

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.79088 of 2023

Arising Out of PS. Case No.-2 Year-2018 Thana- VIGILANCE District- Patna

Nidhi Vivek @ Nidhi Karanwal, W/O Vivek Kumar, Resident Of 31, Varun Vihar, Near Shiv Vihar, Delhi Road, P.S. Sadar, Dist. Saharanpur (UTTAR Pradesh)

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Special Vigilance Unit, Bihar, Patna.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Mayank Shekhar, Advocate Mr. Amritya Raj, Advocate
For the Opposite Party/s	:	Mr. Anil Kumar Singh No. 1, APP
For the Informant	:	Mr. Rana Vikram Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 03-04-2025

Heard Mr. Mayank Shekhar, learned counsel for the petitioner, Mr. Rana Vikram Singh, learned Special Public Prosecutor for the State Vigilance Unit (in short 'S.V.U.') and Mr. Anil Kumar Singh No. 1, learned APP appearing for the State.

2. The present petition is being preferred for quashing the cognizance order dated 23.01.2023 as passed by learned Special Vigilance Court, Patna in connection with F.I.R. bearing Special Case No. 19/2018, corresponding to the Special Vigilance Unit Case No. 02/2018 dated 15.04.2018 registered for the offences punishable under Sections 109 of the Indian Penal Code read with sections 13(2) r/w 13(1)(e) of the Prevention of Corruption Act, 1988, which is presently pending in the court of learned Special Judge, Vigilance, Patna.

3. The aforesaid F.I.R. has been instituted on the basis of



written report dated 15.04.2018 of one Ram Rajya Sharma, Dy.S.P./SVU/Patna alleging *inter alia* that Shri Vivek Kumar, IPS (Bihar; 2007), who is presently posted as Senior Superintendent of Police, Muzaffarpur, Bihar, is a corrupt officer and has amassed huge movable and immovable assets through corrupt means, which are disproportionate to his known sources of income.

4. It is alleged that Shri Vivek Kumar, who was born on 01.07.1978, son of Shri Prakash Chandra, resident of 31, Varun Vihar, Delhi Road, Saharanpur, Uttar Pradesh joined Indian Police Service on 18.08.2007. Shri Vivek Kumar is a Class/Grade-A Officer, who remained posted in different capacities in Purnea, Jehanabad, Naugachhia, Sitamarhi, Siwan, Bhagalpur and Muzaffarpur districts of Bihar. He passed his High School in 1994 from St. Mary's Academy, Saharanpur and has done B.Tech (Civil Engineering) from IIT Roorkee. Thereafter, he worked in Income Tax Department as an Indian Revenue Service Officer for a few years, prior to his joining as an officer of the Indian Police Service in Bihar Cadre (2007). He was married with Smt. Nidhi Karnwal (petitioner) on 06.12.2010. Smt. Nidhi Karnwal (petitioner) is daughter of Smt. Uma Rani Karnwal and Shri Ved Prakash Kanwal Resident of House number 227/32A, Ansari Road, Aryapuri, Muzaffarnagar (U.P.) (ii) 87 Sarwat North, Muzaffarnagar (UP)/87



Sarwat Road, Kewal Puri, Civil Lines North, Muzaffarnagar (U.P.), and (ii) 67/5 Bagh Kesho Dass, near Sanatan Dharma Subha, Muzaffarnagar (UP). Smt. Nidhi Karnwal @ Nidhi Vivek is a housewife. Shri Vivek Kumar and Smt. Nidhi Karnwal have one son namely Reyansh. The brother of Smt. Nidhi Karnwal is Shri Nikhil Karnwal. Other members of the family are Mrs. Shelley Karnwal and Mrs. Poonam Karnwal.

5. It is alleged that while being posted in the capacity of SDPO in Purnea and Jehanabad and SP/SSP Naugachhia, Sitamarhi, Siwan, Bhagalpur and Muzaffarpur, Shri Vivek Kumar learnt to have amassed huge movable and immovable properties in the name of his wife Smt. Nidhi Karnwal (petitioner) and parents of petitioner in Muzaffarnagar (U.P.) by indulging in corrupt practice as a public servant, during the discharge of his official duties, as learnt from reliable sources. It has also been revealed that Vivek Kumar (husband of petitioner) incurred huge expenses for creating fixed deposits with State Bank of India, Ansari Road Branch, Muzaffarnagar (U.P.) in the name of the parents, brother and other relatives of his wife Smt. Nidhi Karnwal @Nidhi Vivek. The FIR also contains the table of income from known/declared and undeclared sources of Vivek Kumar and Smt. Nidhi Karnwal, the details of which are given in different pages of the F.I.R.



