

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL MISCELLANEOUS No.75684 of 2023**

Arising Out of PS. Case No.-126 Year-2017 Thana- MADHUBANI TOWN District-  
Madhubani

=====

Manoj Kumar Manish Son Of Sri Birendra Narayan Mahto Village- Kishori  
Lal Chowk Ps- Madhubani Dist- Madhubani

... .. Petitioner/s

Versus

1. The State of Bihar
2. The S.P Vigilance, Bihar, Patna

... .. Opposite Party/s

=====

**Appearance :**

|                      |   |                                 |
|----------------------|---|---------------------------------|
| For the Petitioner/s | : | Mr. Lalit Kishore, Sr. Advocate |
|                      |   | Mr. Rikesh Sinha, Advocate      |
| For the State        | : | Mr. Jagdhar Prasad, APP         |
| For the Vigilance    | : | Mr. Arvind Kumar, Advocate      |

=====

**CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR**

**ORAL JUDGMENT**

**Date : 16-07-2025**

Heard the learned Senior Counsel for the petitioner, the learned counsel for the State and the learned counsel for the Vigilance.

2. This application has been filed for quashing the order dated 29.05.2023 passed by the learned Special Judge, Vigilance, North Bihar, Muzaffarpur in Special Case No. 01 of 2019 arising out of Madhubani Nagar P.S. Case No. 126 of 2017 whereby and whereunder, the cognizance has been taken for the offence under Sections 406, 409, 420, 467, 468, 477(A) read with 120-B of the I.P.C and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act against the petitioner and another person namely Lal Babu Singh.



3. The brief facts relevant for the present case is that in pursuance of the letter dated 16.05.2017 of the Executive Engineer, Road Construction Department, Madhubani, the Assistant Engineer, Road Construction Department, had submitted a written report to the Officer In-charge, Madhubani Town Police Station regarding the registration of an F.I.R against one Ramanand Singh, the former Executive Engineer Building Division, Madhubani under Sections 409, 467, 468 and 477(A) of the Indian Penal Code for withdrawal of fund on 17.03.2006 without execution of work.

4. The District Magistrate, Madhubani *vide* letter no. 830 dated 07.04.2006 had requested the Building Construction Department to initiate departmental enquiry against aforesaid Ramanand Singh in the aforesaid regard. After enquiry, the Chief Engineer, Building Construction Department found Ramanand Singh, the then Executive Engineer, guilty of payment of fund to the Contractor prior to execution of work and submitted report *vide* letter no. 3220 dated 12.09.2011.

5. Further it is stated that for the aforesaid, the Hon'ble Member Lokayukta, Bihar *vide* order dated 12.01.2017 directed the authorities of Road Construction Department to lodge criminal



case as well as certificate case for recovery of the amount which was paid to the contractor without execution of the work.

6. On the basis of the aforesaid written report of the informant, the F.I.R was lodged against one Ramanand Singh, the then Executive Engineer, Building Division, Madhubani. One Satya Narayan Pandey filed a complaint petition before the Hon'ble Lokyukta, Bihar against the then Executive Engineer Building Division, Madhubani for misappropriation of Government money without execution of work. On the basis of the aforesaid complaint, Lokayukta/Lok (Bhawan) Case No. 09 of 2008 titled '**Satya Narayan Pandey Vs. Executive Engineer, Building Division, Madhubani**' was registered.

7. The learned counsel for the petitioner has submitted that the Building Construction Department *vide* its Letter No. 6112 dated 30.06.2011 intimated the office of Lokayukta Bihar that any action against Sri Ramanand Singh could have been taken only by his parent department namely the Road Construction Department. Further, it is submitted that when the enquiry being conducted by the Hon'ble Lokayukta, he did not make any head way previously on account of the exchange of letters between the Building Construction Department and the Road Construction Department, then the Hon'ble Lokayukta *vide* order dated 12.01.2017 had



viewed the matter seriously and shown displeasure against the authorities of Road Construction Department. He further submits that on 27.01.2017, the Road Construction Department sought legal opinion from the Law Department to lodge FIR against Ramanand Singh and also for filing a requisition under Public Demand Recovery Act for recovery of embezzled amount from the then Executive Engineer, Ramanand Singh. The matter was examined by the Law Department and the file was sent to the learned Advocate General to give opinion on the aforesaid.

8. It is next submitted that on 27.02.2017, the learned Advocate General gave his opinion that in the facts and circumstances of the case, F.I.R must be lodged at the earliest against the then Executive Engineer and others and for recovery of the amount, Certificate Case under the Bihar and Orissa Public Demand Recovery Act, 1914 must be filed against concerned officers of the department who has not put up the concerned file within time for taking departmental action against Ramanand Singh. All of them must be identified and show cause shall be issued against them and departmental proceeding must be started against those erring officials. He further submits that in pursuance of the opinion of the learned Advocate General, the Secretary, Road Construction Department obtained permission from the



concerned competent authority to lodge an FIR against Sri Ramanand Singh and also to file a case under Public Demand Recovery Act for recovery of embezzled amount and also to take necessary action against the officials of the department who had not put up the file within time for disposal of the departmental proceeding initiated against accused Ramanand Singh after inviting show cause from them.

