investigation in the case connected with her husband.

18. Learned senior counsel submits that no doubt the F.I.R. has been lodged against the husband of the petitioner but in course of investigation several revelations have come to the notice of the Investigating Agency.

19. A stand has been taken in the counter affidavit and the supplementary counter affidavit that before the joining of the husband of the petitioner as a public servant on 13.12.2007, the firm of the petitioner had received three work orders from the Tata Tele Service Limited. The total work executed and total payments received for the executed works from the allotment of work till the joining of the husband of the petitioner were worth Rs. 100,04,192.33 from total number of 35 works. During the period the December 2006 to March 2007 the firm of this petitioner had received 18 work orders for total work value of Rs. 3301477.59. The firm earned a total profit of Rs. 1,27,826/- for the financial year 2006-07. The firm received first government contract from Bihar Rajya Pul Nirman Nigam on 11.06.2010 which is after joining of the husband of the petitioner in the services of Government of

Bihar. The investigation has revealed that the husband of the petitioner had visited the Bihar Rajya Pul Nirman Nigam on number of occasions to ensure work orders from the government organization.

20. It is further submitted that the husband of the petitioner used to visit the Bihar Rajya Pul Nirman Nigam for obtaining work orders from the Corporation in 2012. Thus it is alleged that a link is there between the husband of the petitioner and the firm who executed work.

21. Learned senior counsel representing the Vigilance also submits that there were phenomenal rise in income of the firm soon after joining of the husband of the petitioner in the government service which has raised strong suspicion about his active involvement in the business of the petitioner. It has come in course of investigation that there were many bank transactions, bank accounts, and from the bank account money had been transferred to the account of the husband of the petitioner and vice versa.

22. It is also pointed out that the Special Vigilance Unit has been enquiring regarding debit and credit entries in the bank account of the firm as well as the motive of such transactions. However, petitioner could give only details of 50 transactions. At this stage however learned senior counsel for the petitioner submits that the petitioner has made available all the information.

23. Learned senior counsel representing the Special Vigilance Unit has submitted that the plea of the petitioner that a preliminary inquiry was required to be held at the first instance is not tenable inasmuch as the guidelines of the Vigilance Investigation Bureau cannot be said to be a statutory provision and the same has not been a part of the scheme of the Code of Criminal Procedure.

24. It is also submitted that in an appropriate case where the information received from the reliable sources are prima facie satisfactory and those are sufficient to lodge an F.I.R., the Vigilance Investigation Bureau is free to lodge the F.I.R. No fault may, thus, be found in the action of the Special Vigilance Unit in the matter of lodging of the F.I.R. in which the husband of the petitioner is an accused.

25. It is further submitted that right to property of a person is no longer a fundamental right but at the same time no person can be deprived of his/her property or may be dispossessed thereof without following the established procedure of law. It is submitted that in the present case the interim measures have been taken directing the petitioner not to deal with the assets standing in her name only because at this stage if properties are allowed to be dealt with, the investigation will suffer and the alleged ill-gotten assets may be transferred to the detriment of a *bona fide* purchaser and the State.

26. Learned senior counsel submits that the kind of declarations which the petitioner is looking for in the present writ application is not fit to be granted by a writ court sitting in its extraordinary writ jurisdiction under Article 226 of the Constitution of India.

27. Submission is that the petitioner will have an adequate opportunity to defend herself if in ultimate analysis it is found that the properties owned and possessed by the petitioner are part of the ill-gotten money of the husband of the petitioner.

28. On instruction from officer present in the court, learned senior counsel representing the Special Vigilance Unit submits that the investigation in the present case shall be completed by the end of the month of December 2018, and in any case the result of investigation will be known to the petitioner by the said date. At this stage it is worth mentioning that this court repeatedly asked the learned senior counsel to say a final time frame for completion of investigation and in case more time is required then the same may be brought to the notice of this court, but the learned senior counsel, on instruction from the officer present in the court, submits that the investigation will be definitely concluded by the end of the month of December 2018.

29. Learned senior counsel also submits that the judgments cited on behalf of the petitioner would not be applicable in the facts and circumstances of the case as those are clearly distinguishable.

