

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.21160 of 2021

Arising Out of PS. Case No.-81 Year-2017 Thana- VIGILANCE District- Patna

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Sourav Basu S/o Shri Adhir Kumar Bose, Resident of Flat No. 6/201, Shakti Kunj Apartment, Plot No. B-9/3, Gautam Buddha Nagar, Sector-62, Noida, P.S.- Sector-59 Noida, District- Noida (Uttar Pradesh)

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna
2. The Additional D.G., Vigilance Investigation Bureau, Bihar, Patna
3. The Superintendent of Police-cum-SHO, Vigilance Police Station, Patna
4. The Dy. S.P., Vigilance Investigation Bureau, Patna

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Dhruba Mukherjee, Sr. Advocate Md. Nazir Ansari, Advocate Mr. Arup Kumar Chongdar, Advocate Ms. Eesha, Advocate
For the Opposite Party/s :		Mr. Parmeshwar Mehta, APP
For the Vigilance	:	Mr. Anjani Kumar, Sr. Advocate Mr. Shailendra Kumar Singh, Advocate Mr. Utkarsh Bhushan, Advocate Ms. Archana Palkar Khopde, Advocate

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
CAV JUDGMENT

Date : 13-09-2024

This Court has heard Mr. Dhruba Mukherjee, learned Senior Advocate along with Mr. Arup Kumar Chongdar, learned Advocate for the petitioner and Mr. Anjani Kumar, learned Senior Advocate for the Vigilance.



2. The petitioner by filing the present application invoking the inherent jurisdiction of this Court, seeking quashing of the entire criminal proceedings pending against him in Special Case No. 343 of 2017 arising out of Vigilance P.S. Case No. 81 of 2017 and also the charge-sheet bearing no. 20 of 2019 dated 25.04.2019, wherein, the petitioner has been charged with offences punishable under Sections 406, 409, 420, 467, 468, 471, 477-A and 120(B) of the Indian Penal Code and Sections 13(1)(d) read with 13 (2) of the Prevention of Corruption Act, 1988.

3. Shorn of unnecessary details, the facts which are necessary for the final adjudication of the matter are as follows: The aforementioned vigilance case has been instituted on the basis of enquiry conducted by Sri Arun Kumar, Dy. S. P., Vigilance Investigation Bureau, Patna in the light of the report issued by the vigilance and other departments in connection



with large scale corruption in the schemes of Bihar Mahadalit Vikas Mission (hereinafter referred to as “BMVM”) established under the SC/ST Welfare Department, Government of Bihar. Under the BMVM, several schemes were launched by the Government of Bihar for the welfare of SC/ST e.g. Dashrath Manjhi Kaushal Vikas Scheme; Chief Minister Mahadalit Poshak Scheme; Special Schools and Hostels etc. Under the Dashrath Manjhi Kaushal Vikas Scheme, the boys and girls of the community have to be given free technical education so that they may get employment. The BMVM was established in 2007 but the technical training was introduced in the year 2010.

4. In the light of the complaint, enquiry was conducted to look into the allegation of financial irregularities committed in the name of training of the students for Microsoft Office Trade. On 29.03.2011, tender was published in the name



of Expression of Interest (hereinafter referred to as “EOI”) for imparting training of Microsoft Office Trade and for the said purpose, a committee of officers was constituted. The tender was invited; in response thereto, ten companies submitted their proposal. After evaluation of the proposal, the proposal of Sri Ram New Horizons (hereinafter referred to “SRNH”) was found to be satisfactory and accordingly, the selection committee recommended its name for the aforementioned work. Agreement was entered into on 23.09.2011 with the aforesaid company. As per the agreement, 3445 students were to be given training at the rate of Rs. 4081/- per candidate and 70 per cent of the said money was to be paid only after imparting training to the trainees, making available the study materials and completion of the training examination and certification. It is alleged that the company imparted training to 3445 students but the same was not verified and advance payment of Rs.



98,41,322/- was paid at the rate of Rs. 4081/- in place of Rs. 2081/-, that too without verification of the trainees. All the training was to be completed within one year from the date of inception and the agreement was signed by Sourav Basu (petitioner), who was at that point of time Vice President of SRNH.

