

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.85368 of 2024

Arising Out of PS. Case No.-1 Year-2024 Thana- VIGILANCE District- Patna

Arvind Kumar Tiwari Son of Late Sitaram Tiwari R/O Village - Keshari
Nagar, Post Office- Barka Gaon, Police Station - Karja, District -
Muzaffarpur, At Present Block Education Office (BEO), Block Patahi,
District- East Champaran, Motihari.

... .. Petitioner

Versus

1. The State of Bihar through the Special Vigilance Unit, Patna. Bihar
2. Santosh Kumar S/O Late Yogendra Prasad R/O Village and P.O-
Parsauni Kapur, Dushad Toli, Patahi, Distt.- East Champaran.

... .. Opposite Party

Appearance :

For the Petitioner/s	:	Mr.Rajesh Kumar Singh, Sr. Advocate Mr.Ranvijay Narain Singh, Advocate Mr.Dharmendra Kumar Singh, Advocate Mr.Manish Kumar singh, Advocate
For the State	:	Mr.Sanjay Kumar Singh, APP
For the S.V.U.	:	Mr.Rana Vikram Singh, Law Officer

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
C.A.V. JUDGMENT

Date : 17-06-2025

Heard Mr. Rajesh Kumar Singh, learned senior
counsel appearing on behalf of the petitioner and Mr. Rana
Vikram Singh, learned Law Officer appearing on behalf of the
Department of Vigilance.

2. This application has been preferred under section
482 of the Code of Criminal Procedure (in short, the
“Cr.P.C.”) for quashing the order dated 31.05.2024 as



passed by the court of Special Judge, Vigilance, Patna in Special Case No. 2 of 2025, arising out of S.V.U. P.S. Case No. 1 of 2024, whereby and whereunder learned trial court has been pleased to take cognizance against the petitioner for the offence under Section 7 of the Prevention of Corruption Act (hereinafter referred to as the 'P.C. Act') and also to quash the order dated 12.12.2024 (through I.A. No. 01 of 2025), through which learned Vigilance Court framed charge under section 7 of the P.C. Act against the petitioner.

3. The brief facts of the prosecution as per First Information Report (in short, the 'F.I.R.') state that the informant namely, Santosh Kumar (opposite party no. 2) made his application dated 08.02.2024 to the Superintendent of Police, Special Vigilance Unit, Bihar, Patna, alleging therein that he is posted as Headmaster of N.P.S. Parsonikpur (Dusadh Toli) and the Block Education Officer, Patahi (petitioner), had been demanding a bribe of Rs. 10,000/- (ten thousand) from him for allotment of funds relating to SSA Grant and Mid-day Meal. The petitioner was allegedly threatening the informant regarding the initiation of



departmental proceedings if the informant failed to meet the said demand.

4. The aforesaid application was duly endorsed to the Sub-Inspector of Police for the purpose of causing an inquiry into the veracity of the allegations set forth therein. The Sub-Inspector of Police made his report dated 08.02.2024 to the Superintendent of Police to the effect that the allegations against the petitioner were correct. Accordingly, S.V.U. P.S. Case No. 01 of 2024 dated 12.02.2024 was registered against the petitioner for the offence under Section 7 of the P.C. Act.

5. It is a trap case where the petitioner was caught red-handed with cash of Rs. 10,000/- by the raiding team of the Special Vigilance Unit (in short the 'S.V.U.'), Patna, while he was receiving an alleged bribe amount from the informant.

6. Mr. Rajesh Kumar Singh, learned senior counsel appearing for the petitioner submitted that upon bare perusal of the initial complaint, it would reveal that it was filed on 08.02.2024 to the Superintendent of Police, S.V.U. at Patna, where no time is mentioned. The said complaint was



thereafter endorsed to the Sub-Inspector of Police for necessary verification, which was duly carried out on the same day, and the concerned officer submitted his verification report on 08.02.2024 itself. It is submitted that by any measure of human probability, the verification of the allegations and the submission of the report on the very same day is highly improbable, considering that the distance between Patna and Patahi exceeds 200 Kms. It is submitted that the present case was lodged out of ulterior and oblique motives to tarnish the image of the petitioner. In view of the facts as being superior authority, petitioner checked the malpractices of the informant *qua* mid-day meal.

