IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.19877 of 2016
Arising Out of PS. Case No.-88 Year-2006 Thana- C.B.I CASE District- Patna
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Krishna Murari, Son of Sri Hardeo Prasad Mahto, Resident of Village- Sundarpur, P.O.- Baha Chowki, P.S.- Dharahara, Dist- Munger.

... ... Petitioner/s

Versus

The State of Bihar Through Vigilance Investigation Bureau

... ... Opposite Party/s

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Code of Criminal Procedure---section 482, 239---Prevention of Corruption Act---section 19---Legality of sanction for prosecution---petition to quash impugned orders whereby discharge petition filed by Petitioner was rejected and charges were framed against him---allegation against Petitioner is of demanding and accepting bribe for discharge of his official duties---the verification report, pre-trap memorandum, post-trap memorandum and seizure memo are sufficient to prima facie attract the alleged offences---so far as the legality of the prosecution sanction is concerned, the trial court will examine it as it requires the examination of all the relevant facts, such as, the materials which were considered by the law department while issuing sanction order and the prejudice causing to the petitioner on account of non-issuance of the sanction order by the General Administration Department, Bihar which is said to be the competent authority----no illegality in the impugned order---- though the question of legality of prosecution sanction can be decided at the stage of final argument in the trial but when such question is raised at initial stage, at the time of taking cognizance or framing of charge, then such issue should not be kept pending for a long period as a serious prejudice may cause to an accused if such issue is decided in favour of the accused at the time of final

argument, resulting in acquittal of the accused on technical ground despite the same having been raised at the initial stage---trial court directed to decide the question of legality of sanction raised by the petitioner at the earliest preferably in the next six months from the date of receipt of this order---petition dismissed. ***(Para 8, 9)***

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Appearance :
For the Petitioner/s : Mr. Sanjeet Kumar, Adv.
For the Vigilance : Mr. Anil Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH

ORAL ORDER

14 28-01-2025 **Re : I.A. No. 01 of 2024**

Heard Mr. Sanjeet Kumar, learned counsel appearing for the petitioner and Mr. Anil Singh, learned counsel appearing for the Vigilance Department.

2. At the outset, learned counsel appearing for the petitioner presses the instant interlocutory application in which he has made a prayer to decide the main petition with petitioner's additional prayer for setting aside the order dated 12.05.2016 passed by the court of learned Special Judge Vigilance (Trap), Patna, by which the trial court has framed charges upon him. Learned counsel prays to treat the prayer made in the instant I.A. as part and parcel of the same quashing petition.

3. After considering the submissions advanced by both the sides as well as going through the averments made in this application, the main petition is being decided in respect of

main prayer and aforesaid additional prayer.

4. In result, I.A. No. 01 of 2024 stands allowed.

Re : Cr. Misc. 19877 of 2016

5. The instant petition has been filed under section 482 of the Code of Criminal Procedure (in short 'Cr.P.C.') with a prayer to quash the order dated 01.03.2016 whereby the petitioner's prayer made under section 239 of Cr.P.C. for discharge has been rejected by the Special Judge Vigilance (Trap), Patna in Special Case No. 29 of 2006 arising out of Vigilance Case No. 88 of 2006. The petitioner has further prayed to set aside the order dated 12.05.2016 passed by the trial court by which the charges have been framed upon him.

6. In order to assail the aforesaid impugned orders, Mr. Sanjeet Kumar, learned counsel for the petitioner has mainly taken three grounds, firstly, the allegation levelled by the informant/complainant, namely, Chohariya Devi is completely unbelievable as the complainant is an old lady aged more than 65 years, therefore, she was not entitled to get the alleged employment on the post of Asha worker, so, mainly on this ground, the entire prosecution's allegation relating to demanding bribe and accepting bribe through co-accused by this petitioner in lieu of giving a report favouring the eligibility of the

