

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.51286 of 2018

Arising Out of PS. Case No.-28 Year-2016 Thana- VIGILANCE District- Patna

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1. Binod Kumar, Son of Late Indramani Singh, Resident of Village/Mohallah- Nawanagar, P.O. and P.S.- Nawanagar, District- Buxar Bihar.
 2. Satya Prakash Roy, Son of Late Kamla Roy, Resident of Village/Mohallah- Anand Bazar, P.O. and P.S.- Danapur, District- Patna Bihar.

... .. Petitioner/s

Versus

1. State of Bihar
2. Babalu Kumar Singh, Son of Chitragun Prasad, Resident of Village/Mohallah- Saket Vihar, Mitra Mandal Colony, P.O.- Anisabad, P.S.- Phulwarisharif, District- Patna Bihar.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Raju Giri, Advocate
		Mr. Harsh Vardhan, Advocate
		Mr. Pankaj Kumar Singh, Advocate
For the Opposite Party/s:		Mr. Jharkhandi Upadhyay

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI

ORAL ORDER

- 2 03-07-2024 1. Petitioner No. 1 is a Motor Vehicle Inspector.
- Petitioner No. 2 is the driver of Petitioner No. 1. On 11th March, 2016, the Petitioner No. 1 detained and seized two trucks bearing Registration No. BR-01GA-8430 and JH-12C-5858, while the said two trucks were being driven from Aurangabad to



Ara with Stone Chips loaded thereon. Both the trucks were overloaded with the Stone Chips and as a result of overloading, the said trucks were seized and brought to the local police station. The driver of the said truck had met Petitioner No. 1 who told him to talk to his driver, Petitioner No. 2 herein. The Petitioner No. 2 told that in order to get the said trucks released, the driver was required to pay a sum of Rs. 44,000/-. The owner of the said two vehicles did not want to give any bribe to the Petitioners and on 12th March, 2016, he lodged a complaint before the Vigilance P.S. at Patna. Immediately, after receiving the said complaint, the Vigilance Investigation Bureau made a preliminary inquiry with regard to the veracity of the allegation. On being satisfied of the truthfulness of the allegation, a vigilance trap team was formed. The driver of the vehicle was asked to pay Rs. 44,000/- to Petitioner No. 1. He received the said money and handed it over to his driver. Immediately, he was caught red-handed by the Officers constituting vigilance trap. A sum of Rs. 44,000/- was recovered from Petitioner No. 2 Satya Prakash Roy and the said amount being illegal gratification was seized from Petitioner No. 2 under proper seizure list. Thereafter, F.I.R. was lodged by the Deputy Superintendent of Police, Vigilance Investigation Bureau against



the petitioner. On the basis of the said FIR, Vigilance P.S. Case No. 28 of 2016, dated 12th March, 2016 under Section 7, 8, 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act was registered and the case was entrusted to one Shyam Babu Prasad, Inspector of Police for Investigation. After investigation, police submitted a charge-sheet against the petitioner being C.S. No. 13, dated 18th January, 2018.

2. It is submitted by learned Advocate for the Petitioners that initially the instant Miscellaneous Case was filed for quashing of the order of cognizance, dated 19th January, 2018 on the ground that the informant lodged initial complaint against the Petitioners on some *mala fide* allegations to wreck vengeance. In support of the first issue, the learned Advocate on behalf of the Petitioners refers to a letter written by the Petitioner No. 1 to the Secretary of the State Transport Commissioner, Bihar on 11th March, 2016 itself that when the above-named trucks were seized on 11th March, 2016, the drivers of the said vehicles threatened him and his driver that they would not spare him and they would take appropriate action against them, as they seized their trucks. Subsequently, however, a charge-sheet was filed, the case was transferred to the learned Special Judge under the Prevention of Corruption



Act, the Petitioners filed an application for discharging them on the additional ground that they were exonerated from the departmental proceeding on merit and therefore, the criminal proceeding cannot be continued. However, the learned Special Judge refused to accept the submission made on behalf of the Petitioners and rejected the application for discharging them. The Petitioners filed an Interlocutory Application, bringing the above-mentioned facts on record with a prayer also to set aside the order passed by the learned Special Judge rejecting their application for discharging them and quashing the criminal proceeding.

