IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.34051 of 2016

Arising Out of PS. Case No.-36 Year-1991 Thana- C.B.I CASE District- Patna

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1. Braj Kishore Lal @ Brij Kishore Lal, son of late Chandra Deo Lal, resident of Flat No. N/18, Lohinanagar under Kankarbagh Police Station, Town and District- Patna.
2. Sneh Lata Devi @ Sneh Prabha @ Lalita Devi @ Lali Devi, Wife of Sri Braj Kishore Lal, resident of Flat No.N/18, Lohinanagar under Kankarbagh Police Station, Town and District- Patna.

... ... Petitioner

Versus

1. State Of Bihar
2. Deputy Superintendent of Police, Vigilance Department, Government of Bihar.

... ... Opposite Parties

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with

CRIMINAL MISCELLANEOUS No. 34948 of 2016

Arising Out of PS. Case No.-36 Year-1991 Thana- C.B.I CASE District- Patna

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2. Sneh Lata Devi @ Sneh Prabha @ Lalita Devi @ Lali Devi, wife of Sri Braj Kishore Lal, resident of Flat No. N/18, Lohianagar under Kankarbagh Police Station, Town and District- Patna.

... ... Petitioners

Versus

1. State Of Bihar
2. Deputy Superintendent of Police, Vigilance Department, Government of Bihar.

... ... Opposite Parties

Appearance :

(In CRIMINAL MISCELLANEOUS No. 34051 of 2016)

For the Petitioners	:	Mr. Umesh Prasad, Sr. Advocate
		Mr. Vaibhav Veer Shankar, Advocate
For the State	:	Mr. Navin Kumar Pandey, APP
For the Vigilance	:	Mr. Rana Vikram Singh, Advocate

(In CRIMINAL MISCELLANEOUS No. 34948 of 2016)

For the Petitioner/s	:	Mr. Mr. Umesh Prasad, Sr. Advocate
		Mr. Vaibhav Veer Shankar, Advocate
For the State	:	Mr. Sri Chandrasen Prasad Singh, APP
For the Vigilance	:	Mr. Rana Vikram Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR

COMMON ORAL JUDGMENT

Date : 01-05-2023

Since both these petitions arise out of vigilance case no.65 of 1991 and the petitioners of both the cases are the same, they have been heard together and are being disposed of by this common judgment and order.

2. In both the petitions, the petitioners are challenging the order dated 15.06.2016 passed by the Special Judge (Vigilance), Patna, in Special Case No.65 of 1991, arising out of Vigilance P.S. Case No.36 of 1991, by which the petition dated 04.06.2015 filed by the petitioners under Sections 91, 227 and 243 of the Cr.P.C. for summoning of the documents has been rejected. By the same order, the discharge petition dated 12.05.2015 filed by the petitioners under Sections 227 and 239 of the Cr.P.C. has also been rejected.

3. The prosecution case in brief is that the petitioner no.1 namely, Brij Kishore Lal, who is the husband of petitioner no.2 namely, Sneha Prabha @ Lalita Devi, was initially appointed as Engineer in the year 1965 and at the time of institution of this case he was working as Assistant Engineer in the Bihar State Housing Board, Patna. During inquiry, it was found that the petitioner no.1 is in possession of the properties beyond his known sources of income and the petitioner no.2, abetted the said offence. It is further alleged that the petitioner no.1 hails from very ordinary family and his family properties were mortgaged. But now he has got his own fiat car besides land and three storied house. It has also been alleged that he had shown exaggerated income in the income tax and other returns and in the raid of his house, articles were seized which go to show that he was living a lavish life which was not possible from his salary. The further allegation is that the accused persons had deposited some money in the bank locker also. Lastly, it has been alleged that during inquiry it was found that from the date of joining of service till 1980 his total income from all sources was Rs. 1,00000/-, but the cost of house constructed by the accused in Kankarbogh alone was found to be Rs.1,90,000/-. After lodging the F.I.R in the year 1991, the charge-sheet was submitted on 22.07.2007.