5. In the light of the agreement, SRNH started training programme from 17.11.2011 from Microsoft Trade in the different districts of Bihar and got payment of Rs. 10,29,228/- for the financial year 2011-12, Rs. 89,23,923/- for the financial year 2012-13. The agency had allegedly imparted training to 3445 trainees, but did not conduct any examination and 70 per cent amount was paid and remaining 30 per cent was to be given only after examination and certification.

6. Similarly, in the year 2013-14, 2014-15, 2015-16, SRNH got payment of Rs. 1,16,74,072/- and till financial year



2015-16, it is stated that SRNH had imparted training to 9573 trainees. It is also revealed that during the financial year 2013-14 to 2015-16 Indus Integrated Information Management Limited has been paid Rs. 2.68 crores flouting the financial rules without proper verification and this clearly shows the deep rooted conspiracy of the accused persons. It is further alleged that the SRNH should be paid the amount after taking the cost on certification and for 20,000 trainees, 70 per cent amount of Rs. 3,30,36,289/- was paid but only 9573 trainees were imparted training and there is no information regarding their examination and certification in the management information system.

7. Learned Senior Advocate, Mr. Mukherjee, drawing the attention to the enquiry report, on the basis of which the FIR has been instituted, submitted that SRNH is a non Government company, has been in business served for the last 29 years. The



petitioner worked as an employee of the company with a big team. He was neither the managing director nor shareholder of the company. All the payments made by the Government went into the official account of the company. There is no allegation that any money was paid to the petitioner in his personal capacity or that the petitioner has benefited out of any transaction.

8. The petitioner being the Vice President (Operations) of SRNH, on instruction of the company, signed the agreement with BMVM to impart Microsoft Office training course under the Dashrath Manjhi Kaushal Vikas Yojna in October, 2011. The date of termination of agreement was mentioned as 17th October, 2012. During the period, while he was working as the Vice President, the company has received only Rs. 10,06,584/- against advance payment as per the terms and conditions of the agreement. Thereafter, the reporting of



the petitioner was shifted to Dr. Arvind Shukla (Executive Director) on 8th December, 2012. In January, 2013 the petitioner was transferred and given charge to initiate partnership with National Skill Development Corporation and other North-East Projects. It is the contention of the learned Senior Advocate that the petitioner was not at all involved in the BMVM project anymore since January, 2013 onwards. In fact, once the term of the agreement signed by the petitioner ended, a subsequent agreement was signed by Sr. Manitosh Kumar, Bihar Co-ordinator on 10.05.2013, which was in effect thereafter when the alleged transactions took place. The petitioner, in fact, left the organization SRNH in December, 2013.

9. The petitioner has been named as an accused in both the FIR as well as charge-sheet along with other accused persons. However, there is absolutely no role worth the name



attributed to him qua the entire transaction on the basis of which he could have been made an accused, much less charge-sheeted. Even if the allegation taken on face value and assumed to be correct in entirety, do not disclose any *prima facie* commission of an offence by the petitioner. None of the ingredient of the offence is/are available constituting a case under any of the penal provisions. In support of his contention, reliance has been placed on various decisions of the Court, which are as follows: ***Thermax Limited & Ors. Vs. K. M. Johny & Ors, (2011) 13 SCC 412; Dalip Kaur & Ors. Vs. Jagnar Singh & Anr., (2009) 14 SCC 696; Sheila Sebastian Vs. R. Jawaharaj & Anr., (2018) 7 SCC 581; and Mohammed Ibrahim & Ors. Vs. State of Bihar & Anr., (2009) 8 SCC 751.***

10. After placing reliance upon the aforementioned decisions of the Hon'ble Supreme Court, Mr. Mukherjee, learned Senior Advocate for the petitioner further contended



that the entire gamut of allegation pertains to serious financial irregularities and fraud carried out in implementation of the scheme of BMVM in the name of imparting training in Microsoft Office to students of SC/ST in connivance with the officers and employees of the shortlisted companies, the ultimate beneficiaries have been the said companies along with the said government officials involved by siphoning off huge amount of money. The only role attributable to the petitioner herein, is that of signing the agreement on behalf of the SRNH, in his official capacity, being its Vice President. That being the allegation, it is vehemently submitted that it was imperative for the respondent investigating agency to array the company, namely, SRNH as an accused and further attributed specific role of the petitioner in the alleged offence, without which the FIR against the petitioner, who was working in his official capacity is not maintainable. The allegation broadly, for



whatever worth they are, in any case is against the company and there is no specific allegation against the petitioner herein, as such, when the company itself is not made an accused, no criminal proceeding can lie against the petitioner in his capacity as Vice President of the company. The said position of law is well settled and, as such, renders the impugned criminal proceeding initiated against the petitioner bad in law and liable to be set-aside.

