IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.935 of 2019

Arising Out of PS. Case No.-25 Year-2012 Thana- C.B.I CASE District- Patna

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PRABHA DEVI W/o Late Shambhu Sharan Sinha R/o Lohiya Nagar, P.S.- Begusarai, District- Begusarai.

... ... Petitioner/s

Versus

1. The Central Bureau Of Investigation (C.B.I.) Through Superintendent Of Police, C.B.I. Bailey Road Patna.
2. The Food Corporation of India (F.C.I.) through the General Manager (R), FCI, Arunachal Bhawan Exhibition Road, Patna.
3. The Executive Director, FCI, Zonal Office (East) Kolkata.
4. The General Manager (R), FCI, Arunachal Bhawan, Exhibition Bhawan Road, Patna.
5. The Area Manager FCI, Patna District Office Patna.
6. The Manager (A/Cs) FCI, District Office, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ashar Mustafa, (*amicus curiae)*
For the Respondent/s	:	Mr. Bipin Kumar Sinha

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR

ORAL JUDGMENT

Date : 20-04-2023

Heard learned counsel for the parties.

This application has been filed for directing respondent authorities to refund the amount of Rs. 9,09,751/- with statutory interest which has been deposited by the husband of the petitioner in the office of Food Corporation of India, District Office, Patna on 17.10.2014 and further to quash the order dated 02.11.2018, passed by Spl. Judge, CBI-1, Patna passed in Spl. 56/18, RC 25(A)/12 whereby and whereunder the petition filed by the petitioner for direction to the authorities to refund the amount of Rs. 9,09,751/- in favour of the petitioner was rejected.

The petitioner is the wife of Shambhu Sharan Sinha, who was accused in RC 25(A)/12 giving rise to Special Case No. 56 of 2018. The case was pending in the court of Special Judge, CBI-1, Patna. The accused Shambhu Sharan Sinha died on 29.11.2016 in the hospital during treatment and the death of Shambhu Sharan Sinha is not denied by any of the party. Shambhu Sharan Sinha was made accused in the criminal case along with the other co-accused which was registered under section 120-B read with 409 of the Indian Penal Code and Section 13(2) read with 13(1)(c) and (d) of the Prevention of Corruption Act, 1988. He was chargesheeted on 21.12.2013. He moved for anticipatory bail and this Court vide order dated 25.06.2014 granted the petitioner provisional bail. The order dated 25.06.2014 reads as under:-

> *"Heard learned counsel for the Petitioner and the State. The Petitioner apprehends his arrest in a case instituted for the offence under Section(s) 120-B read with 409 Indian Penal Code and Section 13(2) read with 13(1)(c) and (d) of prevention of Corruption Act. It has been submitted on behalf of the Petitioner that a sum of `12,09,751/-has been fastened as financial liability on the Petitioner, but in the departmental proceeding only a sum of `3,00,000/-was fastened which amount was recovered. However, without prejudice to his case, he is ready to deposit `9,09,751/- within a reasonable time. Considering the aforesaid, it is ordered that in the event of surrender/arrest of the Petitioner, named above,*

within four weeks from the date of receipt/ production of a copy of this order in connection with Special Case No.1/13 arising out of R.C.25A/12,he shall be released on provisional anticipatory bailon furnishing bail bond of `5,000/-(five thousand) with two sureties of the like amount each or any other surety to be fixed by the court below to the satisfaction of the Special Judge, CBI III, Patna, subject to the conditions as laid down under sections 438(2) Cr. P. C. and (i) That one of the bailors will be a close relative of the Petitioner, who will give an affidavit giving genealogy as to how he is related with the Petitioner. The bailors will undertake to furnish information to the court about any change in the address of the Petitioner."

Thereafter, Shambhu Sharan Sinha deposited the amount of Rs. 9,09,751/- in the F.C.I. as per the order dated 25.06.2014 for which the F.C.I. on 17.10.2014 has issued the receipt. By order dated 17.12.2014 passed in Cr. Misc. No. 17886 of 2014, the provisional bail granted to the petitioner was confirmed. The order dated 17.12.2014 read as under:

"Supplementary affidavit has been filed of behalf of the Petitioner stating therein that as undertaken by him before this Court on 25.6.2014,he has deposited Rs.9,09,751/-on 17.10.2014 before the authorities concerned without prejudice to his case. In view of such, the provisional anticipatory bail granted by order dated 25.6.2014 is hereby confirmed in connection with Special case No.1/13 arising out of R.C. 25A/12 pending in the court of Special Judge, CBI III, Patna on condition(i) That one of the bailor will be a close relative of the petitioner who will give an affidavit giving genealogy as to how he is related with the petitioner. The bailor will undertake to furnish information to the Court about any change in address of the petitioner. (ii) That the petitioner will give an undertaking