9. The learned counsel for the petitioner submits that *vide* letter no. 3972 dated 05.05.2017 issued by the Road Construction Department, a show cause was asked from the petitioner in respect of departmental proceeding initiated against Ramanand Singh. On 04.09.2017, the petitioner submitted his show cause to the Road Construction Department stating therein that there are no laches on his part in disposal of the concerned file and concerned letters. He next submitted that *vide* memo no.13265 dated 18.10.2017 of the General Administrative Department, charges were served upon the petitioner who was working as an Assistant at the relevant time, and he was directed to submit explanation within a fortnight. On 07.11.2017, the petitioner submitted his show cause to the General Administrative Department denying the charges leveled against him and *vide* memo No.15188 dated 30.11.2017 of General Administrative



Department, departmental proceeding was initiated against the petitioner and on 06.02.2018 and 17.04.2018, the petitioner submitted his explanation before the Conducting Officer stating therein that according to the allotment of work on 23.07.2010, the charge of the concerned file was not given to the petitioner for taking departmental action against Ramanand Singh. It is submitted that the concerned file was initiated in the year 2008 and it was not handed over to the petitioner.

**10.** The learned counsel for the petitioner submits that the Letter No. 9996 dated 09.11.2011 and Letter No. 5606 dated 18.07.2012 issued by the Building Construction Department for taking necessary action against Ramanand Singh with proper photostat copy of enquiry report of the Chief Engineer, North Division Building Construction Department were duly put up in one file related to Ramanand Singh, therefore, it is contended that there is no negligence on his part in disposal of the concerned file.

**11.** It is next submitted by the learned counsel for the petitioner that the conducting officer submitted his enquiry report on 17.05.2018 in which, out of two charges, he had not found charge No.1 proved and found charge No.2 partially proved, though he found that there was no *malafide* intention on the part of the petitioner and after agreeing with the report of Conducting



Officer, the General Administrative Department *vide* order contained in Memo no. 9935 dated 26.07.2018 of corrigendum memo No.12312 dated 13.09.2018 had awarded minor punishment i.e., censure for 2012-2013 and stoppage of one increment with the non-cumulative effect.

12. The learned counsel for the petitioner has thereafter submitted that *vide* order dated 09.10.2017, it was observed by the Lokayukta that though an enquiry was immediately initiated by Lokayukta, Bihar in the month of June 2008 but it was only on account of slackness on the part of the officials of Building Construction Department that nothing was done for the next three years. He further submits that *vide* order dated 15.01.2018 the Lokayukta observed that the main person namely Sri Ramanand Singh, the then Executive Engineer who in connivance with the Contractor and Engineer had embezzled the Government money which should have been a good ground for the Vigilance Department to lodge FIR under the provisions of the Prevention of Corruption Act in which all the officers including the Chief Engineers who have colluded and thereby abated in commission of the offence can be brought under the purview of the case. It was further observed that if such prosecution is lodged by the vigilance department it will not confine itself to the three persons against



whom the police has already lodged Madhubani Town P.S. Case No. 126 of 2017 but it may extend to each and every person who have given shelter or have colluded for suppressing the misappropriation/ embezzlement of the government funds.

**13.** It is next submitted by the learned counsel for the petitioner that in pursuance of the respective orders of the Lokayukta, Bihar, the petitioner has been made non-FIR accused in Madhubani Town P.S. Case No. 126 of 2017 for not putting up the file within time of departmental action against accused Ramanand Singh. He further submits that the enquiry report in respect of initiation of Departmental Proceeding against Sri Ramanand was submitted by the Chief Engineer, Building Construction Department to the Road Construction Department on 09.11.2011 and by that time, the proceeding itself had become infructuous as time-barred.

**14.** It is also submitted by the learned counsel for the petitioner that the petitioner was working as an Assistant in the Road Construction Division and not in the concerned department in which the defalcation had been done at the relevant period. The aforesaid Ramanand Singh, the then Executive Engineer, Building Construction Department, Madhubani had retired from service on 31.10.2007. So far allegation against the petitioner that he has not



taken prompt action in proceeding against the accused person in disposal of the departmental proceeding, it is stated that a departmental proceeding was initiated against the petitioner in the aforesaid regard and he was asked to explain the matter and after agreeing with the enquiry report of the Conducting Officer, the disciplinary authority disposed of the departmental proceeding by awarding minor punishments. He further submits that no case of misappropriation/ embezzlement of Government money is made out against the petitioner in the instant case and considering that defalcated amount for which the aforesaid demand Rs.33,39,587.50/- has been attached by way of one time recovery against the due amount.

15. The learned counsel for the petitioner has emphasized that the petitioner is presently working as Section Officer in Art, Cultural and Youth Department, Patna, and considering the nature of allegation which may give rise to administrative action, this Court had been pleased to allow anticipatory bail to the petitioner in the instant case vide order dated 18.12.2018 passed in Cr. Misc. No. 69659 of 2018 and from perusal of the F.I.R. itself, no case is made out against the petitioner. So far allegations against the petitioner that he is responsible for delaying the process of file for initiating



departmental proceeding against Ramanand Singh give rise to administrative action after which they have already been punished, the matter was investigated by the Vigilance Department and charge sheet was submitted against the accused persons including the petitioner under Sections 120(B), 406, 409, 420, 467, 468 and 471(A) I.P.C. and under Sections 13(2) & 13(1)(d) Prevention of Corruption Act. The allegations made in the charge sheet and the evidence collected in support of the same do not disclose the commission of any offence and do not make out a case against the petitioner and the learned Special Judge without applying his judicial mind has taken cognizance under the aforesaid sections against the accused persons including the petitioner *vide* the impugned order dated 29.05.2023. He further submits that the impugned order is bad in law as well as on fact and is in example of non-application of mind by the learned Special Judge.

