

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Criminal Writ Jurisdiction Case No.500 of 2011
With
Interlocutory Application No. 1475 of 2018.**

Arising Out of P.S. Case No. -64 Year- 2006 Thana –Vigilance District- PATNA

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Santlal Chaudhary, S/O Late Ramswaroop Chaudhary, R/O Vill - Rashulpur, P.S. Mahua, Distt – Vaishali (Hazipur)

.... Petitioner/s

Versus

1. The State Of Bihar Represented Through The Chief Secretary, Govt. Of Bihar, Patna
2. The Principal Secretary, Department of Labour Resources, Bihar, Patna
3. The Commissioner, Department of Labour Resources, Bihar, Patna
4. The Principal Secretary Department of Vigilance, Bihar, Patna

.... Respondent/s

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Appearance:

For the Petitioner/s	:	Mr. Avinash Kumar, Advocate.
For the State	:	Mr. Madhaw Prasad Yadav, G.P. 23 & Mr. Meera Singh, AC to GP 23.
For the Vigilance:		Mr. Rama Kant Sharma, Sr. Advocate & Mr. Rakesh Kumar Sharma, Advocete.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

Date: 09-05-2018

Heard learned counsel for the petitioner and learned counsel representing the Vigilance Investigation Bureau.

2. It appears that initially the Writ Application was preferred for setting aside the order as contained in Memo No. 03 dated 02.01.2007 (Annexure-4 to the Writ Application) by which sanction has been accorded by the competent authority to prosecute the petitioner for the offences alleged under Sections 7/13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988.

3. The contention raised on behalf of the petitioner was



that the sanction has been granted by the Law Department which is not competent to grant such sanction in respect of the petitioner because the petitioner happens to be an employee of the Labour, Employment and Training Department of the Government of Bihar.

4. During pendency of the Writ Application, since a similar matter was pending consideration before the Hon'ble Apex Court in the case of **State of Bihar & Ors. Vs. Rajmangal Ram** this case was awaiting result in the case of **Rajmangal Ram** pending before the Hon'ble Apex Court.

5. At this stage, learned counsel for the petitioner has placed before this Court the judgment of the Hon'ble Apex Court in the case of **State of Bihar & Ors. Vs. Rajmangal Ram**, reported in (2014) 11 SCC 388. Sensing the difficulty in raising this issue on the ground stated in the application, particularly in view of the view taken by the Hon'ble Supreme Court in Paragraph 9 of the judgment rendered in the case of **Rajmangal Ram** (Supra), at this stage learned counsel for the petitioner has a submission that even though the prosecution of the petitioner is being done under the provision of the Prevention of Corruption Act but the sanction has been accorded under Section 197 of the Code of Criminal Procedure.

6. Attention of this Court has also been drawn towards the Interlocutory Application being I.A. No. 1475 of 2018 filed on behalf



of the petitioner to challenge the order dated 20.02.2007 passed by the learned Special Judge, Vigilance, North Bihar in Vigilance Case No. 64/2006 by which cognizance has been taken for the offences alleged under the Prevention of Corruption Act.

7. Learned counsel submits that the order taking cognizance is liable to be held bad in law because no sanction was taken prior to cognizance in accordance with Section 19 of the Prevention of Corruption Act, 1988.

8. On the other hand, learned counsel representing the Vigilance Investigation Bureau has submitted before this Court that a bare perusal of Paragraph 9 of the judgment rendered by the Hon'ble Supreme Court in the case of **Rajmangal Ram** (Supra) would show that the Hon'ble Apex Court even assumed that the Law Department was not competent for purpose of according sanction but despite that assumption the Hon'ble Supreme Court set aside the order of the Hon'ble High Court because the High Court had not reached to a conclusion that a failure of justice had occasioned because of the sanction accorded by the Law Department.

9. Taking a cue from the view taken by the Hon'ble Apex Court in Paragraph 9 of the judgment in the case of **Rajmangal Ram** (Supra) it is contended on behalf of the Vigilance Investigation Bureau that in the present case as well the petitioner is unable to show



that only because the Law Department has granted sanction there is any failure of justice on the part of the department which would prejudice the petitioner. It is his submission that mere levelling of Section 197 of the Code of Criminal Procedure will not be of any relevance so as to render the order of sanction bad in law. According to him, it is not the case of the petitioner that the sanctioning authority, in terms of Section 197 of the Code of Criminal Procedure, would be different from that of one under Section 19 of the Prevention of Corruption Act and, if it is so, the order granting sanction, as contained in Annexure-4, is not fit to be set aside on the grounds pleaded on behalf of the petitioner.

10. Having heard learned counsel for the petitioner as also learned counsel representing the Vigilance Investigation Bureau and after going through the judicial pronouncement placed before this Court as has been taken note of here-in-above, this Court is of the considered opinion that the order granting sanction, as contained in Annexure-4, shows application of mind on the part of the authorities concerned and the petitioner is unable to demonstrate before this Court that there has been any failure of justice because of grant of sanction by the Law Department. So far as the mentioning of Section 197 Cr.P.C. in the impugned order is concerned, this Court will agree with the contention raised on behalf of the Vigilance Investigation



Bureau that mere levelling of Section will not make any difference in the legality or validity of the impugned order as, according to him, the sanction has been granted by the competent authority and in fact the materials available on the record would show that subsequently a fresh sanction order was also passed in the year 2011 U/S 19 of the Prevention of Corruption Act.

11. In the facts and circumstances of the case, this Court is not willing to accept the submissions on behalf of the petitioner so far as to interfere with the impugned order.

12. The Writ Application as well as the Interlocutory Application are dismissed being devoid of merits.

13. Let the trial of the case be expedited. It is expected that the Vigilance Investigation Bureau shall ensure presence of its witnesses on the date and time fixed by the learned trial court so that the trial is concluded within a reasonable time.

14. At this stage, learned counsel for the petitioner has placed before this Court a copy of judgment dated 21.02.2018 passed by a learned co-ordinate bench of this Court in Cr.W.J.C. No.600 of 2016 and submits that the petitioner may also be allowed to raise the plea of validity of sanction order at appropriate stage of trial. This Court is of the view that petitioner may raise such pleas in course of trial which may be available to him in accordance with law and by



virtue of judicial pronouncements of the Hon’ble Apex Court but the issues raised and decided in the present application shall not be re-opened.

(Rajeev Ranjan Prasad, J)

Dilip, AR

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	11.05.2018
Transmission Date	11.05.2018