> *that he will receive the police papers on the given date and be present on date fixed for charge and if he fails to do so on two given dates and delays the trial in any manner, his bail will be liable to be cancelled for reasons of misuse, (iii) That the petitioner will be well represented on each date if he fails to do so on two consecutive dates, his bail will be liable to be cancelled."*

The petitioner is wife of Late Shambhu Sharan Sinha and she has prayed for refund / release of the amount of Rs. 9,09,751/- with statutory interest from the office of Food Corporation of India, Patna since the date of deposit i.e. 17.10.2014. The petitioner appeared in person and argued her case. Sri. Ashhar Mustafa, learned *amicus curiae* also put forth his submission. It has been argued by him that from the reading of the F.I.R., it appears that upon physical verification at Food Storage Depot, Mokama, some shortage / excess was reported. The said discrepancy was attributed to different employees including Late Shambhu Sharan Sinha, the husband of the petitioner. So far as Late Shambu Sharan Sinha is concerned, it has been alleged in the F.I.R. that because of his conduct, loss to the tune of Rs. 12,09,751/- was suffered by Food Corporation of India, Patna. It has further been submitted that Food Corporation of India initiated a departmental proceeding against Late Shambhu Sharan Sinha, wherein the following order was passed:

> "*The Executive Director, East had ordered a penalty* of *Reduction in rank to the post of AG.III(D) in the maximum time scale of pay of AG.III with immediate effect and recovery of Rs. 3 Lakhs from monthly salary (not exceeding) and the remaining amount from other terminal benefits excluding gratuity.*"

It is clear from the order dated 25.06.2014 that the deposit of the aforesaid amount was without prejudice to the case of the deceased employee i.e. Shambhu Sharan Sinha. It is also submitted that in the trial of Shambhu Sharan Sinha, the only question which was to be decided was whether the conduct of Shambhu Sharan Sinha was culpable and in case, his act is held culpable, if the suggested loss of Rs. 12,09,751/- to the F.C.I. is attributable to him. or not but the delinquent employee passed away before the trial of the case proceeded against him and therefore there is no finding as to whether Shambhu Sharan Sinha was in fact responsible for the loss of Rs. 12,09,751/-. While the said allegations were contested by Late Shambhu Sharan Sinha, he left for heavenly abode during the pendency of trial. This inevitably resulted in abatement of trial. Thus, the position remains that the charges against him were never proved in criminal trial. Moreover after the death of Shambhu

Sharan Sinha, no second enquiry can be held for the entire amount and in view of the aforesaid fact, the petitioner who is wife of the deceased Shambhu Sharan Sinha had asked for refund of the amount. Since the trial revolved around the only question as to whether the criminal conduct of the husband of the petitioner resulted in financial loss to the F.C.I., the Hon'ble High Court purposefully directed the husband of the petitioner to deposit the aforesaid sum "without prejudice to this case". Thus the phrase "without prejudice to this case" in the present circumstance is only capable of one interpretation that the said payment was subject to the fate of the trial. Any other construction of the phrase may not pass the "prejudice test" repeatedly prescribed as qualification for payment by the High Court. If the impugned order is not set aside and the deposited sum is not allowed to be returned to the petitioner, it will result in greater anomaly in as much as the said payment for all practical purposes would virtually be a punishment in the form of fine without the allegation being established in criminal trial.

Mr. Tekriwal, learned counsel submitted that the amount was directed to be deposited by this Court though with a qualification that it will not prejudice the case, but now after death of the delinquent employee, the petitioner is not entitled for release of the amount. The learned counsel for the Central Bureau of Investigation has submitted that C.B.I. is only to prosecute the accused and so far as the recovery of the amount is concerned, it is between the employer and delinquent and the C.B.I. has no role in that unless any order is passed by the criminal court after conclusion of the trial. He further submits that since there is no order of recovery as there is no trial, C.B.I. cannot support or oppose the prayer of the petitioner.

I have considered the submissions of the parties. It is an admitted fact that the husband of the petitioner had passed away during the pendency of the trial and the order dated 25.06.2014 is clear that the amount of Rs. 9,09,751/- was deposited without prejudice to the case of the deceased employee and once the deceased employee had died without conclusion of trial, no fresh recovery proceeding can be initiated after his death. Therefore, the realization of amount in a criminal proceeding is not permissible.

In these circumstances, this application is allowed. The Food Corporation of India is directed to release /refund the amount in question forthwith in favour of the petitioner within 15 days from today. The petitioner is directed to approach the

F.C.I. with a copy of this order so that she may get the amount in question.

(Sandeep Kumar, J)

Ranjeet/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	