

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.1207 of 2017

Arising Out of PS. Case No.-383 Year-2015 Thana- KOTWALI District- Patna

Umesh Kumar, Son of Late Mithileshwar Prasad Singh, Resident of Mohalla-Baudh Vihar, Near Bahadurpur Housing Colony Kumhrar Naya Tola, P.S. B.H. Colony, P.S. Agam Kuan, District-Patna

... .. Petitioner/s

Versus

1. The State of Bihar
2. Patna Municipal Corporation through Chief Executive Officer, Patna Municipal Corporation, Mauralek Complex, Bailey Road, Patna.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Kumar Chandra Shekhar-Advocate
For the State	:	Mr. Sujit Kumar Singh-A.P.P.
For the Opposite Party/s	:	Mr. Yashraj Bardhan-Advocate

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

5 22-02-2019 Heard learned counsel for the petitioner as well as learned Additional Public Prosecutor along with learned counsel for the O.P. No.2.

2. Informant, who happens to be Office Superintendent of Patna Municipal Corporation has filed written report disclosing therein that the concerned records relating to Vigilance Case No.054 of 2010, of which the petitioner along with Jiut Prasad has been shown to be person as custodian relating to Item Nos.1 and 2, while Dudheshwar Paswan relating to file No.1-1-3/-92/Establishment/14/2010 (Item No.3), Link-1-1-3-92/Establishment (Item No.4), Main File No.-Link-1-1-3-92/Establishment (Item No.5) have been intentionally, purposely



removed. On the basis of the aforesaid written report, Kotwali P. S. Case No.383 of 2015 was registered, followed with an investigation as well as submission of chargesheet and on the basis thereof, vide order dated 22.08.2016, the learned Chief Judicial Magistrate took cognizance of an offence punishable under Section 379, 120B/34 of the I.P.C. and summoned the petitioner along with Jiut Prasad and Dudheshwar Paswan to face trial. The order impugned is under challenge.

3. Manifold arguments has been raised on behalf of petitioner. The first and foremost happens to be that neither petitioner was incharge of the aforesaid file nor was dealing with the same nay, during course of search and seizure by the Vigilance, he was entrusted by the Vigilance to keep the file. In other words, petitioner has got no concern during course of his official duty to have any connection with the aforesaid relevant files. Consequent thereupon, could not array or nor could be held responsible for removing the aforesaid files. Apart from this, it has also been submitted that those files are available in the Department itself and that has specifically been pleaded under Para-14, 26 of the petition that photo copy of the file had already been taken by the Vigilance Department leaving the original file with the custody of O.P. No.2. That being so, no



offence, as alleged, has taken place. In any view of the matter, having cumulative appreciation of the points having raised on behalf of petitioner that neither he was custodian of the document nor having any kind of attachment therewith coupled with the fact that relevant files are available at the Department itself, the order impugned is fit to be set aside.

4. Taking into account the specific disclosure in Para-26 of the petition along with the submission having at the end of the learned counsel for the petitioner, the learned counsel for the O.P. No.2 has been requested to place the relevant submission on that very score. Apart from having some sort of disclosure, there happens to be specific pleading at the end of the O.P. No.2 at Para-7:-

“That it is submitted that after much efforts and search, after order of Hon’ble Court, three files have been found in PRDA (now dissolved) section of the Municipal Corporation namely (1) “Two Way Radio Communication Under Solid Waste Manager with note sheet pages no.1 to 9 and correspondence side pages no.1 to 327”, (2) File relating to supply of Portable Diesel Pump Set through tender for Solid Waste Management”, File No.IV-E-50/eng. 3, (3) Payment file of Two Way Radio Communication System of Patna Municipal



Corporation, Patna (Tender No.30/E 109) with note sheet pages no.1 to 9 and correspondence side pages no.1 to 36.

5. After having the aforesaid submission, the learned counsel for the petitioner drew much stress and submitted that Item No.1 of the written report speaks about Two Way Radio Communication under Solid Waste Management and so, this disclosure relates with the aforesaid file and in likewise manner, the Item No.2, Echotech Service Call Report relating to Wireless and Set, Item No.3 over which learned counsel for the O.P. No.2 specifically requested to explain the same in order to ward off the ambiguity and on that very score, supplementary counter-affidavit has been filed whereunder at Para-4, it has been disclosed:-

“4. That it is submitted that the files as mentioned in Para 7 of the affidavit dt. 21.02.2019 are not the same to those which have been reported in the Letter No.4912, dt. 22.07.2015 to have been missing. The file namely “Two Way Radio Communication Under Solid Waste Management with note sheet pages no.1 to 9 and correspondence side pages no.1 to 327” and other two files mentioned therein are different than the files earlier reported to have been missing. This last noting of this file is dt. 20.02.2010 and in correspondence side, the last



letter placed is letter no.294, dt. 20.02.2010 and there has not been any movement of this file thereafter.

6. Now, coming to submission having made on behalf of petitioner that he was not at all custodial of the aforesaid file nor it was entrusted to him, the matter is found itself explained and for that, Paragraph-17 of the petition could be taken note of.

“17. That in view of such undisputed position, it is submitted that even if the accusations made by the prosecution are accepted to be correct, the fact remains that admittedly it was not the petitioner who handed over the alleged missing files to the Vigilance Investigating Team nor the said files were ever returned back by the Vigilance to him.”

7. Apart from this, at the stage of adjudicating upon the order of cognizance, there happens to be two kinds of parameters prescribed for adjudicating upon the same. The first one is the learned Magistrate is competent enough to deflect from the opinion of the police for the purpose of taking cognizance of an offence in terms of Section 190 of the Cr.P.C. and during course thereof, only prima facie case has to be seen and in likewise manner, the prosecution happens to be malicious or under any of the ingredients so laid down under the ***State of Hariyana & Ors. v. Bhajan Lal & Ors. reported in AIR 1992***



SC 604, the guiding fact is to be perceived.

8. From the order impugned, it is evident that both the eventualities is found properly meted out. Apart from this, the only escape now the petitioner wants is with regard to pleading of his defence relating to presence of the concerned files at the Department, which the O.P. No.2 by way of supplementary counter-affidavit/ supplementary counter-affidavit has denied. At the present moment, the court while exercising power under Section 482 of the Cr.P.C. could not act as an agent of a party in order to trace out the document/ or to accept its denial, however, such plea, the petitioner may avail during course of trial.

9. Consequent thereupon, instant petition lacks merit and is accordingly rejected.

(Aditya Kumar Trivedi, J)

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