11. To bolster the aforesaid submissions, reliance is placed on a judgment rendered by the Hon'ble Supreme Court in the case of ***Sharad Kumar Sanghi Vs. Sangita Rane, (2015) 12 SCC 781*** held as under:

“11. In the case at hand as the complainant's initial statement would reflect, the allegations are against the Company, the Company has not been made a party and, therefore, the allegations are restricted to the Managing Director. As we have noted earlier, allegations are vague and in fact, principally the allegations are against the Company. There is no specific allegation against the Managing Director. When a company has not been arrayed as a party, no proceeding can



be initiated against it even where vicarious liability is fastened under certain statutes. It has been so held by a three-Judge Bench in Aneeta Hada v. Godfather Travels and Tours (P) Ltd. [Aneeta Hada v. Godfather Travels and Tours (P) Ltd., (2012) 5 SCC 661 : (2012) 3 SCC (Civ) 350 : (2012) 3 SCC (Cri) 241] in the context of the Negotiable Instruments Act, 1881.”

12. Further reliance has been placed on a judgment of the Hon’ble Supreme Court in the case of ***Maksud Saiyed Vs. State of Gujarat & Ors., (2008) 5 SCC 668***. The relevant paragraph is quoted hereinbelow:

“13. Where a jurisdiction is exercised on a complaint petition filed in terms of Section 156(3) or Section 200 of the Code of Criminal Procedure, the Magistrate is required to apply his mind. The Penal Code does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the Company when the accused is the Company. The learned Magistrate failed to pose unto himself the correct question viz. as to whether the complaint petition, even if given face value and taken to be correct in its entirety, would lead to the conclusion that the respondents herein were personally liable for any offence. The Bank is a body corporate. Vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the statute. Statutes indisputably must contain provision fixing such vicarious liabilities. Even for the said purpose, it is obligatory on the part of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability.”



13. Reliance has also been placed on a decision rendered by the Hon'ble Supreme Court in the case of ***Sushil Sethi & Anr. Vs. State of Arunachal Pradesh & Ors., (2020) 3 SCC 240***, wherein the Hon'ble Court has stressed on the need to make specific allegation against the Officers of the Company to constitute the vicarious liability in absence whereof, criminal proceeding against them deserves to be quashed. In the aforementioned factum of allegation and the settled position of law, the learned Senior Advocate further relied on a judgment of the Hon'ble Supreme Court in the case of ***State of Karnataka Vs. L. Muniswamy & Ors., (1977) 2 SCC 699*** and contended that the wholesome power under Section 482 of the Cr.P.C., entitles the High Court to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be



quashed. The decision rendered in the case of ***Devendra & Ors. Vs. State of Uttar Pradesh and Anr., (2009) 7 SCC 495*** has also been placed in order to buttress the submission that the High Court ordinarily would exercise its jurisdiction under Section 482 of the Code of Criminal Procedure if the allegations made in the first information report, even if given face value and taken to be correct in their entirety, do not make out any offence. The superior courts would not encourage harassment of a person in a criminal court for nothing, when the allegations made in the first information report or the evidences collected during investigation do not satisfy the ingredients of an offence.

14. It is lastly contended that in identical situation, one Sarad Kumar Jha, who has also been made accused with an allegation of executing an agreement on behalf of M/s Indus Integrated Information Management Ltd. in capacity of one of



the Director of the said company moved before this Court challenging the order of cognizance qua petitioner dated 30.08.2018 in Cr. Misc. No. 66927 of 2018. The Hon'ble Court vide its order dated 26.04.2024 taking a guiding note from ***R. Kalyani case Vs. Janak C. Mehta & Ors. [(2009) 1 SCC 516]*** and from ***Sushil Sethi & Anr. Vs. State of Arunachal Pradesh [(2020) 3 SCC 248]*** quashed the impugned order of cognizance, the copy of which has also been produced before this Court.

