

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.639 of 2022

Arising Out of PS. Case No.-17 Year-2015 Thana- KUNDWACHAINPUR District- East
Champaran

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Kamlesh Singh S/o Late Shiv Bahal Singh Resident of Village and P.O.- Silha
Ghat, P.S.- Krishnagarh, District- Bhojpur.

... .. Petitioner/s

Versus

1. The State Of Bihar Through Principal Secretary, Deptt. Of Home, Patna, Bihar
2. The Principal Secretary, Food and Consumer Protection Department, Bihar, Patna. Bihar
3. The Principal Secretary, General Administrative Department, Bihar, Patna. Bihar
4. The Law Secretary, Department of Law, Bihar, Patna. Bihar
5. The Director General of Police, Bihar, Patna. Bihar
6. The Additional Director General of Police, Crime Investigation Department, Bihar, Patna. Bihar
7. The Inspector General of Police, Crime Department, Bihar, Patna. Bihar
8. The Superintendent of Police (D), Crime Investigation Department, Bihar, Patna. Bihar
9. The Superintendent of Police, East Champaran, Motihari, Bihar Bihar
10. The Deputy Superintendent of Police, Motihari, Bihar Bihar
11. The S.H.O. Kundwa Chainpur, Police Station, East Champaran, Motihari Bihar

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rama Kant Sharma, Sr. Advocate
		Mr. Mithilesh Kumar Upadhyay, Advocate
For the Respondent/s	:	Mr. Manish Kumar

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

13 15-04-2025 Heard the parties.

Re.: Interlocutory Application No. 01 of 2022

2. The present Interlocutory application has been filed
for addition in the prayer portion of the writ application i.e., for



quashing the letter No. 144 dated 19.05.2022 passed by the respondent no. 6 by which an order to arrest and attach the property of the petitioner as well as for submission of the charge sheet has been passed.

3. For the reasons mentioned therein, the interlocutory application is allowed in as much as, the prayer made in the Interlocutory Application shall be treated to be the part of the main writ application.

Re.: Cr.W.J.C. No. 639 of 2022

4. The present writ petition is preferred on behalf of the petitioner against the letter/order issued vide order no.65/J dated 28.3.22 by respondent no.4 whereby order for sanction of prosecution against the petitioner under section 197 of the Code of Criminal Procedure has been issued to initiate criminal prosecution in connection with Kundwa Chainpur (East Champaran) P.S. case No. 17/15 lodged for the offences under section 406, 409, 420, 467, 468, 471 read with 120(B) of the Indian Penal Code after lapse of more than 7 years from the date of institution of F.I.R. in an arbitrary manner without maintaining procedural integrity and in violation of the mandate of provision made under Article 14 of the constitution of India.

5. Learned Senior Counsel Mr. Ramakant Sharma,



has submitted that the aforementioned sanction for prosecution was issued blatantly ignoring the fact that the issue of including the name of petitioner in the column of accused is pending under inquiry and even till date the petitioner has not been arrayed as an accused. Further it is submitted that the documents received by the Investigating Officer prove that no *prima-facie* case is made out against the petitioner and on the contrary it is easily ascertainable that the instant petitioner has rendered his service in the best interest of the government.

6. The learned senior counsel appearing for the petitioner submits the factual background necessary for the present petition is that the present petitioner is a civil servant of the Bihar Administrative Services and during the period between 2013-2014 he was posted as Senior Deputy Collector, East Champaran, Motihari with additional charge of District Manager, Bihar State Food and Civil Supplies Corporation, (BSFC) East Champaran. The aforesaid additional charge was held by the petitioner between 20.06.2013 to 15.02.2014. It is next submitted that pursuant to the letters dated 30.03.2013 and 18.05.2013 issued by the Chief Procurement Officer, BSFC, Patna, all District Managers were directed to deliver paddy to the rice millers. Upon the petitioner assuming the additional



charge, the Chief Secretary, Bihar had given a direction to make available paddy to the rice millers at the earliest. Thereafter the petitioner from 02.07.2013 started the task of delivering the paddy and had delivered 13,670 quintals of paddy against which 9,158 quintals of rice was to be recovered from the rice mills. It is next submitted that the petitioner actively took steps to recover Custom Milled Rice (for short, 'CMR') from the rice millers for which the petitioner has brought on record the notices issued by the petitioner to the rice millers dated 24.10.2013 and 14.11.2013. In order to further elaborate on the *bona fides* of the petitioner the learned Senior Counsel submits that during the period of posting as (holding additional charge of) District Manager, BSFC, the petitioner recovered more than the required/prescribed rice against the paddy delivered to the rice millers.