6. It is also alleged that the relatives of Shri Vivek Kumar and Smt. Nidhi Karnwal did not have sufficient income to justify the creation of such huge assets, even when it is assumed that Vivek Kumar, Nidhi Karnwal and her relatives had zero expenditure, during the period stated in para-12 (i) hereinabove, the acquisition of movable assets by them (including Vivek Kumar & Nidhi Karnwal) to the extent of Rs. 2,06,94,238/- against gross total income of Rs. 1,56,42,164/- cannot be satisfactorily accounted for, by any means.

7. It is further alleged that the assets mentioned aforesaid are merely movable ones, in fact, immovable properties in the name of Vivek Kumar and Smt. Nidhi Karnwal (petitioner) acquired in 2012 have not been mentioned in the above calculation. Besides, as per source of information, it is reasonably believed that more properties in the name of the above-named persons are likely to be found during investigation.

8. That Smt. Nidhi Karnwal (petitioner) and her relatives namely Shri Ved Prakash Karnwal, Smt. Uma Rani Karnwal, Shri Nikhil Karnwal and Smt. Shelley Kanwal have actively connived in the said conspiracy along with Vivek Kumar (husband of petitioner). In fact, Vivek Kumar acquired illegal gains from corrupt practices while discharging his official duties as a public



servant. Smt. Nidhi Karnwal (petitioner) and her relatives deliberately and intentionally invested the illegal gains acquired by Vivek Kumar (husband of petitioner) by way of acquisition of movable properties in his name. Shri Vivek Kumar, with the assistance of Smt. Nidhi Karnwal (petitioner) and her relatives concealed the income/property acquired through illegal means from the Government of Bihar and the Income Tax Department. For such acts of omission and/or commission, Smt. Nidhi Karnwal and her relatives are equally liable for the misconduct of Shri Vivek Kumar in the acquisition of illegal gains.

9. It further alleged that a mere glance at the assets acquired either by Shri Vivek Kumar and his wife Smt. Nidhi Karnwal (petitioner) together or along with their family members would lead to the irresistible and irrefutable conclusion that Shri Vivek Kumar and his wife (petitioner), taken together, as well as along with their other relatives are in possession of disproportionate assets which cannot be satisfactorily accounted for by any means.

10. It is submitted by learned counsel appearing on behalf of the petitioner that cognizance against the petitioner was taken in aforesaid FIR without appreciating the materials available on record specially the report submitted by the Income Tax



Department (in short the “IT Department”) as during course of investigation, Investigating Officer has referred the matter to the IT Department as to ascertain whether the allegation raised through F.I.R. is genuine *qua* income of the petitioner, whereupon IT Department exonerated the petitioner and other accused persons. It is submitted that aforesaid report of IT Department deliberately not made part of the case diary intentionally and petitioner and other accused persons were charge-sheeted without assigning any reason due to oblique motive with harassing attitude, even without getting any incriminating materials during course of investigation.

11. It is pointed out that said report of IT Department was also brought before the learned trial court, but unfortunately it was not considered and the impugned order of cognizance was passed against the petitioner.

12. Arguing further, learned counsel submitted that the husband of petitioner, while posted as Sr. S.P., Muzaffarpur in 2017, was selected for the post of OSD to the Hon’ble Minister of State, Human Resources Department, Government of India on 05.10.2017, and for that assignment he was given vigilance clearance by the Vigilance Department, Govt. of Bihar and also given ‘No Objection Certificate’ on 5th March, 2018 for said



purpose.

13. It is submitted that when aforesaid fact regarding husband of the petitioner came into the knowledge of the then Inspector General of Police, SVU, who was earlier posted as SP, Muzaffarpur and was biased with the working and promotion of petitioners' husband, hatched a conspiracy and by giving misleading information to the senior authority, where no explanation was sought for from husband of the petitioner with respect to his assets, which has already been declared by him, present prosecution was lodged.

14. In this context, it is further submitted that husband of petitioner declared all his annual assets and liabilities every year since his joining and, therefore, without making any preliminary inquiry after assuming all the stridhan of the petitioner as illegal, the present F.I.R. was lodged.

15. Arguing further, it is submitted by learned counsel that from perusal of the contents of the F.I.R. as well as data of income and expenditure mentioned therein, it transpired that out of malicious intention, the SVU without giving opportunity of being heard, declared sum of Rs. 72,69,779/- as disproportionate asset of the petitioner's husband on the basis of annually declared assets and ITR furnished by him. The stridhan of the petitioner and



all her declared assets have been assumed illegal and taken as part of disproportionate assets, just by supplying the reasons that she is a housewife.

