IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.391 of 2018

Arising Out of PS. Case No.-116 Year-2016 Thana- VIGILANCE District- Patna

Ghulam Mustafa Ansari, Son of late Abdul Aziz Ansari, Resident of Flat no. 402, Makka Tower, Samanpura, P.S.-Shashtrinagar, District-Patna.

... ... Petitioner/s

Versus

The State of Bihar Through Vigilance Investigation Bureau Patna

... ... Respondent/s

with

CRIMINAL REVISION No. 488 of 2018

Arising Out of PS. Case No.-116 Year-2016 Thana- VIGILANCE District- Patna

Chandan Puri son of Sri Arun Kumar Puri, resident of Shrikrishna Nagar, P.S. - Town, District - East Champaran.

... ... Petitioner/s

Versus

The State of Bihar through Vigilance Investigation Bureau Patna

... ... Respondent/s

Appearance :

(In CRIMINAL REVISION No. 391 of 2018)

For the Petitioner/s : Mr. Sachin Dutta, Sr. Adv, Mr.Vinay Ranjan, Adv & Smt. Prity Sharma, Adv.

For the Respondent/s : Mr.Anjani Kumar, Sr. Adv

(In CRIMINAL REVISION No. 488 of 2018)

For the Petitioner/s : Mr. Sachin Dutta, Sr. Adv, Mr.Vinay Ranjan, Adv & Smt. Prity Sharma, Adv.

For the Respondent/s : Mr.Anjani Kumar, Sr. Adv

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 08-05-2019

Heard parties.

2. These criminal revision petitions have been filed

against the order dated 12.02.2018 passed by learned Special Judge, Vigilance (Trap), Patna, in Special Case NO. 52 of 2016 arising out of Vigilance P.S. Case No. 116 of 2016 under Sections 7/8/13(ii) read with Section 13 (i)(d) of Prevention of Corruption Act, 1988, by which the learned Special Court has rejected the discharge petition filed by petitioners under Section 239 of Cr.P.C.

3. Briefly stated, the facts of the case is that FIR No. 116 of 2016 was registered on 28.10.2016 by Vigilance Investigation Bureau, Patna, under Section 7/8/13(ii) read with Section 13(i)(d) of Prevention of Corruption Act, 1988 against the petitioners on the basis of complaint dated 03.10.2016, made by complainant Ram Briksh Shah, Jai Nagar, Madhubani, Bihar, to Superintendent of Police cum Officer In Charge, Vigilance P.S., Patna, in which it was alleged that he was loading the goods in his Pick-up Van on 27.09.2016 and during course of loading Gulam Mustafa (petitioner) S.D.O, and Chandan Puri (petitioner) SDPO, Jai Nagar, Madhubani came near his vehicle and told him that he had got information that he carries illegal goods and if he wants to continue the work he will have to pay Rs. 2 Lacs as bribe to petitioners otherwise he will be implicated in false case upon which complainant paid Rs. 50,000/- to

S.D.P.O. Chandan Puri (petitioner) and thereafter Gulam Mustafa (petitioner) S.D.O., told to pay the balance amount of Rs. 50,000/- to S.D.P.O and Rs. 1 Lac to him. After the incident, both the officers were pressurizing the complainant to pay the remaining amount of Rs. 50,000/- to SDPO Chandan Puri (Petitioner), and Rs. 1 Lac to SDO Gulam Mustafa (Petitioner).

4. On said complaint verifier Manikant Singh (Constable) was deputed for verification of complaint by the Superintendent of Police, Vigilance Investigation Bureau, Patna on 03.10.2016 and verifier went to the house of S.D.P.O. (petitioner) and S.D.O. (petitioner) on 05.10.2016 and 07.10.2016 with complainant and found the allegations to be true. Complainant was asked to arrange bribe money and thereafter making said arrangement he came to headquarter of Vigilance on 26.10.2016 with Rs. 1,50,000/- and verifier submitted his verification report on 26.10.2016 to the Superintendent of Police, Vigilance Investigation Bureau, Patna. In verification report it has been submitted that the conversation between complainant and accused were recorded and is a part of verification report.