15. Countering the aforementioned submissions, Mr. Anjani Kumar, learned Senior Advocate for the Vigilance referring to the FIR as well as the materials collected during the course of investigation primarily contended that the petitioner being Vice President of the SRNH was acquainted with the fact that the company had no training center in other district except the district of Patna. But despite the aforesaid



fact, in order to win the contract, the petitioner had furnished in writing to the BMVM that SRNH has presence in all 38 districts of its own. Thus for the falsehood, the petitioner is himself liable for his criminal act. The aforesaid fact has also been admitted by the petitioner in his defence statement before the investigating officer. The act of the petitioner led to criminal misappropriation of the Government money to the tune of Rs. 51,75,381/- during his tenure in SRNH (up to 23.03.2013) whereas, total money defalcated by SRNH amounting to Rs. 2,16,27,233/-. The documents which were seized in course of investigation also reveal that the list of the trainees under Dasrath Manjhi Kaushal Vikas Yojna was duly furnished by the petitioner to BMVM, on the basis of which the payment has been received though the entries made in the select list suffers from act of duplicity and forgery. The aforesaid fact has also been highlighted in different paragraphs



of the case diary, which has been read by the learned Senior Advocate before this Court. The surreptitious and clandestine execution of the agreement with ITETI Ltd. as well as Aparndeeep for imparting training in Microsoft Office Trade to the list of trainees offered by BMVM to the petitioner company, precisely reveals that it is the petitioner who devised a formula for sharing the money received from the BMVM under the said training programme, in the ratio of 72 per cent and 28 per cent per trainee out of the admissible Rs. 4081/-. The witnesses including the employees of SRNH clearly disclosed that it is the petitioner who had falsely and knowingly annexed the documents in the EOI-III showing SRNH presence in 38 districts of Bihar in order to win the contract.

16. Mr. Anjani Kumar, learned Senior Advocate for the Vigilance further urged before this Court that there is no



quarrel to the settled legal position as has been held in the case of *Sharad Kumar Sanghi and Maksud Saiyed (supra)* that if the allegations are against the company but the company has not been arrayed as a party, no proceeding can be initiated against it even where vicarious liability is fastened under certain statutes. However, it is not in dispute that irrespective of the fact that the company is not a party but the Officer of the Company, who played a pivotal role in misappropriating the Government money or siphoning of government exchequer and there is specific allegation against him in the FIR; and the materials collected during the course of investigation speaks loud about the involvement of such officer in such circumstances despite the company not being arrayed as an accused; there is no impediment in continuation of the proceeding against such person alone.

17. Mr. Kumar, learned Senior Advocate also placed



his reliance on similar decision of *Sharad Kumar Sanghi (supra)* and contended that only in absence of specific allegation against the Managing Director or officer of the company or even where vicarious liability is fastened on certain statutes, the Company without being arrayed as a party, no proceeding can be initiated against them. However, the Court has held that when a complainant intends to rope in a Managing Director or any officer of a company, it is essential to make requisite allegation to constitute the vicarious liability. The materials available on record clearly suggest that it is the petitioner who not only executed the agreement with the BMVM but made a false representation in order to win the contract and submitted a list of trainees, which was full of duplication and forgery, in order to get under financial benefit.

18. It is also the contention of the learned Senior Advocate that admittedly, the charge-sheet has been submitted



in various penal provisions of the Indian Penal Code and Prevention of Corruption Act as out of the list of accused persons, some of them are government officials. The FIR as well as the charge-sheet and the materials collected during the course of investigation constitutes offences on the basis of which the criminal proceeding proceeded. The cognizance is always of the offences and at the time of framing of charge it is to be looked into as to what role the petitioner has played and for which separate charges shall be framed. Thus, there is no infirmities in the proceeding leading to the submission of the charge-sheet.

19. Learned Senior Advocate contended that the case of Sarad Kumar Jha, who had approached before this Court against the order taking cognizance passed in Vigilance P.S. Case No. 81 of 2017 corresponding to Special Case No. 343 of 2017 in Cr. Misc. No. 66927 of 2018, whereby the order of



cognizance and the continuation of the proceeding, qua the petitioner (Sharad Kumar Jha) was quashed and set-aside is not identical to that of the petitioner as in his case, it was not found that the petitioner being a Directors of M/s IIIM Ltd. was intended to cheat the government, at the inception of executing agreement with BMVM and there was an arbitration award in favour of M/s IIIM Ltd., which *prima facie* negated the allegation of financial liabilities on part of M/s IIIM Ltd as well as Sarad Kumar Jha. It is lastly contended that the investigation is still going on with regard to other districts of Bihar, which may also reveal fresh evidences regarding the involvement of accused petitioner and SRNH in the commission of crime for which separate supplementary charge-sheet may be filed.