30. Having heard learned senior counsel for the petitioner and the Special Vigilance Unit as also learned counsel representing the State, this court is of the considered opinion that at this stage the writ application is wholly misconceived. The reliefs prayed in the writ application are in the nature of a declaration sought from this court that the assets standing in the name of the petitioner are her self-acquired properties, and therefore those properties cannot be subjected to investigation in connection with the F.I.R. lodged against the husband of the petitioner.

31. In the opinion of this court, the claim of the petitioner that she has acquired these properties out of her own income from the firm would be a pure question of fact which may be culled out only in course of investigation by the investigating agency. This court cannot act as a fact finding court and give a declaration as sought for.

32. From the allegations mentioned in the First Information Report which includes the assets of which ownership is being claimed by this petitioner, it is evident that if those allegations are found to be true in course of investigation, they will constitute an offence punishable under the provisions of the Prevention of Corruption Act, 1988. The investigation is still in progress. This court however cannot remain a mute expectator when it is found that the investigation in the present case started with the lodging of the F.I.R. on 30.06.2015, but despite a lapse of more than three years, the investigation has not been concluded.

33. In the case of **Hussainara Khatoon Vs. State of Bihar** reported in **AIR 1979 SC 1369;** the Hon'ble Supreme Court has held that the right to speedy justice is a part of the fundamental right granted to a citizen under Article 21 of the Constitution of India. By no means, pendency of an investigation for about 3½ years by now can be justified. This court has taken note of the judgment of the Hon'ble Apex Court in the case of **Manohar Lal Sharma (supra)** wherein Hon'ble Apex Court has held that the court ordinarily did not interfere with the matter of investigation but in exceptional cases the court can interfere in the matter of investigation. It has also been held that investigation should conclude expeditiously from the point of view of all concern. What has been held in paragraph 33 & 81 of the judgment rendered in the case of **Manohar Lal Sharma (supra)** are quoted hereunder for ready reference:

> "**33.** A proper investigation into crime is one of the essentials of the criminal justice system and an integral facet of rule of law. The investigation by the police under the Code has to be fair, impartial and uninfluenced by external influences. Where investigation into crime is handled by CBI under the DSPE Act, the same principles apply and CBI as an investigating agency is supposed to discharge its responsibility with competence, promptness, fairness and uninfluenced and unhindered by external influences.
>
> **81.** What is an investigation has already been discussed by Brother Lodha, J. and I endorse his views on this. However, what is crucial for an investigation is that it should conclude expeditiously from the point of view

> of all concerned: from the point of view of the accused, a quick conclusion to the investigation will clear his name and image in society if he is innocent. This is certainly of considerable importance to a person who has been wrongly accused or framed for an offence; from the point of view of society, a quick closure to investigation is necessary so that those against whom there is evidence of the commission of a crime are tried at the earliest and punished if they are guilty. This, so far as society is concerned, is essential for maintaining the rule of law; and from the point of view of the investigator, an expeditious conclusion of investigations is necessary because greater the delay, greater the chances of evidence being destroyed, witnesses being compromised or the accused being able to manipulate circumstances to his or her advantage."

34. In the opinion of this court, the extraordinary writ jurisdiction under Article 226 of the Constitution of India cannot be exercised for giving the kind of declaration sought for by the petitioner in the present case, and therefore so far as the reliefs prayed in paragraph-1(i), 1(ii), 1(iii), 1(iv) are concerned, those prayers are rejected at this stage.

35. In relief no. 1(v) petitioner has prayed for any other relief that the petitioner may be found entitled to.

36. This court is of the opinion that the petitioner is entitled to the relief to the extent that this court would direct the Investigating Agency to conclude the investigation with regard to the assets of this petitioner expeditiously and in any case by the end of the month of December 2018. It is reiterated that learned senior counsel representing the Special Vigilance Unit, on instruction from the officer present in the court, has made categorical statement that the investigation with regard to the assets of the petitioner, which are under investigation, shall definitely be concluded by the end of December 2018.

37. This writ application is therefore disposed off in terms stated hereinabove.

38. Let it be recorded that this court has not gone into the merit of the submissions at this stage and the Investigating Agency shall be free to proceed in their own way in accordance with law to complete the investigation independently and fairly.

(Rajeev Ranjan Prasad, J)

Rajeev/-

AFR/NAFR	**AFR**
CAV DATE	27.09.2018
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