

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.370 of 2018

In
Civil Writ Jurisdiction Case No.527 of 2016

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1. The State of Bihar through the Principal Secretary, Social Welfare Department, Government of Bihar, Patna
 2. The Special Secretary, Social Welfare Department, Government of Bihar, Patna.
 3. The Joint Secretary, Social Welfare Department, Government of Bihar, Patna.
 4. The Sectional Officer - 05, Social Welfare Department, Government of Bihar, Patna.

... .. Appellant/s

Versus

Phulpari Kumari, Wife of Sri Yogendra Kumar Madhup, resident of Mohall - Gayatri Nagar, New Bypass Road, 70 Feet, Bishnupur Pakari, P.O. -Pakari, P.S.- Beaur, District - Patna.

... .. Respondent/s

Appearance :

For the Appellants	:	Mr. P.K. Verma, AAG-3 Mr. Saroj Kumar Sharma, A.C. to AAG-3
For the Respondent	:	Mr. Ashish Giri, Advocate Mr. Rajat Kumar Tiwary, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 03-04-2019

Heard Shri P.K. Verma, learned Additional Advocate General for the State of Bihar and Shri Ashish Giri for the respondent-petitioner.

2. On the basis of a complaint which arose out of a vigilance case alleging the demand and acceptance of a bribe for appointment as an Anganwari Sevika, the respondent-petitioner,



who was the Child Development Officer, came to be dismissed from service on 10th December, 2014 after holding an enquiry. The same was assailed before the learned single Judge in the writ petition giving rise to this appeal. The learned single Judge after having traversed the fact came to the conclusion that the charge could not be proved on the basis of preponderance of probabilities inasmuch as no evidence was brought forth to establish the demand of a bribe and its acceptance was also not proved except by the oral testimony of two members of the trap team who had actually not seen the respondent-petitioner taking the bribe. However, the criminal case is still pending and Shri P.K. Verma has informed the Court today on the basis of the queries made on the previous occasion that a Forensic Science report from the FSL, Bihar, Patna has been tendered before the Court on 15th July, 2016. A photostat copy of the same has been produced before the Court.

3. The State of Bihar has come up assailing the judgment of the learned single Judge whereby the writ petition has been allowed and she has been directed to be restored with all consequential benefits. The appeal was entertained and vide order dated 26th June, 2018, the impugned judgment was kept in



abeyance. It is after exchange of affidavits that the matter has come up before us.

4. The defence set up by the respondent-petitioner in the proceeding was that the selections on the post of Anganwari Workers were held on 24th June, 2013 and the alleged complaint was made two months thereafter on 12th August, 2013 for which there was no occasion. In her reply during the enquiry, the respondent-petitioner categorically stated that even though the complainant's wife had not been selected or shortlisted, yet the complainant was pestering her to show undue favour and when she refused to accept his request, this false trap case was set up in order to harass the respondent-petitioner. This reply was categorically made and further procedural violations were alleged, some of which are admitted on record. The first is that the complainant whose wife is alleged to have been an aspirant for the post of Anganwari Worker and who had moved the complaint in writing was never produced. The second is that the wife of complainant was also not produced during the enquiry proceedings. Thus, the genesis of the complaint which was made the basis for proceeding with the enquiry was not established by any evidence oral or otherwise as neither the complainant nor his



wife, who were aggrieved, were produced during the disciplinary proceedings to support the complaint.

5. The evidence adduced was oral testimony and two of the said witnesses on behalf of the Department, namely, Inspector Sudesh Yadav and Constable Rasid Imam deposed that they saw the charged officer keeping money on the chair when the raid was conducted. There was therefore no witness or evidence relating to the alleged demand for the purpose as alleged in the complaint. In this respect, Shri P.K. Verma relying on Section 20 of the Prevention of Corruption Act, 1988 submitted that there is a presumption about the demand having been made and consequently, it was for the delinquent respondent-petitioner who had to disprove the fact of the demand being made.

6. Apart from the aforesaid glaring flaw in not producing the prime witnesses, namely, the complainant or his wife, there also appears to be no force in the argument on the strength of Section 20 of the 1988 Act inasmuch as the presumption of demand by way of burden on the delinquent would arise only after the demand has been proved as has been held by the Apex Court in the case of **State through Central Bureau of Investigation vs. Dr. Anup Kumar Srivastava**, reported in **AIR 2017 SC 3698- paragraph 22**), wherein it has been ruled that the



proof of demand is an indispensable essentiality for permeating the mandate for presumption as contained in Section 20 of 1988 Act. Applying the aforesaid principle, we find that even though the two witnesses have alleged that the officer was seen keeping the money on chair in a veranda of the house, there is no indication of any evidence of any demand having been made of which the best witnesses, namely, the complainant and his wife, were never produced.

7. Shri Verma then alleged that the entire evidence in the criminal case, including the FSL report demonstrates that as soon as the raiding party entered and made the recovery of the amount, the fingers of the respondent-petitioner were emerged in the solution that had turned out to be positive. The witnesses who saw this happening have been produced during the enquiry and therefore it should be taken to be sufficient proof and with a high degree of probability of the incident having occurred ,namely, that of acceptance of bribe by the respondent-petitioner.

8. This argument may or may not be accepted during the criminal trial depending upon the correctness of the veracity of the strict measures of evidence which is required in this respect, but the argument on behalf of the respondent-petitioner to the effect that she was virtually being trapped in a fake case has been



dealt with by the learned single Judge in the impugned judgment as follows:

“Mr. Sinha did make a very brilliant attempt to establish the charge but except taking this Court through the evidence of the raiding party, who at best are witness to the petitioner putting the money on the chair but are not the witness on alleged demand made by the petitioner, no tangible evidence on demand could be shown.

A public servant faces high risk of being entrapped in false cases and when I observe thus I am conscious of the genuine offenders drawn in the net. But then there are cases of dissatisfied and disgruntled people with malicious intent to frame public servants in false cases, not being satisfied by their decisions.

Instances of trap cases of accused receiving illegal gratification openly without camouflage are class apart from those where it is packed in envelop or is camouflaged otherwise. The reason is that public servant cannot refuse to receive any document/ envelop handed over to him/her and it is only when he/ she opens the envelop containing the alleged document that the truth is unveiled but by that time it is too late because the Vigilance waiting at the wings pounces and dips his/ her hand in the solution ready for the purpose and obviously since the public servant on duty has touched the document, the solution turns pink. There thus can be possible situations where an unsuspecting public servant is drawn in a net schemingly.”

9. Shri Verma contends that such a conclusion would not be in conformity with law inasmuch as the corroborating



witnesses who saw the incident were examined and their testimony was sufficient to establish her probability. We are unable to accept this submission inasmuch as in such matters the probabilities of the defence of false implication cannot be ruled out.

10. Consequently, we see no reason to interfere with the impugned judgment without prejudice to the trial which is being conducted in this regard or without prejudice to any further action which may be required after the criminal trial concludes in accordance with law.

11. Dismissed.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

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