

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 6333 of 2015

Arising Out of PS. Case No.-242 Year-2002 Thana- BIHARSHARIF District- Nalanda

Madhav Mallik @ Madhav Malik, Son of Late Degambar Mallik, Resident of
Village - Rampur, P.O. and P.S. - Madhawapur, District - Madhubani

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Anjani Kumar, Sr. Advocate

Mr. Sanjay Prasad, Advocate

For the Opposite Party/s : Mr. Jharkhandi Upadhyay, A.P.P.

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 25-06-2019

Heard learned counsel for the parties.

2. This application is, under Section 482 Cr.P.C., against the order dated 22.08.2014 passed in Special Case No. 19 of 2002 arising out of Bihar P.S. Case No. 242 of 2002 whereby the learned trial Judge has refused the prayer of the petitioner for discharge.

3. According to First Information Report, the petitioner while posted, on deputation, in the Treasury Office, Bihar Sharif, allegedly, demanded and received bribe from the informant and was trapped while accepting the bribe. The case was registered under Section 7 and 13(1) of the Prevention of Corruption Act, 1988.

4. The prayer for discharge was on different ground that besides lack of evidence, sanction to prosecute was accorded by an



incompetent authority. The impugned order does not reveal that the learned court below examined and discussed the question whether the prosecution of the petitioner was bad for grant of sanction by an incompetent authority, though the petitioner had raised this issue.

5. The grievance of the petitioner is that the petitioner is an employee of Bihar State Pharmaceutical Corporation and he was on deputation in the Treasury Office, Nalanda. Therefore, the District Magistrate, Nalanda was not the authority competent to remove him from his office, as such, was incompetent to grant sanction under Section 19(1)(c) of the Prevention of Corruption Act, 1988.

6. Since the learned court below has not considered the aforesaid point of the petitioner, the impugned order suffers from non-application of judicial mind, hence, the same is hereby set aside and the matter is remitted back to the learned court below to pass necessary order on the issue whether the District Magistrate, Nalanda was competent authority, according to law, to sanction prosecution of the petitioner and thereafter shall pass a reasoned order according to law.

7. Let the carbon copy of the case diary received herein be returned back to the authority concerned.



8. Having regard to the gravity of the allegation levelled against the petitioner, the prosecution may take step for sanction from a competent authority, if the authority which has passed the sanction order is not competent to grant sanction. In case, the prosecutor produces fresh sanction order, the court below shall proceed afresh against the petitioner from the stage of taking of the cognizance of the offences.

9. Entire formality be completed within three months from the date of receipt/production of a copy of this order.

10. With the aforesaid observation, this application stands disposed of.

(Birendra Kumar, J)

Kundan/-

AFR/NAFR	N.A.
CAV DATE	N.A.
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