**16.** The learned counsel for the Vigilance Department has filed a counter affidavit and has submitted that the petitioner Manoj Kumar Manish, the then Assistant, Road Construction Department, has filed the instant application for quashing the order of cognizance dated 29.05.2023 passed by the Special Judge Vigilance, Muzaffarpur against the petitioner Manoj Kumar Manish under section 406, 409, 420, 467, 468, 477(A) read with



120(B) of I.P.C. and under section 13(2) and 13(1)(d) of P.C, Act 1988 in Special Case No. 01 of 2019 arising out of Madhubani Nagar P.S case 126 of 2017 dated 19.05.2017, whereby and where under the Court has taken cognizance against the accused persons namely Shri Lal Babu Singh, the then, Contractor, whereas *vide* the aforesaid order, cognizance under section 217 of I.P.C. was taken against the other accused persons namely Kishore Ranjan Sinha, Gopal Krishan, Sunil Kumar Sinha, Ram Babu Choudhary whereas showing rest accused persons namely Ramanand Singh, Sudhir Kumar, Jai Ram Rajak and Pramod Bihari as dead.

**18.** In the counter affidavit, it is stated that the complainant Manish Kumar along with seven persons had jointly filed a complaint petition to the District Magistrate, Madhubani on 01.04.2006 in which it was alleged that the then Executive Engineer of the Building Construction Department, Madhubani had withdrawn the Government money without the completion of repair work of non-residential Block Development Building located at Jainagar, Harlakhi, Basopatti and Madhawapur of Madhubani district issued four cheques for Rs. 4,32,530/-, Rs. 4,90,639/-, Rs. 4,62,328/-and Rs. 4,23,804/- respectively on 17.03.2006 in the name of M/s Ram Janki Construction, Dulapatti, Madhubani. The said money was withdrawn by M/s Ram Janki



Construction, Dulapatti, Madhubani without completing the said work and therefore, then Executive Engineer of the Building Construction Department, Madhubani has caused wrongful gain to the M/s Ram Janki Construction, Dulapatti, Madhubani and wrongful loss to the government.

19. It is stated in the counter affidavit that on the aforesaid allegations mentioned in the complaint petition, the District Magistrate, Madhubani appointed Shri Gajanand Mishra the then, Dy. Collector, Establishment, Madhubani to conduct an enquiry and after the completion of the enquiry, a report was submitted from which it became clear that the government money was withdrawn without the completion of the said work and, therefore, he found the allegations of financial irregularities committed by the then Executive Engineer, Building Construction Department, Madhubani to be true. The District Magistrate, Madhubani by annexing the aforesaid enquiry report in his Letter No. 830 dated 07.04.2006 communicated the same to the Commissioner-cum-Secretary, Building Construction Department, Bihar, Patna for initiating strict disciplinary action against the delinquent public servants for committing the said financial irregularities. The Deputy Secretary, Building Construction Department on receipt of Letter No. 830 dated 07.04.2006 of the



District Magistrate, Madhubani by annexing the same in his Letter No. 3220 dated 16.04.2008 addressed to the Principal Secretary, Road Construction Department had requested him for initiating departmental proceeding under Rule 43(B) of Bihar Pension Rules against the delinquent public servant namely Sri Ramanand Singh, the then Executive Engineer, Building Construction Department, Madhubani, but no action was initiated by the Road Construction Department, Bihar, Patna against Ramanand Singh, the then Executive Engineer, Building Construction Department, Madhubani. Further, the Joint Secretary, Building Construction Department, Bihar, Patna *vide* Letter No. 9996 dated 09.11.2011 by annexing the enquiry report submitted to the department by the Chief Engineer (North), Building Construction Department, Bihar, Patna contained in Letter No. 1642 dated 12.09.2011 requested the Principal Secretary, Road Construction Department, Bihar, Patna for initiating departmental proceeding under Rule 43(B) of Bihar Pension Rules against Ramanand Singh, the then Executive Engineer, Building Construction Department, Madhubani (Retd.).

**20.** It is next submitted by the learned counsel for the Vigilance that the matter of said financial irregularities committed by the delinquent public servant of the Building Construction Department, Madhubani was also being heard by the Hon'ble



Lokayukta, Bihar Patna in the case 01/ लोक॰ (भवन) 09/2008, filed by Satnarayan Pandey, in which *vide* order dated 12.01.2017, the Hon'ble Lokayukta, Bihar, has ordered the authorities to file F.I.R., against the delinquent public servant, the then Executive Engineer, Building Construction Department, Madhubani (Retd.) and also for recovery of defalcated amount under Public Demand Recovery Act. The Road Construction Department which was the parent department of delinquent public servant Ramanand Singh, after seeking approval in the file from the competent authority, authorized Sri Satendra Prasad, the then Assistant Engineer, Road Construction Department Madhubani to lodge F.I.R against Sri Ramanand Singh, the then Executive Engineer, Building Construction Department, Madhubani (Retd.), thereafter, F.I.R. was registered against Sri Ramanand Singh, the then Executive Engineer, Building Construction Department (hereinafter B.C.D.), Madhubani (Retd.) bearing Madhubani Town P.S. Case No. 126 of 2017 dated 19.05.2017.

