

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.74584 of 2024

Arising Out of PS. Case No.-44 Year-2006 Thana- VIGILANCE District- Patna

Pankaj Kumar Gupta Son of Late Kishori Lal Ram R/O Mohalla- Navratan
Hata, P.S.- Khazanchi Hat, District- Purnea, Bihar

... .. Petitioner/s

Versus

1. The State of Bihar Through the Vigilance Investigation Bureau, Muzaffarpur Bihar
2. The Deputy Superintendent of Police-cum-Station House Officer, Vigilance, Bihar,6, Circular Road Patna- 800001
3. The Special Judge, Special Court, Vigilance, Muzaffarpur (West), Muzaffarpur Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Pushkar Narayan Shahi, Sr. Advocate Mr. Siddharth Shankar Pandey, Advocate Mr. Amit Anand, Advocate Mr. Gopal Kumar, Advocate Mr. Sandeep Kumar Singh, Advocate
For the Vigilance	:	Mr. Arvind Kumar, Law Officer Vigilance

CORAM: HONOURABLE MR. JUSTICE SOURENDRA PANDEY
ORAL JUDGMENT

Date : 28-07-2025

Heard Mr. Pushkar Narayan Sahi, learned Senior Counsel for the petitioner assisted by Mr. Siddharth Shankar Pandey, learned counsel for the petitioner and Mr. Arvind Kumar, learned counsel for the Department of Vigilance.

2. The present application has been preferred by the petitioner for quashing of the order dated 15.06.2024 passed by learned Special Judge, Vigilance, Muzaffarpur, whereby the



application dated 18.10.2023 filed by the petitioner for discharge was dismissed.

And further for quashing of the order dated 13.02.2017 by which the learned Special Judge Vigilance, North Bihar, Muzaffarpur, was pleased to take cognizance against the petitioner in Special Case No. 28 of 2006 arising out of Vigilance P.S. Case No. 44 of 2006 dated 05.05.2006 for the offences under Section 420, 465, 467, 468, 471, 477(A), 120(B) of the I.P.C. and under Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act and also the consequential order of issuance of process against the petitioner.

And further prayer to direct the learned Court below to provide the petitioner entire police paper and other relevant document on which prosecution is going to rely and propose to use against the petitioner which has not been done despite filing of application under Section 207 dated 18.10.2023.

3. The learned Senior Counsel for the petitioner submits that the fact giving rise to the present application is that one *Kamleshwar Pawan, Mansu Paswan* and *Lalan Paswan* submitted and undated application in the office of the Block Development Officer, Saraiya on 26.0.2003 stating therein that eight bags of Rice laden on the hand-cart (Thela) was apprehended and was



subsequently taken into the possession by the villagers. It is further alleged that upon inquiry *Ramesh Singh* and *Bindeshwar Paswan* were taking the rice stated that the said rice was of the Government and was being move for the payment of wages to the laborers and the B.D.O. was requested to initiate an appropriate inquiry in the matter.

4. It is further stated that the B.D.O., Saraiya, Muzaffarpur, on the same day, endorsed the said complaint to the then Block Animal Husbandry, Officer and directed to submitted a report and, therefore, the B.D.O., Saraiya, Muzaffarpur, was transferred on 21.07.2003. Thereafter, a new incumbent joined after the transfer of the B.D.O., Saraiya, Muzaffarpur, who entrusted the inquiry concerning the issue of the Block Co-operative Extension Officer, Saraiya. Upon the inquiry a report was submitted by the Block Co-operative Extension Officer, Saraiya, wherein categorical findings were recorded that *mukhiya* and executive agent, in conspiracy with each other, were taking the rice out for the black marketing. Despite the aforesaid inquiry report no action was taken against anybody and the seized rice was also kept at the door of *Vishwanath Shah* and was deteriorating day by day and a report was also sent to the S.H.O., Saraiya for taking necessary action, however, even the S.H.O., Officer, Saraiya,



preferred to sit over the issue and did not lodge any FIR against the persons named in the report. It is further stated that the petitioner is said to have submitted a report in pursuance of oral instructions and after due inquiry in accordance with law a report was submitted stating therein that the *Mukhiya* and his associates were involved in committing illegalities and had also adopted corrupt practices. The findings of the inquiry report submitted by the petitioner was considered by the then District Magistrate Muzaffarpur, and on his instructions the then B.D.O., Saraiya was directed to lodge an FIR against the accused i.e., the then *Mukhiya* and other persons who were found involved in the misdeed. In pursuance to the above directions an F.I.R., bearing Saraiya P.S. Case No. 324 of 2004 dated 18.10.2004 got registered under Sections 406, 409, 420 and 120B of the I.P.C. against the then *Mukhiya* and Contractor.

