

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.40428 of 2010

Arising Out of PS.Case No. -0 Year- null Thana -null District- MUZAFFARPUR

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Rabindra Nath Sharma, son of late Nathuni Prasad Singh, resident of village-Sirsiya, P.S.-Nautan, District-Siwan.

.... Petitioner/s

Versus

1. The State of Bihar
2. The State of Bihar through Vigilance, Bihar Patna,
3. The Superintendent of Police, Vigilance Investigation Bureau, Bihar, Patna.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Paras Mani, Advocate
Mr. N. D. Chaubey, Advocate

For the State : Mr. S. N. Shukla, APP

For the Vigilance : None

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

CAV JUDGMENT

Date: 30-01-2018

1. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 19.07.2010 passed by the Special Judge, Vigilance, Muzaffarpur, in Rail P.S. Case No.03 of 1995 giving rise to Special Case No.04 of 2001, by which the learned Special Judge has rejected the petition filed by the petitioner under Section 239 Cr. P C. for his discharge.

2. Instant case has been filed by the informant alleging that he is dealing in Fertilizer from New Market, Saraiyaganj, District-Muzaffarpur, and is owner of firm M/s Binjarka Ware House and Manager of M/s Akshay Vyapaar. It is



alleged that on 24.10.1994, his staff, Prem Prakash Agrawal, had gone to Narayanpur Anant Railway Station for taking delivery of one sealed rack of Fertilizer, which was sent from Nagarjun Fertilizer & Chemicals Ltd., Andhra Pradesh. Staff of the Complainant, Prem Prakash Agrawal, on the basis of the slip issued by the employee of Godown Superintendent and the staff of RPF, got loaded fertilizer on two trucks and on the third truck, in conspiracy of both the employees, in place of 200 bags of fertilizer, 200 bags of Cement were loaded. The aforesaid truck of the informant loaded with Cement reached near the Main Gate of the Godown, then objection was raised by the RPF Officials present on the gate and the truck was kept standing in the Godown inside the goods shade campus from 11.00 AM to 5.00 PM. Inspector, Rabindra Nath Sharma, Officer In charge of RPF Post (petitioner) came near gate at 5.00 PM and called the informant by making telephone call in the Godown. Transport Contractor, Sri Sidhnath Tiwari, of M/s Mithila Motor, went to meet the petitioner on behalf of the informant at Narainpur Anant Railway Station and made request with the petitioner to release Prem Prakash Agrawal on which petitioner made demand of rupees fifteen thousand as bribe. It is alleged that when the amount of bribe was not given then the petitioner on the basis of report of Sri Nirdayee Shyam Singh, ASI,



RPF, registered a case against Prem Prakash Agawal and driver of Truck bearing registration no. BHM 8641, namely, Ram Singhashan Tiwary, under Section 3 of the RP UP Act vide RPF Case No.07 of 1994 dated 24.10.1994, and forwarded both the persons in the Court of the Railway Magistrate, Sonapur. They also took signature of Prem Prakash Agrawal on blank paper. They also took signature of the transporter on some written paper forcibly. Staff of the informant, Sri Prem Prakash Agrawal and the truck driver were also threatened by the accused persons to implicate them in other false cases.

3. The informant has alleged that he would not have any gain by loading Cement in place of Fertilizer because rate of Fertilizer in the market is Rs.200/- per bag while the rate of the Cement is Rs.100/- per bag. It is alleged that the informant is taking delivery of Fertilizer from the racks since several years, but after posting of the present petitioner, signature of staff of the informant was forcibly taken by them and 30-35 bags of Fertilizer are not loaded. Fertilizers were also stolen by the gang of women inside the Godown in conspiracy with petitioner and other accused persons.

4. It is alleged that on 13.12.1994, by giving threat to the employee of the informant, namely, Arun Kumar and Prem Prakash Agrawal, signature of receipt of 185 Bags Nagarjun Urea



was obtained and 8 bags of Urea was forcibly snatched. 8 bags of Urea was later on found at Platform No.1 by Sri A. K. Jindal, Traffic Inspector, Muzaffarpur, during his inspection on 13.12.1994. It is alleged in the written report that on several dates in conspiracy with the petitioner Fertilizers were taken by the accused persons illegally.

5. Counsel for the petitioner has submitted that Rail Police after investigation submitted charge-sheet under Section(s) 192, 193, 218, 347, 384, 385, 120-B of the Indian Penal Code and Section 7 of the Prevention of Corruption Act against the petitioner. The petitioner at the relevant time was posted as Officer-in-Charge, Narainur Anant Post at Muzaffarpur. Information was lodged with RPF Post by ASI, Nirdai Shyam Singh, on 24.10.1994 alleging that accused persons, namely, Prem Prakash Agrawal and Ram Singhasan Tiwari, have loaded 200 bags of Cement instead of 200 Bags of Fertilizer on Truck No. BHM 8641 and were trying to take it out from the Godown, which was detected and loaded truck was seized. Accused persons were taken into custody. Accused persons were forwarded to the Court of Railway Magistrate, Sonapur. Charge-sheet was submitted. During trial, one of the accused confessed his guilt and another accused, Prem Prakash Agrawal, was convicted. Instant case was filed by the informant



with malicious intention after three months of institution of the aforesaid case with false and concocted allegation.

6. Reason for malafide false and concocted allegation is that the informant tried to hush up the case, but despite all the efforts charge-sheet was submitted in RPF Case No.07 of 1994. Thus, the informant has filed instant case to take revenge from the petitioner.

7. Counsel for the petitioner has submitted that after cognizance case was transferred to Special Judge, where petitioner filed petition for his discharge on 20.02.2003, which was rejected by the impugned order, which is under challenge in this application.

