IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.21123 of 2023

Arising Out of PS. Case No.-148 Year-2012 Thana- OBRA District- Aurangabad

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Vinod Kumar Srivastava Son Of Late Murli Manohar Srivastava Branch Manager Madhya Bihar Gramin Bank Dihra, P.S.- Obra, District - Aurangabad, Permanent Resident Of 7 Ashirbad, Kalpna Colony, Church Road, Kamta Chinhat P.S.- Chinhat, Lucknow (Uttar Pradesh) Pin Code – 227105 ... Petitioner

Versus

1. The State of Bihar through the Vigilance Department, South Bihar, Patna. Bihar
2. Kaushal Kumar Pandey Son of Late Ram Janam Pandey Resident of Village - Ghataro, P.S.- Obra, District - Aurangabad.

... ... Opposite Parties

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Appearance :

For the Petitioner	:	Mr. Anil Kumar Mishra, Advocate Mr.Narendra Kumar Chaubey, Advocate
For the Vigilance	:	Mr. Rana Vikram Singh, Spl. Public Prosecutor

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH

ORAL ORDER

6 15-04-2024 Present quashing application has been filed seeking quashing of the order dated 22.11.2022, passed in Special Case No. 37 of 2012, arising out of Obra (Aurangabad) Police Station Case No. 148 of 2012, lodged on 12.10.2012 as Obra Police Station Case No. 148 of 2012, under sections 341, 323, 504 and 506 of the I.P.C. and Section 7 of the Prevention of Corruption Act,1988, by which discharge petition of the petitioner has been rejected.

2. Prosecution case in brief is that the informant came to Madhya Bihar Gramin Bank, Dihra branch and made enquiry about spot verification of dairy project and then to release rest sanctioned amount amounting to Rs. 2.70 lakh from

the petitioner who was branch manager. Informant also asked the petitioner to return Rs. 33,000/- given to him for processing the sanction amount, if he is not interested in making spot verification and then to release the said amount. Hearing these words of the informant, the Bank Manager/ petitioner became infuriated and he abused and assaulted the informant under threat to send him to jail in bank loot case. It is further alleged that thereafter the Bank Manager threw some currency note around the informant and forcibly put some money in his pocket saying that you will be arrested by the police for commission of dacoity in bank. Lastly, it is alleged that in the meantime people assembled there and saved him. Thereafter, police came to the place of occurrence and on the written statement of the informant, FIR bearing Obra P.S. Case No. 148 of 2012 dated 12.10.2012 was registered against the petitioner and he was taken into custody. Police investigated the case and submitted chargesheet no. 159 of 2017 for the offence punishable under sections 341, 323, 504 and 506 of the Indian Penal Code and Section 7 of the Prevention of Corruption Act, 1988.

3.Learned counsel appearing on behalf of the petitioner submits that the petitioner is quite innocent and has committed no offence. He submits that the genesis of the occurrence was loan of 2.72 lakh, which was already sanctioned by the Regional manager. Two instalments have already been disbursed. Petitioner's role was only to process the matter, and Regional Manager was having authority to approve the loan amount, as such, allegation of demand of gratification as well as payment of bribe of Rs. 33000/- six months back is mere allegation levelled against the petitioner based on flimsy grounds. These allegations rest on weak foundation and the genesis is very shaking and contrary to the facts and evidences. He further submits that the informant has mentioned in his complaint that the money was thrown in the bank and inserted in his pocket. But there is no such seizure of money available on record. Hence the story of the informant seems completely concocted. He further submits that the informant never wanted verification of his work to be done nor he had produced the same before the bank when he came to bank to take his third installment of land. This shows a clear motive and *mens rea* of the informant to be false by creating a false and baseless story to make a case against the accused. He further submitted that there is no prosecution sanction in the case diary, prosecution sanction must be produced U/s.197 of Cr.P.C against public servant before filing the charge-sheet. He submits that none of the witnesses have clearly seen the Incident, none of the witnesses have seen the accused taking bribe money, nor they have seen recovery of bribe money from the accused. Learned counsel also submits that the entire prosecution story discloses high handedness of informant making pressure to sanction the loan. For constituting offence under section 7 of the Prevention of Corruption Act, relating to public servants taking bribe, proof of offer and acceptance of bribe is essential but in this case no proof of demand, acceptance and recovery has been brought on record. Besides, one of the essential ingredients for any prosecution against a public servant is to acquire prosecution sanction from the authorities concerned under section 197 of the Cr. P.C. There is no prosecution sanction in case diary.

