IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1109 of 2021

Arising Out of PS. Case No.-40 Year-2015 Thana- VIGILANCE District- Patna

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SUNIL KUMAR S/o Late Shri Krishna Resident of M.I.G.H. Flat No. 250, Lohia Nagar, Kankarbag Colony, P.S.- Kankarbag, District- Patna

... ... Petitioner/s

Versus

1. THE STATE OF BIHAR THROUGH THE PRINCIPAL SECT. DEPTT. OF VIGILANCE, GOVT. OF BIHAR , PATNA Bihar
2. The Vigilance Investigation Bureau, through its Principal Secretary, Dept. of Vigilance, Govt. of Bihar Patna, Bihar
3. The Director General, Vigilance Investigation Bureau, Patna Bihar
4. The Additional Director General, Vigilance Investigation Bureau, Patna Bihar
5. The Superintendent of Police, Vigilance Investigation Bureau, Patna Bihar
6. Mahesh Kumar son of Aditya Prasad Singh, Investigating officer-cum-Inspector vigilance Investigation Bureau, Patna

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sanjay Singh Mr.Santosh Kumar Sinha 2 Mr. Ujjawal Mr. Uttam Kumar Mishra
For the Vigilance	:	Mr.Arvind Kumar

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

JUDGMENT AND ORDER
C.A.V.

Date : 03-11-2023

The petitioner has been made accused in Vigilance Police Station Case No. 40 of 2015, registered against the petitioner for the offences punishable under Sections 7/13 (2) read with Section 13 (1) (d) of the Prevention of Corruption Act for demanding and accepting bribe of ₹50,000/- from the complainant, namely, Madan Bihari Singh, and later on, in the trap laid by the vigilance team, the petitioner was caught red handed along with the bribe money.

2. The First Information Report was lodged on 20.05.2015 by the Vigilance Investigation Bureau. The petitioner was taken into custody on 20.05.2015 and was released on bail on 30.07.2017. While in jail, the petitioner filed a representation before the Director General of Police, Vigilance Investigation Bureau, through the Jail Superintendent, on 11.06.2015, which was forwarded to the Director General of Police, Vigilance Investigation Bureau on 13.06.2015, with copies of representation to the Superintendent of Police, Vigilance and the Investigating Officer of the case.

3. After investigation, charge sheet was submitted on 17.07.2015. The petitioner was released on bail of 30.07.2015. Since, after the order of cognizance, dated 31.07.2015, the case was fixed for framing of charge before the Court of learned Special Judge, Vigilance, Patna, in Special Case No. 22 of 2015. At this juncture, after lapse of two years, the petitioner filed a petition on 17.03.2017, under section 173 (8) of the Code of Criminal Procedure, before the learned Special Judge, Vigilance, Patna, for directing for further investigation on the representation filed by the petitioner and further to summon the Investigating

Officer of the case as to why he left the investigation on the representation of the petitioner. The aforesaid petition filed by the petitioner was dismissed by the learned Special Judge, by order, dated 10.02.2021, and thereafter the petitioner has filed the present writ application on 29.08.2021 for holding fair, judicious transparent investigation and for further investigation in the matter after declaring the investigation and charge sheet vitiated on the ground that the investigation was not conducted in a fair manner.

