IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.69714 of 2023
Arising Out of PS. Case No.-142 Year-2022 Thana- JAHANABAD District- Jehanabad

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MANOJ KUMAR GUPTA son of Late Mundrika Prasad R/o- Ganesh Tower, 101-B, Bhootnath Road Patna Ps- Agamkuan Dist- Patna

... ... Petitioner/s

Versus

1. The State of Bihar
2. Union of India through Accountant General (A and E) Bihar, Patna

... ... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. P.N. Shahi, Sr. Advocate Mr. Prashant Bhushan Mr.Nawnit Kumar Tiwary
For the Opposite Party/s	:	Mr.Murli Dhar
For the O.P. No. 2	:	Mr. Bindhyachal Rai

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR

ORAL ORDER

6 25-07-2024 Heard learned Senior Counsel for the petitioner and learned Additional Public Prosecutor for the State as well as learned counsel appearing on behalf of the opposite party No. 2.

2. The present petition application has been filed for quashing of the cognizance order dated 24/07/2023, passed by the Chief Judicial Magistrate, Jehanabad, in connection with Jehanabad P.S. Case No. 142/2022, wherein the Chief Judicial Magistrate, Jehanabad has taken cognizance of offence under Section 409, 420, 467, 468, 471, 120(B) of the Indian Penal Code, 1860, against the petitioner and two other accused persons.

3. The prosecution case in brief is that the informant, Rajesh Kumar, Executive Engineer, gave a written application

for registration of FIR, in pursuance to the directions given to him by Under Secretary, Water Resources Department, Government of Bihar, stating therein that Shri Tushar Goyal, Director, Konark Associates and Branch Manager, Bombay Mercantile Cooperative Bank, Patna Branch had fraudulently liquidated three Fixed Deposit Receipts which were pledged as security for work under Agreement in which Shri Arvind Kumar (the then Executive Engineer, Irrigation Division, Uderasthan), Shri Raju Kumar (the then Cashier, Irrigation Division, Uderasthan), have engaged in a well-planned conspiracy to commit the financial irregularity.

4. Learned Senior Counsel appearing on behalf of the petitioner submits that on the basis of aforesaid written application of the informant Jehanabad P.S Case No. 142/2022 was registered under Section 409, 420, 467, 468, 471, 120(B) of the Indian Penal Code, 1860, against the two accused persons namely, Shri Arvind Kumar, the then Executive Engineer, Irrigation Division, Uderasthan, and Raju Kumar, the then Cashier, Irrigation Division, Uderasthan.

5. It has been submitted that in course of investigation, the name of the petitioner (the then Divisional Accounts Officer, Irrigation Division, Uderasthan) and one other person

namely, Shri Ravi Kant, Senior Divisional Accounts Officer, Irrigation Division, Uderasthan, was added as accused in the case for the alleged involvement in the well-planned conspiracy to commit the financial irregularity in the liquidation and encashment of the FDRs.

6. Learned Senior Counsel further submits that the police submitted Final Form/Charge-Sheet No. 342/2023 against the present petitioner and two other accused persons namely, Ravi Kant and Raju Kumar. The investigation is continuing with respect to one accused namely, Arvind Kumar.

7. It is also argued that the police has submitted the charge sheet in a mechanical manner in an undue haste without conducting complete investigation and has not even gone through the relevant records of the fraudulent transaction and has not considered the fact of exoneration of petitioner in the departmental proceeding on the identical charges.

8. He further submits that except the examination of witnesses, which are mere restatement of the allegations made in FIR, there is absolutely no documentary evidence suggesting any involvement of the petitioner in the fraudulent encashment.

9. Learned Senior Counsel further submits that the petitioner after the submission of Final Form/Charge-Sheet No. 342/2023 by the Investigating Officer, the Chief Judicial Magistrate, Jehanabad, vide order dated 24/07/2023 (impugned order), took cognizance of offence under Section 409, 420, 467, 468, 471, 120(B) of the Indian Penal Code, 1860, against the petitioner and two other accused person namely, Ravi Kant and Raju Kumar, in connection with Jehanabad P.S Case No. 142/2022.

10. It is also submitted on behalf of the petitioner that the Chief Judicial Magistrate, Jehanabad has mechanically taken cognizance against the petitioner without any independent application of mind.

11. He submits that the petitioner is a Central Government employee working under the Accountant General (A&E), Bihar, Patna and he was sent on deputation to the office of Executive Engineer, Irrigation Division, Uderasthan, Jehanabad as Divisional Accounts Officer worked there till 04/07/2017.