7. On 14.04.2015 one Ram Wakil Pandey the then District Manager, State Food Corporation, Motihari (Informant) had submitted an application to the Respondent S.H.O, Kundwa Chainpur (East Champaran) for institution of FIR against one Smt. Sheela Devi who is the proprietor of M/s Jagdamba Rice Mill, Hasanpur alleging embezzlement/defalcation committed to the property of the State Government to the tune of Rs.



4,64,63,124.64. It was alleged that during the crop marketing year 2012-13 the said mill was supplied 2,14,55,478 quintals CMR at the rate of 2,165.56 rupees which was not recovered. On the basis of said application the FIR Kundwa Chainpur P.S. Case No. 17/2015 was instituted on 15.04.2015 for the offences alleged u/s 406, 409, 420, 120(B) of IPC.

8. As per the FIR, the prosecution story in short is that Smt. Sheela Devi proprietor of Jagdamba Rice mill had received 50,963.40 quintals of paddy on the basis of the agreement for milling in the year 2012-2013 against which 60% CMR i.e., total 34,145.4788 quintals was to be delivered but she had delivered only 12,690.00 quintals CMR and had therefore defalcated a total amount of Rs.4,64,63,124.94. It was alleged that the accused Sheela Devi had only deposited Rs. 5 lakhs and the rest of the amount totaling to Rs.4,59,63,124.94/- had been defalcated.

9. It is next submitted that the Assistant Superintendent of Police vide memo no 2103 directed the petitioner to appear for the inquiry. In compliance thereto the petitioner appeared before the Assistant Superintendent of Police on 30.08.2018 and explained the facts. It is next submitted that the petitioner on 12.09.2018 wrote a letter



addressed to the Assistant Superintendent of Police explaining the fact that the petitioner has been falsely implicated in the present case. It is also submitted that the petitioner had also preferred to file his representations before the higher police officials of the State vide his letter dated 13.06.2019 and 13.08.2019.

10. It is categorically emphasized that the agreement with the rice millers and also the delivery of the excess paddy to the rice millers was made prior to the petitioner taking charge as the Deputy Manager, BSFC. The learned senior counsel has reiterated the *bona fides* of the petitioner here by submitting that even though there was pressure from the government for the delivery of paddy $\frac{3}{4}$ times the value of the property pledged to the rice millers in order to secure the paddy from being destroyed in the rain and bad weather, yet the petitioner delivered the paddy to the rice millers concerned equivalent to the value of the property pledged. Therefore, the petitioner made recoveries of the CMR from the rice millers more than the amount of the paddy delivered by the petitioner.

11. It has been submitted by Mr. Rama Kant Sharma, learned Senior counsel for the petitioner that the investigation is still pending and in the meantime, the impugned order vide



order no.65/J dated 28.3.22 has been passed granting sanction for the prosecution of the petitioner.

12. He further submits that from a plain reading it is clear that the aforesaid impugned order is cryptic in nature and there is no discussion about the facts of the case and the allegation levelled against the petitioner.

13. Learned counsel for the State has opposed the application and submitted that after going through the materials on record, the sanction has been granted by the (In-charge) Law Secretary.

14. The S.D.P.O, Chakia has filed a counter affidavit on behalf of the respondent no. 09, wherein it is submitted that on Supervision and Report-2, the case has been found to be true under sections 409 and section 420 of the IPC and accordingly charge sheet no. 25/2016 dated 19.03.2016 was submitted under the aforesaid sections, i.e., 409 and 420 of the IPC.

15. Thereafter it is submitted in the counter affidavit that the case was forwarded to the C.I.D Bihar, Patna and upon review of the case, a review note was issued by C.I.D, Patna vide its memo no. 2910 dated 04.11.2019 wherein the case was found true against the accused named in the FIR as also against 07 (seven) non-FIR named accused persons which includes the



present petitioner. Thereafter it is submitted that the case was being tried in the Special Court (Millar), Chapra wherein the investigating officer appeared and prayed for issuance of warrants of arrest against the aforesaid non-FIR named accused persons however the Trial Court had rejected the prayer.