4. The background of this case is that the complainant, namely, Madan Bihari Singh, who is the secretary of Lalji Singh Sudarshan High School, Taranpur, filed a representation seeking affiliation of the school in question before the Education Minister, Government of Bihar. While the file was pending before the Joint Secretary of the Bihar School Examination Board, the P.A. to the Joint Secretary, namely, Rakesh Kumar, demanded a sum of Rs. 12,000/- as bribe (₹2000 himself and ₹10,000 for sahab) for disposal of the representation/file. A complaint was made by the petitioner on 18.05.2015 before the Superintendent of Police, Vigilance Investigation Bureau against the P.A. to the Joint Secretary, namely, Rakesh Kumar. Subsequently, the complainant and the verifier again went to meet the P.A. to the Joint Secretary, who told that now he cannot help them in this matter and hence they may immediately meet the Incharge Joint Secretary, i.e. the petitioner. The complainant and the verifier made the accused-petitioner. The complainant, by giving reference of Rakesh Kumar (PA), requested him for quick disposal of the file, upon which the accused-petitioner demanded ₹60,000, but on the request of the complainant, the amount was reduced to ₹50,000. The verifier, finding the allegation true, submitted his verification report. A pre-trap and post-trap was conducted and the petitioner was arrested along with the bribe money on 20.05.2015 and the First Information Report, bearing Vigilance Police Station Case No. 40 of 2015 was registered against the petitioner.

5. Learned Counsel for the petitioner argued that on 11.06.2015, the petitioner, through the jail authorities, filed a representation giving the facts showing his innocence and false implication, annexing therein documents and CD, which was forwarded by the jail authorities to the Director General of Police, Vigilance Investigation Bureau, and other authorities, vide memo number 3447, dated 13.06.2015 (Annexure-2). The representation of the petitioner was made available to the Investigating Officer of the case on 13.07.2015, but before filing the charge sheet, on 17.07.2015, the Investigating Officer did not consider the representation of the petitioner nor any investigation in that regard was made, which would be evident from the charge sheet/CD. The petitioner, on 18.07.2015 and 05.09.2016, applied for mobile location of the complainant from the call details service provider, which was refused on 20.09.2016.

6. Learned Counsel further argued that the investigating agency, with oblique motive, did not consider the representation, evidence/application produced by the petitioner inasmuch as he does not find any mention in the case diary or the charge sheet; whereas, the law says that all the documents/representations given by the accused shall be tested during the course of investigation. It is also settled principle that the Investigating Officer is not the bolster of the prosecution case with such evidence as may enable the Court to record conviction, but is to bring out the real unvarnished truth.

7. Learned Counsel relies on Rules 48 (d) and 164 of the Bihar Police Manual, 1978 and Section 23 of the Police Act, 1861. Rule 164 of the Bihar Police Manual, 1978, deals with the case diary whereas Rule 48 (d) of the Manual deals with the supervision notes. Section 23 of the Police Act envisages that the Investigating Officer is obliged to obey the orders and warrants issued to him by the competent authority.

8. Learned Counsel further argues that the investigation was tempted and biased because the complainant and the verifier were not present at the place of trap on the alleged date and time, as stated in the pre and post-trap memorandum, which would have been ascertained from the mobile location. The CD and the location of the mobile of the complainant is the most important document to show conspiracy, but no details were provided to him nor any investigation was done in that direction. He argues that the concerned file for grant of affiliation to the school of the complainant was not with the petitioner on the alleged date nor he is the competent authority to grant affiliation to any school inasmuch as he was only the forwarding authority.

9. He next argues that on the alleged date of occurrence, i.e. on 20.05.2015, the petitioner came to the office at 09:30 AM, and placed his lunch box over the table as usual and went for making arrangement/preparation of final result of Intermediate of Science, which was to be declared on the said date, i.e. on 20.05.2015. At about 11 AM, the petitioner went to attend a meeting and on the same day, at about 02 PM, upon the instruction of the Chairman of the Board, the petitioner went to receive the Education Minister and the petitioner accompanied the Education Minister to the Office of the Board at 02:45 PM. The petitioner remained with the Education Minister till 4 PM. Thereafter, he went for a meeting with the Chairman and then returned back to the room of computer operator to collect the CD of the published result, where the officials of the Vigilance Investigation Bureau caught him. He next argues that the colour of the water was already changed before he could put his hand in it.

10. He further argues that the complainant and the verifier are of the same village and there was no staff of the Vigilance Investigation Bureau at the time of post-trap and all the witnesses are highly interested witnesses.