20. We have carefully heard the learned Advocates for the respective parties. The inherent power of the High



Court under Section 482 of the Cr.P.C. is designed to achieve the purpose of ensuring that criminal proceeding are not permitted to generate into weapons of harassment and whenever the Court finds that the initiation of a proceeding or its continuation would amount to an abuse of the process of the Court, the same is required to be quashed and cancelled for the ends of justice. However, the caution is imperative that while exercising its jurisdiction, the High Court has to be cautious and the power is to be used sparingly. The statutory provisions was considered by the Supreme Court in its celebrated decision of *State of Haryana & Ors. Vs. Bhajan Lal & Ors., 1992 Supp (1) SCC 335* wherein, certain guidelines has been enunciated where the Court can exercise its inherent power.

21. In case of *Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra & Ors.*, reported in *2021 SCC OnLine SC 315*, a three Judge Bench of Hon'ble Supreme Court laid



down the following principles of law to meet the exigencies
where the inherent power ought or ought not to be exercised.

“57. From the aforesaid decisions of this Court, right from the decision of the Privy Council in the case of Khawaja Nazir Ahmad (supra), the following principles of law emerge:

i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into cognizable offences;

ii) Courts would not thwart any investigation into the cognizable offences;

iii) However, in cases where no cognizable offence or offence of any kind is disclosed in the first information report the Court will not permit an investigation to go on;

iv) The power of quashing should be exercised sparingly with circumspection, in the ‘rarest of rare cases’. (The rarest of rare cases standard in its application for quashing under Section 482 Cr. P.C. is not to be confused with the norm which has been formulated in the context of the death penalty, as explained previously by this Court);

v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

vi) Criminal proceedings ought not to be scuttled at the initial stage;

vii) Quashing of a complaint/FIR should be an exception and a rarity than an ordinary rule;

viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities. The inherent power of the court is, however, recognised to secure the ends of justice



or prevent the above of the process by Section 482 Cr. P.C.

ix) The functions of the judiciary and the police are complementary, not overlapping;

x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. During or after investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under Section 482 Cr. P.C. is very wide, but conferment of wide power requires the court to be cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint; and xv) When a prayer for quashing the FIR is made by the alleged accused, the court when it exercises the power under Section 482 Cr. P.C., only has to consider whether or not the



allegations in the FIR disclose the commission of a cognizable offence and is not required to consider on merits whether the allegations make out a cognizable offence or not and the court has to permit the investigating agency/police to investigate the allegations in the FIR.”

22. The petitioner is seeking quashing of the entire criminal prosecution against the petitioner in Special Case No. 343 of 2017, arising out of Vigilance P.S. Case No. 81 of 2017 and the charge-sheet bearing No. 20 of 2019, which relates to petitioner along with seven other named accused persons. Further investigation in this case is still continuing against the remaining accused and for further collection of evidence. Thus, the point raised by the petitioner that no offence under any of the penal provision of the Indian Penal Code or Prevention of Corruption Act, 1988 is made out against the petitioner does not find much force at this stage, if the allegation levelled in the FIR and materials collected during course of investigation is/are; *prima facie*, sufficient enough to drive the investigating officer to investigate and submit charge-sheet against all the



accused persons, including the petitioner.

23. During the course of investigation, it has come that file no. 06 of 2008 of BMVM pertaining to EOI-III makes it clear that meeting of the committee constituted under the Chairmanship of Mission Director, Sri Prabhat Kumar was called for deciding the EOI submitted by shortlisted companies and also for deciding the financial aspect of it. The comparative table which was prepared for comparing the EOI reveals that the petitioner quoted its presence in 38 districts, which means that the training centers under all the 38 districts under his direct control, equipped with certified trainer in Microsoft Office Trade were fully functional. On the basis of the documents submitted by the petitioner, his proposal was accepted by BMVM and work order was issued to him to impart three months training to the SC/ST youths under Microsoft Office Trade.



