

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.60398 of 2017

Arising Out of PS. Case No.-44 Year-2006 Thana- C.B.I CASE District- Muzaffarpur

Sudhir Prasad Sahu @ Sudhir Kumar Sahu S/o Sri Shyama Prasad Sahu, R/o
Village- Lapung, District- Ranchi Jharkhand presently posted as Officer In
Charge, Kudu, P.S.- Kudu, District- Lohardaga (Jharkhand).

... .. Petitioner/s

Versus

The State Of Bihar Through D. G. Vigilance, Department, Govt. Of Bihar At
Patna

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Ranjan Kumar Srivastava, Advocate Mrs. Rajnigandha Akhouri, Advocate Mr. Shashwat Srivastava, Advocate Mr. Abhijeet Kumar Srivastava, Advocate Mr. Sunny Raman, Advocate
For the Opposite Party/s	:	Mr. Arvind Kumar, Special P.P.

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

- 4 19-09-2023 1. Heard learned counsel for the petitioner and learned
Special Public Prosecutor for the Vigilance, Sri Arvind Kumar.
2. The present application has been filed seeking
quashing of the order dated 13.02.2017 arising out of Special
Case No. 28 of 2006 in Vigilance Case No. 44 of 2006 passed
by the learned Special Judge, Vigilance, North Bihar,
Muzaffarpur whereby cognizance has been taken under Sections
420, 465, 467, 468, 471, 477(A) and 120(B) of the Indian Penal
Code read with Sections 13(2) and 13(1)(d) of the Prevention of
Corruption Act, 1988 against the petitioner.



3. Learned counsel for the petitioner, at the outset, submits that the order taking cognizance is mechanical without due application of judicial mind, it is further submitted that the controversy can be appreciated better if the facts of the case are recorded in some brief.

4. It is next submitted that the present FIR came to be instituted based on a Complaint Case No. 16 of 2005, dated 24.03.2005 instituted by the complainant alleging that he was elected member of the Vigilance Committee of Gram Panchayat, Raj Ambara Tej Singh, further the then *Mukhiya* and the then Panchayat Secretary did not appoint him in different development scheme undertaken by the Panchayat, further that on 26.03.2003 he informed the B.D.O., Saraiya that huge quantity of government rice is being taken for black marketing, the B.D.O. entrusted the inquiry to a Veterinary Doctor, but thereafter nothing was done for nearly one year, it is next alleged that since no inquiry report was received for one and a half year, the B.D.O., Saraiya wrote two letters dated 15.07.2004 and 28.07.2004 to the S.H.O., Saraiya Police Station (petitioner) for taking proper action in this regard, but then nothing was done by the petitioner, thereafter, the complainant on 11.03.2005 made a complaint before the District Magistrate,



Muzaffarpur but then also no inquiry was held and accordingly, an FIR was instituted.

5. Learned counsel for the petitioner submits that from bare perusal of the allegation as alleged in the FIR, it would manifest that the allegation against the petitioner is that the FIR was not instituted based on the letter written by the B.D.O., Saraiya. It is next submitted that even presuming what has been alleged is true without admitting whether non-institution of the FIR would lead to a criminal prosecution or the petitioner had to be dealt on the administrative side. It is further submitted that in the nature of allegation as alleged, prima facie, no criminal offence is made out against the petitioner. It is also submitted that certain dates would be relevant for proper adjudication of the case.

6. Learned counsel for the petitioner submits that petitioner was appointed as the Sub-Inspector of Police in the year 1994 and had an unblemished service record till date of institution of the FIR and thereafter. It is next submitted that petitioner's cadre was allocated to the State of Jharkhand on 01.09.2004, it is thus submitted that from 01.09.2004, the competent authority of the petitioner was the State of Jharkhand and definitely not the State of Bihar.



7. Learned counsel for the petitioner next submits that from perusal of the allegation as alleged in the FIR, it would manifest that the first letter written by the B.D.O., Saraiya to the petitioner was dated 15.07.2004 and thereafter again on 28.07.2004. It is next submitted that petitioner from 15.07.2004 till 20.07.2004 was on sanctioned leave thus when the first letter was written by the B.D.O., Saraiya on 15.07.2004, the petitioner was on sanctioned leave, which also is not disputed by the Vigilance, as such, the letter never came to the notice of the petitioner. It is next submitted that the letter dated 28.07.2004 escaped the attention of the petitioner since he was in process of getting allocated to the State of Jharkhand and on 01.09.2004 the petitioner was allocated the State of Jharkhand.