**21.** It is next submitted by the learned counsel for the vigilance that during the course of investigation, the following evidence has surfaced which has been stated under paragraph 12 of the counter affidavit:-

*“(i) That, Sri Satyendra Kumar, the then Assistant Engineer, R.C.D. Madhubani, the informant of this*



*case has stated before the I.O. that Sri Ramanand Singh, the then Executive Engineer, Building Construction Department, Madhubani (Retd.) has issued cheques to the contractor of M/s Ram Janki Construction, Dulapatti, Madhubani on 17.03.2006 and the same was withdrawn by the contractor on 20.03.2006 but on that date no work was initiated, the same became clear from the enquiry conducted by Shri Gajanand Mishra, the then, Dy. Collector, Establishment, Madhubani contained in the letter no.830 dated 04.04.2006 issued by D.M., Madhubani. (Para 30 of the C.D). Sri Sanjay Choudhary, Executive Engineer, R.C.D, Mahubani in his statement before the I.O. suggests that he received a letter no. 3968 dated 05.05.2017 vide which he was directed by the Additional Secretary, R.C.D., Bihar, Patna to register F.I.R. against the accused Sri Ramanand Singh, the then Executive Engineer, Building Construction Department, Madhubani(Retd) in the light of the order passed by the Hon'ble Lokayukta, Bihar dated 12.01.2017 and to register a certificate case against him under Public Demand Recovery Act, for the recovery of the defalcated amount. (Page 34 to 35 of the application), (Para-31 of the CD)*

*Sri Manoj Singh the then Member, Panchayat Samiti, Jainagar has stated before the I.O., that government money was withdrawn by M/s Ram Janki Construction, Dulapatti, Madhubani without the completion of the renovation/ repair work of non-residential building of*



*all four block located in Jaynagar, Harlakhi, Madhwapur and Basopatti. (para-125 of CD)*

*(ii) That, the I.O. of the case has mentioned the supervision note of the SDPO, Sadar Madhubani from which it became clear that government money was withdrawn by the contractor prior to the completion of the work and thereafter the work was initiated post-facto. In order to cover up the wrong doing M/s Ram Janki Construction, Dulapatti, Madhubani and Sri Sudhir Kumar the then Junior Engineer, was found guilty. (Para-51 of CD)*

*(iii) That, in the case 01/ लोक० (भवन) -09/2008, vide order dated 15.01.2018 the Hon'ble Lokayukta, Bihar Patna has observed that :-*

*"It should be a good ground for the Vigilance Department to lodge First Information Report under the Provisions of the Prevention of corruption Act in which all the officers including the Chief Engineers, who have colluded and thereby abated in the commission of the offence can be brought under the purview of the case. It is with this end in sight that the Road Construction Department is directed to approach the Vigilance Department for lodging the First Information Report against Sri Ramanand Singh, the then Executive Engineer, Sudhir Kumar, Junior Engineer and M/s Ram Janki Construction, Dulapatti, Madhubani, under the provision of Prevention of Corruption Act*



*so that the Vigilance Department may conduct its preliminary enquiry and thereafter also institute First Information Report for the offences punishable both under the Prevention of Corruption Act and the Indian penal Code.”*

*In the light of the directions given by the Hon'ble Lokayukta, Bihar Patna, to the Vigilance Department, Bihar, Patna, Vigilance enquiry No. R & B-01/2017 लो०नि०/मधुबनी was instituted in the bureau conducted by Sri Kamod Prasad, Dy. S.P. on three charges i.e.,*

*(a) that, despite the letter no. 830 dated 07.04.2006 addressed to the Joint Secretary, BCD, Bihar Patna by the D.M., Madhubani for initiating departmental proceedings against Sri Ramanand Singh, the then executive Engineer, no such proceedings initiated from 2006 to 2011*

*(b) the Joint Secretary, BCD, Bihar Patna by annexing the letter no. 830 dated 07.04.2006 vide his letter 3220 dated 16-04-2008 requested the Principal Secretary, RCD, Bihar, Patna for initiating departmental proceedings u/s 43(B) of the Bihar Pension Rules against Sri Ramanand Singh, the then executive Engineer, after his retirement in 2007.*

*(c). that, no action has been taken by the respective department from 2008 to 2015 against Sri Ramanand Singh, the then executive Engineer.*



*After completion of the Vigilance enquiry, a report was submitted before the Hon'ble Lokayukta, Bihar Patna contained in the letter 1106 dated 21.07.2018. (C.D. No. 33 para 192 ). In the light of the directions passed by the Hon'ble Lokayukta, Bihar Patna vide order dated 24-07-2018, Vigilance Investigation Bureau, Patna was entrusted to conduct further investigation in the Madhubani Town P.S. case no. 126/2017. (CD No. 33 Para-196) ”*

*(iv) In the light of the directions passed by the Lokayukta, Bihar Patna vide order dated 24-07-2018, the former I.O of the case vide letter no. 1493 dated 08.10.2018 petitioned to the Court of Learned Chief Judicial Magistrate, Madhubani to transfer the case in the Spl. Court Vigilance, North Bihar, Muzaffarpur because in the investigation section 13(2) read with 13(1) (d) of P.C. Act 1988 was incorporated. (CD No 33 Para-196)*

