

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No. 222 of 2012

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Krishna Nand Pandey, Son of Late Ram Bachan Pandey, Resident of Village-
Kargahar, P.S.- Kargahar, District- Rohtas.

... .. Petitioner/s

Versus

The State of Bihar through Vigilance

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Chitranjan Sinha, Senior Advocate
		Mr. Prabhu Nath Pathak, Advocate
For the Opposite Party/s :		Mr.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH

ORAL JUDGMENT

Date : 04-01-2019

Heard Mr. Chitranjan Sinha, learned senior counsel
along with Mr. Prabhu Nath Pathak, learned counsel for the
petitioner and learned counsel for the Vigilance.

2. The petitioner has moved the Court under Section
482 of the Code of Criminal Procedure, 1973 for the following
relief:

*“That by this application, the Petitioner is
invoking the inherent jurisdiction of this Hon’ble
Court for quashing the order of cognizance taken on
20.10.2011 under Section 420, 466, 467, 468, 471,
120 (B) of Indian Penal Code, Section 13 (1), (C)
and (D) of Prevention of Corruption Act, 1988 and
Section 9 (B) of Bihar Prevention of Specified
Corrupt Practice Act 1983 against Hareshwar
Prasad Sinha and others including the petitioner by
Special Judge, Vigilance, 1st in Special Case No.
92/2009.”*



3. The allegation against the petitioner and four others is that they had connived to unduly favour co-accused Srikant Prasad, a contractor in award of contract for widening of Dumri to Salalpur road under the Rural Works Department, Works Division, Hilsa. The petitioner was at the relevant time posted as Assistant Engineer in the office of Chief Engineer-I, Rural Works Department, Bihar, Patna. The allegation against him is that when the petitioner was sent by the Chief Engineer for preparing a comparative chart, the petitioner while doing so instead of writing the correct date under the signature had written 12.06.2008, whereas, the actual signature was made by him on 24.06.2008.

4. Learned counsel for the petitioner submitted that from the admitted position, the sole allegation against the petitioner is that he had incorrectly put the date 12.06.2008 instead of 24.06.2008, under the signature made by him on the comparative chart which was called for by the Chief Engineer. Learned counsel submitted that neither in the initial awarding of marks on the technical bids of the Contractors, by the Executive Engineer nor in the subsequent reevaluation of the technical bid by the Technical Bid Committee, he had any role to play as he was not a member of the Technical Bid Committee. Learned counsel submitted that from the finding of the Vigilance itself, it is clear



that initially, the Executive Engineer had awarded 60 to the other Contractor and 65 to the other co-accused Srikant Prasad, which later on was revised as 22 and 70 respectively by the Technical Bid Committee. Learned counsel further submitted that due to this revision by the Technical Bid Committee, another Contractor was ousted at the stage of technical bid itself and the co-accused Srikant Prasad, being the sole person left had got the contract. Learned counsel submitted that the petitioner accepted that 12.06.2008 was not the date of which he had signed the sheet and the same was 24.06.2008, but for the same, the *bona fide* explanation is that it was an inadvertent slip of the pen which is corroborated by the sequence of events, inasmuch as, the file itself came to him pursuant to the letter sent by the Chief Engineer on 20.06.2008. Learned counsel submitted that thereafter only at the level of the petitioner, the comparative chart was made on which the petitioner did sign on 24.06.2008, but inadvertently, the date appended is 12.06.2008. Learned counsel submitted that beyond that, there is not even an iota of any complicity or involvement of the petitioner whatsoever in the entire proceeding leading to award of contract to co-accused Srikant Prasad. It was further submitted that the petitioner was at no level concerned in any capacity in the decision making, which was at the higher level.



5. Learned counsel for the Vigilance submitted that the petitioner was posted in the office of the Executive Engineer at the relevant point of time and further, the wrong mentioning of the date below his signature indicates his involvement also in the episode. However, on a direct query to him as to beyond such allegation of wrong mentioning of the date under the signature, any other material to connect him in the entire exercise or decision making leading to award of contract to co-accused Srikant Prasad is available with the prosecution to show his involvement, learned counsel for the Vigilance could not demonstrate the same.

6. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that a case for interference has been made out. If the trial against the petitioner is allowed to proceed, it would clearly be an abuse of the process of the Court. In this connection, it would be useful to refer to the decision of the Hon'ble Supreme Court in the case of **State of Haryana vs. Bhajan Lal** reported as **1992 Supp (1) SCC 335**, where at paragraph no. 102, the following has been held:

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have



extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercise.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing



efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

7. In the opinion of the Court, the present case falls under category 5 of the aforesaid guidelines fixed by the Hon'ble Supreme Court.

8. For the reasons aforesaid, the application is allowed. The order taking cognizance dated 20.10.2011 under Sections 420/ 466/ 467/ 468/ 471/120B of the Indian Penal Code and 13((1), (C) and (D) of the Prevention of Corruption Act, 1988 and 9(B) of the Bihar Prevention of Specified Corrupt Practices Act, 1983, as far as it relates to the petitioner, stands quashed.

(Ahsanuddin Amanullah, J.)

P. Kumar

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