24. The aforesaid information, however, found false and in fact the petitioner had submitted incorrect or fabricated documents in order to cause illegal gain to the petitioner's company in EOI-III, to the effect of his company's presence of training centers in all the 38 districts. At the time of agreement on 18.10.2011, the accused petitioner had only one fully equipped training facility available only at Patna for imparting training under this trade. The accused petitioner did not have fully equipped training facility in rest of the 37 districts of Bihar. The agreement was signed by the accused petitioner with BMVM for imparting training at the rate of Rs. 4081/- per trainee.

25. After execution of the agreement on 18.10.2011 with the BMVM, the petitioner further entered into a fresh agreement with one Lal Mohan Yadav, Director of Ishan Technology Education and Training Institute (hereinafter



referred to as “ITETI”) Ltd. on 13.12.2011. The agreement
aforenoted reveals that ITETI Ltd. had their presence in 14
districts of Bihar would impart training in Microsoft Office
Trade to the list of trainees supplied by BMVM to the SRNH.
The petitioner agreed to pay at the rate of Rs. 2200/- per
trainees to ITETI for the said training. The aforesaid facts
clearly suggest that the petitioner has falsely claimed in the
tender that for training under the Microsoft Office Trade, the
SRNH had training facility available in all 38 districts of Bihar
equipped with Microsoft Certified Trainers.

26. Simultaneously, the petitioner surreptitiously
executed further agreement with Aparndeeep for imparting
training in 4 districts, namely, Gaya, Aurangabad, Nawada and
Jehanabad, for imparting training in remaining district. In the
aforenoted manner, this petitioner had devised up a novel
formula for sharing the money received from the BMVM under



the said training programme in the ratio of 28 per cent and 72 per cent per trainees out of the admissible Rs. 4081/- per trainees from BMVM.

27. During the course of investigation, it has also come that the list of trainees under the Dasrath Manjhi Kaushal Vikas Yojna was also furnished by the petitioner to BMVM for receiving payment against the trained persons. However, in the list there were several duplicity and forgery causing loss to the Government Exchequer. Based upon the oral and documentary evidence, found against the accused petitioner and seven named accused persons, a charge-sheet bearing no. 20 of 2019 dated 25.04.2019 was submitted before the learned Special Court Vigilance – I, Patna in Special Case No. 343A of 2017, keeping the further investigation continue against remaining accused and for collection of further evidence.

28. The allegation levelled in the FIR and the



materials collected during the course of investigation and the charge-sheet disclosed the entire gamut of the offence committed by the accused persons, including the petitioner, and even if some of the offences is/are not made out against the petitioner or some of the offences are made out against him, that is to be considered at the time of framing of the charge, whether any offence is made out or not or as to whether the materials do constitute any offence, it is for the learned jurisdictional Court to look into at the time of order taking cognizance.

29. Trite it is that the dishonest inducement is the *sine qua non* to attract the provisions of Sections 415 and 420 of the IPC. There is a clear distinction between a civil wrong in the form of breach of contract, non-payment of money or disregard to and violation of the contractual terms; and a criminal offence under Sections 420 and 406 of the IPC. The



ingredients of the aforementioned provisions distinctly shows that the offence of cheating falls in two parts. The first, where a person fraudulently or dishonestly deceives another in inducing that person to deliver any property to any person, etc. Secondly, the offence would be made out if somebody is deceived to do an act which causes damage or harm that person; in body, mind, or reputation or property is said to have cheated.

30. The Hon'ble Apex Court repeatedly reiterated that in order to make out an offence under cheating, the intention to cheat or deceive should be right from the beginning. In the case of ***Hridaya Ranjan Prasad Verma Vs. State of Bihar, (2000) 4 SCC 168***, the Hon'ble Apex Court held as under:

“15. In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but for this



subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed.”

31. Recently, the Hon’ble Supreme Court in the case of ***Delhi Race Club (1940) Ltd. and Ors. Vs. State of Uttar Pradesh and Anr., 2024 SCC Online SC 2248*** while highlighting the difference between criminal breach of trust and cheating held as follows:

“24. This Court in its decision in S.W. Palanitkar v. State of Bihar; (2002) 1 SCC 241 expounded the difference in the ingredients required for constituting an offence of criminal breach of trust (Section 406 IPC) viz-a-viz the offence of cheating (Section 420). The relevant observations read as under:—

“9. The ingredients in order to constitute a criminal breach of trust are : (i) entrusting a person with property or with any dominion over property, (ii) that person entrusted (a) dishonestly misappropriating or converting that property to his own use; or (b) dishonestly using or disposing of that property or wilfully suffering any other person so to do in violation (i) of any direction of law



prescribing the mode in which such trust is to be discharged, (ii) of any legal contract made, touching the discharge of such trust.