*Sri Kamod Prasad, Dy. S.P. was appointed the I.O of the instant Madhubani P.S. case No. 126/2017.(C.D. No.193) and has received the (C.D no. 01 to 32) from the predecessor/ former I.O. From the perusal of the C.D. it appears that the report of the enquiry has been incorporated in (C.D no. 33. para 192). From the perusal of the file of B.C.D. Bihar it became clear that B.C.D. Bihar vide departmental letter no. 5127 dated 30.08.2006, letter no. 6259 dated 04.11.2006, letter no.204 dated 08.01.2007, letter no. 1769 dated 26.02.2007 and letter no. 5870 dated 22.06.2007 along with the demi Official letter no. 1033 dated*



*08.02.2008 directed the then Chief Engineer, (North) for conducting enquiry in the financial irregularities of Rs. 15,06,812/- committed by the accused petitioner and others in the renovation/ repair work of non-residential building of all four block located in Jaynagar, Harlakhi, Madhwapur and Basopatti but despite the said request the accused Chief Engineers then posted namely 1. Sri Pramod Bihari Asthana 2. Sri Kishore Ranjan Sinha 3. Sri Jairam Razak and 4. Sri Gopal Krishna failed to submit report to the department in order to shield the main accused Sri Ramanand Singh, the then Executive Engineer by abusing their official position, for which they were found guilty and made as non-F.I.R accused.*

*Thereafter, B.C.D. Bihar got the matter enquired by a technical team consisting of Sri Ramesh Kumar, Chief Engineer, Patna, Sri Navin Kumar Superintending Engineer, Darbhanga and Sri Sunil Kumar, Superintending Engineer, Darbhanga who submitted his report vide letter no. 1642 dated 12.09.2011 from which it became clear that a sum of Rs. 15,06,821/- was criminally misappropriated by Sri Ramanand Singh, the then Executive Engineer in criminal conspiracy with Sudhir Kumar, the then Junior Engineer and Sri Lal Babu Singh Contractor of M/s Ram Janki Construction.*

*(v) The Road Construction Department, Government of Bihar, Patna became the administrative department of Sri Ramanand Singh, the then*



*Executive Engineer after his retirement on 31.10.2007. The Joint Secretary, B.C.D, Bihar Patna by annexing in its letter no.3220 dated 16.04.2008, the letter no. 830 dated 07.04.2006 of D.M., Madhubani and has requested the Principal Secretary, Road Construction Department, Government of Bihar, Patna for starting departmental proceeding u/s 43(B) of Bihar Pension Rules, but the same was deliberately kept pending in the department till year 2015 despite of the gravity of the allegations mentioned in the said letter of Joint Secretary, B.C.D. Bihar Patna was known to then posted Assistants of Road Construction Department, Government of Bihar, Patna namely (1). Sri Sunil Kumar Sinha (2). Sri Ram Babu Choudhary and (3). Sri Manoj Kumar Manish, but they did not move it in the appropriate file of the department before the competent authority for taking necessary action.*

*(vi) From perusal of the file no.- 49/2008, in the investigation it became clear that the letter no.3220 dated 16.04.2008 of B.C.D, Bihar Patna which was received in the Road Construction Department, Government of Bihar, Patna on 24.04.2008. That the said file was moved till 13.10.2008. Thereafter, then posted Assistants of Road Construction Department, Government of Bihar, Patna namely (1). Sri Sunil Kumar Sinha (2). Sri Rambabu Choudhary and (3). Sri Manoj Kumar Manish did not present the aforesaid letter in the file bearing no. 49/2008 (related to the said subject matter of the letter of*



*B.C.D, Bihar Patna) before the authorities on time despite acquainted with the said letter of B.C.D, Bihar Patna and therefore the matter was intentionally not moved in the appropriate, the said file was kept pending till 2015 without any action being initiated against Sri Ramanand Singh, the then Executive Engineer, accused. Therefore, no timely proceedings could be initiated u/s 43(B) of Bihar Pension Rules, against Sri Ramanand Singh, the then Executive Engineer because (1). Sri Sunil Kumar Sinha (2). Sri Rambabu Choudhary and (3). Sri Manoj Kumar Manish had colluded with the accused Sri Ramanand Singh, the then Executive Engineer, Madhubani (Retd.) and shielded him from the further proceedings in the Road Construction Department, Government of Bihar Patna. The Hon'ble Lokayukta, Bihar taking cognizance of the aforesaid facts vide order dated 15.01.2018 has observed that:-*

*"It goes without saying that such prosecution to be lodged by the Vigilance Department will not confine itself to the three persons against whom the police case has been lodged vide Madhubani P.S. case No. 126/2017 but it may extend to each and every person who have been given shelter or have colluded for suppressing the misappropriation / embezzlement of the government fund to the tune of Rs. 15,06,812/- for a period of over ten years. "*



*(vii) That, the Road Construction Department, Government of Bihar, Patna has conducted departmental proceedings vide letter no. 8453 dated 25- 09-2017 against (1). Sri Sunil Kumar Sinha (2). Sri Rambabu Choudhary and (3). Sri Manoj Kumar Manish.”*

**22.** It is submitted by the learned counsel for the Vigilance that the Road Construction Department, Government of Bihar, Patna in its finding revealed that the accused petitioner Sri Manoj Kumar Manish has not presented the file no. 49 of 2008 on time before the competent authority and by doing so misled the authorities, for which departmental proceedings *vide* Letter No. 8453 dated 25.09.2017 was initiated against the accused petitioner Sri Manoj Kumar Manish. The General Administrative Department, Bihar, Patna, *vide* its Memo No. 15652 dated 08.12.2017 conducted departmental proceeding against the accused petitioner Sri Manoj Kumar Manish. He further submits that the I.O. of the case has received the sanction for prosecution against the accused petitioner Sri Manoj Kumar Manish, the then Assistant, R.C.D, Bihar, Patna from the competent authority dated 23.02.2021 under Section 19 of the P.C. Act for the offence committed by him under section 13(2) read with 13(1)(d) of P.C. Act 1988



**23.** It is next submitted that the I.O. had submitted a Charge Sheet No. 75/2022 dated 03-012-2022 against the accused petitioner Sri Manoj Kumar Manish in the Court of Special Judge, North Bihar, Muzaffarpur. Thereafter, the learned Court after perusing the charge sheet and after duly applying judicial mind had taken cognizance *vide* the impugned order.

