

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.68305 of 2018

Arising Out of PS. Case No.-118 Year-2007 Thana- C.B.I CASE District- Muzaffarpur

Arun Kumar Upadhyaya, Son of Late S.N. Upadhyaya, Resident of East
Harnichak, P.S.- Gardanibagh, District- Patna.

... .. Petitioner/s

Versus

The State Of Bihar Through S.p. Vigilance

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Dineshwar Mishra, Advocate

Ms.Ruchi Arya, Advocate

For the Opposite Party/s : Mr.Anil Singh, Vigilance, Advocate

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

3 25-09-2024 In respect of an incident which took place in the year 2004, the learned Special Judge, Muzaffarpur took cognizance of offence under Sections 120B, 201 and 420 of the IPC and Sections 13(2) (r) (i) read with Section 13(1) (d) of Prevention of Corruption Act on 30th of January, 2017. After taking cognizance, 7 years have elapsed but till date even the charge has not been framed.

2. It is submitted by the learned Advocate for the petitioner that during 2004, the petitioner was posted as the District Supply Officer at Gayghat, in the district of Muzaffarpur. He got information that foodgrains belonging to the Public Distribution System (P.D.S.) were illegally taken away by some villagers. The Block Supply Officer, along with



the Circle Officer, and others went to the spot, seized the available articles, and referred the matter to the Sub-Divisional Officer for sanction to lodge FIR. The sanction was obtained after seven days of the occurrence, and immediately on 24th of January, 2004, the Supply Officer lodged FIR against the concerned persons, including the Mukhiya of the village where the incident took place regarding theft of P.D.S. materials.

3. Subsequently, after a lapse of four months, a complaint was filed against the present petitioner and three other persons with some false and frivolous allegations. The said complaint was sent to the Vigilance Department for treating the same as FIR and to start an investigation. On completion of investigation, police attached to Vigilance Investigation Bureau submitted an FIR against the present petitioner on the basis of which Special Case No. 41 of 2007 was instituted.

4. It is contended by the learned Advocate on behalf of the petitioner that the said complaint contained false and frivolous statement regarding delay in lodging FIR, however, no delay was committed in lodging the FIR by the petitioner because of the fact that without valid order of sanction, he was not in a position to file any FIR against the perpetrators of offence.



5. Be that as it may, the question as to whether the said case being Special Case No. 41 of 2007 is vitiated by delay in lodging FIR or by false and malicious prosecution are questions of fact to be determined by the learned Special Judge at the time of consideration of charge.

6. This Court while exercising the jurisdiction under Section 482 of the Cr.P.C. cannot look into the objections referred to by the learned Advocate for the petitioner.

7. Under such circumstances, I direct the learned Special Judge to fix a date for consideration of charge within two months from the date of this order.

8. In the meantime, the petitioner is at liberty to file appropriate application under Section 227 of the Cr.P.C., praying for his discharge and mentioning all the grounds taken in the instant proceeding.

9. The learned Special Judge shall consider the objections against framing of charge which may be raised by the petitioner on due consideration of the facts and circumstances on the basis of which Special Case No. 41 of 2007 was instituted and also on the basis of the observation made hereinabove and dispose of the petition under Section 227 of the Cr.P.C. in accordance with law within the aforesaid time frame,



positively.

(Bibek Chaudhuri, J)

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