10. The ingredients of an offence of cheating are : (i) there should be fraudulent or dishonest inducement of a person by deceiving him, (ii)(a) the person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or (b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and (iii) in cases covered by (ii)(b), the act of omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property.”

25. What can be discerned from the above is that the offences of criminal breach of trust (Section 406 IPC) and cheating (Section 420 IPC) have specific ingredients.

In order to constitute a criminal breach of trust (Section 406 IPC):—

1) There must be entrustment with person for property or dominion over the property, and

2) The person entrusted:—

a) dishonestly misappropriated or converted property to his own use, or

b) dishonestly used or disposed of the property or willfully suffers any other person so to do in violation of:

i. any direction of law prescribing the method in which the trust is discharged; or

ii. legal contract touching the discharge of trust (see : S.W.P. Palanitkar (supra).

Similarly, in respect of an offence under Section 420 IPC, the essential ingredients are:—

1) deception of any person, either by making a false or misleading representation or by other action or by omission;

2) fraudulently or dishonestly inducing any person to deliver any property, or



3) the consent that any persons shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit (see : Harmanpreet Singh Ahluwalia v. State of Punjab, (2009) 7 SCC 712 : 2009 Cri LJ 3462 (SC))

26. Further, in both the aforesaid sections, mens rea i.e. intention to defraud or the dishonest intention must be present, and in the case of cheating it must be there from the very beginning or inception.”

32. The facts in hand clearly suggest that the petitioner despite being aware of the EOI published by BMVM that the participating firm/company must have their own training center in 38 districts of Bihar along with only Microsoft certified trainers for MS Office training for imparting training under Microsoft Office Trade was eligible to submit the tender to the BMVM. The petitioner submitted tender document that SRNH as it has its own training center in all 38 districts of Bihar. Though it has only one training center, which clearly demonstrate the fraudulent and dishonest intention of the petitioner at the very inception at the time of making promise or entering in the agreement.



33. There are other instances which have been transpired during the course of investigation as to how the petitioner was involved in submitting the list of trainees and on the basis thereof, received wrongful payment; which list, on verification has been found to be full of duplication and forgery. For the aforesaid acts of criminal conspiracy, criminal breach of trust, cheating and forgery, the accused petitioner is himself liable for such criminal acts committed by him.

34. Now this Court comes to the issue as to whether in absence of the company arrayed as an accused, the petitioner, who was holding the post of Vice President of the company and signatory to the agreement with the BMVM can be prosecuted. Before parting with the final outcome, it would be apposite to highlight the relevant observations of the decisions of the Hon'ble Supreme Court in the case of ***Sharad Kumar Sanghi (supra)***, wherein it was observed and held that



in the absence of specific allegation against the Managing Director and without the company being arrayed as a party, even where vicarious liability is fastened under certain statutes, no proceeding can be initiated against such Managing Director or any of the officer of the company. However, it is further clarified and held that when a complainant intends to rope in a Managing Director or any officer of a company, it is essential to make requisite allegation to constitute the vicarious liability.

35. In case of *Maksud Saiyed (supra)*, the Hon'ble Court has held that the Penal Code does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the Company when the accused is the Company. The learned Magistrate failed to pose unto himself the correct question viz. as to whether the complaint petition, even if given face value and taken to be correct in its entirety, would lead to the conclusion that the



respondents herein were personally liable for any offence. The Bank is a body corporate. Vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the statute. It is obligatory on the part of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability. The Hon'ble Court having found no allegation against any of the respondent officials of the company that they had nothing to deal with personally either in the charge of their statutory or official duty, did not interfere in the appeal preferred by the appellant, who was the complainant before the jurisdictional Court and dismissed the appeal with cost.