**24.** It is next submitted by the learned counsel for the Vigilance that the B.C.D, Bihar in the departmental proceedings presented evidence before the authorities and stated that the action taking report related to the financial irregularities committed by the accused Ramanand Singh, the then Executive Engineer, Madhubani was communicated to the R.C.D. Bihar vide letter no. 9996 dated 09.11.2011 and a reminder *vide* letter no.5606 dated 18.07.2012 was also communicated to it, but the said letter of B.C.D, Bihar was not presented by the accused petitioner Sri Manoj Kumar Manish in the connected file no - 49 of 2008 rather he has presented the said letter in the file no. 20 of 2008. The content and subject matter of file no. 20 of 2008 was entirely different from file no.-49 of 2008. It is alleged that the accused-petitioner Manoj Kumar Manish had intentionally presented the said letter of B.C.D., Bihar in file no. 20 of 2008 in order to conceal the real facts from the competent authority at R.C.D.,



Bihar in order to mislead them and also initiated a wrong noting in file no. 20 of 2008 and therefore made it directionless, due to which during the course of hearing of the Case 01/ लोक० (भवन) 09 of 2008 before the Hon'ble Lokayukta, the position of the competent authorities of the Road Construction Department, Government of Bihar, Patna, Bihar became otiose.

**25.** It is next submitted in the counter affidavit that the presenting officer in the departmental proceedings had acknowledged the aforesaid facts of B.C.D., Bihar and found the charge to be true against the accused petitioner Sri Manoj Kumar Manish and does not exonerate him of the said charge. The General Administrative Department, Bihar *vide* Letter No.9935 dated 26.07.2018 passed the order against the accused petitioner Manoj Kumar Manish by which it has found the charges partially proved and due to which order of censure was passed in addition to awarding punishment withholding of one annual increment under Rule 14 (V) Bihar Government Servants (Classification, Control and Appeal) Rules 2005.

**26.** It is next submitted that the points raised by the accused petitioner is only to mislead the Court whereas there is sufficient material on record on the basis of which the order of cognizance dated 29.05.2023 was passed. It is argued by the



learned counsel that the evidence which would be placed before the court during the course of trial, could then only be weighed and tested to arrive at the truth.

27. It is lastly submitted by the learned counsel for the vigilance that in view of the facts and circumstances, the petition of the petitioner is devoid of any merit and liable to be rejected.

28. In reply to the counter affidavit filed by the Vigilance, the petitioner has filed a rejoinder affidavit and has submitted that in reply to the statements made in Paragraph No.12(v) to 12(vii) of the counter affidavit under reply it is stated that:-

*“(i) That action against Sri Rama Nand Singh the then Executive Engineer could not be taken within 4 years from the date of occurrence i.e. 17.03.2006 as required under section 43(B) of the Bihar Pension Rules and it became "time barred" and the enquiry report of Chief Engineer North Bihar Division and Building Construction Department, Bihar remained unavailable.*

*(ii) That on 23.07.2010 the petitioner was instructed by the Department to see the Table work of Sri Ram Babu Choudhary Assistant but the charge of concerned file 49/2008 was not given to the petitioner and it is also relevant to state here that before taking the charge of the concerned table by the petitioner the action against Sri Rama Nand Singh the Executive Engineer under section 43(B) of the Bihar Pension Rules become time barred.*



*(iii) That show cause was asked from the petitioner in pursuance of R.C.D.'s letter No.3972 dated 05.05.2017 (Annexure-2 of the main petition). The petitioner submitted his show cause.*

*(iv) That a departmental proceeding was initiated against the petitioner and a copy of the charge was served upon the petitioner (Annexure-3 of the main petition).*

*(V) That the charge No.1 was that the proceeding initiated against Sri Rama Nand Singh the then Executive Engineer for embezzlement of Government money could not be completed within stipulated time as per provision of section 43(B) of Bihar Pension Rule and it of the enquiry report.*

*And*

*Charge No.2 was that on 23.07.2010 the proceeding file No.49/2008 relating to Sri Rama Nand Singh, the then Executive Engineer Building Division, Madhubani was allotted to the petitioner but the petitioner instead of the aforesaid file forwarded File No.20/2008 though the subject matter of both the file was different.*

*(vi) That the petitioner submitted his show cause in detail explaining his innocence (Annexure-5 of the main petition)*

*(vii) That the conducting officer who is an I.A.S. Officer after considering the entire materials available on record came to the conclusion that the charge No.1 has not been proved and so far charge No.2 is concerned the file No.20/2008 which was forwarded by the petitioner in place of File No.49/2008, Name, Designation and year of allegation was similar and the mistake appears to be not deliberate (opinion of the Conducting Officer at Page-117 of the main petition).*

*(viii) That the Disciplinary authority having gone through the enquiry report awarded minor punishment of censure and stoppage of one increment with non-cumulative effect.*



