

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.44971 of 2019

Arising Out of PS. Case No.-58 Year-2017 Thana- VIGILANCE District- Patna

=====

NIRAJ KUMAR @ NEERAJ KUMAR, S/o Vijay Kumar Srivastava,
Resident of Sendha, P.S. - Tarari, District - Bhojpur

... .. Petitioner/s

Versus

The State of Bihar through the Cabinet Vigilance, Patna Bihar

... .. Opposite Party/s

=====

Appearance :

For the Petitioner/s	:	Mr. Jitendra Prasad Singh, Sr. Advocate
		Mr. Anil Kumar Singh, Advocate
For the Opposite Party/s :		Mr. Anjani Kumar (L.O. Inc. Vig.)

=====

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 16-09-2019

Heard the parties.

2. The petitioner is one of the accused in Vigilance P.S.

Case No. 58 of 2017 corresponding to Special Case No. 44A of 2017 wherein cognizance has been taken by the impugned order dated 06.11.2018 for offences under Sections 8, 7, 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988.

3. The challenge is on two grounds. First that there was no material disclosing commission of cognizable offence for taking cognizance by the learned court below and the impugned order has been passed without application of judicial mind. Secondly, on the ground that a perusal of the impugned order would reveal that it is handwritten in a different pen and only the word “cognizance” has been written by the Presiding Officer



which clearly depicts a case of non-application of judicial mind and, as such, not sustainable in law.

4. Since, this Court is going to allow the application on the second ground itself and remit the matter to the learned court below, there is no need to disclose mind on the first ground so that the learned court below may not be prejudiced at the time of reconsideration of the cognizance order.

5. Contention is that time without number, this Court has deprecated the practice of writing such type of orders which prima facie depicts non-application of judicial mind by the learned court below. Further contention is that cognizance is a serious judicial exercise which affects the fundamental right of the accused to fair trial. Hence, the learned Magistrate is not expected to act in a mechanical way. Reliance has been placed on **P.R. Catering, a partnership firm having Registered Office at Calcutta vs. The State of Bihar and Anr.** reported in **2001(1)PCCR 120**. In the aforesaid case, a Division Bench of this Court was confronted with the cognizance order which was in a printed form and different columns were filled up in pen by the Court taking cognizance and this Court held that the order was mechanical one without application of judicial mind.



6. I find substance in the submission of learned counsel for the petitioner for the apparent reason that the impugned order dated 06.11.2018 which is a handwritten order is in a different pen and the word “cognizance” has been written in a different pen prima facie making out a case of non-application of judicial mind and for this reason only, the impugned order is not sustainable in law. Accordingly, the same stands set aside and the matter is remitted back to the learned court below to pass fresh order in accordance with law.

(Birendra Kumar, J)

Kundan/-

AFR/NAFR	N.A.
CAV DATE	N.A.
Uploading Date	19.09.2019
Transmission Date	19.09.2019

