

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.288 of 2023

Arising Out of PS. Case No.-1 Year-2004 Thana- VIGILANCE District- Patna
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Madhu Sharma, Wife of Shri Ajay Narayan Sharma, R/O Shyam Bhawan,
Choudhary Tola, Mahendru, P.S.- Sultanganj, Distt.- Patna- 800006

... .. Petitioner/S

Versus

1. The State of Bihar Through The Director General, Cabinet Vigilance Investigation Bureau 6 Circular Road, Bihar, Patna, Bihar
2. The Superintendent of Police-Cum-Station House Officer, Cabinet Vigilance Investigation Bureau 6 Circular Road, Bihar, Patna, Bihar
3. The Investigating Officer of Vigilance P.S. Case No. 01/2004 (SPECIAL Case No. 01/2004) Vigilance Investigation Bureau, 6 Circular Road, Bihar, Patna, Bihar

... ..Respondent/s

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Acts/Sections/Rules:

- CrPC - Section 173

Cases referred:

- Azija Begum vs. State of Maharashtra & Anr reported in (2012) 3 SCC 126.
- Hasanbhai Valibhai Qureshi vs. State of Gujarat & Ors. reported in (2004) 5 SCC 347
- Kishan Lal vs. Dharmendra Bafna & Anr., reported in (2009) 7 SCC 685
- Subramanian Swamy vs. Director, CBI & Anr., reported in (2014) 8 SCC 682.

Petitioner is aggrieved because of alleged corruption in recruitment process for lecturers.

Held - In the instant case, an applicant for the post of Lecturer filed the application under Section 173(8), alleging that the investigation was found to be tainted or otherwise unfair. The applicant, not being an informant, cannot raise this issue before the learned Magistrate empowered to take cognizance. (Para 27)

Petitioner is not a competent person to challenge the charge- sheet and seek for further investigation of a case which ended in filing of the charge-sheet. (Para 29)

Petitioner allowed to submit the relevant documents before the IO who shall consider whether the said documents disclose fresh evidence or not and if the said documents amount to fresh evidence, IO is at liberty to cause further investigation of the case, since in the charge-sheet, the Investigating Officer has already taken the liberty to file supplementary charge-sheet on receipt of fresh evidence. (Para 34)

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... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Jagnnath Singh, Advocate Mr. Rakesh Kumar, Advocate Mr. Deepak Kumar, Advocate Mr. Md.Ghulam Mustafa, Advocate Mr. Bhargava Pandey, Advocate
For the State	:	Mr. Suman Kumar Jha, AC to AAG 3
For the Vigilance	:	Smt. Archana Palkar Khopde, Advocate

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL JUDGMENT
Date : 19-04-2024

- 1. The petitioner is one Madhu Sharma, who claimed to be selected in respect of the recruitment process of Lecturers, conducted in pursuance of vacancy of 29 Lecturers, announced by Bhagalpur University in the year 1997.
- 2. It is the grievance of the petitioner that she appeared in the selection process, passed in written examination and thereafter appeared in the interview but she was not



appointed as a Lecturer against the vacancy declared by Bhagalpur University.

3. Further grievance of the petitioner is that the Selection Committee, i.e., University Service Commission, prepared a list of 1100 successful candidates against the said 29 vacancies and the said successful candidates were absorbed time to time in respect of the vacancies which occurred in colleges under other universities without any fresh notification for selection. In such process of appointment, widespread corruption took place, involving the Vice Chancellors of different Universities, Bureaucrats, Political Personalities and also the then Chancellor. It is also on record that on the recommendation of the Chancellor, the Vigilance Investigation Bureau (hereinafter referred to as the 'VIB') registered Vigilance P.S. Case No. 1 of 2004 and submitted charge-sheet against some persons in the Court of learned Special Judge, Vigilance.

4. It is alleged by the petitioner that the said investigation done by the VIB was perfunctory. The Investigating Agency failed to investigate involvement of some very important personalities who are deeply involved and also against their words/relations/dependence. Appointment of



Lecturers made in the year 1996, following the Advertisement No. 2 of 1994, and those through Advertisement No. 2 of 1997 of the Bihar State University Service Commission were illegal and merit was not considered while giving appointments to the Lecturers.

5. It is also contended by the petitioner that the State University Service Commission did not issue any notice of appointment for subsequent vacancies in respect of universities beside Bhagalpur University but appointment was made from the panel prepared by the said Commission, consisting of 1100 candidates.

6. After filing of the charge-sheet, the petitioner and another person, namely, Mithlesh Kumar, filed an application under Section 173(8) of the Cr.P.C. before the learned Special Judge, Vigilance, Patna. The said application was, however, rejected *vide* order, dated 6th of July, 2022, by the learned Special Judge, holding, *inter alia*, that the petitioner had no locus standi to file such application for further investigation as she was not the informant in respect of Vigilance P.S. Case No. 1 of 2004.