16. It is thereafter submitted that, against one of the non-FIR named accused person namely Upendra Kumar, the Directorate of Agriculture has issued the sanction for prosecution on 15.12.2020 and the sanction for prosecution was issued against the instant petitioner on 19.04.2022. Thereafter the Superintendent of Police had constituted an SIT headed by the SDPO Sikarahana. It is next submitted that several raids have been conducted by the SIT but every time the accused persons were found absconding and the investigation is pending.

17. The respondent no. 3 has also filed a counter affidavit wherein it is stated that the Additional Director General of Police, Crime Investigation Department vide letter no. 1080 dated 25.06.2020 had recommended issuance of sanction for prosecution against the petitioner under sections 406, 409, 420, 467, 471 read with section 120B of the IPC and also under sections 12, 3(2) read with section 13(1)(d) of the P.C. Act in connection with Kundwa Chainpur P.S. Case No 17/2015. It is



next submitted that the case was examined and accordingly the Department of Law vide its order No. 65/Jo dated 28.03.2022 issued the sanction for prosecution against the petitioner. Lastly in the counter affidavit, the allegation of defalcation /embezzlement at the hands of the petitioner is reiterated.

18. The petitioner has preferred to file a rejoinder to the Counter affidavit filed on behalf of the respondent no. 9, wherein at the outset the petitioner states that the instant F.I.R. was only lodged against the proprietor of M/s Jagdamba Rice Mill alleging embezzlement and not against the petitioner. Further the petitioner has submitted that even till date the petitioner has not been made an accused since the investigation is still pending and has not been completed. The learned senior counsel for the petitioner has categorically laid emphasis on the fact that since the investigation *qua* the petitioner is still pending therefore the sanctioning authority could not have been in a position to draw a reasonable inference for grant of sanction and therefore such grant of sanction is pre-mature at best.

19. The learned senior counsel for the petitioner has also argued that the respondents have acted in haste since the name of the petitioner was under consideration for promotion to the Indian Administrative Service and therefore it is alleged on



behalf of the petitioner that the respondent authorities have acted in a *mala fide* manner and such actions cannot therefore be sustained in the eyes of the law.

20. A supplementary counter affidavit has been filed on behalf of the respondent no. 3 wherein a copy of the report of the S.I.T dated 24.05.2019 has been brought on record. The respondent no.3 has submitted that the sanctioning authority after going through all the aspects of the case and the relevant records/evidences had come to the conclusion that the petitioner had defalcated/embezzled the public funds and therefore the sanction was issued against the petitioner.

21. The Respondent no. 4, Under-Secretary-cum-Legal Rembrancer, Department of Law, Government of Bihar has also filed a counter affidavit to the present writ wherein it is stated that since the petitioner was not named in the F.I.R and his name has transpited during the course of investigation therefore there was no occasion for sanction of prosecution at the time of filing the F.I.R in the year 2015. It is next submitted that once the name of the petitioner has surfaced the petitioner was directed to appear before the Assistant Superintendent of Police on 30.08.2018 and thereafter on being satisfied that *prima facie* the case is made out against the petitioner the



impugned sanction order was passed. The respondent no. 4 has stated that the impugned order has been passed by the State Government after examining the materials available on record and thereafter finding the involvement of the petitioner with the alleged transaction and also considering the losses suffered by the State Government.

22. A reply to the counter affidavit filed on behalf of the respondent no 4 has also been filed by the petitioner. The petitioner has stated that the respondent authorities have not applied their judicious and independent mind while granting sanction though the impugned order granting sanctions does mention that the respondent no.4 has perused the documents and the case diary. It is submitted that the sanction was granted in a mechanical manner. Lastly it is submitted by the petitioner that no cogent reasons for granting sanctions have been given and rather the report of the Bihar State Food Corporation has also been totally disregarded wherein it was held that the petitioner had recovered 832 quintals more than what was required to be recovered by the petitioner.