*(ix) That it is stated that a departmental proceeding was also initiated against Sri Sunil Kumar Sinha the then Asst. Road Construction Department, Bihar, Patna and Sri Ram Babu Choudhary the then Asst. Road Construction Department, Bihar, Patna and after completion of the Departmental Proceeding, the Disciplinary Authority vide order as contained in memo No.16348 dated 22.12.2017 awarded minor punishment of "Censure" for the service period (2008-2009) to Sri Sunil Kumar Sinha and vide memo No.63.61 dated 16.05.2018 awarded major punishment of stoppage of two increments with the cumulative effect to Sri Ram Babu Choudhary the then Asst. Road Construction Department, Bihar, Patna."*

**29.** The learned counsel for the petitioner has further submitted that the petitioner has already explained the reasons before the Conducting Officer and the disciplinary authority and thereafter considering the explanation of the petitioner minor punishment was awarded to the petitioner. He further submits that the charge for which charge sheet has been submitted by the Vigilance, has already been decided by the disciplinary authority and minor punishment was awarded to the petitioner.

**30.** The learned counsel for the petitioner has further submitted that during the investigation by the Vigilance Department, Government of Bihar no direct or indirect evidence has been found which connects the petitioner in the alleged offence.



31. I have heard and considered the submissions of the parties. It is not in dispute that the petitioner was proceeded against for the same charges in a departmental proceeding and the petitioner has been held not guilty but has been held to be negligent.

32. The following is the finding in the department proceeding:

“ परंतु भवन निर्माण विभाग से प्राप्त दोनों पत्रों का विषय एवं उपस्थापित की गयी संचिका संख्या-निग०/सारा-4 (भवन) निग० था० को 20/08 के विषय के बिल्कुल अलग-अलग होने की स्पष्टता नहीं होना अपने बचाव बयान में कहा जा रहा है, वह पूरी तरह स्वीकार योग्य नहीं है। यदि विषय के अलग-अलग होने की स्पष्टता नहीं है तो विषय के बिल्कुल समान होने की भी स्पष्टता नहीं है साथ ही प्रस्ताव उपस्थापित करते समय संचिका के तथ्यों के साथ-साथ प्राप्त पत्र. के तथ्यों का भी ध्यान रखना चाहिए। भवन निर्माण विभाग के पत्रों के प्रसंग के तहत अंकित पत्रांक एवं दिनांक को भी पूर्णतः आरोप पत्र एवं बचाव बयान से परे नहीं कहा जा सकता है। अतः आरोपित सहायक के बचाव बयान, विभागीय मंतव्य एवं आरोपित सहायक की प्रतिक्रिया से स्पष्ट होता है कि कार्यवाह सहायक द्वारा भवन निर्माण विभाग के पत्रों के उपस्थापन एवं समर्पित प्रस्ताव में गलती की गयी है, भले ही वह जान-बूझकर न किया गया हो। समर्पित किये गये बचाव बयान के आलोक में कार्यवाह सहायक पूर्णतः दोषमुक्त नहीं किये जा सकते हैं।”

33. No materials have come in the entire proceeding in the investigation to indicate that the petitioner had any *mens rea* to commit the crime, or that he had conspired with the main accused in putting up the different file. In fact, after examination of the oral and documentary evidence, it has been held in the departmental



proceeding that the petitioner may be guilty of only negligence and consequently minor punishment was imposed.

34. The Hon'ble Supreme Court in the case of *Ashoo Surendranath Tewari Vs. Deputy Superintendent of Police, EOW, CBI* reported as (2020) 9 SCC 636 has held as follows:

*“8. A number of judgments have held that the standard of proof in a departmental proceeding, being based on preponderance of probability is somewhat lower than the standard of proof in a criminal proceeding where the case has to be proved beyond reasonable doubt. In P.S. Rajya v. State of Bihar [P.S. Rajya v. State of Bihar, (1996) 9 SCC 1 : 1996 SCC (Cri) 897] , the question before the Court was posed as follows: (SCC pp. 2-3, para 3)*

*“3. The short question that arises for our consideration in this appeal is whether the respondent is justified in pursuing the prosecution against the appellant under Section 5(2) read with Section 5(1)(e) of the Prevention of Corruption Act, 1947 notwithstanding the fact that on an identical charge the appellant was exonerated in the departmental proceedings in the light of a report submitted by the Central Vigilance Commission and concurred by the Union Public Service Commission.”*

9. This Court then went on to state: (P.S. Rajya case [P.S. Rajya v. State of Bihar, (1996) 9 SCC 1 : 1996 SCC (Cri) 897] , SCC p. 5, para 17)

*“17. At the outset we may point out that the learned counsel for the respondent could*



*not but accept the position that the standard of proof required to establish the guilt in a criminal case is far higher than the standard of proof required to establish the guilt in the departmental proceedings. He also accepted that in the present case, the charge in the departmental proceedings and in the criminal proceedings is one and the same. He did not dispute the findings rendered in the departmental proceedings and the ultimate result of it.”*

**10.** *This being the case, the Court then held:*  
*(P.S. Rajya case [P.S. Rajya v. State of Bihar, (1996) 9 SCC 1 : 1996 SCC (Cri) 897] , SCC p. 9, para 23)*

