IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1513 of 2017

Arising Out of PS. Case No.-89 Year-2017 Thana- MOUZAHIDPUR District- Bhagalpur

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Kumar Anuj son of Late Ramjee Prasad resident of village - Amrai Nawada, Post Office - Bihiyan, Police Station - Bihiyan, District - Bhojpur.

... ... Petitioner/s

Versus

1. The State Of Bihar.
2. The State of Bihar through the Vigilance Department, Bihar, Patna.
3. Mr. Aadesh Titarmare, at present District Magistrate, Bhagalpur.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rajeev Shekhar, Adv.
	:	Mr. Sanchay Srivastava, Adv.
	:	Mr. Sourav Suman, Adv.
	:	Mr. Ravi Prakash, Adv.
For the Respondent/s	:	Mr. Prabhat Kumar Verma, Adv.
For the Vigilance	:	Mr. Anil Singh, Spl. P.P., Vigilance

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT
Date : 29-04-2023

Heard learned counsel for the petitioner, learned counsel for the Vigilance and learned counsel for the State.

The present Cr. Writ application has been filed for quashing of the F.I.R. bearing Mojahidpur (Babarganj) P.S. Case No.89 of 2017, being Special Case No.07 of 2017 registered u/s 406/409/120B/417/418/420/423/426/431/464/465/468/477(A)/ 34 of the Indian Penal Code, Section 3(O) of Damage to Public Property Act, 1988 and Section 7 of the Prevention of Corruption Act, 1988 on 02.05.2017.

Counsel for the petitioner submits that petitioner is innocent and has committed no offence. He submits that from the contents of the F.I.R. the allegation has been made against the petitioner, which are mentioned in paragraph (vi) onwards and it is due to this reason, under various provisions of I.P.C. (406/409/120B/417/418/420/423/426/431/464/465/468/477(A)/34 Indian Penal Code) and Section 3(O) of Damage to Public Property Act, 1988 and Section 7 of the Prevention of Corruption Act, 1988, the case has been registered.

Counsel for the petitioner submits that his first point before this Court is that during the investigation process, which is still pending, no statement has been recorded by the investigating officer from the petitioner and without giving any opportunity this case has been lodged and continuing. The second point of the counsel for the petitioner is that, there is absolutely no illegality found in the statements relating to account during the inquiry. He submits that actually case has been lodged only on oral submission, and upon checking of accounts, nothing wrong has been earthed, therefore, on this ground also this criminal case may not be permitted to continued.

Counsel further submits that the case has been lodged at the instance of one R.T.I. activist and on his instance, the inquiry started but petitioner was not given any opportunity for same. As such there is a gross violation of natural justice and on this ground also, the filing of F.I.R. is bad in law and it should be quashed. Counsel for the petitioner submits that Government has lodged the F.I.R. in gross violation of its own guidelines, published in circular, which is annexed in Annexure-9 and Annexure-10. He also submits that no decision was taken on representation filed vide Annexure-11.

Counsel further submits that the informant has narrated before a five men inquiry committee, that he has no knowledge of this event but F.I.R. has been filed by him. As such, on this ground that the same person has disclosed earlier before the inquiry committee, that he has no knowledge, but subsequently filed an F.I.R. making all allegations, which is not possible.

Counsel for the petitioner submits that all the prosecution has started only when the petitioner got transferred from that place, leaving the post, therefore, on this ground also the F.I.R. may be quashed.

In furtherance of his argument, counsel submits that the allegation of disobedience against the petitioner as indicated in the F.I.R. is also not correct. He submits that petitioner is a victim of conspiracy, as he has taken stern action against the land encroachers and got the land vacated and only due to this reason, in the garb of one R.T.I. activist, the entire system has taken action against him. Counsel further submits that he has apprehension that petitioner's name may be involved in false cases, it is due to this reason, the petitioner through his mother, had also filed representation before the authority i.e. Annexure-11.

Counsel submits that upon considering Annexure-9, 10 and 11, it is very clear that the action of respondent authorities are not in accordance with the law and it requires interference by this Court by virtue of quashing the F.I.R.

Counsel for the Vigilance submits that it is admitted that the entire action has initiated by virtue of an R.T.I. application, filed by the activist. Counsel further submits that the District Magistrate has not taken action directly based on application filed by R.T.I. activist. It has been firstly verified by constituting a five men committee upon such allegations, under the Chairmanship of High Officials of the District i.e. D.D.C.

Counsel for the Vigilance submits this inquiry is a full fledged inquiry, in which evidences of series of persons have taken place. Documents have been verified and oral statements, which have been narrated by the public at large, and then only, after receiving report of the five men inquiry committee, the District Magistrate has applied his mind and recommended for filing an F.I.R. under different Sections, whose substances are available in the said inquiry committee.