23. I have considered the submissions of the parties.

24. The grant of sanction is meant to protect public servants from false and frivolous prosecution; however, the



provision is not to shield government officers against whom *prima facie* case is made out for having committed an offence. Therefore, it becomes imperative that the authority granting such sanction takes into account for its consideration all the relevant material against the accused and then pass a well-reasoned and speaking order.

25. The Hon'ble Supreme Court in the case of ***Mohinder Singh Gill & Anr. vs. The Chief Election Commissioner & Ors.*** reported as ***(1978) 1 SCC 406*** had held that

“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out. as under From the reading of the impugned order, it appears to be cryptic and non-speaking. Materials available on record for grant of sanction has not been discussed in the order. Such a cryptic and non-speaking order cannot be sustained in the eyes of law.

Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the



actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.

Orders are not like old wine becoming better as they grow older.”

26. Although there is no set prescribed format for grant of sanction under section 197 Cr.P.C. yet the order for grant of prosecution must contain all relevant materials while exercising discretion for grant of sanction as well as the reasons for granting sanction. The order of sanction must abundantly make it evident that the authority has been aware of all the relevant facts and materials and has further independently and fairly applied its mind to the aforesaid materials. The authority granting sanction is not required to embark upon a parallel detailed enquiry. However, it is imperative that all the relevant materials are duly considered. In the case of ***Mohd. Iqbal Ahmed vs. State of Andhra Pradesh*** reported as ***AIR 1979 SC 677***, the Hon'ble Supreme Court had emphasized that sanctioning authority must be satisfied that a case for grant of sanction has been clearly made out and such authority at the time of giving sanction must be aware of the facts constituting the offence and must apply his mind. The Hon'ble Supreme Court has further held that the grant of sanction is not an idle formality, but rather a sacrosanct act which affords protection to



the government servants against frivolous prosecution.

27. At this stage it would be apposite to refer to the law laid down by the Hon'ble Supreme Court in the case of ***Central Bureau of Investigation vs. Ashok Kumar Agarwal (2020) 14 SCC 295***

“In view of the above, the legal propositions can be summarised as under:

(a) The prosecution must send the entire relevant record to the sanctioning authority including the FIR, disclosure statements, statements of witnesses, recovery memos, draft charge sheet and all other relevant material. The record so sent should also contain the material/document, if any, which may tilt the balance in favour of the accused and on the basis of which, the competent authority may refuse sanction.

(b) The authority itself has to do complete and conscious scrutiny of the whole record so produced by the prosecution independently applying its mind and taking into consideration all the relevant facts before grant of sanction while discharging its duty to give or withhold the sanction.

(c) The power to grant sanction is to be exercised strictly keeping in mind the public interest and the protection available to the accused against whom the sanction is sought.

(d) The order of sanction should make it evident that the authority had been aware of all relevant facts/materials and had applied its mind to all the relevant material.

(e) In every individual case, the prosecution has to establish and satisfy the court by leading evidence that the entire relevant facts had been placed before the sanctioning authority and the authority had applied its mind on the same and that



the sanction had been granted in accordance with law.

28. Since in the present case the order granting the sanction for prosecution fails to discuss the materials available, therefore a subsequent affidavit sworn by the respondents before this Court could not cure this defect. The order granting sanction could not remain silent on the materials considered by the sanctioning authority. A mere mention of the documents placed would not be sufficient, it would be necessary for such an authority to also weigh the materials to come to a *prima facie* conclusion that the offences as alleged have been made out and therefore sanction must be granted. A cryptic and non-speaking order is un-sustainable.

29. The argument advanced by the learned senior counsel that the respondent authorities while granting the sanction for prosecution have acted in haste and also unfairly and in a *mala fide* manner merely because the name of the petitioner was under consideration for promotion to the Indian Administrative Services is unconvincing and stale to this Court. However, the issue of cryptic and non-speaking order cannot be sustained.

30. For the reasons mentioned above, this application is allowed and the order granting sanction for prosecution vide



order no.65/J dated 28.3.22 is hereby quashed and set aside.

31. Since the Order granting sanction for prosecution vide order no.65/J dated 28.3.22 is quashed, therefore the prayer made by way of the Interlocutory Application does not warrant any further interference from this Court at this stage.

(Sandeep Kumar, J)

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