4. Learned senior counsel for the petitioner submits that this is a fit case for quashing because this is the prime example of abuse of process of law as well as infringing the rights of an individual by the officers of the State. He further submits that bare plain reading of the documents will establish that no *prima facie* case is made out against the petitioners as the allegations made against the petitioners are nothing but a concocted story with a malafide intention to harass the petitioners.

5. Learned senior counsel for the petitioner further submits that although in case of quashing, mini-trial cannot be held but just to falsify the allegations of the Vigilance, he is stating the facts of this case. He submits that the check period for the petitioner no.1 was from the year 1965 to 1980, which is admitted by the Vigilance but they have also taken the property accumulated by the petitioner in the year 1986 and the car purchased in the year 1981. He further submits that when on an anonymous application, an enquiry against the petitioner was ordered, it was handed to one Deputy Superintendent of Police, Vigilance, Patna for investigation, who after thorough investigation, by his report dated 28.06.1988 brought on record everything from income to assets of both the petitioners and in that report he has stated that the charges of acquisition of disproportionate property against the petitioners does not appear to be made out, however, the authorities were not satisfied with the report of Deputy Superintendent of Police so another enquiry was ordered to Deputy Superintendent of Police (Cabinet)

Vigilance, Patna who then conducted the second enquiry and submitted a detailed report with the answers of the questions raised from the first report and also stated that no case of disproportionate asset is made out against the petitioners. After this, another enquiry (third) was ordered and this time the Additional Superintendent of Police, was entrusted with the enquiry, who after thorough enquiry submitted a report dated 21.05.1991 stating therein that there is a meagre chance to prove the allegation of disproportionate assets and requested his senior officials to take final decision in the matter. For the reasons best known to the department, the F.I.R was instituted against the petitioners on 03.09.1991 even after three successive reports in favour of the petitioners. Thereafter, a final progress report was submitted by the Additional Superintendent of Police on 19.08.1992 wherein he has stated that the income of the petitioner no.1 is more than that of the assets of the petitioners.

6. Learned senior counsel for the petitioner further submits that after coming into force the Reorganization Act, 2000, by which the State of Jharkhand was created and subsequently, the services of the petitioner no.1 was transferred to the Jharkhand State Housing Board from where he superannuated on 28.02.2002 and was re-employed by the Jharkhand State Housing Board on the same terms and conditions and in this regard, a letter dated 21.05.2007 was issued under the signature of the Secretary by the order of the Managing Director of the Jharkhand State Housing Board and he continued there till 10.04.2010.

7. Learned senior Counsel for the petitioner further submits that no sanction was ever granted either by Bihar State Housing Board or Government of Bihar when the F.I.R was instituted in the year 1991 and after the year 2000 when the services of the petitioner no.1 was transferred in the State of Jharkhand then also no sanction was granted either by the State of Jharkhand or by the Jharkhand State Housing Board, and without taking sanction the charge-sheet was submitted by the department, which is illegal. He further submits that although the cognizance order dated 22.07.2007 is bad in law due to non-granting of sanction but also because of the reason that the aforementioned order is a non-speaking and cryptic order.

8. Learned counsel for the petitioner further submits that the impugned order is fit to be quashed on the ground of delay also, as in the last 32 years since the F.I.R has been instituted in the year 1991 there has been no "stay order" on the proceeding by this Court till June, 2019 but the trial has not moved an inch after passing of the impugned order dated 15.06.2016 and therefore, the prosecution of the petitioners cannot continue.

9. In support of his contentions, learned senior counsel for the petitioners has relied upon the following decisions:-

(i) ***Santosh De vs. Archna Guha & Others*** reported in ***(1994) Suppl. 3 SCC 735***

(ii) ***Pankaj Kumar vs State of Maharashtra & Ors.*** reported in ***(2008) 16 SCC 117***.