8. Learned counsel for the petitioner, at the cost of repetition, submits that this explains that act of the petitioner in not instituting the FIR was not deliberate but definitely was an administrative lapse which could have been dealt administratively for which the FIR was not required.

9. learned counsel for the petitioner next submits that after the petitioner was allocated to the State of Jharkhand, the present FIR came to be instituted on 05.08.2006 i.e. two years after the allocation of the petitioner to the State of Jharkhand, as



such, officers posted in the concerned police station after the petitioner were also equally responsible for not instituting the FIR, but then only the petitioner came to be implicated in the present case. It is further submitted that since the petitioner was allocated to the State of Jharkhand, as such, he went beyond the jurisdiction of the State of Bihar and the competent authority of the petitioner in terms of the Re-organization Act, 2000 was the State of Jharkhand and if any sanction had to be granted then the said sanction had to be granted by the State of Jharkhand and definitely not by the State of Bihar, the learned counsel, at this stage, submits that though this submission has been made but then he is not pressing the said submission as in the nature of controversy the case can be allowed on a different ground also.

10. Learned counsel for the petitioner, at this stage, again reiterates his submission and submits that after the petitioner was allocated to the State of Jharkhand, two years thereafter, the present FIR came to be instituted and from perusal of the FIR, it would manifest that it has been instituted against eleven persons who committed dereliction of duty. It is next submitted that the FIR also records that the informant had approached the Collector of the District bringing to his notice that FIR is not being instituted and allegation is of black-



marketing of food grains, but the Collector of the District also did not take any action, but then he is not made an accused nor the officers who joined the concerned P.S. after his allocation to the State of Jharkhand have also not been made an accused which, prima facie, demonstrates the selective implication being made by the Vigilance. It is submitted that it absolutely does not stand to reason that as to why those officers who joined the concerned P.S. after the petitioner was not made an accused in the FIR, why the Collector of the District was left out when it is specifically alleged in the FIR that in the year 2005 itself the informant had approached him by a letter bringing to his notice about the offence, but he chose not to take any action. The submissions made by the learned counsel for the petitioner is not without merit, but then the Court is not inclined to consider the said submissions of the learned counsel for the petitioner.

11. Learned counsel next submits that the petitioner was subjected to a departmental proceeding based on the same charges which have been levelled against him in the present FIR and the inquiry officer in the departmental proceeding, after threadbare inquiry, exonerated him of the charges and the said exoneration was accepted by the disciplinary authority as would be evident from *Annexure-1* to the supplementary affidavit. It is



next submitted that when the department was not able to prove the charges against the petitioner in the departmental proceeding which is based on preponderance of probability, in that event whether it would be justified to continue the criminal proceeding which is based on strict rule of evidence.

12. Learned counsel in order to fortify his submission places reliance on the judgment in the case of **P.S. Rajya vs. State of Bihar reported in 1996 9 SCC (1)** wherein the Hon'ble Supreme Court at para 3 recorded as under:-

“The short question that arises for our consideration in this appeal is whether the respondent is justified in pursuing the prosecution against the appellant under section 5(2) read with section 5(1)(e) of the Prevention of Corruption Act, 1947 notwithstanding the fact that on an identical charge the appellant was exonerated in the departmental proceedings in the light of a report submitted by the Central Vigilance Commission and concurred by the Union Public Service Commission”.