5. A meeting was conducted on 26.10.2016 under the Incharge of trap team Maharaja Karan Kumar Singh Deputy

Superintendent of Police, with 14 members of the Trap Team in which statement of complainant and Verifier were recorded and Rs. 1,50,000/- bribe money was bifurcated in two parts as Rs. 1,00,000/- for Gulam Mustafa Ansari S.D.O.(petitioner), and Rs. 50,000/- for Chandan Puri S.D.P.O.(petitioner).

6. A pre trap memorandum was prepared and the number of notes were indicated in the pre trap memorandum and instructions were given as to how the trap will be laid and conducted. 14 members of trap team were divided into two teams for making trap at two different places. Brother of the complainant with Verifier accompanied the trap team who went in the house of Gulam Mustafa Ansari (petitioner) where Baidyanath Yadav daily wage employee of S.D.O Office, Jai Nagar, was caught red handed while accepting bribe of Rs. 1 Lac for Gulam Mustafa Ansari, S.D.O, on his direction and both were arrested before two independent witnesses and thereafter post trap memorandum was prepared and copy of which was given to Baidyanath Yadav and Gulam Mustafa Ansari (petitioner).

7. The second trap team with complainant went to the house of S.D.P.O and on the direction of Chandan Puri (petitioner) bribe money of Rs. 50,000/- was taken by the body-

guard Pramod Kumar Dubey from the complainant and was given to Pawan Kumar Yadav for counting and were caught red handed by the trap team and the post trap memorandum was prepared and a copy of which was given to Chandan Puri (petitioner), Pramod Kumar Dubey and Pawan Kumar Yadav.

8. During investigation statement of members of trap team, complainant, brother of complainant, was taken and the seized articles were sent to FSL for test. Sanction for prosecution was also obtained from the competent authority and after investigation the allegations were found to be true and chargesheet was submitted against the petitioners being chargesheet no. 1081 on 26.12.2016 before the Special Judge, upon which Special Court took cognizance of the offence against the petitioners.

9. A petition was filed under Section 239 of Cr.P.C by the petitioners to discharge them as there is no legal evidence collected against them during whole investigation and case is based on suspicion, presumption and assumption and petitioners have been falsely framed in this case at the instance of complainant who is having criminal background.

10. It has been submitted on behalf of the petitioners that they are having clean antecedents and unblemished record and

not a single complaint by any person has been made against them.

11. The complainant has connived with the officials of Vigilance Department and has implicated them in this case without any evidence against them. Nothing has been recovered from their possession and all allegations are false and concocted and based on manipulations and fabricated evidence. It has been further submitted that in the verification report it is nowhere indicated that there has been any demand on the part of petitioners for doing any favour to the complainant. The allegations are fake and nothing has been complained that for doing any favour to complainant, petitioners had demanded any bribe.

12. It has been submitted that under the provisions of Prevention Of Corruption Act, 1988, essential ingredients in order to constitute the offence is that "Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any

person or for rendering or attempting to render any service or disservice to any person, which is absolutely lacking in the present case.

13. There is no admissible evidence against the petitioners to rope them in the present case. There is nothing on record to substantiate the allegations that petitioners demanded gratification to show favour to the complainant. As per chargesheet nothing was recovered from the possession of petitioners. The solution in which fingers of petitioner Gulam Mustafa Ansari was dipped, no change in colour of solution was found. It has been further submitted that verifier Manikant Singh has been shown to be present along with two different raiding parties at the same time at two places which is not probable.

14. In the so-called conversation of petitioners with said peon and complainant not a single word regarding demand of money has been made by the petitioners. The necessary ingredients in order to constitute the offence i.e. pending work with petitioners, any demand made by the petitioners or recovery of bribe money from the petitioners is missing. It has been further submitted that there was no occasion for the petitioners to demand any bribe from the complainant as there

was no work pending against the complainant before the petitioners. Neither he has been made accused in any case in the jurisdiction of petitioners.