(iii) ***Mahendra Lal Das Vs. State of Bihar*** reported in ***AIR 2001 SC 2989.***

(iv) ***A.R. Antulay vs. R.S Nayak*** reported in ***(1992) 1 SCC 225***

(v) ***Vakil Prasad Singh vs. State of Bihar*** reported in **(2009) 3 SCC 355**

(vi) ***Ajay Kumar Vs. State of Bihar Through the Vigilance department*** reported in ***(2018) 1 PLJR 215.***

10. Learned Senior Counsel after taking this

Court through the above-mentioned Judgments submits that this ground alone and in itself is sufficient to quash the criminal prosecution against the petitioner and he further states that though the Section 482 Cr.P.C says that no abuse of process should be there but also for securing the ends of Justice and in this case the same needs to be done. The ends of justice should be secured for the petitioners who are being harassed at the hands of the officers of the State.

11. Lastly, learned senior counsel for the petitioner submits that the impugned order is a non-speaking and cryptic order and the same is required to be quashed. In support of his submissions, he has relied upon the decisions of the Hon'ble Supreme Court in the case of ***Kanchan Kumar Vs. State of Bihar*** reported in ***(2022) 9 SCC 577*** and in the case of ***Manohar Kumar Verma Vs. State of Bihar & Ors (Cr. W.J.C No. 1252 of 2019)*** decided on 22.12.2022. He also submits that the ingredients of the offences, as alleged in the F.I.R. under the provisions of the Indian Penal Code, are also not made out against the petitioners.

12. Learned counsel for the Vigilance Department on the very outset submits that earlier the petitioner no.1 had challenged the order of cognizance dated

27.07.2007 before this Court in Criminal Miscellaneous No.3869 of 2007, which was dismissed by this Court vide order dated 21.01.2008 and against the said order, the petitioner no.1 moved before the Hon'ble Supreme Court by filing S.L.P. (Cr.) No.1180 of 2008, which was also dismissed by the Hon'ble Supreme Court with liberty to raise the point of sanction at the appropriate stage.

13. Learned Counsel for the vigilance Department further submits that the present application filed by the petitioners as well as the petitions filed by them are nothing but delaying tactics being played on their part just to delay the trial. He further submits that the petitioners were found in possession of disproportionate asset worth of Rs.6,21,531/- and the learned Special Judge, Vigilance has rightly rejected the petitions filed by the petitioners. He further submits that as far as petition under section 91 & 227 of the Cr.P.C is concerned, that has also been rightly rejected by the learned Special Judge as it is a settled principle of law that under section 227 the document/paper upon which the prosecution relies upon should be given to the accused but the prosecution is not bound to supply the irrelevant documents to the accused persons. Although, the documents sought under section 91 of the Cr.P.C is not at all necessary for the trial and if the documents are necessary for the defence, then the petitioners may demand the same at an appropriate stage of the trial.

14. Learned counsel for the Vigilance Department also submits that the disproportionate asset of the petitioner no.1 has been calculated keeping in mind the check period, which is from 1965-1980, the salary from the said period, which comes to only Rs.92,000/-, income from chit fund company, which comes to Rs. 7, 475/- and accordingly total income comes to Rs.99,475/- but the value of the three-storied house of the petitioner alone has been estimated to the tune of Rs. 1,90,000/- besides that a car was purchased of Rs. 68,000/- in the name of his wife and also 11 kathas of land, which was purchased in the year 1986.

15. Learned counsel for the Vigilance Department further submits that during the course of investigation, it was found that the car purchased by the petitioner had a fake address and he took a false stand that he took a loan for the car from his '*Sadhu*' (husband of his wife's sister) for which no documentary evidences that the amount was routed through a bank account could be established by the accused and as such that defence is not valid. He further submits that 11 kathas of land at Phulwari, Patna was purchased by the petitioner no.1 under the name of his son and daughter in the year 1986 and in the sale deed it has been shown that the minor kids were under the guardianship of their grandmother. It has been also found that the petitioner had taken a false plea regarding the income of Rs. 50,000 (Fifty Thousand) after the death of his father which also does not support the claim as there is no documentary proof of the same as the said huge amount was not kept in any bank or post-office. The value of land purchased by him was also undervalued knowingly so that he does not come under the radar.

