

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.2645 of 2017

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Lalan Prasad Singh S/o Late Shyam Singh, Presently Incharge Executive Engineer, Patna Municipal Corporation, Patna having permanent address Residing at Gandhi Nagar, In front of Patliputra Railway Station, P.S.- Rajiv Nagar, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar Through The Principal Secretary, Vigilance Department, Government of Bihar, Patna.
2. The Director General, Vigilance Investigation Bureau, Bigilance Department , Bihar Patna.
3. The Superintendent of Police, Vigilance Investigation Bureau, Patna.
4. The Police Inspector, Patna Range, Vigilance Investigation Bureau, Patna.

.... Respondent/s

with

Criminal Writ Jurisdiction Case No.1193 of 2018

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

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1. Neelam Devi W/o Lalan Prasad Singh, R/o Vill.- Hathiyaawan, P.S.- Sheikhpura, District- Sheikhpura, at present residing at Gandhi Nagar, In front of Patliputra Railway Station, P.S.- Rajiv Nagar, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar Through The Principal Secretary, Vigilance Department, Government of Bihar, Patna.
2. The Director General, Vigilance Investigation Bureau, Vigilance Department, Bihar, Patna.
3. The Superintendent of Police, Vigilance Investigation Bureau, Patna.
4. The Police Inspector, Patna Range, Vigilance Investigation Bureau, Patna.

.... Respondent/s

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Appearance :

(In Cr. WJC No.2645 of 2017)

For the Petitioner/s : Mr. Bipin Kumar, Adv.

For the Respondent/s : Mr. Rama Kant Sharma(L.O, I/C Vig.)

(In Cr. WJC No.1193 of 2018)

For the Petitioner/s : Mr. Bipin Kumar, Adv.

For the Respondent/s : Mr. Ramakant Sharma (L.O.,Inc.Vigi.)

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

6 01-08-2018

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

Petitioner in the present case is aggrieved by the



impugned declaration being Memo No.4515 dated 07.11.2017 issued under the signature of the Principal Secretary, Vigilance Investigation Bureau, Bihar, Patna, by which the State Government in exercise of its power conferred under Section 5 of the Bihar Special Court's Act, 2009 (hereinafter referred to as 'the Bihar Act, 2009') has declared that on the scrutiny of relevant materials available on the record, it is of the opinion that there is a prima facie case that the petitioner has accumulated properties disproportionate to his known source of income by resorting corrupt means.

In course of argument Mr. Sandip Kumar, learned counsel representing the petitioner has placed reliance upon the judgment of the Hon'ble Supreme Court in the case of **S.N. Mukherjee v. Union of India** reported in **AIR 1990 Supreme Court 1984**. Referring to paragraph 35 of the judgment in the case of **S.N. Mukherjee** (Supra) learned counsel submits that in the present case since no reason has been assigned by the authority issuing Annexure-6, the order is liable to be held bad. Mr. Kumar further placed reliance on yet another judgment of the Hon'ble Supreme Court in the case of **Hardeep Singh Versus State of Punjab and Others** and its analogous matters reported in **(2014) 3 Supreme Court Cases 92** which arose out of a



criminal proceeding in which the word “evidence” as appearing in Section 319 of the Code of Criminal Procedure had come for consideration before the Hon’ble Supreme Court. It would appear from a reading of paragraph 117.2 and 117.3 of the judgment in the case of **Hardeep Singh** (Supra) when the Hon’ble Supreme Court was considering the word “evidence” under Section 319 Cr.P.C. and in context thereof it was held that the said word has to be broadly understood and not literally. Thus, the evidence brought in course of trial and the view was taken that the word “evidence” used in Section 319 Cr.P.C. could only mean evidence tested by cross-examination. Mr. Kumar has further contended that even though the word “evidence” is nowhere appearing in the Bihar Act, 2009, but in the Code meaning of cluster of words “prima facie evidence” occurring in Section 5 of the Bihar Act, 2009 would mean only such evidence which has come up on record after cross-examination of the witnesses in course of trial. Learned counsel further submits that when the declaration under Section 5 was issued, the only material before the authority was the FIR, which was not a substantive piece of evidence and as such even if post declarations some materials have been collected and charge-sheet has been filed and cognizance has been taken by the learned court below, the same



cannot be a ground to supplant the reason which is in the declaration. He has also placed before this Court Section 273 of the Code of Criminal Procedure, which provides that the evidence to be taken in course of the trial or other proceeding shall be taken in the presence of the accused, or when his personal attendance is dispensed with, in the presence of his pleader.

Initially, when the writ application was taken up for consideration, the argument of the learned counsel representing the petitioner was that the declaration as contained in Annexure 6 is without application of mind inasmuch as, the Vigilance Investigation Bureau was still in course of investigation of the allegations based on which Vigilance Case No.94 of 2014 was registered. The whole contention of the petitioner was that since the year 2014, after registration of the case the charge-sheet has not been submitted which shows that there is no prima facie material in the hand of Vigilance Investigation Bureau based on which any declaration in the nature of Annexure 6 could have been issued.