15. It has been submitted on behalf of Vigilance Bureau that the conversation with petitioner and complainant and thereafter with Baidyanath Yadav on the mobile regarding demand of bribe was recorded and a C.D.R. was prepared after taking sample of voice has been sent to Forensic Laboratory. There were two verifier in the two raiding teams A.S.I. Bhim Singh and constable Manikant Singh and as such the contention of petitioners that verifier Manikant Singh was present with both raiding teams are not correct. It is true that when finger of petitioner Gulam Mustafa was dipped, no change in colour of solution was found, however, when finger of his peon was dipped, same turned pink. When finger of petitioner Chandan Puri S.D.P.O. and his two associates were dipped the solution turned pink. Currency notes which were marked in pre-trap memorandum were recovered in post-trap memorandum from possession of co-accused who had kept the amount on direction of petitioners.

16. After hearing, learned counsel for the parties, Special Court held that there is sufficient material available on record to

make out a *prima facie* case against petitioners and sufficient evidence collected during investigation for framing of charge against the petitioners. The sufficiency, adequacy and reliability of evidence cannot be judged at this stage. The issue raised on behalf of petitioners can be considered at the time of trial and not at this stage and rejected the discharge petition dated 19.09.2017 and 16.12.2017, filed on behalf of petitioners by order dated 12.02.2018 against which the present criminal revision has been filed.

17. Learned counsel for the petitioners has placed reliance on the judgment of the Apex court in the cases of **Vinod Kumar vs State of Punjab (2015) 3 SCC 220, State of Kerala v. C.P. Rao, (2011) 6 SCC 450, M. Narsinga Rao v. State of A.P., (2001) 1 SCC 691 and C.M. Girish Babu v. CBI, (2009) 3 SCC 779.**

18. The judgment cited by the counsel for the petitioners is in respect of conviction of the accused and in those cases the Apex Court has found the convictions not to be sustainable for the reasons as stated in judgment of conviction. However, in present case the discharge petition of petitioners has been rejected and consideration of evidence at the stage of discharge petition and at the stage of conviction or acquittal of accused are

quite different. At the time of considering the acquittal or conviction, the court has to consider the evidences of prosecution which are admissible and legal on which charges has to be established beyond reasonable doubt. However, at the stage of considering the discharge/framing of charge petition the court has only to consider whether prima facie case is made out against the accused or not for proceeding further and accused can be discharged if the trial court finds the charges to be groundless. The trial court has considered the materials and evidences available on record against the petitioners and has found that there were sufficient materials on basis of which *prima facie* case is made out against the petitioners to proceed further and meticulous appreciation of evidence and its pros and cons cannot be considered at this stage and has rightly left the points raised by the petitioners to be considered at the stage of trial.

19. The Apex Court in the case of **State of Delhi Vs. Gyan Devi and Ors** since reported in **(2000) 8 SCC 239,** in para 10 has held that at the time of consideration of discharge petition the court has only to see whether *prima facie* case is made out against accused or not to proceed further in matter and same is quoted hereinbelow:-

"10. In a recent decision in State of M.P. v. S.B. Johari and Ors. 2000 SCC (Cri) 311, this Court, adverting to the question of quashing of charges in the light of the provisions contained in Sections 227 & 288, 401 & 397 and 482 Cr.P.C. did not favour the approach of the High Court in meticulously examining the materials on record for coming to the conclusion that the charge could not have been framed for a particular offence. This Court, while quashing and setting aside the order passed by the High Court, made the following observations:

"After considering the material on record, learned Sessions Judge framed the charge as stated above. That charge is quashed by the High Court against the respondents by accepting the contention raised and considering the details of the material produced on record. The same is challenged by filing these appeals.

In our view, it is apparent that the entire approach of the High Court is illegal and erroneous. From the reasons recorded by the High Court, it appears that instead of considering the prima facie case, the High Court has appreciated and weighed the materials on record for coming to the conclusion that charge against the respondents could not have been framed. It is settled law that at the stage of framing the charge, the court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The court is not required to appreciate the evidence and arrive at the conclusion that the materials produced are sufficient or not for convicting the accused. If the court is satisfied that a prima facie case is made out for proceeding further then a charge has to be framed. The charge can be quashed if the evidence which the prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged by cross-examination or rebutted by defence evidence, if any, cannot show that the accused committed the particular offence. In such case, there would be no sufficient ground for proceeding with the trial."