7. By filing the instant writ petition, the petitioner has prayed for quashing of the order, dated 6th of July, 2022



passed by the learned Special Judge, Vigilance Court at Patna and further issue a direction upon the VIB to make further investigation in the light of the allegation made by the petitioner.

8. The learned Advocate for the petitioner has made his elaborate submission in support of the petition. He also referred some decisions which I propose to discuss at a subsequent stage.

9. The learned Advocate for the State as well as the Vigilance Bureau, on the other hand, supports the impugned order dated 6th of July, 2022 and further submits that Vigilance P.S. Case No. 1 of 2004 was initiated on the basis of a direction made by the then Governor, being the Chancellor of the Universities in the State of Bihar. On the basis of such direction, a suo motu FIR was lodged and investigation was taken up by VIB. On completion of investigation, charge-sheet was submitted before the Court of the learned Special Judge and at the time of acceptance of the charge-sheet, the petitioner and another person filed an application under Section 173(8) of the Cr.P.C..

10. It is contended on behalf of the VIB that the petitioner, not being an informant, cannot maintain an



application under Section 173(8) of the Cr.P.C.

11. Section 173 of the Cr.P.C. is absolutely relevant in this case and is quoted below.

“173. Report of police officer on completion of investigation.—

(1) Every investigation under this Chapter shall be completed without unnecessary delay.

[(1A) The investigation in relation to 3 [an offence under sections 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB or 376E] from the date on which the information was recorded by the officer in charge of the police station.]

(2) (i)As soon as it is completed, the officer-in-charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating -

(a)the names of the parties;

(b)the nature of the information;

(c)the names of the persons who appear to be acquainted with the circumstances of the case;

(d)whether any offence appears to have been committed and, if so, by whom;

(e)whether the accused has been arrested;



(f)whether he has been released on his bond and, if so, whether with or without sureties;

(g)whether he has been forwarded in custody under section 170.

[(h) whether the report of medical examination of the woman has been attached where investigation relates to an offence under Sections 376, 376A, 376AB, 376B, 376C, 376D or section 376E of the Indian Penal Code (45 of 1860)].]

(ii)The officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him, to the person, if any, by whom the information relating to the commission of the offence was first given.

(3)Where a superior officer of police has been appointed under section 158, the report shall, in any case in which the State Government by general or special order so directs, be submitted through that officer; and he may, pending the orders of the Magistrate, direct the officer-in-charge of the police station to make further investigation.

(4)Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks



fit.

(5) When such report is in respect of a case to which section 170 applies, the police officer shall forward to the Magistrate along with the report -

(a) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation;

(b) the statements recorded under section 161 of all the persons whom the prosecution proposes to examine as its witnesses.

(6) If the police officer is of opinion that any part of any such statement is not relevant to the subject-matter of the proceeding or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interest, he shall indicate that part of the statement and append a note requesting the Magistrate to exclude that part from the copies to be granted to the accused and stating his reasons for making such request.

(7) Where the police officer investigating the case finds it convenient so to do, he may furnish to the accused copies of all or any of the documents referred to in sub-section (5).

(8) Nothing in this section shall be



deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer-in-charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2).”

12. On perusal of the above provision, it is found that on completion of investigation, the Officer In-Charge of the Police Station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the prescribed format by the State Government. Though, in the Cr.P.C., the report under Section 173(2), is not called report in final form but the report under Section 173(2) is described as the report in final form. The report in final form may be of two types - The report may state that on culmination of investigation prima facie charge against the accused person is established; or secondly, the report may say that no evidence could be collected against the accused and the alleged charge has not been established.



13. Section 173 (2) (ii) also mandates that the officer shall also communicate, in such manner, as may be prescribed by the State Government, the action taken by him, to the person, if any, by whom the information relating to commission of the offence was first given. In other words, the result of investigation shall have to be communicated to the informant by the Office In-Charge of the Police Station at the time of submission of final report.

14. Thus, whenever a final report is filed, the informant is informed. In case of the final report, stating that the allegation against the accused has not been established, the informant, on receipt of notice, is at liberty to file an application, stating his reservation against acceptance of final report and praying for further investigation and on such application, the Magistrate or the Special Judge, empowered to take cognizance, may direct further investigation of a case.

15. It is needless to say that for further investigation under Sub-section (8) of Section 173, no formal order of the learned Special Judge or the Magistrate, empowered to take cognizance on charge-sheet, is necessary and the Officer-In-Charge of the Police Station upon receiving further evidence, oral or documentary, is at liberty to forward such further



evidence to the Magistrate with a further report or reports regarding such evidence in the form prescribed.

16. It is contended that in the matter of submission of such further report, the provisions of Sub-sections (2) to (6) shall apply as far as may be.

