

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.60900 of 2019

Arising Out of PS. Case No.-21 Year-2014 Thana- C.B.I CASE District- Patna

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Bijay Kumar Bimal Son Of Sri Pulkit Prasad Yadav Resident Of Mohalla-
Vidyapuri, S.B.I. Road, Ward No. 18, P.O. And P.S.- Madhepura, District-
Madhepura.

... .. Petitioner/s

Versus

1. C.B.I.through the Superintendent of Police, C.B.I., Anti Corruption
Branch,Patna Bihar
2. The Superintendent of Police, Central Bureau of Investigation, Anti
Corruption Branch, Patna. Bihar
3. The Deputy Superintendent of Police, Central Bureau of Investigation, Anti
Corruption Branch, Patna Bihar
4. The Inspector of Police-cum- Investigating Officer Central Bureau of
Investigation, Anti Corruption Branch, Patna, Bihar.

... .. Opposite Party/s

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with

Criminal Writ Jurisdiction Case No. 695 of 2019

Arising Out of PS. Case No.-21 Year-2014 Thana- C.B.I CASE District- Patna

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S. K. Sethy Son Of Late Biswanath Sethy Permanent Resident Of Village -
Saem, P.O. Olakana, P.S.- Mahanga, District - Cuttak In The State Of Odisha,
Presently Posted As Manager (general), Central Warehousing Corporation,
Regional Officer, Mayryalok Complex, Patna P.O. Kotwali, District - Patna

... .. Petitioner/s

Versus

1. The Central Bureau Of Investigation, Govt. Of Bihar Bihar
2. The Managing Director, and Disciplinary Authority Central Warehousing
Corporation (A Government of India undertaking) Corporate Officer, 4/1,
Siri Institutional Area, August Kranti Marg Hauzkhas New Delhi- 110016.

... .. Respondent/s

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with

Criminal Writ Jurisdiction Case No. 738 of 2019

Arising Out of PS. Case No.-21 Year-2014 Thana- C.B.I CASE District- Patna

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Dr. Sidharth Rath Son Of Sri Mayadhar Rath Resident Of At And P.O.-
Angarua, Via- Anandpur, P.S.- Ramchandrapur, Distt.- Keonjhar, Odisha,
Manager (Technical) At Central Warehousing Corporation Corporate Office,
New Delhi.

... .. Petitioner/s



Versus

1. The Central Bureau Of Investigation, Govt. Of India, Patna Govt. Of India.
2. The Central Warehousing Corporation (A Govt. Of India Undertaking) Corporate Office, 4/1 Siri Institutional Area August Karanti Marg Hauzkhas New Delhi- 110016, Govt. Of India.
3. The Managing Director, And Disciplinary Authority Central Warehousing Corporation (A Govt. Of India Undertaking) Corporate Office, 4/1, Siri Institutional Area, August Kranti Marg Hauzkhas New Delhi -110016, Govt. Of India.

... .. Respondent/s

Appearance :

(In CRIMINAL MISCELLANEOUS No. 60900 of 2019)

For the Petitioner/s	:	Mr. Anita Kumari, Advocate Mr. Shashi Bhushan, Advocate Mr. Kumar Manglam, Advocate Mr. Awnish Kumar, Advocate
For the State	:	Mr. Jharkhandi Upadhyay, APP
For the C.B.I.	:	Mr. Avinash Kumar, Sp.PP. C.B.I.

(In Criminal Writ Jurisdiction Case No. 695 of 2019)

For the Petitioner/s	:	Mr. Amit Kumar Jha, Advocate Md. Anisur Rahman, Advocate Md.Akram Naiyar, Advocate
For the State	:	Mr. Jharkhandi Upadhyay, APP
For the C.W.C	:	Mr. Deepak Sahay , Advocate
For the C.B.I.	:	Mr. Avinash Kumar, Sp.PP. C.B.I.

(In Criminal Writ Jurisdiction Case No. 738 of 2019)

For the Petitioner/s	:	Mr. Amit Kumar Jha, Advocate Md. Anisur Rahman, Advocate Md.Akram Naiyar, Advocate
For the State	:	Mr. Jharkhandi Upadhyay, APP
For the C.W.C	:	Mr. Deepak Sahay , Advocate
For the C.B.I.	:	Mr. Avinash Kumar, Sp.PP. C.B.I.

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

5 03-08-2023 1. These applications have been filed on behalf of
the petitioner above named for the following reliefs:-

(I) For quashing of the order dated 20.05.2016 passed
by the learned Special Judge, C.B.I.-III, Patna in Special Case
No. 11 of 2014, R.C. No. 21A of 2014, so far it relates to the
petitioner, by which the learned Special Judge refused to accept



the closure/final report submitted by the O.P. No. 4 and forwarded by the O.P. No. 2 and came to the conclusion that in *prima-facie* case under Section 120B, 420 of the I.P.C. and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 is made out against the petitioner and other accused persons.

(ii) For quashing of the order dated 24.04.2019 passed by the learned Special Judge, C.B.I.-III, Patna in Special Case No. 11 of 2014, R.C. NO. 21A of 2014 by which learned Special Judge has been pleased to take cognizance for the offence under Section 120(B) and 420 of the Indian Penal Code and Section 13 (2) read with Section 13 (1)(d) of the Prevention of Corruption Act, 1988, so far it relates to the petitioner.