8. Counsel for the petitioner has submitted that Section 17 of the Prevention of Corruption Act mandates that Officers of the rank of Dy. Superintendent of Police or specially empowered Officer shall investigate the case under the Prevention of Corruption Act. In the instant case, necessary sanction required under Section 19 of the Prevention of Corruption Act has not been obtained before initiating prosecution. He has also submitted that requirement of Section 2 of the Prevention of Corruption Act that cognizance be taken by only specially empowered Court has not been complied and, thus, cognizance is bad in law. The petitioner is



also entitled for protection under Section 197 Cr. P.C. as he belongs to Railway Protection Force and was discharging his official duty. The petitioner is also entitled to protection under Section 20 of the RPF Act. Delay in filing of the complaint has not been explained, which shows malafide intention.

9. Counsel for the Vigilance did not appear to make argument although two dates were granted for his appearance.

10. From the record, it appears that Counter Affidavit has been filed by the Opposite Party No.2, wherein, it has been mentioned in para 8 that Muzaffarpur Rail P.S. Case No.03 of 1995 was assigned to IO. The case was supervised by the then Dy. Superintendent of Police, Railway, Samastipur, and the case was found true against the petitioner and other accused persons. The then Superintendent of Police, Railway, Muzaffarpur, had issued Report -2 and the case was found true against the petitioner and other accused persons.

11. It is mentioned in para 10 of the Counter Affidavit that Muzaffarpur Rail P.S. Case No.03 of 1995 i.e. instant case was finally investigated by the Inspector of Police, Rail, Samastipur, by the order of the Superintendent of Rail Police, Muzaffarpur. The then Superintendent of Police, Railway, Muzaffarpur, after completion of investigation, had ordered to the



Investigating Officer of the case to submit charge-sheet against the petitioner and other accused persons. Thereafter, charge-sheet was submitted against the accused persons including the petitioner. It has further been submitted in para 14 of the Counter Affidavit that sanction under Section 197 Cr. P.C. is required to be obtained when the offence complained against the public servant is attributable to discharge of his public duty or has direct nexus therewith, but the same is not necessary when the offence complained of has nothing to do with the same.

12. As stated above, although aforesaid Counter Affidavit has been filed on behalf of the Opposite Party No.2, but none appeared on behalf of the Vigilance to make argument at the time of hearing of the case.

13. From the allegation in the written report, as mentioned above, in detail, it appears that prior to lodging of this case by the informant against the petitioner, on the basis of information lodged on 24.10.1994 with RPF Post by ASI Nirdayee Shyam Singh, alleging that employee of the informant namely, Prem Prakash Agrawal and driver of the truck, Ram Singhasan Tiwari, had loaded 200 bags of Cement instead of 200 Bags of Fertilizer on Truck No. BHM 8641 and were trying to take it out from the Godown, which was detected and loaded truck was seized,



RPF Case No.07 of 1994 was instituted and both the accused persons were taken into custody after registering the case, during trial, one of the accused confessed his guilt and another accused, Prem Prakash Agrawal, was convicted. Instant case was filed by the informant against the petitioner after three months of institution of the aforesaid case. Moreover, from the Counter Affidavit filed by the Opposite Party No.2, it appears that entire investigation was done by the Inspector of Railway, Samastipur, and he submitted charge-sheet on the direction of Superintendent of Police, Railway, Muzaffarpur. It also appears from the statement made in para 14 of the Counter Affidavit that no sanction under Section 197 Cr P.C. was obtained by the informant before submitting charge-sheet.

14. In terms of Section 17 of the Prevention of Corruption Act, Officers of the rank of Dy. Superintendent of Police or specially empowered Officer shall investigate the case under the aforesaid offence. It is also required to obtain sanction under Section 19 of the Prevention of Corruption Act before initiating prosecution for the said offence.

15. From perusal of the entire Counter Affidavit filed on behalf of the Opposite Party No.2, it appears that none of these provisions have been complied with by the informant before submitting charge-sheet. It further appears from the allegation in



the First Information Report that truck of the informant loaded with Cement was intercepted by the RPF personnel during course of official duty and First Information Report was lodged against the employee of the informant, Prem Prakash Agrawal, and Ram Singhasan Tiwary, for such illegal act, vide RPF P.S. Case No.07 of 1994. As such, petitioner was discharging his official duty and sanction under Section 197 Cr. P. C. was mandatory before taking cognizance against him in this case.

16. From the impugned order, it appears that the learned Special Judge without application of judicial mind has rejected the petition filed by the petitioner under Section 239 Cr. P.C. for his discharge on the ground that taking of cognizance is a mental process of a Magistrate or a Judge and it is said to have been taken when he applied mind.

17. This Court is not satisfied with such finding given by the learned Special Judge in rejecting the discharge petition filed by the petitioner under Section 239 Cr. P. C. Learned Judge has failed to take into consideration various legal points involved in the case, as mentioned above, and passed the impugned order in mechanical manner without application of proper judicial mind. The provision of Section 239 Cr. P.C. itself speaks when accused shall be discharged.



18. In view of such, impugned order dated 19.07.2010 passed by the Special Judge, Vigilance, Muzaffarpur, in Rail P.S. Case No.03 of 1995 giving rise to Special Case No.04 of 2001 is hereby quashed and the accused-petitioner is discharged from the offence levelled against him.

19. This application is, accordingly, **allowed**.

20. Let the lower court records be returned to the Court below forthwith.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	AFR
CAV DATE	21.11.2017
Uploading Date	03-02-2018
Transmission Date	03-02-2018