17. Thus, the scheme of the Code prescribes service of notice upon the informant, following submission of report under Section 173 Sub-section (2). The informant is at liberty to raise objection against the final report.

18. It is contended by the learned Advocate for the petitioner that besides the informant, any person interested in the outcome of a criminal case, is permitted to make an application under Section 173(8) of the Cr.P.C. to bring forth to the notice of the Court, empowered to take cognizance that the investigation was not properly done and had the investigation been properly done, there would have been many other accused persons to be roped in during the investigation.

19. In support of his contention, the learned Advocate for the petitioner first refers to a decision of the Hon'ble Supreme Court in *Azija Begum vs. State of Maharashtra & Anr* reported in (2012) 3 SCC 126. He relies on paragraphs 12 and 13 of the report.



20. In paragraphs 12 and 13, it is observed by the Hon'ble Supreme Court that every citizen of this country has a right to get his or her complaint properly investigated. The legal framework of investigation provided under our laws cannot be made selectively available only to some persons and denied to others. This is a question of equal protection of laws and is covered by the guarantee under Article 14 of the Constitution. The issue is akin to ensuring an equal access to justice. A fair and proper investigation is always conducive to the ends of justice and for establishing rule of law and maintaining proper balance in law and order. These are very vital issues in a democratic set up which must be taken care of by the Courts.

21. What missed the attention of the learned Advocate for the petitioner is that in the instant report, the appellant was none other than the informant.

22. In the present writ petition, the petitioner is not the informant. Therefore, the aforesaid decision is not applicable in the facts and circumstances of this case.

23. The learned Advocate for the petitioner next draws my attention to another decision of the Hon'ble Supreme Court in the case of *Hasanbhai Valibhai Qureshi vs. State of Gujarat & Ors.* reported in (2004) 5 SCC 347.



24. In this report, it is held by the Hon'ble Supreme Court that mere fact that further investigation may cause delay of the trial is not a relevant consideration. Police can conduct further investigation in a proper manner, even if the Court has taken cognizance. Thus, when fresh facts (lapses in earlier investigation of the case) came to light, the police should inform the Court and seek permission to make further investigation.

25. Thus, in this report, it is held that further investigation can be made by the police and the issue of delay in trial cannot stand on the way of further investigation. This decision also does not state that any person other than the informant can pray for further investigation.

26. In *Kishan Lal vs. Dharmendra Bafna & Anr.*, reported in (2009) 7 SCC 685, the appellant was the informant. The Hon'ble Supreme Court held that the Investigating Officer may exercise his statutory power of further investigation in several situations, as, for example, when new facts came to his notice; when certain aspects of the matter had not been considered by him and he found that further investigation is necessary to be carried out from a different angle(s) keeping in view the fact that new or further materials came to his notice. Apart from the aforementioned grounds, the learned Magistrate



or the superior courts can direct further investigation, if the investigation is found to be tainted and/or otherwise unfair or is otherwise necessary in the ends of justice.

27. In the instant case, an applicant for the post of Lecturer filed the application under Section 173(8), alleging, *inter alia*, that the investigation was found to be tainted or otherwise unfair. The applicant, not being an informant, cannot raise this issue before the learned Magistrate or the learned Special Judge, who is empowered to take cognizance.

28. The same principle is also relied on, in ***Subramanian Swamy vs. Director, CBI & Anr.***, reported in ***(2014) 8 SCC 682***.

29. Thus, this Court is of the considered view that the petitioner is not a competent person to challenge the charge-sheet and seek for further investigation of a case which ended in filing of the charge-sheet.

30. Therefore, I do not find any illegality or material irregularity in the impugned order, dated 6th of July, 2022, passed by the learned Special Judge, Vigilance, Patna.

31. At this stage, a question arises in the mind of the Constitutional Court as to whether the petitioner will be remediless to make his grievance.



32. It is clearly stated in Sub-section (8) of Section 173 that on receipt of fresh evidence, the Officer-In-Charge of the Police Station may cause further investigation of a case and file supplementary charge-sheet against some persons who were not previously charge-sheeted.

33. It is the grievance of the petitioner that the VIB did not consider the documents filed by her in the instant writ petition.

34. Therefore, this Court disposes of the instant writ petition, allowing the petitioner to submit the documents annexed with the instant writ petition before the Investigating Officer and the Investigating Officer shall consider whether the said documents disclose fresh evidence or not and if the said documents amount to fresh evidence, the Investigating Authority is at liberty to cause further investigation of the case, since in the charge-sheet, the Investigating Officer has already taken the liberty to file supplementary charge-sheet on receipt of fresh evidence.

35. With the above observation/direction, the instant writ petition stands disposed of.

36. Since, the case is pending for petty long time, the learned Special Judge is directed to take proper step for



completion of trial and disposal of the case.

(Bibek Chaudhuri, J)

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AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	26.04.2024
Transmission Date	26.04.2024