7. It is submitted by Mr. Singh that after registering an F.I.R. on 12.02.2024, S.V.U. picked up two employees of BUDCO, Rajapur Pul, Patna, to be witnesses of the trap and thereafter the S.V.U. team reached Bela PACS Godown, Patahi, where a preliminary memorandum was prepared on 12.02.2024, whereafter the S.V.U. team proceeded to the office of the petitioner and reached there at 13:45 'O' Clock.

8. Mr. Singh further submitted that, as per the



allegation, the informant after taking Rs. 8000/- from his right pocket, offered the same to the petitioner, which the petitioner accepted by his right hand and kept in the back pocket of his trousers. It is submitted that this admitted position straightway contradicts the fact that the recovery memorandum shows the left hand of the petitioner when washed with a solution of sodium carbonate, turned pink. It is submitted that, when the alleged bribe was not received with the left hand, the claim of the left hand having turned pink stands vitiated, thereby casting serious doubt upon the veracity of the allegation levelled against the petitioner, particularly in the backdrop of pre-existing official disputes and differences.

9. It is submitted that the necessary memorandum was not prepared at the actual place of trap/recovery; rather, the same was drawn up at the premises of Gagan Hotel situated on the National Highway at Chakiya in the presence of the very same witnesses who had been brought from Patna. It is submitted that the witnesses, namely, Anil Kumar and Ajay Ranjan, both employees of BUDCO, Patna cannot be



said to be independent witnesses, as they were brought by the team of S.V.U., Patna itself, and, therefore, the entire trapping memorandum becomes doubtful, which is the calyx of the allegation. It is further submitted that S.V.U. had neither taken the signature of the petitioner on the recovery memorandum nor supplied the copy of the same to the petitioner, which further makes the raid doubtful.

10. It is submitted that the petitioner being a Block Education Officer, was not the disciplinary authority of the complainant, who is the Headmaster of the Govt. School, though he is the superior authority. It is also pointed out that generally the office of the petitioner marks the presence of 10-12 employees, but none of them were made witnesses of the occurrence.

11. It is submitted that till the submission of charge-sheet no prosecution sanction was granted against the petitioner despite the request of S.V.U. on 04.04.2024, and, therefore, charge-sheet was submitted in anticipation of sanction order. It is submitted that, ignoring all such facts in a very mechanical manner, the concerned learned Vigilance



Judge took cognizance against the petitioner for the offence punishable under Section 7 of the P.C. Act as well as under sections 109 and 120B of the I.P.C.

12. In support of his submission, learned senior counsel relied upon the legal report of the Hon'ble Supreme Court as available through **State of Haryana vs. Bhajan Lal** reported in **1992 Supp (1) SCC 335**.

13. Mr. Rana Vikram Singh, learned counsel appearing on behalf of S.V.U., Patna submitted that the petitioner raised his defence version by disputing several factual aspects, which cannot be considered at this stage, as it is a well established principle of law that the probative value of the material on record cannot be gone into at the time of framing of charge, the court must apply its judicial mind on the material placed on the record and must be satisfied whether the commission of offence by the accused was possible.

14. It is submitted by Mr. Singh that at this stage, the court has to proceed with an assumption that the materials brought on record by the prosecution are true and to evaluate



the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the offence. It is submitted that a mini trial at this stage is not possible.

15. Mr. Singh, learned counsel for the S.V.U. further submitted that the chemical analysis test and the conversation of the petitioner with the informant are such materials, on the basis of which it cannot be said that the allegation against the petitioner is “groundless” and, moreover, the charge already framed against the petitioner by learned vigilance court and the trial of this case already commenced with.