16. It is also submitted that on the basis of aforesaid presumptive note, the assets of petitioner, which was her stridhan, was declared disproportionate assets of her husband and for such reasons the petitioner was implicated with present case. It is pointed out that no questionnaire has been issued to the petitioner till date by the SVU as to enable him to reply to the query. Pointing government policy in this regard, it is submitted that Government of Bihar vide its letter No. Vig. Deptt/Estb./Misc./619/2005/4927 dated 29.08.2008 has clearly directed all its departmental head that the movable/immovable property return of all the employees should be scrutinized first and if any of them is found suspicious, a show cause to be issued firstly before initiating any action, but in the present case out of ulterior and oblique motive SVU directly lodged the F.I.R.

17. It is further argued that father of the petitioner requested the I.O. of this case to send a questionnaire to reply due to his heart problem and severe knee problem of his wife in the background of Covid-19 situation prevalent in the country, but the I.O. did not send any questionnaire to father of the petitioner as to



enable him to answer the query of the SVU. The act of SVU was of harassing attitude. It is submitted that admittedly preliminary inquiry, which is a mandatory provision, did not made in the present case before lodging F.I.R. and, therefore, the present F.I.R. itself is bad in the eyes of law.

18. Arguing further, it is submitted by learned counsel appearing for the petitioner that a disciplinary proceeding was initiated against the petitioners' husband by the State Government in March 2019, which was conducted by Chief Inquiry Commissioner, Bihar, where all facts and evidences were supplied by him, which upon consideration, husband of the petitioner was given a clean chit in the departmental proceeding including allegation of disproportionate assets and, it was submitted to the Home Department for further action in December, 2020. Learned counsel submitted that when the petitioner's husband filed a case in Hon'ble Central Administrative Tribunal, Patna (in short the 'CAT') for decision on the departmental inquiry report, it was ordered in December 2021 to start a fresh inquiry on plea that SVU has submitted the prosecution sanction proposal, which has been referred by SVU to Income Tax Department for its investigation and further action. IT Investigation Wing, Meerut subsequently called the entire information from father of the



petitioner through summon dated 23.02.2021, which was based on the information shared by the SVU, Bihar. Thereafter, father of petitioner submitted detailed reply to the questionnaire of the IT Department Wing, Meerut, which after its inquiry recommended reopening of assessment cases for 6 consecutive years in case of father of the petitioner. Assessment orders for five consecutive years i.e. FY 2012-13, 2013-14, 2014-15, 2015-16 and 2016-17, which, after investigation, was not found with any discrepancy against petitioner regarding her income and assets. The aforesaid finding of IT Department was communicated to the ADG, SVU with copies of detailed income tax assessment orders, but the same was refused to accept by the investigating officer of this case. In this context, it is further submitted that on 06.03.2023, the IT Department issued detailed assessment order even for sixth assessment year 2018-19 for the mother of petitioner and found the income of petitioner genuine and not connected to the present case.

19. It is submitted that all such facts constitutes *prima-facie* ulterior and oblique prosecution due to departmental biaseness where petitioner being wife of concerned officer were made victim with harassing attitude.

20. In this connection, it is submitted that after clean chit



from the IT Department and also by getting exoneration of husband of the petitioner from departmental proceeding, continuing with the present proceeding is nothing but an abuse of court process.

21. While concluding the argument, learned counsel submitted that petitioner's husband namely, Vivek Kumar declared stridhan gifts of his wife, with Bihar Government time to time and also with IT Department, which was also certified on scrutiny by the IT Department, as submitted above. The implication of petitioner is only to harass her husband out of ulterior and oblique departmental motive.

22. Traveling further to argument, it is submitted by learned counsel that realizing aforesaid mistake Department (SVU) filed an application in the court of learned Special Judge, Vigilance, Patna on 02.09.2024 for withdrawal of the present prosecution *qua* petitioner and, therefore, now nothing survives in this matter against the petitioner. It is pointed out since September, 2024, this matter is pending before the learned court below for order on said petition for the only reason as cognizance order *qua* parents of petitioner was stayed by this Court vide its order dated 05.12.2023.

23. It is submitted that in view of aforesaid, continuing of



proceeding *qua* petitioner before learned trial court would only amount to abusing the process of court of law and, therefore, same is fit to be set-aside/quashed.

24. Mr. Rana Vikram Singh, learned Special Public Prosecutor Vigilance engaged for Patna High Court, while arguing in this matter, submitted that in view of aforesaid withdrawal letter of prosecution, the present petition become infructuous.

25. It is an admitted position that main charge of corruption is available against Vivek Kumar (husband of petitioner) who is an IPS officer and at the time of raid he was posted as SSP, Muzaffarpur, who is related with wife. The implication of petitioner with the present case appears with the aid of section 107/109 of the I.P.C. The crux of allegation as surfaced out of aforesaid discussion that stridhan of wife of Vivek Kumar namely, Nidhi Vivek @ Nidhi Karnwal (petitioner), which was said to be disproportionate to the income and, therefore, it was charged that property of Nidhi Karnwal was created out of corrupt practice followed by Vivek Kumar, where the role of petitioner being wife as abettor, accepting that the amount shown by Nidhi Vivek @ Nidhi Karnwal as stridhan was gifted by her parents on the occasion of her marriage with main accused Vivek Kumar, who is an IPS Officer.



