IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.13360 of 2008

==

Deepak Kumar Sinha S/o Late Shyam Nandann Prasad, Assistant Department of Commercial Taxes Office, Munger, resident of Moalla-Lal Darwaja, New Colony, Police Station- Kotwali, Town and District- Munger

... ... Petitioner/s

Versus

1. The State Of Bihar.

2. Ramesh Chandra Singh, Joint Commissioner, (Administration) Department of Commercial, Bhagalpur Division at Bhagalpur, Town and District- Bhagalpur

... ... Opposite Party/s

==

Appearance :

For the Petitioner/s : Mr. Suraj Narayan Prasad Sinha, Sr. Advocate with Mr. Indu Bhushan, Advocate

For the State : Mr. Jharkhandi Upadhyay, A.P.P.

==

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date : 11-02-2019

Heard learned counsel for the petitioner and learned A.P.P. for the State.

2. The petitioner has moved the Court for the following relief:

> *"That this application is directed for quashing the F.I.R. of Kotwali P.S.Cr. Misc. No. 13360 of 2008 was filed by the*

> *deponent of this affidavit for quashing the proceedings including order taking cognizance of Kotwali P.S. Case No. 174/2001 G.R. Case No. 695 of 2001 under sections 406, 408, 409, 420, 120B of I.P.C. and 49(i) of F.E. Bihar State Finance Act 1981 dated 29.8.2005 passed by the court of C.J.M., Munger."*

3. The allegation against the petitioner, who was a Clerk at the relevant time in the Commercial Taxes Department office at Munger, is alleged to have connived with various traders in issuing them license in violation of the Department's Rules/ Circulars as well as there being dues against them and also them not paying the license fee as well as the penalty imposed on them but still granting them 'No Objection Certificate'.

4. Learned counsel for the petitioner submitted that he was only a Clerk in the office and the certificates were issued by the officer concerned. He submitted that he had only verified Register-6 in which it was mentioned that there were no dues against those dealers and based on the same the license was issued. However, on a direct query of the Court as to why, when it was his duty to verify all the facts as it was at his level that such exercise is to be done so that a comprehensive and correct note is put up before the officials, he had not done so, there was no answer

forthcoming. At this stage, learned counsel further submitted that the Government had not granted sanction for the present prosecution against the petitioner.

5. Learned A.P.P. submitted that there is specific allegation against the petitioner and he was the person at whose level files started and the true facts had to be noted in the file which has not been done and rather what had been noted was contrary to the actual position, and thus, it is clear that undue favour has been granted to the dealers resulting in revenue loss to the State Government and rightly the Court has taken cognizance.

6. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court does not find any merit in the present application. The fact remains that the petitioner, being the Clerk, was responsible and obliged to put the correct facts before the officials by faithfully noting the same in the file. Him not doing his job in the manner required and only casually referring to some entries made in some register cannot be said to be the proper discharge of his duty. Had it been a simple administrative loss, there could have been an argument in his favour that the same does not disclose any criminal aspect. However, in the present case, when clearly such noting in favour of the Dealers who were not entitled to get the license and this

involving revenue and money, the benefit of doubt, at least at the present stage, cannot be given to the petitioner. Thus, acting in an official capacity, for extraneous considerations, would definitely make a person liable for criminal prosecution besides departmental proceeding. The Court finds that in the present case, both departmental and criminal proceedings are equally maintainable. As far as sanction not being granted by the Government, the same is a separate issue which the State Government has to consider and whatever is done, would result in the obvious consequences. As far as the present case is concerned, such would not be an issue for the reason that by now the law has been clarified that sanction can be granted at any stage and, thus, for taking cognizance, such sanction is not of much relevance.

7. For reasons aforesaid, the application stands dismissed.

8. After the order was passed, learned counsel for the petitioner submitted that the Court may observe that the discussion in the present order may not prejudice him at any stage in the trial.

9. In view thereof, the Court would only observe that any of the observations in the present order were only for the purpose of consideration of the present case and shall not cause any prejudice to the petitioner at any stage during trial. Further, the

case being quite old, the court below shall expedite the same and take it to its logical conclusion without any undue loss of time.

(Ahsanuddin Amanullah, J)

Anjani/-

AFR/NAFR	
U	
T	