

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.600 of 2016

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

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Birendra Kumar Sahu S/o. Sri Parmeshwar Sahu, R/o. Mohalla- Bhoot Nath Road, Police Station-Agamkuan, District- Patna, presently posted as Deputy Superintendent of Police (Suspended), Head Office, Office of Deputy Inspector General of Police, Purnia.

.... Petitioner/s

Versus

1. The State of Bihar Represented Through The Chief Secretary, Govt. of Bihar, Patna
2. The Principal Secretary, Department of Home (Special), Government of Bihar, Patna
3. The principal Secretary, Department of Vigilance, Government of Bihar, Patna
4. The Secretary, Department of Law, Government of Bihar, Patna
5. The Director General, Vivilance Investigation Bureau, Bihar, Patna
6. The Superintendent of Police, Vigilance Investigation Bureau, Bihar, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Bindhyachal Singh, Advocate Mr. Vipin Kumar Singh, Advocate Mr. Krishna Chandra, Advocate
For the Respondent/s	:	Mr. Gautam Bose, AAG-8
For the Vigilance	:	Mr. Rama Kant Sharma, Sr. Advocate Vig. Mr. Rabindra Kumar, AC to Vigilance L/O.

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

CAV JUDGMENT

Date: 21-02-2018

Heard learned counsel for the parties.

2. The petitioner has invoked the writ jurisdiction of this Court under Articles 226 & 227 of the Constitution of India for quashment of order contained in Memo No.138/J dated 07.08.2015 vide Annexure-6, whereby sanction has been accorded, in exercise of power under Section 19 of the Prevention of



Corruption Act, to prosecute the petitioner in connection with Vigilance Case No.042 of 2015 registered under Sections 7/8/13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988.

3. Allegation in the F.I.R. is that co-accused Munna, the security of the petitioner, had accepted bribe of Rs.1,10,000/- (One lac ten thousands) on behalf of the petitioner, a Deputy Superintendent of Police, just to ensure favour of the petitioner as Supervising Authority of Rajauli P.S. Case No.109 of 2015. The case is that the petitioner was to show favour to the accused of Rajauli P.S. case aforesaid. Mr. Jaypal Yadav, brother of the accused of the aforesaid Rajauli P.S. Case, is informant of the present vigilance case.

4. The challenge is on the ground that the entire materials were not placed before the authority at the time of grant of sanction to prosecute the petitioner. Hence, the sanction order is vitiated in law as it suffers from non-application of mind causing serious prejudice to the petitioner having right to be put on fair trial. The aforesaid order has further been challenged on the ground that the sanctioning authority, Law Department, Government of Bihar, is not competent to grant sanction as the petitioner is not subordinate to the Law Department.

5. Learned counsel for the petitioner has placed reliance



on the judgment of the Hon'ble Supreme Court in the case of **CBI V. Ashok Kumar Aggarwal** reported in **MANU/SC/1220/2013** decided on 22.11.2013. His submission is that guidelines laid down in para-8 of the judgment for consideration and precaution at the time of grant of sanction has not been followed.

6. The respondents have filed counter affidavit and resisted the claim of the petitioner on different grounds including on the ground that sufficient material was there, which was placed before the competent authority at the time of grant of sanction and the Sanctioning Authority is the State Government, which would be evident from the sanction order itself. Though the order was issued under the signature of the Secretary to the Department of Law, Government of Bihar.

7. There is no dispute that the investigation of the case was still going on especially on the representation of the petitioner disclosing his defence in the case. However, the sanction was accorded in the meantime. However, the record reveals that this writ application was preferred on 28.06.2016 and the charge sheet was filed in the case on 03.08.2016 wherein cognizance was taken on the same day i.e., 03.08.2016 itself, in the aforesaid Vigilance case corresponding to Special Case No.24A of 2015 by the Court of learned Special Judge, Vigilance-I, Patna.



8. The law is well settled that the validity of the sanction can be looked into at the stage of trial only. In the case of **CBI V. Ashok Kumar Aggarwal** (supra), the Hon'ble Supreme Court considered earlier judgment in **State of M.P. V. Dr. Krishna Chandra Saksena** reported in (1996) 11 SCC 439 and quoted as follows in para-6 of the judgment:

“....the sanctioning authority was satisfied after complete and conscious scrutiny of the records produced in respect of the allegation against the accused. Now the question whether all the relevant evidence which would have tilted the balance in favour of the accused if it was considered by the sanctioning authority before granting sanction and which was actually left out of consideration could be examined only at the stage of trial when the sanctioning authority comes forward as a prosecution witness to support the sanction order if challenged during the trial. As that stage was not reached the prosecution could not have been quashed at the very inception on the supposition that all relevant documents were not considered by the sanctioning authority while granting the impugned sanction.”

9. In para-20 of the judgment the Hon'ble Supreme Court formulated question for consideration as follows:

“The aforesaid concluding paragraphs of the judgment give rise to questions as to what is the



proper stage to examine the issue of sanction; as well as relating to the applicability of the provisions of Section 19(3)(b) and 19(4) of the Prevention of Corruption Act, 1988.”

10. In para-47 of the judgment the Court answered as follows:

“Undoubtedly, the stage of examining the validity of sanction is during the trial and we do not propose to say that the validity should be examined during the stage of inquiry or at pretrial stage.”

11. In view of the aforesaid judgment, the petitioner would be at liberty to raise the validity of the sanction order at the appropriate stage of the trial and this Court is not proper forum at this stage, i.e., pretrial stage, to consider the disputed question of fact.

12. Therefore, with the aforesaid observation, this writ application stands disposed of.

(Birendra Kumar, J)

Mkr./-

AFR/NAFR	NAFR
CAV DATE	01.11.2017
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