4. It is also submitted by learned counsel for the petitioner that the informant and the petitioner have already filed compromise petition on 19.10.2022 before the court of the Sub Divisional Judicial Magistrate, Daudnagar but the same has not been considered by the Court below.

5. Mr. Rana Vikram Singh, learned counsel appearing for the Vigilance opposes the prayer of the petitioner. He submits that on the basis of written application/information of one Kaushal Kumar Pandey dated 12.10.2012, Obra P.S. case

no. 148/2012 dated 12.10.2012, u/Ss 341, 323, 504, 506 of IPC and section 7 of the Prevention of Corruption Act, 1988 was registered against the petitioner Vinod Kumar Srivastava, Branch Manager, Madhya Bihar Gramin Bank Dihra, Aurangabad. It has been alleged therein that an application for loan of Rs. 2,70,000/- (Rs. Two Lac Seventy thousand) was sanctioned under the Dairy Development Scheme. Informant went to the bank for disbursement of the loan amount and requested the Manager (petitioner) to pay sanctioned loan amount who asked him to leave his chamber. Thereafter, informant asked the petitioner to return the bribe money i.e. Rs. 30,000/- which was already paid to the petitioner six months back. During course of Supervision, this case was found to be true against the petitioner u/ Ss 341, 323, 504, 506 of IPC and section 7 of the Prevention of Corruption Act, 1988. After completion of investigation, charge sheet bearing C.S. No. 159/17 dated 30.11.2017 has been submitted against the petitioner. Learned counsel for the Vigilance further submits that the petitioner misused his official position in garnishing wealth by corrupt means, which could not be said to be done in discharge of his official duty. Where a criminal act is involved in the colour of authority, it is for the personal benefit of the public servant himself which is a serious crime and does not deserve any relief. He submits that in view of the above-mentioned facts and circumstances, the present Cr. Misc application, being devoid of merit is fit to be dismissed.

6. Heard rival submissions of the parties and perused the materials and the impugned order on record.

7. There is clear and specific allegation against the petitioner that when the informant visited his chamber for disbursement of his loan amount which was already sanctioned, the petitioner being the Bank Manager misused his official position, abused and assaulted the informant and tried him to rope in a false bank dacoity case. From perusal of the FIR, it is clear that the informant has alleged about giving of bribe money amounting of Rs 33,000/- six month earlier to the petitioner for sanctioning the said loan amount and hearing the fact he became infuriated and abused and assaulted him.

8. It is settled law that at the time of considering the discharge petition, court below is required to take into consideration the only materials brought on record during course of investigation with limited purpose to find out as to whether there is sufficient material to proceed against the petitioner. While deciding a discharge petition, only materials

brought on record by prosecution have to be considered. Accused in entitled to discharge if evidences (statements recorded by police or documents concerned), which prosecution proposes to adduce to prove the guilt of accused, even if fully accepted before it is challenged in cross-examination or rebutted by defence evidence, cannot show that accused committed the offence. Moreover, grounds taken by the petitioner fall in the realm of defence which cannot be seen at this stage. Reliance is placed on the decision of the Hon’ble Supreme Court rendered in case of **M.E.Shivalingamurthy Vs. CBI, Bengaluru,** reported in **(2020) 2 SCC 768.**

9. Thus, having regard to the facts and circumstances and discussions made above as well as the law laid down by Hon’ble Supreme Court in case of **M.E.Shivalingamurthy (supra)**, this Court does not find error in the impugned order. Accordingly, this quashing application stands dismissed.

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(Prabhat Kumar Singh, J)

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