

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.28716 of 2016

Arising Out of PS. Case No.-70 Year-2010 Thana- C.B.I CASE District- Patna

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Murari Singh @ Murari Prasad Singh s/o- Late Upendra Singh, R/o- village- Sabalpur, P.S.- Sahebpur Kamal, Dist- Begusarai.

... .. Petitioner/s

Versus

1. The State Of Bihar through Vigilance
2. Vijay Kumar Singh, S/o- Baijnath Prasad Singh, Police Inspector, Vigilance Investigation Bureau, Bhagalpur, Range, Bhagalpur Bihar.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr.Rajkumar Rajesh, Adv
For the O.P.(Vigilance)	:	Mr.Sanjay Prasad, Adv.
For the State	:	Mr. Shyam Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 19-09-2019

Heard learned counsel for the parties.

2. Petitioner has sought for quashment of order of cognizance dated 20.09.2013 passed in Vigilance P.S.Case No.70 of 2010 corresponding to Special Case No.26 of 2010 whereby the learned Special Judge, Vigilance-II, Patna has taken cognizance against the petitioner and others for offences under Sections 467, 468, 466, 477A, 120B,420 and 201 I.P.C. as well as under Sections 7/13(2) read with Section 13(i)(d) of Prevention of Corruption Act, 1988.

3. Challenge is on the ground that none of the offences alleged are prima facie made out against the petitioner



and as such entire criminal prosecution is abuse of the process of the Court.

4. In the matter of co-accused-Chandra Mohan Ram, this Court has already quashed the impugned order in Cr. Misc. No.19513 of 2014 on 22.06.2017.

5. According to FIR lodged by police Inspector, Vigilance, one Ajay Kumar Singh filed Complaint Case No.28 of 2007 before the learned Special Judge, Vigilance-II, Patna which was sent for enquiry by the Vigilance Department and after preliminary enquiry, the Vigilance Department came to conclusion that prima facie offences are established. Hence, the FIR was lodged.

6. According to Ajay Kumar Singh, Plot No.227 total area 11 acres was of Ajay Kumar Singh and other agnates and relations of Ajay Kumar Singh which they had acquired through purchase by different registered sale deeds fully detailed in the FIR. The same property was purchased by Mr. Raj Kumar Singh other 15 person named in the FIR from the grand son of ex-landlord-Sah Mohammed Saiyed through different registered sale deeds detailed in the FIR. Co-accused-Tulsi Hajara, the then Land Acquisition Officer, co-accused-Ramashish Yadav, the assistant posted in the Land Acquisition Office, demanded, 50% of the total



compensation of Rs. Thirty Lacs for the acquisition of the aforesaid Plot No.227, from Ajay Kumar Singh. In the meantime, Circle Officer got the name of Raj Kumar Singh and others mutated in the Govt. records. Title Suit No.48 of 2004 Ajay Kumar Singh Vs. Raj Kumar Singh was already going on for the same dispute besides proceedings under Section 145 Cr.P.C. etc. The Land Acquisition Authority made payment of the compensation amount to the person named at Page-6 of the FIR in their bank account. While the bank account was being opened, the petitioner had provided blank application form for opening of the account that much is allegation against the petitioner. Further allegation is that Mr. Tulsi Hajara, the Land Acquisition Officer asked for Rs.Four Lacs as bribe from different decree holders of the said plot and when payment of the bribe money was being made at the house of Mr. Tulsi Hajara, co-accused-Ramashish Yadav and the petitioner were also there. Thereafter, Ramashish Yadav, the assistant demanded 10% of the amount paid to Mr. Tulsi Hajara for issuing cheque of compensation money in favour of the decree holders. The petitioner was allegedly all along there when entire transaction of payment of bribe and demand of more bribe was made by Mr. Tulsi Hajara and Mr. Ramashish Yadav.



7. Submission of learned counsel for the petitioner is that the petitioner is a farmer having no concern with the Bank or Land Acquisition Office. Since the petitioner is not a public servant and cognizance has been taken against the petitioner even for offences of the Prevention of Corruption Act, it depicts that the learned Magistrate has passed the order of cognizance without application of judicial mind and has taken cognizance against those person also who are not public servant. His next contention is that there is no allegation that the petitioner had made any false document, hence, allegation of forgery and punishment under Sections 467, 468, 466, 477A I.P.C. are also apparently not made out. There is no allegation that the petitioner was ever fraudulent or dishonest with anyone in the dealing nor the petitioner ever persuaded anyone to make payment of anything, hence, offence under Section 420 is also not made out. The allegation of criminal conspiracy is bald one just to falsely implicate the petitioner.

8. Learned counsel for the Vigilance submits that the FIR itself discloses that the petitioner was present alongwith Mr. Ramashish Yadav, the assistant posted in the Land Acquisition Office when demand of bribe was made by Ramashish Yadav or bribe was paid to Mr. Tulsi Hajara, the Land Acquisition Officer. Hence, the petitioner cannot evade his responsibility. In economic



offences there is always deep rooted conspiracy. Hence, it cannot be lightly gathered whether the petitioner was part of the conspiracy or not. Therefore, the impugned order should not be interfered in exercise of this extraordinary jurisdiction.

9. On careful consideration of the material on the record, I find that none of the offences for which cognizance has been taken are apparently made out against the petitioner. The learned Magistrate has acted in a mechanical manner while taking cognizance for offence under the Prevention of Corruption Act against the petitioner also. It is true that cognizance is taken of offences and not the offender but application of judicial mind while taking cognizance vis-a-vis the accused is the mandate of law and non-compliance has led to miscarriage of justice. Therefore, the impugned order and entire subsequent criminal proceeding is hereby quashed against the petitioner and this application is allowed.

(Birendra Kumar, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
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