16. In support of his submission, Mr. Singh, learned counsel relied upon the legal report of the Hon’ble Supreme Court as available through **State of Tamil Nadu by Inspector of Police Vigilance and Anti-Corruption Vs. N. Suresh Rajan and Others [(2014) 11 SCC 709]; State of Rajasthan Vs. Ashok Kumar Kashyap [(2021) 11 SCC 191** and **State Represented by Inspector of**



**Police, CBI, ACB, Visakhapatnam Vs. Eluri Srinivasa
Chakravarthi and Others [2025 SCC OnLine SC 1215].**

17. It would be apposite to reproduce para 29 of **N.**

Suresh Rajan case (supra), which reads as under:

“29. We have bestowed our consideration to the rival submissions and the submissions made by Mr Ranjit Kumar commend us. True it is that at the time of consideration of the applications for discharge, the court cannot act as a mouthpiece of the prosecution or act as a post office and may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an order of discharge. It is trite that at the stage of consideration of an application for discharge, the court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage.”

18. It would be further apposite to reproduce para
11.2 of **Ashok Kumar Kashyap case (supra)** for better



understanding of the case, which reads as under:

11.2. In the recent decision of this Court in *M.R. Hiremath* [*State of Karnataka v. M.R. Hiremath*, (2019) 7 SCC 515 : (2019) 3 SCC (Cri) 109 : (2019) 2 SCC (L&S) 380] , one of us (D.Y. Chandrachud, J.) speaking for the Bench has observed and held in para 25 as under : (SCC p. 526)

"25. The High Court [*M.R. Hiremath v. State*, 2017 SCC OnLine Kar 4970] ought to have been cognizant of the fact that the trial court was dealing with an application for discharge under the provisions of Section 239 CrPC. The parameters which govern the exercise of this jurisdiction have found expression in several decisions of this Court. It is a settled principle of law that at the stage of considering an application for discharge the court must proceed on the assumption that the material which has been brought on the record by the prosecution is true and evaluate the material in order to determine whether the facts emerging from the material, taken on its face value, disclose the existence of the ingredients necessary to constitute the offence. In *State of T.N. v. N. Suresh Rajan* [*State of T.N. v. N. Suresh Rajan*, (2014) 11 SCC 709 : (2014) 3 SCC (Cri) 529 : (2014) 2 SCC (L&S) 721] , advertent to the earlier decisions on the subject, this Court held : (SCC pp. 721-22, para 29)

‘29. ... At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what



needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage.’ ”

19. In the aforesaid context, it would also be apposite to reproduce para 24 & 25 of **Eluri Srinivasa Chakravarthi case (supra)**, which reads as under:

“24. The decisions of this Court in *Satish Mehra v. Delhi Administration* (1996) 9 SCC 766] and *State of Bihar v. Ramesh Singh* [(1977 4 SCC 39] took divergent views on the competence of a special court/magistrate to look at material other than the final report read with documents filed by the prosecution in terms of section 173 of the CrPC. The issue was referred to a three-judge bench for decision in *State of Orissa v. Debendranath Padhi* [(2005) 1 SCC 568]. The full bench in a detailed examination of the statutory scheme and also the precedents on the point has held that the accused at the stage of framing of charge does not have a right to file material or documents. It is apt to excerpt the following paragraphs from the said decision.

“8. What is the meaning of the expression “the record of the case” as used in Section 227 of the Code. Though the word “case” is not defined in the Code but Section 209 throws light on the interpretation to be placed on the said word. Section 209 which deals with the commitment of



case to the Court of Session when offence is triable exclusively by it, inter alia, provides that when it appears to the Magistrate that the offence is triable exclusively by the Court of Session, he shall commit "the case" to the Court of Session and send to that court "the record of the case" and the document and articles, if any, which are to be produced in evidence and notify the Public Prosecutor of the commitment of the case to the Court of Session. It is evident that the record of the case and documents submitted therewith as postulated in Section 227 relate to the case and the documents referred in Section 209. That is the plain meaning of Section 227 read with Section 209 of the Code. No provision in the Code grants to the accused any right to file any material or document at the stage of framing of charge. That right is granted only at the stage of the trial.