complainant is completely unbelievable and the complainant filed her complaint with malafide intention to harass the petitioner, who was then Block Development Officer. Secondly, the trial court while taking cognizance of the alleged offences punishable under the Prevention of Corruption Act (in short 'PC Act') placed reliance on a faulty prosecution sanction as the same is said to have been issued by the law department and not by the competent authority which is a complete violation of the provision of section 19 of the PC Act as the appointing/competent authority in respect of petitioner's employment is General Administration Department of Bihar Governement which has not issued the sanction upon which the prosecution is relying. It is further submitted by petitioner's counsel that the petitioner raised the issue of illegality on the part of the government in issuing prosecution sanction before the trial court when he pressed his prayer under section 239 of Cr.P.C. but legality of sanction was not examined by the trial court and the said issue has been kept pending. While as per the settled principle of law, there are three stages when the question with regard to validity of sanction can be raised by the accused in connection with the offences of the PC Act, firstly, at the time of taking cognizance, secondly, at the time of framing of

charges and thirdly, at the stage of final argument. Though at any of these stages, the question with regard to validity of sanction can be raised but when such issue is raised, the trial court is bound to decide the legality of sanction at the earliest without keeping it pending for a long time. In support of this submission, learned counsel has placed reliance upon the judgment of Hon'ble Apex Court passed in the case of **State of Karnataka Lokayukta Police vs. S. Subbegowda** reported in **2023 SCC OnLine SC 911**. The relevant paragraph No. '10' of the said judgment upon which reliance has been placed is being reproduced as under : -

> *"**10.** Having regard to the afore-stated provisions contained in Section 19 of the said Act, there remains no shadow of doubt that the statute forbids taking of cognizance by the Court against a public servant except with the previous sanction of the Government/authority competent to grant such sanction in terms of clauses (a), (b) and (c) to Section 19(1). It is also well settled proposition of law that the question with regard to the validity of such sanction should be raised at the earliest stage of the proceedings, however could be raised at the subsequent stage of the trial also. In our opinion, the stages of proceedings at which an accused could raise the issue with regard to the*

validity of the sanction would be the stage when the Court takes cognizance of the offence, the stage when the charge is to be framed by the Court or at the stage when the trial is complete i.e., at the stage of final arguments in the trial. Such issue of course, could be raised before the Court in appeal, revision or confirmation, however the powers of such court would be subject to sub-section (3) and sub-section (4) of Section 19 of the said Act. It is also significant to note that the competence of the court trying the accused also would be dependent upon the existence of the validity of sanction, and therefore it is always desirable to raise the issue of validity of sanction at the earliest point of time. It cannot be gainsaid that in case the sanction is found to be invalid, the trial court can discharge the accused and relegate the parties to a stage where the competent authority may grant a fresh sanction for the prosecution in accordance with the law."

Thirdly, the investigating officer was a member of raiding party, so, the entire investigation made by him got vitiated. In support of this submission, learned counsel has placed reliance upon the judgment of this Court passed in the case of **Ghanshyam Mishra vs. The State of Bihar** reported in (**2010) 1 PLJR 925**. The relevant paragraph No. 15 of the said

judgment upon which reliance has been placed is being reproduced as under : -

> ***"15.*** *There cannot be any doubt that in a criminal trial, to observe objectivity and to prevent bias, the investigation should be completely fair and devoid of any partisan attitude. For this reason, the courts have consistently demanded investigation through independent agencies since the objective of the court is to do justice upon the evidence adduced by the parties. In the present case, it is noticed that PW 8 and PW 14, both Investigating Officers were also members of the raiding party. In my opinion, the end of each trial is not to somehow or other to bring about the conviction of the accused but it is to see whether the accused has been justifiably charged or not. In the present case, once the investigating officers themselves become party to the factum of verification of demand and acceptance, I have no hesitation in concluding that such officers are bound to lean in favour of the party of which they also constitute a part. Under the circumstances, in my opinion, the Investigating Officers in the present case on the factum of verification of demand and recovery can not be relied upon. In this background, when I evaluate the evidence of PW6 Raj Kumar Roy, the shadow witness, PW 11 Ram Nath Sah, the*