When the case was taken up on the last date, learned counsel representing the Vigilance Investigation Bureau informed this Court that based on the materials which were collected in



course of investigation, the State Government was satisfied that it was a fit case to proceed by issuing a declaration as envisaged under Section 5 of the Bihar Act, 2009 and, accordingly, Annexure 6 has been issued. In addition to that it was submitted that investigation in the case is completed, police has already filed a charge-sheet and cognizance has been taken by the learned Special Judge, Vigilance 1st Patna, and, therefore, a prima facie case has been initiated and proceeding is going on against the petitioner. The contention of learned counsel for the petitioner was that the word 'prima facie evidence of the commission of offence' as according to Section 5 of the Bihar Act, 2009 requires that while issuing the declaration under Section 5 of the Bihar Act, 2009 the State Government must apply itself to the materials available on the record in form of evidence and only finding a prima facie evidence such declaration could have been made but in this case the declaration was made even before filing of the charge-sheet, therefore, the declaration dated 07.11.2017 as contained in Annexure 6 is bad in law.

I have heard learned counsel for the parties and perused the records. In the opinion of this Court, Section 5 of the Bihar Act, 2009 only talks of a prima facie evidence of the commission of offence, the cluster of words used in Section 5 of



the Bihar Act, 2009 were subject matter for consideration before the Hon'ble Supreme Court in the case of **V.C. Shukla v. State (Delhi Administration)** reported in (1980) 3 SCR 500 popularly known as the case relating to the missing film "Kissa Kursi Ka". The Hon'ble Supreme Court having considered submission made at the bar held that the word prima facie evidence on commission of offence talks of only the minimum level of satisfaction required on the part of the government while issuing such declaration.

I am unable to accept the submission of Mr. Kumar, learned counsel representing the petitioner in the light of the judgment of the Hon'ble Apex Court which has been cited at the Bar. So far as the case of **S.N. Mukherjee** (Supra) is concerned, in the said case, an administrative action had fallen for consideration before the Hon'ble Apex Court. In the context of the Administrative action, the Hon'ble Apex Court was of the view that the decision taken by an administrative authority or as quasi judicial authority must contain reasons and it should be based on application of mind. In the present case, declaration has to be tested keeping in mind the provision, as contained in Section 5 of the Bihar Act, 2009, which specifically provides for the only basis i.e. "prima facie evidence" and based on which the State Government can issue a declaration. So far as the case of



Hardeep Singh (Supra) is concerned, in the said case the Hon'ble Supreme Court was considering a limited issue as to what would be the meaning of word "evidence", as appearing in Section 319 of the Code, where the word "evidence" would be required to be interpreted, in the light of the context in which it has been used in Section 319 Cr.P.C. In my opinion, both the judgment of the Hon'ble Supreme Court, which have been placed before this Court, would not apply in the facts and the issues which have arisen for consideration before this Court in the present case. Here, the word "prima facie evidence" has to be considered by giving a literal meaning and what has been held by the Hon'ble Supreme Court in the case of **V.C. Shukla** (Supra) is that at this stage, only the minimum level of satisfaction is required on the part of the Government. The declaration need not be speaking about the entire materials.

I am also of the opinion that at this stage, while deciding the declaration under Section 5 of the Bihar Act, 2009, this Court, sitting in its writ jurisdiction, would not be required to go into adequacy or inadequacy of the materials, which were available before the competent authority to issue declaration. The submission of the learned counsel for the petitioner that at the time of issuing declaration, the only material before the



competent authority was the FIR and the same cannot be a basis to issue declaration has also not impressed this Court. The FIR, it is true, is not a substantive piece of evidence, however, after registering the FIR, if in course of investigation, the investigating agency has collected certain materials and in course of examining those materials, they have found that the minimum level of satisfaction, which is required for issuance of a declaration under Section 5 of the Bihar Act, 2009, is present, the authority concerned may issue such declaration. This being the position, even this argument on behalf of the petitioner fails.

In the present case, I find that the State Government had indicated in the declaration that on scrutiny of the materials available on the record, the government had affirmed the opinion based on which the declaration as contained in Annexure 6 was issued. This being the position, I do not find any reason to interfere with the declaration as contained in Annexure 6 to the writ application.

In the second writ petition wife of the petitioner in first case has challenged the notice of confiscation (Annexure-6) in Special Case No.06/2017 which arises out of the proceeding initiated against the petitioner in first case. She has been called upon to appear and show her entire source of income and earning.



It is only a kind of notice giving opportunity to the petitioner to appear and explain the whole matter. This Court at this stage will not enter into the merit of her contentions. She will have appropriate opportunity to explain her stand before the learned Special Court.

In result, both the writ applications are dismissed at this stage. The interim order(s) stand vacated.

(Rajeev Ranjan Prasad, J)

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