11. On the other hand, learned Counsel for the Vigilance Department, argues that the investigation was done in fair and proper manner in accordance with law. The petitioner was caught red-handed with the bribe money. During search, the bribe amount was recovered from the possession of the petitioner in presence of two independent witnesses. The description of the recovered G.C. notes were matching with the pre-trap memorandum. He further argues that the washes of both the hands of the petitioner turned into pink colour, which finds support in the report of the Forensic Science Laboratory.

12. He next argues that the Investigating Officer, after completion of investigation, submitted charge sheet and cognizance of the offence was taken on 31.07.2015, and since then, seven years have passed, but the petitioner, one way or the other, is not letting the Court to frame charges. The petitioner is trying to delay the conclusion of the trial.

13. I have heard learned Counsel for the parties concerned and have perused the materials available on record.

14. On the basis of the complaint made by the complainant regarding the demand of illegal money by the petitioner, the Vigilance Investigation Bureau verified the complaint through its verifier, namely, Indrajeet Singh, and upon being satisfied, the pre-trap memorandum was prepared. From the post-trap memorandum, which is part of the writ petition, it appears that a trap was led on 20.05.2015, and a sum of Rs. 50,000/- has been recovered from the possession of the petitioner, kept in his black bag.

15. The number and description of the G. C. notes recovered from the possession of the petitioner were matching with the number and description of the G. C. notes mentioned in the pre-trap memorandum. The signatures of the complainant, the petitioner and the independent witnesses as well as the verifier are there on the post-trap memorandum.

16. The police, after completion of investigation, submitted charge sheet on 17.07.2015. After completion of investigation and submission of charge sheet and that too, after expiry of two years, the petitioner, in the year 2017, filed a petition before the learned Special Judge, Vigilance, Patna, for further investigation under Section 173 (8) of the Code of Criminal Procedure on the ground that his representation, dated 11.06.2015, was not considered by the Investigating Officer.

17. It appears that the representation of the petitioner was already forwarded to the Investigating Officer, in which the petitioner has raised the contention that the complainant, along with the P.A. to the Joint Secretary, have falsely implicated him due to the fact that the work and conduct of the P.A. to the Joint Secretary was not satisfactory and the petitioner had orally requested to the Secretary to remove the said P.A. from his cell. In the representation, the petitioner has further stated that while the petitioner was in the computer cell, he was caught hold by the Vigilance Investigation Bureau.

18. Thus, the contention of the petitioner is that in his absence, the money was kept in his black bag in order to falsely implicated him by the complainant, P.A. to the Joint Secretary and others.

19. From the post-trap memorandum, it appears that the place of the post-trap is the southern facing room of Sunil Kumar, Incharge Joint Secretary, i.e. the petitioner. In the post-trap memorandum, the signature of the petitioner is there along with the signatures of the complainant and others, including the independent witnesses.

20. It is also not in dispute that the representation of the petitioner was already forwarded to the Investigating Officer of the case before submission of the charge sheet.

21. Upon objective consideration of the facts and the materials on record, including the representation of the petitioner, I come to the conclusion that there is no mala fide exercise of power by the Investigating Officer of the case. The petitioner-accused cannot control the manner of investigation, The representation of the petitioner only narrates the activities of the petitioner on the alleged date of trap and that he was falsely implicated in this case by the complainant and his P.A.

22. Accordingly, in my opinion, the petitioner has failed to make out a case for further investigation in the matter.

23. In the result, this application is dismissed.

24. There shall be no order as to costs.

25. Taking into consideration the fact that after cognizance having been taken on 31.07.2015, more than eight years have already crossed and charges have not yet been framed. Accordingly, I direct the Special Judge, Vigilance, to frame the charges within a period of thirty days from today with further direction to the petitioner to co-operate in the trial of the case.

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

AFR/NAFR	AFR
CAV DATE	26-09-2023
Uploading Date	03-11-2023
Transmission Date	03-11-2023