*“23. Even though all these facts including the report of the Central Vigilance Commission were brought to the notice of the High Court, unfortunately, the High Court took a view [Prabhu Saran Rajya v. State of Bihar, Criminal Miscellaneous No. 5212 of 1992, order dated 3-8-1993 (Pat)] that the issues raised had to be gone into in the final proceedings and the report of the Central Vigilance Commission, exonerating the appellant of the same charge in departmental proceedings would not conclude the criminal case against the appellant. We have already held that for the reasons given, on the peculiar facts of this case, the criminal proceedings initiated against the appellant cannot be pursued. Therefore, we do not agree with the view taken by the High Court as stated above. These are the reasons for our order dated 27-3-1996 for allowing the appeal and quashing the impugned criminal proceedings and giving consequential reliefs.”*



*11. In Radheshyam Kejriwal v. State of W.B. [Radheshyam Kejriwal v. State of W.B., (2011) 3 SCC 581 : (2011) 2 SCC (Cri) 721], this Court held as follows: (SCC pp. 594-96, paras 26, 29 & 31)*

*“26. We may observe that the standard of proof in a criminal case is much higher than that of the adjudication proceedings. The Enforcement Directorate has not been able to prove its case in the adjudication proceedings and the appellant has been exonerated on the same allegation. The appellant is facing trial in the criminal case. Therefore, in our opinion, the determination of facts in the adjudication proceedings cannot be said to be irrelevant in the criminal case. In B.N. Kashyap [B.N. Kashyap v. Crown, 1944 SCC OnLine Lah 46 : AIR 1945 Lah 23] the Full Bench had not considered the effect of a finding of fact in a civil case over the criminal cases and that will be evident from the following passage of the said judgment: (SCC OnLine Lah: AIR p. 27)*

*‘... I must, however, say that in answering the question, I have only referred to civil cases where the actions are in personam and not those where the proceedings or actions are in rem. Whether a finding of fact arrived at in such proceedings or actions would be relevant in criminal cases, it is unnecessary for me to decide in this case. When that question arises for determination, the provisions of Section 41 of the Evidence Act, will have to be carefully examined.’*

*29. We do not have the slightest hesitation in accepting the broad submission of Mr Malhotra that the finding in an*



*adjudication proceeding is not binding in the proceeding for criminal prosecution. A person held liable to pay penalty in adjudication proceedings cannot necessarily be held guilty in a criminal trial. Adjudication proceedings are decided on the basis of preponderance of evidence of a little higher degree whereas in a criminal case the entire burden to prove beyond all reasonable doubt lies on the prosecution.*

*31. It is trite that the standard of proof required in criminal proceedings is higher than that required before the adjudicating authority and in case the accused is exonerated before the adjudicating authority whether his prosecution on the same set of facts can be allowed or not is the precise question which falls for determination in this case.*

*12. After referring to various judgments, this Court then culled out the ratio of those decisions in para 38 as follows: (Radheshyam Kejriwal case [Radheshyam Kejriwal v. State of W.B., (2011) 3 SCC 581 : (2011) 2 SCC (Cri) 721] , SCC p. 598)*

*“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.”

13. It finally concluded: (Radheshyam Kejriwal case [Radheshyam Kejriwal v. State of W.B., (2011) 3 SCC 581 : (2011) 2 SCC (Cri) 721] , SCC p. 598, para 39)

“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.”



**35.** The action against the main accused Ramanand Singh had become time barred on 17.03.2010. It is an admitted case that the petitioner was not entrusted the file on 17.03.2010. For the first time on 23.07.2010, the petitioner was entrusted by the Department to see the table work of Sri Ram Babu Choudhary, Assistant but the charge of the concerned file was not given to the petitioner. Before taking charge of the concerned table by the petitioner, the action against Ramanand Singh, the then Executive Engineer under Rule 43(B) of the Bihar Pension Rules had become time-barred. The charge no. 1 was that the proceeding initiated against Sri Ramanand Singh, the then Executive Engineer for embezzlement of government money could not be completed within stipulated time as per provision of Rule 43(B) of Bihar Pension Rule, therefore, the allegations against the petitioner which was with regard to charge no. 1 has failed. A person held liable for minor punishment of censure, that too, on account of acting negligently, in the department proceedings, cannot in my opinion and in the facts that emerge from the present case be fastened with criminal liability.

**36.** The standard of proof for proceeding against an accused in a criminal case is much more than what is required in a departmental proceeding. In the present case, considering the



finding of the departmental proceeding wherein a categorical conclusion has been arrived at to the effect that the petitioner had acted negligently and the only thread connecting the present petitioner is that he had deliberately not forwarded the concerned file to the competent authority and instead had forwarded a different file in itself could not attract criminal liability. Moreover the petitioner is not alleged to have committed the defalcation/ embezzlement of government funds.

37. In view of the foregoing discussions and the law laid down by the Hon’ble Supreme Court in *Ashoo Surendranath Tewari (supra)*, the order taking cognizance is bad in the eyes of Law and therefore the same is unsustainable. Accordingly the order dated 29.05.2023 passed by the learned Special Judge, Vigilance, North Bihar, Muzaffarpur in Special Case No. 01 of 2019 arising out of Madhubani Nagar P.S. Case No. 126 of 2017 is hereby quashed.

38. The application stands allowed.

39. Pending application/s, if any, shall also stand disposed of.

(Sandeep Kumar, J)

Shishir/-

|                   |            |
|-------------------|------------|
| AFR/NAFR          | N.A.F.R.   |
| Uploading Date    | 29.07.2025 |
| Transmission Date | 29.07.2025 |

