

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.3330 of 2015**

Arising Out of PS. Case No.-1 Year-2007 Thana- C.B.I CASE District- Muzaffarpur

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Manoj Kumar Son of Rajeshwar Singh Resident of Village and P.O. -
Kabilpur, P.S. - Kanti, District - Muzaffarpur.

... .. Petitioner/s

Versus

The State Of Bihar Through The Spl. Vigilance north Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Shashi Bhushan Singh

For the Opposite Party/s :

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**CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA
ORAL JUDGMENT**

Date : 02-05-2019

Heard learned counsel for the petitioner.

The petitioner has challenged the order dated 12.9.2014 passed in Special case no. 1 of 2007 (arising out of Vigilance P.S. case no. 1 of 2007) by which the Spl. Judge Vigilance (North Bihar) Muzaffarpur has rejected the petition filed on behalf of the petitioner for discharge U/s 239 of Cr.P. C.

The FIR was lodged against this petitioner along with other accused persons. After holding preliminary enquiry, charge sheet has been submitted.

The allegation is that appointment was made to



unsanctioned post without any advertisement in newspaper. The complaint has been filed before the Court of Spl. Vigilance, North Bihar alleging that for purpose to earn money illegally the then Civil Surgeon-cum Chief Medical Officer, Muzaffarpur under a conspiracy having made discrepancy, demanded money for regularizing the complainant. The complainant has further alleged that accused told him that he had legalized some illegal and forged appointment made earlier after having received money. In this context, the complainant disclosed the name of several persons who have faced such critical situations. The complainant has further alleged that Civil Surgeon-cum Chief Medical Officer, Muzaffarpur has also told the name of Ram Nandan Choudhary (head clerk) who committed irregularities but nothing happened against him. The accused told him that the appointment of petitioner was also made on 1.1.1980, but nothing happened against him. The appointment letter of Bipin Bihari Singh and Tej Narayan have also not been issued from the office, but still they are working.

On the basis of the aforesaid complaint which was sent to the S.P. Vigilance for preliminary inquiry U/s 202 of Cr.P.C., report was submitted before the Court on 22.8.2005 leading to institution of FIR against the accused persons.



Thereafter, the Vigilance case no. 1/2007 was registered against this petitioner and other accused persons.

Learned counsel for petitioner submits that in the entire complaint the name of this petitioner has not transpired anywhere. But in the FIR the Investigating Officer had deliberately mentioned the name of this petitioner saying that petitioner while posted as Clerk, Primary Health Centre, Kanti without allocation of fund, in connivance with, the Incharge Medical Officer made payment of the monthly salary to the employee.

Learned counsel submits that payment was made under the direction of the controlling officer i.e. Civil Surgeon-cum -Chief Medical Officer, Muzaffarpur. The petitioner was clerk and he was required to comply the direction of the Superior Authorities . The Civil Surgeon-cum -Chief Medical Officer, Muzaffarpur was the Superior Officer. Hence, he was required to comply the order of the Controlling Officer i.e. Civil Surgeon-cum Chief Medical Officer, Muzaffarpur. The F.I.R. was lodged for investigating the allegation against the Civil Surgeon-cum Chief Medical Officer, Muzaffarpur for demanding money, but petitioner has also been implicated only with a view to harass him. The Court below has passed the



impugned order without properly considering the material in the case.

This Court, vide order dated 6.8.2018, had called for the report from the Court below about the present stage of the case, which has been received and placed at Flag-A.

From perusal of the report (kept at Flag-A), it appears that cognizance has been taken on 27.7.2011. Charges were framed against the accused persons on 7.9.2015. Presently, this case is running at the stage of evidence. It is further mentioned in the report that altogether 12 prosecution witnesses have been examined. Xerox copy of the entire order sheets have been received along with the report.

Learned counsel for petitioner submits that proceedings can be quashed at any stage, if there is no any cogent material against the accused persons. In this regard, he has relied on judgments of the Hon'ble Apex Court passed in ***Cr. Appeal no. 1723 of 2017 (Parbatbhai Aahir @ Parbatbhai Bhimsinhbhai Karmur & Ors. State of Gujarat & Anr)*** and ***Cr. Appeal no. 1723 of 2017 (Anand Kumar Mohatta and Anr. vs. State (Govt. of NCT of Delhi) Department of Home and Anr.)***

This Court, after perusing the impugned order, finds



that charge sheet has been submitted against this petitioner and other accused persons. It has come in the investigation report that appointment was made to unsanctioned post without any advertisement in newspaper and also without complying the required procedure for appointment. A detailed report of the investigation conducted by the Vigilance Investigation Bureau is part of the FIR, wherein, at page 41 and onwards, there is specific allegation against this petitioner that he along with other accused persons have made payment to the employees who have not been properly appointed on the sanctioned post. The various illegalities committed by the petitioner along with other accused persons have been mentioned in subsequent pages of the report of the investigation submitted by the Vigilance Investigation Bureau. The Court below has also after perusing the relevant paragraphs of the case diary as mentioned in the impugned order come to the finding that there are sufficient material against the petitioner to frame charge. The charges have been framed and 12 prosecution witnesses have already been examined.

As such this Court finds that sufficient materials have come against the petitioner during investigation. The trial has also proceeded and 12 witnesses have already been examined



till date. Therefore, this Court does not find any illegality in the impugned order.

The Criminal Miscellaneous is, accordingly, dismissed.

The trial court is directed to proceed in the trial in accordance with law and make efforts to conclude the same expeditiously within a fixed period by fixing case either on day to day basis or giving short adjournment in the case and send compliance report to learned District Judge who shall send information to this Court.

(Sanjay Priya, J)

shyambihari/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	13.5.2019
Transmission Date	