20. The Apex Court in case of **Amit Kapoor Vs. Ramesh Chander and Anr** since reported in **(2012) 9 SCC 460,** in para 17 and 19 has held as follows:-

"17.Framing of a charge is an exercise of jurisdiction by the trial court in terms of Section 228 of the Code, unless the accused is discharged under Section 227 of the Code. Under both these provisions, the court is required to consider the 'record of the case' and documents submitted therewith and, after hearing the parties, may either discharge the accused or where it appears to the court and in its opinion there is ground for presuming that the accused has committed an offence, it shall frame the charge. Once the facts and ingredients of the Section exists, then the Court would be right in presuming that there is ground to proceed against the accused and frame the charge accordingly. This presumption is not a presumption of law as such. The satisfaction of the court in relation to the existence of constituents of an offence and the facts leading to that offence is a sine qua non for exercise of such jurisdiction. It may even be weaker than a prima facie case. There is a fine distinction between the language of Sections 227 and 228 of the Code. Section 227 is expression of a definite opinion and judgment of the Court while Section 228 is tentative. Thus, to say that at the stage of framing of charge, the Court should form an opinion that the accused is certainly guilty of committing an offence, is an approach which is impermissible in terms of Section 228 of the Code."

19. At the initial stage of framing of a charge, the court is concerned not with proof but with a strong suspicion that the accused has committed an offence, which, if put to trial, could prove him guilty. All that the court has to see is that the material on record and the facts would be compatible with the innocence of the accused or not. The final test of guilt is not to be applied at that stage. We may refer to the well settled law laid down by this Court in the case of State of Bihar v. Ramesh Singh (1977) 4 SCC 39:

4. Under Section 226 of the Code while opening the case for the prosecution the Prosecutor has got to describe the charge against the accused and state by what evidence he proposes to prove the guilt of the accused. Thereafter comes at the initial stage the duty of the Court to consider the record of the case and the documents submitted therewith and to hear the submissions of the accused and the prosecution in that behalf. The Judge has to pass thereafter an order either under Section 227 or Section 228 of the Code. If "the Judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing", as enjoined by Section 227. If, on the other hand, "the Judge is of opinion that there is ground for presuming that the accused has committed an offence which-…

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused", as provided in Section 228. Reading the two provisions together in juxtaposition, as they have got to be, it would be clear that at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the Prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under Section 227 or Section 228 of the Code. At that stage the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding prima facie whether the Court should proceed with the trial or not: It the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial. An exhaustive list of the circumstances to indicate as to what will lead to one conclusion or the other is neither possible nor advisable. We may just illustrate the difference of the law by one more example. If the scales of pan as to the guilt or innocence of the accused are something like even, at the conclusion of the trial, then, on the theory of benefit of doubt the case is to end in his acquittal. But if, on the other hand, it is so at the initial stage of making an order under Section 227 or Section 228, then in such a situation ordinarily and generally the order which will have to be made will be one under Section 228 and not under Section 227."

21. This Court in its revisional jurisdiction can interfere

in the order passed by trial court if there is patent defect or error of jurisdiction or law. In the case as referred (supra) in paragraph 12, 13, the ambit and scope has been explained by Apex Court under revisional jurisdiction which is reproduced below:-

> 12. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for the court to scrutinise the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revsional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.
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> 13. Another well-accepted norms is that the revisional jurisdiction of the higher court is a very limited one an canot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in exercise of its revisional jurisdiction unless the case substantially falls within the categories aforestated. Even framing of charge is a much advanced stage in the proceedings under the CrPC."

22. After hearing the parties and considering the materials available on record the accusation against the

petitioners cannot be said to be groundless and at this stage Court cannot enter into meticulous consideration of the evidence and material on record, as such this Court does not find any error, infirmity or illegality in the order passed by the Special Court and is not inclined to interfere in the order passed by the Special Judge, in its revisional jurisdiction, accordingly, the present revision petitions are dismissed.

(S. Kumar, J)

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