15. *In State of Maharashtra v. Priya Sharan Maharaj [\(1997\) 4 SCC 393](#) it was held that at Sections 227 and 228 stage the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. The court may, for this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case."*

18. *We are unable to accept the aforesaid contention. The reliance on Articles 14 and 21 is misplaced. The scheme of the Code and object with which Section 227 was incorporated and Sections 207 and 207-A omitted have already been noticed. Further, at the stage of framing of charge roving and fishing inquiry is impermissible If the contention of the accused is accepted, there would be a mini-trial at the stage of framing of*



charge. That would defeat the object of the Code. It is well settled that at the stage of framing of charge the defence of the accused cannot be put forth. The acceptance of the contention of the learned counsel for the accused would mean permitting the accused to adduce his defence at the stage of framing of charge and for examination thereof at that stage which is against the criminal jurisprudence. By way of illustration, it may be noted that the plea of alibi taken by the accused may have to be examined at the stage of framing of charge if the contention of the accused is accepted despite the well-settled proposition that it is for the accused to lead evidence at the trial to sustain such a plea. The accused would be entitled to produce materials and documents in proof of such a plea at the stage of framing of the charge, in case we accept the contention put forth on behalf of the accused. That has never been the intention of the law well settled for over one hundred years now. It is in this light that the provision about hearing the submissions of the accused as postulated by Section 227 is to be understood. It only means hearing the submissions of the accused on the record of the case as filed by the prosecution and documents submitted therewith and nothing more. The expression "hearing the submissions of the accused" cannot mean opportunity to file material to be granted to the accused and thereby changing the settled law. At the stage of framing of charge hearing the submissions of the accused has to be confined to the material produced by the police.

(emphasis supplied)

25. Recently, in *State of Rajasthan v. Swarn Singh @ Baba* [Criminal Appeal No. 856 of 2024], to which one of us, Justice Pankaj Mithal, was a part of, relied on *Debendra Nath Padhi* (supra) to hold that the accused cannot and does not have the right to invoke section 91 of the CrPC at the time of framing of



charge. Under the statutory scheme of the CrPC, sections 227/239 are positioned in the midway of continuing or abandoning the prosecution if no case is discernible from the chargesheet and documents. The common belief of the prosecution/complainant is that the report filed warrants trial and conviction, which is to be balanced by the magistrate against the belief of the accused that every prosecution initiated is false and nothing short of an abuse of process. The magistrate, at this stage, by exercising the jurisdiction within the parameters set out by sections 227/239 of the CrPC, decides whether the narrative of the complainant warrants prosecution/trial or the accused is entitled to be discharged. The discretion is exercised in the manner stipulated by sections 227/239. The inner and outer limits of the discretion under these sections are no more *res integra*, and a few of the precedents having a bearing on the conspectus of the case are referred to hereunder.

25.1 In *Sheoraj Singh Ahlawat v. State of U.P.* [(2013) 11 SCC 476], it is observed that inconsistency in material produced by the prosecution cannot be looked into for discharge of the accused in the absence of a full-fledged trial.

25.2 Reiterating the dictum in *Debendra Nath Padhi* again in *State of Madhya Pradesh v. Rakesh Mishra* [(2015) 13 SCC 8.], it has been held that only the chargesheet along with accompanying materials are to be considered at the stage of framing of charges, so as to satisfy the existence of a case for trial.

25.3 Further, in *State of Rajasthan v. Ashok Kumar Kashyap* [(2021) 11 SCC 191], this Court reiterates beyond debate that defence on merits is not to be considered at the stage of framing of charges/discharge.”

20. Taking note of the aforesaid factual and legal submission, it appears to this Court that the transcript of the



conversation between the petitioner and the informant and also turning left or right hand pink upon chemical analysis, as discussed above, along with the submission *qua* malicious approach due to official dispute and differences, are such issues which cannot be looked into at this stage. Charges are already framed against the petitioner, and the trial of the case has already begun. It is also a settled position of law that the defence version of the petitioner/accused cannot be considered at the stage of framing of charge to avoid a mini-trial.

21. In view of aforesaid, the present petition appears devoid of any merit. Accordingly, the same stands dismissed.

22. Let a copy of this judgment be sent to the learned trial court/court concerned forthwith.

(Chandra Shekhar Jha, J.)

Rajeev/-

AFR/NAFR	AFR
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