3. The learned Advocate for the petitioner submits that the Petitioners have filed the instant application mainly on two-fold grounds, i.e., the informant lodged a complaint before the Vigilance Investigation Bureau to wreck vengeance against the Motor Vehicle Inspector, Petitioner No. 1 herein. In order to prove the said fact, the learned Advocate on behalf of the Petitioners has referred to the letter written by Petitioner No. 1 to the State Transport Commissioner wherein the Petitioner No. 1 alleged that the drivers of the said vehicle threatened him by saying that the petitioner and his driver would face severe consequences for seizing the said two trucks.



4. It is also submitted by the learned Advocate for the Petitioners that in view of the decision in ***Bhajan Lal's*** case, a criminal proceeding cannot be sustained, where a complaint is filed to wreck vengeance.

5. Referring to Paragraph 38 of ***Radheshyam Kejriwal v. State of West Bengal & Anr.***, reported in ***(2011) 3 SCC 581***, it is submitted by the learned counsel for the Petitioners that the Hon'ble Supreme Court in Paragraph 38 has delineated the following grounds in support of the quashing of the FIR where departmental proceeding was also taken up and decided in favour of the petitioner exonerating from the charges.

6. It is pertinent to mention Paragraph 38 and 39 *Radheshyam Kejriwal* (supra), which states as hereunder:

“38. The ratio which can be culled out from these decisions can broadly be stated as follows:

(i) Adjudication proceedings and criminal prosecution can be launched simultaneously;

(ii) Decision in adjudication proceedings is not necessary before initiating criminal prosecution;

(iii) Adjudication proceedings and criminal proceedings are independent in nature to each other;



(iv) The finding against the person facing prosecution in the adjudication proceedings is not binding on the proceeding for criminal prosecution;

(v) Adjudication proceedings by the Enforcement Directorate is not prosecution by a competent court of law to attract the provisions of Article 20(2) of the Constitution or Section 300 of the Code of Criminal Procedure;

(vi) The finding in the adjudication proceedings in favour of the person facing trial for identical violation will depend upon the nature of finding. If the exoneration in adjudication proceedings is on technical ground and not on merit, prosecution may continue; and

(vii) In case of exoneration, however, on merits where the allegation is found to be not sustainable at all and the person held innocent, criminal prosecution on the same set of facts and circumstances cannot be allowed to continue, the underlying principle being the higher standard of proof in criminal cases.

39. In our opinion, therefore, the yardstick would be to judge as to whether the allegation in the adjudication proceedings as well as the proceeding for prosecution is identical and the exoneration of the person concerned in the adjudication proceedings is on merits. In case it is found on merit that there is



no contravention of the provisions of the Act in the adjudication proceedings, the trial of the person concerned shall be an abuse of the process of the Court.”

7. The said decision was subsequently followed by the Hon’ble Supreme Court in ***Ashoo Surendranath Tewari v. Deputy Superintendent of Police, EOW, CBI & Anr.***, reported in ***(2020) 9 SCC 636***.

8. A Coordinate Bench of this Court also under similar facts and circumstances quashed the charge-sheet filed in criminal case in ***Criminal Miscellaneous No. 4420 of 2023*** by a judgement, dated 9th November, 2023 (***K. Senthil Kumar v. the Vigilance Investigation Bureau***). In this judgement also, the aforementioned decision of the Hon’ble Supreme Court was referred to and followed.

9. In view of the decision of ***Radheshyam Kejriwal*** (supra) when the Petitioner No. 1 was exonerated from the charges in departmental proceeding, criminal case against them cannot be continued. The learned Special Judge failed to consider the said aspect of the matter.

10. For the reasons stated above, the instant petition is allowed.

11. The criminal case, being Special Case No. 13 of



2016, arising out of Vigilance Police Station Case No. 28 of 2016, pending against the Petitioners is quashed and the impugned orders dated 19.01.2018 as also dated 13.05.2024 are set aside.

12. However, there shall be no order as to costs.

(Bibek Chaudhuri, J)

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