13. Thereafter at para 17 it was recorded thus:-

“At the outset we may point out that the learned counsel for the respondent could not but accept the position that the standard of proof required to establish the guilt in a criminal case is far higher than the standard of proof required to establish the guilt in the departmental proceedings. He also accepted that in the present case, the charge in the departmental proceedings and in the criminal proceedings is one and the same. He did not dispute the findings rendered in the departmental proceedings and the ultimate



result of it”

14. Thereafter at para 23 the Hon’ble Supreme Court held as under:-

“Even though all these facts including the Report of the Central Vigilance Commission were brought to the notice of the High Court, unfortunately, the High Court took a view that the issues raised had to be gone into in the final proceedings and the Report of the Central Vigilance Commission, exonerating the appellant of the same charge in departmental proceedings would not conclude the criminal case against the appellant. We have already held that for the reasons given, on the peculiar facts of this case, the criminal proceedings initiated against the appellant cannot be pursued. Therefore, we do not agree with the view taken by the High Court as stated above. These are the reasons for our order dated 27.3.1996 for allowing the appeal and quashing the impugned criminal proceedings and giving consequential reliefs.”

15. Learned counsel for the petitioner next submits that recently the Hon’ble Supreme Court in the case of **Ashoo Surendranath Tewari Vs. Deputy Superintendent of Police, EOW, CBI and Anr.** reported in **(2020) 9 SCC 636** quashed the criminal proceeding against the appellant relying on several precedents including **P.S. Rajya** (supra).

16. Learned counsel for the petitioner further submits that in view of the submissions recorded hereinabove, it would manifest that in the nature of allegation no criminal offence was



made out against the petitioner, further the petitioner was allocated the State of Jharkhand on 01.09.2004 and the FIR came to be instituted on 05.08.2006, but all the officers in between 01.09.2004 to 05.08.2006 who were in-charge of the said police station have not been implicated as an accused, including the District Magistrate of the district for reasons as recorded hereinabove, which prima facie demonstrates that the Vigilance was dealing with the officers selectively and chose the petitioner because he was allocated to the State of Jharkhand and in order to harass him he was implicated when the petitioner could have been dealt for his lapses on the administrative side. The learned counsel reiterates and submits that when in the departmental proceeding, the department could not prove the charges and the Hon'ble Supreme Court also in a similar case quashed the criminal proceeding in the case of **Ashoo Surendranath Tewari Vs. Deputy Superintendent of Police, EOW, CBI & Anr.** (supra) then whether it would be justified to allow the present criminal prosecution against the petitioner to continue.

17. The learned counsel, at this stage, also makes a further submission that B.D.O, Saraiya was also made an accused in the present case and he had moved before this Court for quashing of his criminal prosecution by filing Criminal



Miscellaneous No. 31307 of 2016 and the learned Co-ordinate Bench of this Court by order dated 12.12.2018 was pleased to quash the order taking cognizance dated 13.02.2017 passed by the learned Special Judge, Vigilance, North Bihar, Muzaffarpur in Special Case No. 28 of 2006, Vigilance P.S. Case No. 44 of 2006.

18. The learned counsel for the petitioner submits that case of the petitioner if not better then is akin to the case of Ahmad Mahmud, the B.D.O., Saraiya who was also implicated as an accused in the present FIR whose case was quashed, it is further submitted that Ahmad Mahmud was made an accused on the ground that when information of black-marketing of rice was given to him by the informant, he did not initiate any action and the action for instituting a case was initiated by the subsequent B.D.O, it is next submitted that when the facts of the case is appreciated, it would manifest that the case of the petitioner is better than Ahmad Mahmud for the reason that in the departmental proceeding also, the petitioner was exonerated.

19. The learned Special P.P. for the Vigilance does not dispute the factual submissions made by the learned counsel for the petitioner, but then tries to defend the action of the Vigilance on the ground that sanction was granted against the petitioner by



the State of Bihar but then the learned counsel for the petitioner does not press that submission for consideration of this Court, the learned Special P.P. also does not dispute the judgment relied by the learned counsel for the petitioner in support of his contention.

20. Considering the submissions made by the learned counsel for the petitioner and also taking into consideration the legal issue raised, the order dated 13.02.2017 arising out of Special Case No. 28 of 2006 in Vigilance Case No. 44 of 2006 passed by the learned Special Judge, Vigilance, North Bihar, Muzaffarpur whereby cognizance has been taken under Sections 420, 465, 467, 468, 471, 477(A) and 120(B) of the Indian Penal Code read with Sections 13(2) and 13(1)(d) of the Prevention of Corruption Act, 1988 against the petitioner stands quashed.

21. Accordingly, the present quashing application stands allowed.

(Satyavrat Verma, J)

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