

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.37007 of 2013

Arising Out of PS.Case No. -2 Year- 2012 Thana -ECONOMIC OFFENCE District-
MUZAFFARPUR

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1. Anil Kumar Sinha S/O Sri Mahendra Prasad Sinha R/O 401, Yogendra Parwati
Apartment, Kaidwaipuri, Police Station - Budha Colony, District And Town Patna

.... Petitioner/s

Versus

1. The State Of Bihar Null Null
2. The Secretary Vigilance Department, Government Of Bihar, Patna

.... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Subhash Kumar, Adv.
For the Opposite Party/s	:	Mr. Tapeswar Sharma, A.P.P.
For the EOU	:	Mr. Akhileshwar Prasas Singh, Sr. Adv.

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CORAM: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
CAV JUDGMENT

Dated: 14-03-2018

Heard both the parties.

Petitioner, by means of this application under section 482 of the Cr.P.C., has invoked the inherent jurisdiction of this Court with prayer to quash the order dated 15.05.2013 passed by the Special Judge, Vigilance (north Bihar) Muzaffarpur in Special Case No. 38 of 2012 arising out of Economic Offence Police Station Case No. 02 of 2012 whereby cognizance has been taken against the petitioner for the offences under sections 420, 465, 468, 471/34 of the I.P.C. and Section 13(i) (c), 13(i) (d) read with Section 15 of the P.C. Act.

The contention of learned counsel for the petitioner is that no offence against the petitioner is disclosed and the present prosecution has been instituted with *mala fide* intention for the



purposes of harassment. In fact, the petitioner at the relevant point of time was posted as In-Charge Superintendent of Excise at Sitamarhi and has been put under suspension on 19.03.2012 for the offence under sections 420, 465, 468, 471/34 of the I.P.C. Subsequently, on 26.07.2012, the I.O. of Economic office P.S. Case No. 02 of 2002 has filed a petition for adding the offences punishable under Sections 13(i)(c), 13(i)(d) read with Section 15 of the prevention of Corruption Act without any evidence before the C.J.M., Sitamarhi and the modification in the First Information was made by the order dated 09.08.2012 passed by the C.J.M. As a matter of fact, no case under Sections 13(i)(c), 13(i)(d) read with Section 15 of the prevention of Corruption Act is made out against the petitioner in the absence of evidence. Therefore, the learned C.J.M. has committed illegality by adding the provision of P.C. Act in the First Informant Report and, accordingly, vide order dated 15.05.2013 the Special Judge, Vigilance (north Bihar) Muzaffarpur took cognizance against the petitioner under the aforesaid sections, which is not sustainable in the eye of law and deserves to be quashed.

Learned counsel appearing for the State opposes the application by contending that there are allegations against the petitioner and no ground for quashing the entire proceedings is made out.

From perusal of the materials available on record and looking into the facts of the case, at this stage, it cannot be said that



no offence is made out against the petitioner. All the submissions made at bar relates to the disputed questions of facts, which cannot be adjudicated upon by this Court in exercise of power conferred under section 482 Cr. P.C. Only a *prima facie* satisfaction of the Court about the existence of sufficient ground to proceed in the matter is required. The submissions made by the learned counsel for the petitioner call for adjudication on pure questions of fact which may be adequately gone into by the Trial Court in this case. This Court does not deem it proper, and therefore, cannot be persuaded to have a pre-trial before the actual trial begins. The disputed defence of the accused cannot be considered at this stage. Moreover, the petitioner has got a right of discharge through a proper application for the said purpose and he is free to take all the submissions in the said discharge application before the Trial Court. The prayer for quashing the order taking cognizance is refused.

The application, accordingly, stands dismissed.

(Arvind Srivastava, J)

Brajesh/-

AFR/NAFR	NAFR
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