16. Learned Counsel for the Vigilance has submitted that sanction is not required in the present case as the petitioner no.1 has superannuated from the service and thereafter, the charge-sheet has been filed. Therefore, there is no requirement to obtain sanction from the competent authority for the offence punishable under the Prevention of Corruption Act. He further submits that the petitioners have shown exaggerated income by filing the Income Tax Return of petitioner no.2 in which she has made the claim that she earned the income from embroidery but no evidence for the same has been produced by the petitioners rather the Investigating Officer found that no such type of business is run by the petitioner no. 2. He further states that the petitioner has tried really hard to justify the disproportionate assets but it has been of no use and as far as the claims of Income Tax Return is concerned even if it is assumed to be true without admitting it to be true then also it would not sustainable as this Court in ***Cr. Appeal (SJ) No. 507 of 2011 (Shiv Shankar Verma vs. State of Bihar through Vigilance and Ors.)*** and other analogous cases has distinctly observed that mere filing of the Income Tax Return does not prove pecuniary resources.

17. In reply, learned counsel for the petitioners submits that the submission of the Vigilance that the petitioners are trying to delay the proceeding of the case is just an innuendo against them as the petitioners have always cooperated and there may have been plethora of petitions filed by the petitioners during various stages but that is the right given by the Constitution of India to its citizen and they have never misused that right and no Court of law has ever made an observation of the same except for the Vigilance who have misused their powers and in the last 32 years since

F.I.R and if the end of check period is taken into account then the total time ie. from 1980-2023 for about 43 years, this is the period from which the petitioners are being harassed at the hands of the officials and the Fundamental Right of the petitioners has been thrown down to the garbage.

18. In reply to the submission of learned counsel for the Vigilance that no sanction was required as the charge-sheet has been submitted after the petitioner no.1 superannuated from service, learned counsel for the petitioner submits that just after the superannuation from the Jharkhand State Housing Board, the petitioner was again re-employed and refusal of sanction by the concerned department in the State of Bihar and so on the State of Jharkhand was never communicated by the Vigilance department for sanction. He further submits that under section 19 of the Prevention of Corruption Act, 1988 provides that if a person is being charged with offences under section 13 and other sections then the Sanction is pre-requisite. So, the charge-sheet without the sanction order is an incomplete charge-sheet and therefore the entire Criminal prosecution of the petitioners is bad and malafide at the instance of the Vigilance Department. He has referred to the Judgment of the Hon'ble Apex Court in the case of ***A. Sreenivasa Reddy Vs Rakesh Sharma & Another*** reported ***(2023) 8 SCC 711*** wherein it has been held that in case of Prevention of Corruption Act, 1988 sanction is pre-requisite.

19. Learned senior counsel emphasized on the word "was" used in section 19(i)(a) and the words "has" and "have been" used in Explanation of Section 19(i) of the P.C. Act, which clears the doubt raised by the counsel for the vigilance that cognizance can be taken after the superannuation in the absence of sanction and thus submits that the sanction is a mandatory document required for prosecuting a public servant. Absence of sanction coupled with the letter dated 31.10.2002 of the State Government denying sanction for the petitioner makes it crystal clear that the prosecution of the petitioner is illegal and bad in law.

20. Considered the submissions of the parties and perused the materials on record. From the records, it will appear that the check period for the assessment was from 1965-1980 and the F.I.R. was instituted on 03.09.1991 and thereafter the charge-sheet was submitted on 25.07.2007 and cognizance was taken on 27.07.2007. It is apparent on the face of the record that F.I.R. has been instituted after eleven years of end of the check period and the charge-sheet for the same was submitted after twenty seven years of the end of the check period. The petitioner is facing prosecution for last 32 years since the registration of the F.I.R. There has been no stay of the proceeding granted by the courts till June, 2019. In this way, there is unwarranted inordinate delay in investigation of the case. On account of pendency of investigation and trial, the petitioner has already suffered mental and physical agony. Further, nothing could be shown by the Vigilance Department to attribute the aforesaid inordinate delay which was in any way caused by the petitioner. Therefore, this Court is of the opinion that right of the petitioner for speedy trial has been infringed.