Counsel further submits that filling an F.I.R. is not a punishment. Here, in this case, letter of R.T.I. activist has been followed by a detail inquiry by a five men committee, which followed by filing an F.I.R. This F.I.R. shall be followed by an investigation, which shall be again followed and scrutinized by the Court under the provisions of Cr.P.C. Therefore, the demand of the petitioner that the F.I.R. should be quashed, may not be correct in the eye of law.

Counsel further submits that the petitioner was repeatedly called by the investigating officials for his statement but he has not turned up for his statement for last many years. But he appeared only on 14.06.2021, then he took time for producing documents, thereafter, notices were issued several times but the petitioner has not appeared before the investigating officials. Counsel submits that recently on 24.03.2023, the latest notices has been sent but according to his information, petitioner has not appeared.

Counsel has also pointed out about the applicability of Annexure-9 i.e. Bihar CCA Rules, 2005 related to departmental proceeding matter. Counsel for respondent submits that Annexure-9 is not at all applicable in the present case, because Annexure-9 related to departmental proceeding matter and here, the matter is related to lodging the F.I.R.

Counsel for the Vigilance submits that Annexure-10 is also not applicable at all, due to the reason that present F.I.R. has not been filed directly, rather, prior to filing of the F.I.R. a five men committee has been constituted, therefore, committee after due enquiry reached on a conclusion, when *prima facie* materials have been collected, which has been found to be an offence, and the present F.I.R. has been lodged.

Counsel submits that this matter has been tested in case of **C.B.I. and Anr. Vs. Thommandru Hannah Vijayalakshmi @ T.H. Vijayalakshmi and Anr.** reported in **2021(4) PLJR**, it has been stated as follows :-

> *40. From the above, it becomes evident that the Single Judge of the Telangana High Court has acted completely beyond the settled parameters which govern the power to quash an FIR. The Single Judge has donned the role of a Chartered Accountant. The Single Judge has*

completely ignored that the Court was not at the stage of trial or considering an appeal against a verdict in a trial. The Single Judge has enquired into the material adduced by the respondents, compared it with the information provided by the CBI in the FIR and their counter-affidavit, and then pronounced a verdict on the merits of each individual allegation raised by the respondents largely relying upon the documents filed by them (by considering them to be "known sources of income' within the meaning of Section 13(1)(e) of the PC Act). This exercised has been justified on account of the appellant not having conducted a Preliminary Enquiry and hence, not having addressed the respondents' objections relying upon the documents adduced by them. The reasons provided by the Single Judge for entering into the merits of the dispute while quashing the FIR are specious, especially so considering our finding that the CBI need not hold a Preliminary Enquiry mandatorily. While exercising its jurisdiction under Article 226 of the Constitution to adjudicate on a petition seeking the quashing of an FIR, the High Court should have only considered whether the contents of the FIR-as they stand

and on their face- prima facie make out a cognizable offence. However, it is evident that in a judgment spanning a hundred and seven pages (of the paper-book in this appeal) the Single Judge has conducted a mini-trial, overlooking binding principles which govern a plea for quashing an FIR.

While, as far as, provision coming out of F.I.R. bearing Mojahidpur (Babarganj) P.S. Case No.89 of 2017, being Special Case No.07 of 2017 making out cognizable reason.

Counsel also realize on judgment of **Bhajan lal and Ors. Vs. State of Haraya and Ors.** reported in **A.I.R. 1992, SC 604,** it has been stated as follows:-

72. While Mr Rajinder Sachar and Mr Garg took much pain to show that the reasons given by the High Court in respect of each of the instances are not legally sustainable, Mr Parasaran submitted a tabular statement by listing out each of the instances of the alleged corruption indicted in the complaint, the explanation given in the writ petition as well as in the counter-affidavit related thereto and the reply in the rejoinder and urged that the allegations in the FIR are nothing but a conglomeration of calumny and falsehood.

As the entire matter stands only at the stage of the registration of the case and the investigation has not at all proceeded with on account of the order of stay granted by the High Court, we do not intend or propose to examine the truth or otherwise of each of the instances in snippet form and thereafter string them together and express any opinion either way, since in our view any such opinion may affect the case of either party or cripple the course of investigation.