complainant and PW 9 Abhay Kumar Mishra, an inspector of raiding party, I find that there is factual contradiction in the place where the demand was made as well as where the bribe money was recovered. In the background of partisan nature of witnesses and contradictions in the evidence, a very important aspect of the case vide Exhibit-A, A/1 and B is worth highlighting. These documents reveal that the appellant had conducted his official work on 23.02.1996, which is not possible if the occurrence of demand, acceptance and recovery of bribe had actually taken place on 21.02.1996. Had the First Information Report been instituted on 21.2.96 itself and the appellant remanded on the said date, this court could have concluded that the defence documents were procured but in the present case, I find that First Information Report reached the Court along with the present Appellant only on 24.02.1996, which probablizes the defence that the appellant could have been working on 23.2.96, thus demolishing the prosecution case that the occurrence had taken place on 21.2.96."

7. On the other hand, learned counsel appearing for the Vigilance Department submits that there is sufficient documentary proof to show an enquiry in respect of the

complainant's eligibility on the post of Asha worker being pending before the petitioner, so, the petitioner's plea as to no reason being present for the petitioner to demand bribe from the complainant, is not reliable. So far as the legality of the prosecution's sanction is concerned, the sanction order was issued by an appropriate authority after examining the relevant materials, however, it is a subject matter of trial and its legality can be examined by the trial court only at any stage before the conclusion of trial. It is further submitted by him that the investigating officer, Vijay Kumar Srivastava, Deputy S.P., Vigilance, Patna, was not a member of the trap team which is quite clear from the post and pre-trap memorandum, hence, a wrong statement has been made by petitioner's counsel.

8. Heard both the sides and perused the order impugned and other relevant materials. There is sufficient documentary evidence to show an enquiry with regard to the eligibility of the complainant Chohariya Devi for her appointment on the post of Asha worker being pending before the petitioner during the relevant time which goes in favour of the prosecution's allegation as to petitioner having a reason to demand bribe from the complainant for giving a report favouring the complainant. The complainant's allegations were

initially verified by an Assistant Sub-Inspector who submitted a verification report dated 03.12.2006 finding substance in the allegations, on that basis, a trap team was formed and after completing the necessary formalities, the petitioner's residence was raided by the trap team and as per prosecution's story, a sum of Rs. 2,000/- (Rupees Two Thousand) which had been taken by the co-accused Wakil Sao, servant of the petitioner, on behalf of the petitioner, was recovered from a register kept on the bed of the petitioner and the serial numbers of the seized notes matched with the serial numbers of the notes which were mentioned in the pre-trap memorandum and when the hands of the co-accused was washed, it turned pink as per the post-trap memorandum proceeding. Regarding these relevant facts, the verification report, pre-trap memorandum, post-trap memorandum and seizure memo are relevant, of which details has been given by the State in the counter affidavit. This Court is of the view that these materials are sufficient to *prima facie* attract the alleged offences. So far as the legality of the prosecution sanction is concerned, the trial court will examine it as it requires the examination of all the relevant facts, such as, the materials which were considered by the law department while issuing sanction order and the prejudice causing to the

petitioner on account of non-issuance of the sanction order by the General Administration Department, Bihar which is said to be the competent authority. Accordingly, this Court finds no illegality in the impugned order and there is no merit in this application, so, it stands dismissed.

9. As the petitioner has raised an issue of legality of the sanction order at the time of pressing his prayer under section 239 of the Cr.P.C. before the trial court and the same has not been decided till date as per the petitioner' s counsel even after the lapse of a period of more than eight years though the question of legality of prosecution sanction can be decided at the stage of final argument in the trial but when such question is raised at initial stage, at the time of taking cognizance or framing of charge, then such issue should not be kept pending for a long period as a serious prejudice may cause to an accused if such issue is decided in favour of the accused at the time of final argument, resulting in acquittal of the accused on technical ground despite the same having been raised at the initial stage. As such, the trial court is directed to decide the question of legality of sanction raised by the petitioner at the earliest preferably in the next six months from the date of receipt of this Court's order's copy.

(Shailendra Singh, J)

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