21. The Hon'ble Supreme Court in the case ***Pankaj Kumar vs State Of Maharashtra & Ors. (supra)*** has held in paragraph nos. 22 to 28 as follows:-

> *"22. It is, therefore, well settled that the right to speedy trial in all criminal prosecutions is an inalienable right under Article 21 of the Constitution. This right is applicable not only to the actual proceedings in court but also includes within its sweep the preceding police investigations as well. The right to speedy trial extends equally to all criminal prosecutions and is not confined to any particular*

category of cases.

23. In every case, where the right to speedy trial is alleged to have been infringed, the court has to perform the balancing act upon taking into consideration all the attendant circumstances, enumerated above, and determine in each case whether the right to speedy trial has been denied in a given case. Where the court comes to the conclusion that the right to speedy trial of an accused has been infringed, the charges or the conviction, as the case may be, may be quashed unless the court feels that having regard to the nature of offence and other relevant circumstances, quashing of proceedings may not be in the interest of justice. In such a situation, it is open to the court to make an appropriate order as it may deem just and equitable including fixation of time for the conclusion of trial.

24. Tested on the touchstone of the broad principles, enumerated above, we are of the opinion that in the instant case, the appellant's constitutional right recognised under Article 21 of the Constitution stands violated. It is common ground that the first information report was recorded on 12-5-1987 for the offences allegedly committed in the year 1981, and after unwarranted prolonged investigations, involving aforestated three financial irregularities; the charge-sheet was submitted in court on 22-2-1991. Nothing happened till April 1999, when the appellant and his deceased mother filed criminal writ petition seeking quashing of proceedings *before the trial court.*

25. *Though, it is true that the plea with regard to inordinate delay in investigations and trial has been raised before us for the first time but we feel that at this distant point of time, it would be unfair to the appellant to remit the matter back to the High Court for examining the said plea of the appellant. Apart from the fact that it would further protract the already delayed trial, no fruitful purpose would be served as learned counsel for the State very fairly stated before us that he had no explanation to offer for the delay in investigations and the reason why the trial did not commence for eight long years. Nothing, whatsoever, could be pointed out, far from being established, to show that the delay was in any way attributable to the appellant.*

26. *Moreover, having regard to the nature of the accusations against the appellant, briefly referred to above, who was a young boy of about eighteen years of age in the year 1981, when the acts of omission and commission were allegedly committed by the concerns managed by his parents, who have since died, we feel that the extreme mental stress and strain of prolonged investigation by the Anti-Corruption Bureau and the sword of Damocles hanging perilously over his head for over fifteen years must have wrecked his entire career.*

27. *Be that as it may, the prosecution has failed to show any exceptional circumstance, which could possibly be taken into consideration for condoning*

> *the prolongation of investigation and the trial. The lackadaisical manner of investigation spread over a period of four years in a case of this type and inordinate delay of over eight years (excluding the period when the record of the trial court was in the High Court), is manifestly clear.*
>
> *28. Thus, on facts in hand, we are convinced that the appellant has been denied his valuable constitutional right to a speedy investigation and trial and, therefore, criminal proceedings initiated against him in the year 1987 and pending in the Court of the Special Judge, Latur, deserve to be quashed on this short ground alone."*

22. In a similar situation, in the case of ***Santosh De vs. Archna Guha (supra),*** wherein a delay of eight years in commencing the trial was held to be violative of the right of the accused to a speedy trial and the decision of this High Court to quash the criminal proceedings on that ground was affirmed by the Hon'ble Apex Court. It will be relevant to quote paragraph no.18 of the aforesaid decision, which is as follows:-

> *"18. While we appreciate that a serious criminal offence might have taken place at the hands of Respondents 1 to 9, we cannot be oblivious to the fact that almost 17 years have elapsed*

> *since the date of that occurrence and there are these several delays pointed out earlier which remain unexplained. We think that in the circumstances the rights of Respondents 1 to 9 to a speedy trial have been breached and no interference with the judgment under appeal is called for. The appeal is dismissed."*