73. An argument was advanced by Mr Parasaran submitting that the proposition of law laid down by this Court in Swapan Kumar Guha case holding that "the legal position appears to be that if an offence is disclosed, the court will not normally interfere with an investigation into the case" clearly shows that this Court has carved out an area wherein the courts can interfere in criminal proceedings at any stage if circumstances so warrant and quash the same. Based on the above proposition of law, he states that as the allegations in the present case are demonstrably shown to be speculative and false the judgment of the High Court quashing the proceedings has to be sustained. In our considered view, *this submission cannot be countenanced for the reasons - firstly we, at this premature stage, are unable to share the view expressed by the High Court that the charges levelled against Shri Bhajan Lal are all groundless and secondly Swapan Kumar Guha case cannot be availed of by respondent 1 as the question that came up for determination was entirely different. The facts in Swapan Kumar Guha case were as follows: Sanchaita Investments, a partnership firm was carrying on business as financiers and investors and in its business the firm accepted loans or deposits from the general public for different periods repayable with interest, giving option to the depositors for premature withdrawal. The firm was carrying on its business on a very extensive scale. While so, the Parliament passed the Prize Chits and Money Circulation Schemes (Banning) Act, 1978. On December 13, 1980, the Commercial Tax Officer, Bureau of Investigation, lodged a complaint of violation of the said Act by the firm with the police on the ground that the amount in excess of 12 percent interest so paid showed that the Money Circulation Scheme was being promoted and conducted for the making of quick and/or easy* *money. Two of the partners were arrested. Thereafter the firm and its two partners filed the writ petition in the High Court challenging the validity of the first information report and the proceedings arising out of the same. The question for consideration was as to whether the first information report prima facie disclosed the offence under Section 4 read with Section 3 of the Act of 1978 in the light of the requirement of Section 2(c) of the Act defining the expression "Money Circulation Scheme". This Court examined that question with reference to the facts therein and ultimately held that the allegations did not attract the provisions of Act of 1978. The question that arises for consideration in the present case is not the one as in Swapan Kumar Guha case.*

73. The High Court while quashing the impugned proceedings has made certain sweeping remarks by using the expressions 'imaginary and fantastic, "the fishing enquiry, 'outcome of a desperate and frustrated mind'. Except expressing our view that those remarks are not warranted, we refrain from making any more comment.

Counsel for the Vigilance conclusively submits that an

F.I.R. has been lodged after verification of information by the five men committee, whose report reveals that cognizable offence made out and when F.I.R. has been lodged, the said F.I.R. may be resulted into its logical end. He submits that in the present case, quashing of F.I.R., shall frustrate the flow of justice.

Upon going through the arguments of counsel for petitioner, as well as, upon considering all the points, which has been lodged by the counsel for the petitioner, three things which are admitted.

Firstly that the genesis of this case is the report of the R.T.I. activist. Secondly, Government has not taken any action to lodge F.I.R. on the report of the R.T.I. activist, instead thereof, a five men committee was constituted to verify the same. And after due verification and going through the conclusion of the report, in which some material has come, against many persons including the petitioner upon which Government has filed this case for investigation, because allegation under Indian Penal Code, under Prevention of Corruption Act and under other laws of the country are there, which are cognizable in nature. Upon going through the allegations made in F.I.R., it transpires to this Court that offences are made out.

Annexure-9, which has been annexed by the petitioner is a letter bearing 3(M)-7/2005-KA-945 dated 24.06.2005, issued from Department of Administrative Reforms and Public Grievances. This letter is relating to Departmental proceedings, whereas, the present matter is relating to lodging of F.I.R., therefore, Annexure-9 has no applicability at all in the present matter.

Annexure-10 is a letter issued by Home Department, Government of Bihar dated 30.09.2009, which is relating to filing of F.I.R. against Government officials and staffs working in Government offices.

In the said letter, it has been acknowledged by the Chief Secretary, Government of Bihar that sometimes without application of mind and without existence of *mens rea, c*riminal cases have been filed against the Government officials, which adversely affects the interest of the State and also the public interest. Decision has been taken that prior to filing F.I.R., it has to be ascertained that whether the mistake of charged Government employee is in violation of administrative rules or commission of criminal act. If administrative lapse or any mistake took place, then Departmental action is sufficient. It has also been decided that at the time of lodging the F.I.R., criminal intent, *mens rea,* dishonest intention have to be ascertained. The State has to consider that all losses are not criminal act and it has to be ascertained from the conduct of the employee.

In the present case, the five men committee has been set-up, who after detailed inquiry submitted report and in the said report, the action of the petitioner has been figured showing specific wrongs. Those wrongs are mentioned in the content of the F.I.R.

It transpires to this Court that the involvement of the petitioner is there in commission of the alleged offence, which requires investigation and for that continuation of the F.I.R. is necessary.

Similarly, Annexure-11, is the representation filled mother of the petitioner, which is alleged not to be considered. There is no legal basis for consideration of the said representation, particularly when an inquiry of five men Committee is going on, as such Annexure-9, 10 and 11 shall not help to the petitioner in any manner.

In the Judgments presented by Vigilance i.e. **C.B.I. and Anr. Vs. Thommandru Hannah Vijayalakshmi @ T.H. Vijayalakshmi and Anr.** reported in **2021(4) PLJR** and **Bhajan**

lal and Ors. Vs. State of Haraya and Ors. reported in A.I.R. 1992, SC 604, it is crystal clear from that observation of Supreme Court is that once F.I.R. has been lodged then investigation must reach on conclusion and can not be quashed particularly when upon the reading the F.I.R. *prima facie* it constituted the offence.

In this view of the matter, this Court is not inclined to given relief to the petitioner and after going through the F.I.R., this Court is of the opinion that this case is made out.

Accordingly, the present Cr. Writ Application stands dismissed.

(Dr. Anshuman, J.)

Ashishsingh/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	