5. The learned Senior Counsel further submitted that after lapse of a period of one year and seven months the complainant *Anil Sharma* filed the Complaint Case No. 16 of 2005 dated 24.03.2005 against nine accused persons including the petitioner, however, from perusal of the complaint, it would be clear that there was nothing specific alleged against the petitioner. In pursuance to the complaint, an investigation was directed to be



conducted by the Vigilance Investigation Bureau, Muzaffarpur, Bihar, and the police inspector conducted a preliminary inquiry and submitted a report and from perusal of the said report it would be evident that there is no specific findings against the petitioner which is supported by any material and lawful evidence showing his involvement into alleged offences made against the petitioner. However, a direction was issued to register a case under Section 420, 465, 467, 468, 471, 477(A), 120(B) and permission for the initiation of the investigation of the offences was also granted. Pursuant to the said direction the Vigilance P.S. Case No. 44 of 2006 was lodged and the same was entrusted upon a Deputy Superintendent of Police, Vigilance, Bihar, to conduct investigation after a lapse of more than three years from the date of occurrence. On such instruction, the Vigilance P.S. Case No. 44 of 2006 was registered on 05.08.2006 against all the named accused persons including the petitioner which is *sub-judice* before the Court of Special Judge, Vigilance, Muzaffarpur.

6. Learned Senior Counsel appearing on behalf of the petitioner submits that from mere perusal of the written report it would be evident that that there is no specific allegation alleged against the petitioner and whatever allegations are there the same is not supported and not based on substantial and cogent materials.



It has further been submitted that allegation of black marketing of the government rice related back to the period March, 2003, when the petitioner was posted as the Executive Magistrate, Muzaffarpur, (West). From perusal of the report, it would be evident that involvement of the petitioner or his connivance in the alleged malpractices/ corruption was never found during the course of investigation and unintentional lapse in inquiry of black marketing of rice would not constitute any criminal offences against the petitioner, that too when the rice is in the possession of the complainant.

7. Learned Senior Counsel for the petitioner also pointed out that the complainant who has filed the complaint on account of on going political rivalry between him and the then *Mukhiya* had not stated anything against the petitioner in his complaint and, infact, he had acknowledged the fact that on the basis of report submitted by the petitioner, the FIR bearing Saraiya P.S. Case No. 324 of 2004 was lodged. It has also been stated that the complainant did not take any legal steps against the erring police officials of Saraiya Police Station who did not investigate into the allegations contained therein in the FIR and instead, filed the private vexatious and unplaced complaint.



8. Learned Senior counsel submits that even if the entire allegations levelled in the FIR are taken in their entirety, no offence as alleged is made out against the petitioner and none of the ingredients of offences has described under Sections 420, 465, 467, 468, 471, 477(A), 120(B) are being made out.

9. Learned Senior Counsel then raises a very pertinent question of law wherein he submits that the investigating agency submitted Charge Sheet No. 47 of 2016 on 16.12.2016 i.e., after lapse of eleven years of undue, unlawful and unexplained delay. It has further been submitted that the charge sheet has been submitted in utmost routine and mechanical manner which talks about callous and insensitive attitude of the investigating agency towards the accused persons. Learned Senior Counsel has stated that even on perusal of the charge sheet, it would be evident that even after investigation of more than 10-12 years, no material has come out against the petitioner and the same is reiteration of the preliminary inquiry report contained in Memo No. 156 of 2005 dated 08.12.2005 meaning thereby that there was no further investigation practically made by the investigating officer.

10. Learned Senior Counsel has drawn the attention of this Court towards the judgment dated 12.12.2018 passed in Cr. Misc. No. 31307 of 2016 whereby one of the co-accused, namely,



Ahmad Mohammad, who had preferred an application under Section 482 for quashing the entire proceedings approached this Hon'ble Court and after hearing the parties concerned this Court was pleased to quash the entire proceeding and also the order taking cognizance dated 13.02.2017 against him. Likewise another accused, namely, *Sudhir Kumar Sahu* who had approached this Court for quashing of the entire proceedings vide Cr. Misc. No. 60398 of 2017 was also heard by this Court and vide order dated 19.09.2023 this Court was pleased to quash the entire criminal proceeding and also the order taking cognizance against the said accused.