(III) For quashing the prosecution of the petitioner in connection with Special Case No.11 of 2014, R.C. No.21A of 2014 (State Vs. S. Rath) on the ground that there is no evidence on record to suggest that any illegality was committed by the Tender Committee while awarding the contract to the petitioner and the allegations made against the petitioner in the First Information Report was absolutely false for deliberate purposes.

(iv) For quashing the letter contained in CWC/XIII-10/97/2017/AV/1518 dated 13.11.2017 issued under the



signature of Managing Director, by which sanction for prosecution under section 120B r/w 420 IPC and section 13(2) r/w 13(1) (d) of Prevention Of Corruption Act, 1988 has been accorded.

(v) for quashing of entire criminal prosecution arising out of F.I.R. No. RC232014A 0021 dated 31.10.2014 leading to institution of Special Case No. 11/2014, RC No. 21A/2014.

2. As per the Prosecution case, a reliable information exists to the effect that during the period of November, 2012 to May, 2014, Dr. Sidharth Rath, Regional Manager, Sh. N.K. Verma, SAM(G), J.K. Sharma, SAM (A/C), A.K. Sharma, M(G), D.S. Vishwakarma, SAM(G), P.K. Sen, SAM (A/C), Smt. Anna Kerketta (SFO) and S.K. Sethy, Manager (G) was posted at Regional Office of Central Warehousing Corporation (CWC) at Maurya Complex, Patna, were party to a criminal conspiracy. They in pursuance of the common object of the said criminal conspiracy abused their official positions and dishonestly processed the tenders for Handling and Transportation contract (H & T contract) with ulterior motive and caused huge wrongly loss to Government exchequer.

3. During the said period, 11 H&T contracts were processed on the 2-bid system in the Regional Office of C.W.C.



at Patna. After receipt of valid bids, a committee comprising of three officers was appointed by Regional Manager for scrutiny of the Technical bids. Three officers out of said S/Sh. N.K. Verma, SAM(G), J.K. Sharma, SAM (A/C), A.K. Sharma, (G), D.S. Vishwakarma, SAM(G), P.K. Sen, SAM(A/C), Smt. Anna Kerketta (SFO) and S.K. Sethy, Manager (G) were appointed as members of the Scrutiny Committee.

4. In pursuance of the said conspiracy, the scrutiny committee rejected the technical bids on flimsy grounds for awarding the contracts to their favored contractors. Majority of the bids were dishonestly rejected on flimsy technical grounds and price bid of only favored bidders were opened and the work was awarded mostly on the basis of single price bid. In pursuance of the said criminal conspiracy out of 11 tenders processed during the period in eight instances, only single price bid was opened or was selected for opening for eliminating any competition and for causing huge wrongful gain to the named favoured contractors and corresponding loss to the government exchequer.

5. It is also alleged that all the tenders have been processed and finalized by deliberately eliminating competition by interpreting tender conditions in biased manners flagrant



violation of C.W.C. guidelines which always over emphasized promoting competition for reaching at optimum rate. In many instances, the tender has been awarded at much higher rate than the local market rate.

6. After institution of the case, the Investigating Officer proceeded for its investigation and after completion of investigation, the Investigating Agency after the approval of the O.P. no. 2 filed a Final Report No. 124 of 2015 dated 31.12.2015 under letter no. 5451 dated 31.12.2015.

7. After filing of the closure report, the Court below by the impugned order has taken cognizance of the offences against the accused persons by differing with the final form.

8. I have heard the learned counsel for the petitioner, learned counsel for the State, learned counsel for the CBI and learned counsel for the CWC.

9. In paragraph 15 of the counter affidavit filed by the C.B.I., the C.B.I. has submitted that it would be difficult to attribute any wrongful loss to C.W.C. in respect of the award of the instant tender.

10. From the facts stated above, it is clear that the C.B.I. which is a premium investigating agency has found no evidence against the accused persons of the F.I.R. for



proceeding against them and filed a closure report.

11. In my opinion, the order of the learned Special Judge is devoid of any merit and the same cannot be sustained when the prosecuting agency has filed a closure report.

12. There is no doubt that the learned Special Judge could have differed with the final form and taken cognizance but to prove the case, there has to be some evidence and when the prosecuting agency like C.B.I. submits that there is no material against the petitioner, it would be difficult to attribute any wrongful loss to C.W.C. in respect of the award of the instant tender.

13. In my opinion, the order taking cognizance in the cases cannot be sustained.

14. In view of the above discussions, these applications are allowed and the order dated 20.05.2016 passed by the learned Special Judge, C.B.I.-III, Patna in Special Case No. 11 of 2014, R.C. No. 21A of 2014, order dated 24.04.2019 passed by the learned Special Judge, C.B.I.-III, Patna in Special Case No. 11 of 2014, R.C. NO. 21A of 2014, the prosecution of the petitioners in connection with Special Case No.11 of 2014, R.C. No.21A of 2014 (State Vs. S. Rath), the letter contained in CWC/XIII- 10/97/2017/AV/1518 dated 13.11.2017 issued under



the signature of Managing Director and entire criminal prosecution arising out of F.I.R. No. RC232014A 0021 dated 31.10.2014 leading to institution of Special Case No. 11/2014, RC No. 21A/2014 are hereby quashed.

(Sandeep Kumar, J)

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