26. The main co-accused namely, Vivek Kumar admittedly exonerated from the Departmental Proceeding by the government of Bihar. The records also suggests that no preliminary inquiry was made before lodging the F.I.R. which is essential in terms of Bihar Government order dated 29.08.2008 as discussed aforesaid.

27. It would be apposite to reproduce **Section 107 and 109** of the I.P.C., which reads as under:-

"107. Abetment of a thing.— A person abets the doing of a thing, who—

First.—Instigates any person to do that thing; or

Secondly.—Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly.—Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1.— A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing."

"109. Punishment of abetment if the act abetted is committed in consequence and where no express provision is made for its punishment.—Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.



Explanation.—An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment.”

28. In the background of aforesaid allegation, the IT Investigation Wing, Meerut, on the basis of complain as received from SVU, Bihar, against parents of the petitioner recommended reopening of assessment cases of six consecutive years in case of father of petitioner i.e. for financial year 2012-13, 2013-14, 2014-15, 2015-16 and 2016-17. The order of aforesaid reassessment was passed by the IT Department in the year 2022 where no any discrepancies against petitioner regarding her income and assets was found as said to be connected with the present case of SVU. The finding of aforesaid IT Department was communicated to the SVU, Bihar also. On 06.03.2023, the IT Department issued detailed assessment order even for the sixth Financial Year i.e. 2018-19 for the father of petitioner, which was also found genuine. The details of which is available through Annexure ‘10’ and ‘11’ of the petition. The correctness and genuineness of these documents appears un-impeachable and of sterling nature, therefore, there is no hesitation to read these documents while dealing with the present petition in view of the legal report of Hon’ble Supreme Court as available through **State**



of Orissa Vs. Debendra Nath Padhi reported in **AIR 2005 SC 359.**

29. It is established principle of law that for section 109 of the I.P.C., it is not enough to show a conspiracy only rather an act is committed in furtherance of that conspiracy must be proved. The plain reading of section 109 of I.P.C. says that the abettor is liable to the same punishment which may be imposed on the principal offender, if the act of the latter is committed in consequences of the abetment. **[Somasundaram alias Somu Vs. State represented by Deputy Commissioner of Police reported in 2016 SCC OnLine SC 1006].**

30. Beside available merit in favour of petitioner, the most important fact which transpired during hearing of petition that prosecution preferred an application for withdrawal of present quashing petition *qua* petitioner on 02.09.2024, which could not disputed by Mr. Rana Vikram Singh, learned counsel appearing for SVU.

31. Out of submission of learned counsel appearing for the petitioner, it appears that the said petition is pending before the learned trial court as filed by the prosecution since last six months, but as further proceeding *qua* petitioner in furtherance of cognizance order was stayed vide order dated 10.11.2023 of this



Court, same was not decided till now.

32. This Court failed to understand that how stay order *qua* impugned cognizance order came into way of withdrawal of prosecution. Withdrawal of prosecution is something in favour of petitioner, where 'stay' of impugned cognizance order simply implies as to prevent something which may coerce petitioner, if proceeding allowed to go-ahead. Proceeding *qua* petitioners was stayed in present case seeing balance of merit in favour of petitioners.

33. It would be further apposite to reproduce **para 102** of the legal report of Hon'ble Supreme Court as available through **State of Haryana and Ors. Vs. Bhajan Lal and Ors** reported in **(1992) Supp (1) SCC 335**, which reads as under for a ready reference:

'102. *In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.*

(1) *Where the allegations made in the first*



information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

34. In view of aforesaid, as main accused Vivek Kumar



appears exonerated from his departmental proceeding, where IT Department, Meerut, after reassessment for all six financial years, as discussed above, did not find any irregularity on the part of petitioner *qua her* income and, moreover, prosecution already filed an application for withdrawal of prosecution against petitioner, accordingly, by taking guiding note at serial nos. 3, 5 & 7 of para 102 of **Bhajan Lal’s case (supra)**, the cognizance order dated 23.01.2023 as passed by learned Special Judge (Vigilance), Patna in Special Case No. 19 of 2018 corresponding to Special Vigilance Unit Case No. 02/2018 dated 15.04.2018 *qua* petitioner stands quashed/set-aside.

35. Pending petition, if any, stands disposed of accordingly.

36. This quashing petition is allowed.

37. Let a copy of this judgment be sent to the learned trial court immediately for its compliance.

(Chandra Shekhar Jha, J)

veena/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	07.04.2025
Transmission Date	07.04.2025