11. Learned Senior Counsel thus submits that the entire prosecution is misconceived, malicious and frivolous and even if the allegations levelled against the petitioner are taken into account, it could at best be levelled as dereliction in duty or lack of action or inaction on the part of the petitioner and no criminal intent could be drawn for the inaction committed by the petitioner. Learned Senior Counsel has also submitted that if such delay or inaction is taken into account then many officers including Senior officer would also be equally responsible for the same and singling out the petitioner and few others would amount to abuse of the process of law.



12. Learned counsel for the Vigilance has submitted that once the Court has taken cognizance under Section 190 of the Cr. P.C. this Court would normally not interfere as the learned Court below was justified in holding that a *prima facie* case is being made out as he had found offences having been committed at that relevant time and as such meticulous weighing of the evidence and consideration of the defense of the accused cannot be permitted at this stage. It is further submitted that in view of such legal proposition even this Court under Section 482 of the Cr. P.C. would not interfere as the petitioner would have ample opportunity to present his defense during the trial. It is further submitted that the case of the petitioner is not covered under the parameters as stated in paragraph 102 of the judgment of Hon'ble Supreme Court in the case of **State of Haryana vs. Ch. Bhajan Lal & Ors., 1992 Supp (1) SCC 335.**

13. Learned counsel for the Vigilance further submitted that if a *prima facie* offence is being made against the accused this Court should not interfere under the present jurisdiction, however, Learned counsel for the Vigilance could not deny the fact that the allegations upon the petitioner was only of being not active enough to take appropriate action within time and beyond that there is nothing in the charge sheet against the petitioner.



14. Having considered the aforesaid facts and circumstances and also the submissions forwarded by the learned counsel for the parties and upon going through the materials on record, this Court is of the view that the petitioner has carved out a case for himself. The contention of the learned counsel for the petitioner that even if the complaint, the allegation and also the investigation is taken into account, the allegation upon the petitioner is of not performing his duty and causing delay and apart from that there is nothing against the petitioner to show his complicity in the present case. This Court has observed that the petitioner inquired into the matter and submitted a report, however, no action was taken thereafter and for which he cannot be held liable. In fact, this Court has also taken note of the fact that the report of the petitioner was the basis of lodging of the FIR and therefore he cannot be saddled with the liability of inaction also.

15. This Court also finds the objection of learned counsel for the Vigilance with regard to the jurisdiction of this Court under Section 482 of the Cr.P.C. with regard to none interference in the order taking cognizance to be erroneous. It is a settled law that the primary duty of the Court under Section 482 of the Cr. P.C. is to ensure that the same should be exercised to prevent the abuse of the process of the Court or otherwise to



secure the ends of justice as has been observed by the Hon'ble Supreme Court in the case of **Aanand Kumar Mohatta and Anr. Vs. State (Gov. of NCT of Delhi), Department of Home and Anr.** passed in **Cr. Appeal No. 1395 of 2018 (Arising out of SLP (Crl.) No. 3730 of 2016)** wherein the Hon'ble Supreme Court has stated that there is nothing in the words of Section 482 of Cr. P.C. which restricts to exercise the power of the Court to prevent the abuse of process of Court or miscarriage of justice only to the stage of the FIR. It is a settled principle of law that the High Courts can exercise jurisdiction under Section 482 of Cr. P.C. even when the discharge application is pending with the trial Court.

16. The reliance placed by the learned Senior counsel for the petitioner on the Case of **Pankaj Kumar Vs. State of Maharstara and Ors. Passed in Cr. Appeal No. 1067 of 2008 (Arising out of S.L.P. (Crl.) No. 2843 of 2006)** wherein the Hon'ble Supreme Court was delivering a judgment on the rights of the accused of speedy trial which flows from the Article 21 of the Constitution of India. The Hon'ble Supreme Court in Paragraph No. 15 has observed thus:-

15. The exposition of Article 21 in Hussainara Khatoon's case (supra) was exhaustively considered afresh by the Constitution Bench in Abdul Rehman Antulay