12. Learned Senior Counsel further submits that before submitting the charge sheet, no sanction for prosecution was obtained by the investigating agency from the competent authority i.e., Office of Principal Accountant General (A&E), Bihar, Patna. Since no sanction for prosecution was obtained from the Office of Principal Accountant General (A&E), Bihar, Patna, the Chief Judicial Magistrate, Jehanabad ought not to

have proceeded, since the cognizance order in absence of prior sanction for prosecution would be hit by Section 197 of Code of Criminal Procedure, 1973.

13. It is also submitted on behalf of the petitioner that the impugned order is bad in law and fit to be quashed since cognizance cannot be taken in absence of sanction as per Section 197 of Code of Criminal Procedure, 1973.

14. Learned Senior Counsel has also submitted that it would also be pertinent to mention herein that for the fraudulent liquidation of the three FDRs by Shri Tushar Goyal, Director, Konark Associates and Branch Manager, Bombay Mercantile Cooperative Bank, Patna Branch, an FIR was already lodged, which was registered as Jahanabad P.S. Case No. 864/2018. He submits that when Jahanabad P.S. Case No. 864/2018 was already registered for the same fraudulent transaction involving liquidation of three FDRs, and the investigation was pending in the said matter, there was no occasion to register a fresh FIR for the same alleged fraudulent transaction, that too without disclosing the fact regarding existence of previous FIR in the same matter.

15. Learned Senior Counsel appearing on behalf of the petitioner lastly submits that the Hon'ble Supreme Court in

the case of ***T.T.Antony v. State of Kerala [(2001) 6 SCC 181]*** has held that there can be no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or the same occurrence or incident giving rise to one or more cognizable offences.

16. The State as well as the Accountant General, Bihar have filed their counter affidavits. The State has supported the prosecution case and has submitted that the FIR cannot be quashed at this stage but the State has not denied the fact that no sanction was taken against the petitioner.

17. The reply of the Accountant General, Bihar at paragraph no. 8 reads as follows:

> *"That in reply to the statement made in Para 6 of the application, as per final charge sheet no. 342/23 filed by Jehanabad police in the Learned Court of CJM which has been received by this deponent along with the petition, the name of petitioner appears therein. No information relating to addition of the name of the petitioner or filing of charge sheet was provided to this deponent either by Jehanabad police or by State Government authorities. However, this deponent was earlier in receipt of a representation dated 24.02.2022 from Sri Manoj Kumar Gupta that department had decided to lodge FIR. Subsequently, a letter was written to the Under Secretary, Water Resources Department, Bihar department vide No. WM III/2021-22/414 dated 28.02.2022 with copy to the Executive Engineer vide Memo No. WM III/2021-22/415 dated 28.02.2022 requesting them not to lodge FIR until final outcome be communicated to*

them in the matter in which an inquiry was under consideration."

18. I have considered the submission of learned Senior Counsel for the petitioner; learned counsel for the Accountant General and learned counsel for the State.

19. It is an admitted position that no sanction was asked for and the same was not granted before filing of the charge-sheet and before cognizance was taken. In the case of ***N. K. Ganguli vs. CBI*** reported in ***2016 (2) SCC 143***, the Hon'ble Supreme Court has held has follows:

> *"35. From a perusal of the case law referred to supra, it becomes clear that for the purpose of obtaining previous sanction from the appropriate Government under Section 197 CrPC, it is imperative that the alleged offence is committed in discharge of official duty by the accused. It is also important for the Court to examine the allegations contained in the final report against the appellants, to decide whether previous sanction is required to be obtained by the respondent from the appropriate Government before taking cognizance of the alleged offence by the learned Special Judge against the accused. In the instant case, since the allegations made against the appellants in the final report filed by the respondent that the alleged offences were committed by them in discharge of their official duty, therefore, it was essential for the*

> *learned Special Judge to correctly decide as to whether the previous sanction from the Central Government under Section 197 CrPC was required to be taken by the respondent, before taking cognizance and passing an order issuing summons to the appellants for their presence."*

20. The petitioner is alleged to have acted in his official capacity and he cannot be prosecuted without sanction as held in the case of ***N.K. Ganguli Vs. C.B.I.*** (*supra*) and therefore, the order taking cognizance and the prosecution of the petitioner is held to be illegal.

21. In view of the above, this application is allowed.

22. Accordingly, the order dated 24/07/2023 passed by the Chief Judicial Magistrate, Jehanabad, in connection with Jehanabad P.S. Case No. 142/2022 is quashed with regard to the petitioner.

Sandeep Kumar, J)

P. Kumar/Saif

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