23. Moreover, it also appears from the records that the first report in connection with the case of the petitioner was submitted on 28.06.1988 stating therein that the charges of acquisition of disproportionate assets against the petitioner was not made out. Being not satisfied with the said report, the authority ordered another enquiry of which report dated 21.05.1991 was submitted, in which it has been categorically stated that "*the allegation of acquiring disproportionate assets does not appear possible to be proved and final decision may be taken"*. Even after two successive reports in favour of the petitioner, the F.I.R. was instituted by the Vigilance. After institution of the F.I.R., another enquiry was ordered of which the final progress report was submitted by the Additional Superintendent of Police on 19.08.1992, in which it has been stated that "the income from the known sources of the petitioner is more than that of the properties acquired". When three successive reports were submitted in favour of the petitioner by the officers of the Vigilance Department then the prosecution of the petitioner should not have been launched.

24. Learned senior counsel for the petitioner has drawn the attention of this Court to a dated 31.10.2002 (Annexure-3). On perusal of the same, it appears that the sanction for prosecution against the petitioner was denied on the basis that there is not enough evidence to support the prosecution of the petitioner and it has also been stated that if in future any evidence is brought on record, which makes a prima facie case for the prosecution of the petitioner, then the same may be placed for consideration for sanction. But, it appears that thereafter the Vigilance department could not find any concrete evidence against the petitioner and hence, they waited for the superannuation of the petitioner and after superannuation of the petitioner, they have filed charge-sheet in instant case.

25. Even otherwise, it is an admitted fact that the check period is from 1965-1980 but some of the assets which was taken into account is bought by the petitioner after the check period for example; the car was acquired in the year

1981 whereas the land was bought in the year 1986. This goes against the procedure of investigation. The vigilance should have only accounted for the assets which was acquired either in 1980 or before that. Taking the assets acquired after 1980 and making the allegation based on the same is illegal.

26. In ***Kanchan Kumar vs. State of Bihar*** reported in ***(2022) 9 SCC 577*** the Hon'ble Apex Court has held as follows:-

> *"19. The third objection relates to the inclusion of Rs. 1,58,562/- as the value of the articles found during a search conducted in Appellant's house on 21.02.2000, twelve years after the check period of 1974 to 1988. There is nothing to indicate, even prima facie, that these articles found during the search in the year 2000 were acquired during the check period. In the absence of any material to link these articles as having been acquired during the check period, it is impermissible to include their value in the expenditure. We are therefore of the opinion that the Appellant's objection about inclusion of this amount in the list of expenditure is fully justified. Unfortunately, even this objection, which did not require much scrutiny of the material on record, was not considered by the Special Judge (Vigilance) or the High Court.*
>
> *20. The three heads of expenditure discussed hereinabove must be excluded from Appellant's total*

alleged expenditure during the check period. First, the Appellant's actual balance amount reflected in the Bank Passbook, i.e., Rs.11,998, as against the purported account balance of Rs. 55,000, must be taken into account. Further, the second and third amounts, as indicated above, must be excluded from Appellant's total expenditure mentioned in the chargesheet. Accordingly, the total expenditure comes only to Rs. 2,69,355, and not Rs. 5,24,386, which is based on certain mistakes that we have indicated hereinabove. It is this expenditure of Rs. 2,69,355 which is to be contrasted with the income of Rs.3,01,561/- during the check-period. These facts clearly demonstrate that there is no prima facie case made out by the prosecution and therefore the Appellant was entitled to be discharged."

27. From the aforesaid discussions and also the law laid down by the Hon'ble Supreme Court in the case of Pankaj Kumar (supra), Santosh De (supra) and Kanchan Kumar (supra), I am of the considered opinion that continuation of prosecution against the petitioner would be unjust and will be an abuse of the process of the Court. Hence, the Criminal Miscellaneous No.34051 of 2016 is allowed and the F.I.R. vide Special Case No.65 of 1991, arising out of Vigilance P.S. Case No. 36 of 1991 and all other consequential proceedings arising out of the aforesaid case including the order dated 15.06.2016 are hereby quashed against the petitioners.

28. In view of the above, there is no need to pass any order in Criminal Miscellaneous No.34051 of 2016 as entire prosecution against the petitioners has been quashed by this Court. Accordingly, the same is disposed of.

(Sandeep Kumar, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	21.12.2023
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