& Ors. Vs. R.S. Nayak & Anr. Referring to a number of decisions of this Court and the American precedents on the Sixth Amendment of their Constitution, making the right to a speedy and public trial a constitutional guarantee, the Court formulated as many as eleven propositions with a note of caution that these were not exhaustive and were meant only to serve as guidelines. For the sake of brevity, we do not propose to reproduce all the said propositions and it would suffice to note the gist thereof. These are: (I) fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily; (ii) right to speedy trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and retrial; (iii) in every case where the speedy trial is alleged to have been infringed, the first question to be put and answered is who is responsible for the delay?; (iv) while determining whether undue delay has occurred (resulting in violation of right to speedy trial) one must have regard to all the attendant circumstances, including nature of offence, number of accused and witnesses, the work-load of the court concerned, prevailing local conditions and so on-what is called, the systemic delays; (v) each and every delay does not necessarily prejudice



the accused. Some delays may indeed work to his advantage. However, inordinately long delay may be taken as presumptive proof of prejudice. In this context, the fact of incarceration of accused will also be a relevant fact. The prosecution should not be allowed to become a persecution. But when does the prosecution become persecution, again depends upon the facts of a given case; (vi) ultimately, the court has to balance and weigh several relevant factors-'balancing test' or 'balancing process' and determine in each case whether the right to speedy trial has been denied; (vii) Ordinarily speaking, where the court comes to the conclusion that right to speedy trial of an accused has been infringed the charges or the conviction, as the case may be, shall be quashed. But this is not the only course open and having regard to the nature of offence and other circumstances when the court feels that quashing of proceedings cannot be in the interest of justice, it is open to the court to make appropriate orders, including fixing the period for completion of trial; (viii) it is neither advisable nor feasible to prescribe any outer time-limit for conclusion of all criminal proceedings. In every case of complaint of denial of right to speedy trial, it is primarily for the prosecution to justify and explain the delay. At the same



time, it is the duty of the court to weigh all the circumstances of a given case before pronouncing upon the complaint; (ix) an objection based on denial of right to speedy trial and for relief on that account, should first be addressed to the High Court. Even if the High Court entertains such a plea, ordinarily it should not stay the proceedings, except in a case of grave and exceptional nature. Such proceedings in High Court must, however, be disposed of on a priority basis.

17. The Hon'ble Supreme Court after discussing the various case laws and the judicial pronouncement ultimately held in paragraph 17 as under:-

17. It is, therefore, well settled that the right to speedy trial in all criminal persecutions is an inalienable right under Article 21 of the Constitution. This right is applicable not only to the actual proceedings in court but also includes within its sweep the preceding police investigations as well. The right to speedy trial extends equally to all criminal persecutions and is not confined to any particular category of cases. In every case, where the right to speedy trial is alleged to have been infringed, the court has to perform the balancing act upon taking into consideration all the attendant circumstances,



enumerated above, and determine in each case whether the right to speedy trial has been denied in a given case. Where the court comes to the conclusion that the right to speedy trial of an accused has been infringed, the charges or the conviction, as the case may be, may be quashed unless the court feels that having regard to the nature of offence and other relevant circumstances, quashing of proceedings may not be in the interest of justice. In such a situation, it is open to the court to make an appropriate order as it may deem just and equitable including fixation of time for conclusion of trial.

18. Considering the aforesaid principle enumerated above, this Court finds that in the present case the initial FIR was lodged in the year 2004 while the Vigilance P.S. Case was registered in the year 2006 and the charge sheet was submitted in the year 2016 on 16.12.2016. From the aforesaid facts, it is also evident that the investigating agency took more than 10 years to submit the charge sheet and even today the case is pending for framing of the charges.

19. Learned counsel for the Vigilance has not been able to give any explanation for the delay in the investigation and the reasons for the submission of charge sheet after more than ten



years. Moreover, having regard to the nature of the accusations against the petitioner which this Court has discussed elaborately above, from the plain reading of the FIR, no offence is being made out against the petitioner and there is no material which could later be translated into evidence at the stage of trial.

20. In view of the aforesaid, this Court is constrained to observe that the petitioner has suffered for almost twenty years now with the sword in the form of criminal prosecution hanging over his head and his career has also taken a back seat as he lost on account of promotion along with his other colleagues on account of delayed investigation. The lackadaisical manner in which the investigation had progressed and it took the investigating agency more than ten years to submit the charge sheet is enough to convince this Court that the right which the petitioner is guaranteed under Article 21 of the Constitution of India for speedy investigation and trial must be invoked in the present case and therefore, the criminal proceedings initiated against the petitioner in the year 2006 pending before the learned Special Judge Vigilance, North Bihar, Muzaffarpur, deserves to be quashed.

21. For the aforesaid view, the order dated 15.06.2024 passed by learned Special Judge, Vigilance, Muzaffarpur, in



connection with Special Case No. 28 of 2006 arising out of
Vigilance P.S. Case No. 44 of 2006, is hereby quashed.

22. The application stands allowed.

(Sourendra Pandey, J)

Jyoti/-

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