36. In the case of ***R. Kalyani Vs. Janak C. Mehta & Ors.***, reported in ***(2009) 1 SCC 516***, the Hon'ble Supreme Court has held as under:

“41. If a person, thus, has to be proceeded with as being vicariously liable for the acts of the company, the company must be made an accused. In any event, it would be a fair thing to do



so, as legal fiction is raised both against the company as well as the person responsible for the acts of the company.”

37. The cases which have been cited on behalf of the petitioner on the point that in absence of the company being arrayed as an accused, no criminal proceeding can be initiated against the office bearer, especially, in view of the decision of ***Sharad Kumar Sanghi; Maksud Saiyed; Sushil Sethi (supra)***; there is no dubiety that the office bearers of a company could be arrayed as an accused only if direct allegations are levelled against them. In other words, the complainant/informant has to demonstrate that he has been cheated on account of deception practiced by the office bearers. The vicarious liability of the office bearers would arise provided any provision exists in that behalf in the statute. The statutes must contain provisions fixing such vicarious liability. Even for the said purpose, it is obligatory on the part of the complainant/informant to make requisite allegations, which would attract the provisions constituting a vicarious liability.

38. The law does not, in fact, precluded the office bearer of a company to be proceeded against, if there is direct



allegation against him or the materials available on record constitutes an offence under the penal provisions. In the case in hand, true it is that the petitioner being the Vice President of the Company has executed an agreement with the BMVM, but despite the fact the company has no training centers in other district, except the district of Patna, the petitioner had furnished in writing to the BMVM that SRNH has presence in all 38 districts of its own. Thus, in the opinion of this Court, at the very inception, the petitioner had the intention to win the contract by giving false representation and, as such, deception was practiced by him.

39. Being signatory to the agreement, the petitioner was well aware of this fact and for such falsehood, the petitioner was liable for his criminal act. During investigation, it also transpired that the petitioner surreptitiously and in clandestine manner executed an agreement with ITETI Ltd. as well as Aparndeeep for imparting training in Microsoft Office Trade to the list of trainees offered by BMVM to the petitioner company, by devising a formula for sharing the money received from the BMVM under the said training programme in the proportionate ratio out of the admissible payment.



Nonetheless, there was no such terms and conditions of sub contract in the agreement. Despite this fact, for winning over the contract and siphoning the government exchequer a device of sub-contracting has been done. The investigation further reveals that the petitioner had submitted incorrect or fabricated list of trainees under the Dashrath Manjhi Kaushal Vikas Yojna to the BMVM for receiving payment against the trained persons, which list of trainees contains several duplicity and forgery, causing loss to the Government Exchequer. Overwhelming oral and documentary evidences have been collected during the course of investigation against the petitioner showing involvement in the crime, in question. This Court also can not lose sight of the fact that the investigation in the case is still continuing against the remaining accused and for further collection of evidence. Thus, in case the complicity of any company or other person will come, later on, the same shall be made accused.

40. So far the case of Sharad Kumar Jha, who being Director of M/s IIIM Ltd. is concerned, his case is not identical to that of the petitioner, as he was privy to the contract with the BMVM as a separate entity and there was no, *prima facie*,



material suggesting he was instrumental in misappropriating the government fund by commission of cheating or criminal breach of trust. Sharad Kumar Jha, being the Director of M/s IIIM Ltd. has entered into an agreement for supplying the materials, books, etc and also conducting examination and issuing certificate only, whereas training part was to be done by SRNH. Moreover, there was an arbitration clause under the agreement and the arbitration award also went in favour of M/s IIIM Ltd.

41. The plea of the petitioner that he has tendered his resignation and assigned other charges in the year 2019 itself, in the opinion of this Court, being a defence version is not required to be looked into at this stage in absence of any unimpeachable document; nonetheless in this regard any chit of paper has been brought on record.

42. In the opinion of this Court, quashing of the entire criminal prosecution against the petitioner at this stage, would amount to scuttle it at the midway when with respect to other co-accused person, investigation is still going on. The points which have been raised before this Court, can very well be considered at the time of framing of the charge by the



jurisdictional Court, as to whether the allegation in the FIR as well as the materials collected during the course of investigation is sufficient enough to constitute any offence against the petitioner.

43. This Court having considered the entire conspectus of the facts and the proposition of law does not find that the petitioner has abled to make out a case to exercise the inherent jurisdiction of this Court under Section 482 of the Cr.P.C.

44. The application stands rejected.

(Harish Kumar, J)

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