

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.15284 of 2018

Arising Out of PS. Case No.-7 Year-2002 Thana- VIGILANCE District- Patna

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Anil Kumar S/o Ram Niwas Upadhyay, R/o Village- Mathia, P.S.- Ramgarh,
District- Kaimur at Bhabua presently resided at R/o E2/118, Kankarbagh
Colony, Kankarbagh Housing Emaaigi Patna, P.S.- Kankarbag, District-
Patna.

... .. Petitioner/s

Versus

The State Of Bihar Through Vigilance Investigation Bureau, Bihar, Patna

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Pravin Kumar Sinha

For the Opposite Party/s : Mr.Rama Kant Sharmal.O, I/C Vig.

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CORAM: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
ORAL JUDGMENT

Date : 21-08-2019

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

Petitioner, by means of this application under
Section 482 of the Code of Criminal Procedure, has invoked
the inherent jurisdiction of this Court with prayer to quash
the order dated 22.04.2006, passed by learned Special Judge,
Vigilance, Patna in Vigilance P.S. Case No. 7 of 2002
corresponding to Special Vigilance Case No. 21 of 2002,
whereby and whereunder cognizance has been taken against
the petitioner for the offence under sections 420, 465, 466,
467, 471, 477A, 201, 109, 120B of the Indian Penal Code and



sections 13(2) read with 13(1)(d) of the Prevention of Corruption Act.

The prosecution case, in brief, is that on the complaint of a Member of the Legislative Assembly, namely, Sri Ram Lal Singh, a vigilance inquiry was instituted against one Ashok Kumar Singh, IAS, the then Managing Director, Bihar State Financial Corporation, Patna. The inquiry was conducted with respect to allegation of defalcation of money and of creating two organizations, namely, Samvedna and Green Earth India for raising donations from lonee entrepreneurs. On preliminary investigation, report was submitted on 25.03.1998 to the Personnel and Administrative Reforms Department for taking a decision in the matter. After submission of the report, investigation was directed against Lokesh Man Wine Industries, Digha, Green Earth India, Patna and Samvedna, Patna and with respect to disproportionate earnings of Ashok Kumar Singh.

Learned counsel appearing for the petitioner submits that petitioner is innocent and has been falsely implicated in this case. The entire allegation and investigation revolves around Ashok Kumar Singh and petitioner is only alleged to be an agent of one Akhilesh



Upadhyay, a broker of Magadh Stock Exchange and under his direction petitioner used to go the department for collecting investment forms for investment in IDBI and IFCI. It is further submitted that petitioner is not a public servant, and therefore, no offence under the Prevention of Corruption Act is made out against him. The said Ashok Kumar Singh, against whom the entire allegations and investigation revolves, had filed Cr. WJC No. 352 of 2002 before this Hon'ble Court and this Hon'ble Court vide order dated 07.05.2007, which is reported in 2007(3) PLJR 802, quashed the FIR as not maintainable. The State of Bihar challenged the said order before the Hon'ble Supreme Court in Cr. Appeal No. 1615 of 2013, which was dismissed vide order contained in Annexure-2 and the Hon'ble Supreme Court held the FIR itself to be not maintainable. It is further submitted that another co-accused, namely, Ran Bijay Kumar, against whom there was substantial allegations, moved this Court for quashing the proceeding of Vigilance P.S. Case No. 7 of 2002 in Cr. Misc. No. 37242 of 2005 and this Hon'ble Court vide order dated 21.06.2006 (Annexure-3) quashed the proceeding of Vigilance P.S. Case No. 7 of 2002. Similarly, another co-accused, namely, Devendra Kumar Singh also



moved this Court for quashing of the proceeding of the said vigilance case in Cr. Misc. No. 14329 of 2008 and this Court vide order dated 22.01.2010 (Annexure-4) quashed the proceedings as the allegation do not constitute any offence.

In the aforesaid background, learned counsel for the petitioner submits that the order taking cognizance is not sustainable in the eye of law and the same deserves to be quashed.

Learned counsel appearing for the Vigilance Investigation Bureau vehemently opposes the prayer of the petitioner. However, he is unable to contest the above submissions with regard to relief granted to other co-accused persons.

Without adverting to the merits of the case, when other co-accused persons, especially Mr. Ashok Kumar Singh, who is alleged to have played major role, have been granted relief and the Hon'ble Supreme Court in Cr. Appeal No. 1615 of 2013 has held the FIR itself to be not maintainable, this Court is of the considered opinion that no further discussion is required on the issue. When the Courts have repeatedly held in favour of the accused, both on facts as well as on law, and the Hon'ble Supreme Court has held



the FIR itself to be not maintainable, the continuance of the present criminal prosecution against this petitioner would absolutely be an abuse of the process of the Court.

For the reasons and the discussions made hereinbefore, this application is allowed and the entire criminal proceeding arising out of Vigilance P.S. Case No. 7 of 2002 including the order taking cognizance dated 22.04.2006 insofar as it relates to the petitioner is, hereby, quashed.

(Arvind Srivastava, J)

mcv/-

AFR/NAFR	NAFR
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