

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.322 of 2021

Arising Out of PS. Case No.-242 Year-2020 Thana- SUGAULI District- East Champaran

KISHOR KUMAR, Son of Late Siya Ram Resident of Village - Suhath, P.S.-
Saur Bazar, Dist.- Saharsa, Presently Posted as Polic Inspector in Sugauli
Circle, Distt.- East Champaran, Motihari.

... .. Petitioner/s

Versus

1. The State of Bihar through D.G. Vigilance Investigation Bureau, Department
of Vigilance, Bihar
2. THE DIRECTOR GENERAL OF POLICE, BIHAR, PATNA. BIHAR
3. THE INSPECTOR GENERAL OF POLICE, MUZAFFARPUR. BIHAR
4. THE DEPUTY INSPECTOR OF POLICE (D.I.G), WEST CHAMPARAN,
BETTIAH. BIHAR
5. THE SUPERINTENDENT OF POLICE, EAST CHAMPARAN,
MOTIHARI. BIHAR
6. THE A.S.P. OF EAST CHAMPARAN, MOTIHARI. BIHAR
7. THE S.D.P.O. OF CHAKIA, INVESTIGATING OFFICER, WEST
CHAMPARAN, MOTIHARI. BIAHR
8. THE S.H.O. OF SUGAULI P.S. BIHAR
9. The Director, Department of Vigilance, State of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Raj Kumar Rajesh Mr. Ranvijay Singh
For the State	:	Mr. Suman Kumar Jha, AC to AAG 3
For the Vigilance	:	Mr. Rana Vikram Singh

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

JUDGMENT AND ORDER

C.A.V.

Date : 07-10-2023

The present writ application has been filed for
quashing the First Information Report, bearing Sugauli Police
Station Case No. 242 of 2020, corresponding to Special Case No.
11 of 2020, registered for the offences punishable under Section



7(a) of the Prevention of Corruption Act, 1988 (herein after referred to as the 'Act'.

2. The brief facts, as stated in the writ petition, is that the petitioner was posted as Inspector of Police at Sugauli Police Station, in the district of East Champaran, at Motihari, since January, 2019. It has been stated that the petitioner has falsely been implicated in the present case by the informant in connivance with the concerned police officials.

3. The First Information Report, in question, was lodged on the complaint of the informant before the Superintendent of Police, alleging therein that the petitioner demanded a sum of Rs. 30,000/- as bribe from the informant for giving supervision/case diary notes against the concerned accused of Sugauli Police Station Case No. 191 of 2020, or else he would conclude the case lodged by the uncle of the informant as false case.

4. Learned Counsel for the petitioner submits that on 01.04.2020, a person was caught on a motorcycle with illicit liquor and the Station House Officer (petitioner) misused his power and released that person illegally. The petitioner sent a report to the Superintendent of Police in this regard, which, later on, got viral in public at large. Despite taking action against the said Station House Officer (petitioner), the Superintendent of Police issued a



transfer order, by which the petitioner was transferred to Chakia Police Station. Before his transfer, the petitioner was working on a case, which was instituted by one Amiri Lal Sah, who is the father of the present informant, bearing Sugauli Police Station Case No. 161 of 2020, for the offences punishable under Sections 323/384/379 and other allied sections of the Indian Penal Code against Mukesh Sah and others, and in the said case, the accused persons got bail and then Rameshwar Sah, uncle of the informant, again lodged First Information Report, bearing Sugauli Police Station Case No 191 of 2020, against the same accused person for the same offences. The petitioner contends that since the First Information Report, bearing Sugauli Police Station Case No 191 of 2020 appeared to be false, so he refused to interfere and proceed in the matter. It is further contended that thereafter, the informant, in connivance with the concerned police officials, lodged the present false and fictitious First Information Report against the petitioner.

5. The petitioner further argues that neither the telephonic communication with regard to the alleged demand of bribe nor any recovery of any incriminating material was made from his conscious possession and merely on the allegation of private person, the authorities, i.e local police, without any jurisdiction suo motu proceeded in the matter without taking any



help from the vigilance department, who are scientifically expert in such type of matter.

6. Learned Counsel thus submits that the police does not have the authority to investigate into offence where the offence discloses the commission of offences under the Act, as they do not have scientific measures to unravel the truth or collect evidences. The petitioner is Inspector of Police and the present First Information Report has been lodged on the complaint of a private person. He further submits that the First Information Report does not disclose commission of offence under section 7(a) of the Act. The petitioner was not present at the spot and, therefore, there was no attempt by him to obtain money. He relies on a decision of the Supreme Court, in the case of **C. M. Girish Babu v. CBI, Cochin, High Court of Kerala**, reported in **(2009) 3 SCC 779**.

7. Learned Counsel further argued that before lodging of the First Information Report, a preliminary enquiry was not held, as decided by the Supreme Court, in the case of **Lalita Kumari v. State of Uttar Pradesh and Others**, reported in **(2014) 2 SCC 1**. No prior approval of the competent authority was taken, as required under Section 17A of the Act, inasmuch as the petitioner was not apprehended from the spot nor the First Information



Report shows anything as such and, therefore, Section 17A of the Act, bars continuation of the present case.

8. The further argument is that the investigation is not being done in scientific manner. The First Information Report is maliciously filed with ulterior motive and with unclean hands as in the so-called raiding team, the Investigating Officer, namely, Shailendra Kumar, was absent and also the Block Development Officer was present as a shadow witness without any letter of the District Magistrate, who was the competent authority. He relies on the decision of this Court, in the case of **Tarkeshwar Prasad Chaudhary v. The State of Bihar and Another**, reported in **2017 (4) PLJR 87** and the decision of the Supreme Court, in the case of **State of Haryana Vs Bhajan Lal and Others**, reported in **1992 Supp. (1) SCC 335**.

9. Lastly, the petitioner relies on Annexures 5 and 6 series to state that without verifying the allegations against him, no action should have been taken.

10. Learned Counsel for the State, referring to the contents of the counter affidavit filed by respondent no. 6, Additional Superintendent of Police, east Champaran, Motihari, submits that a raid was conducted at the official residence of the petitioner in consultation with the District Magistrate. The raiding



team was constituted, headed by the Additional Superintendent of Police and consisting of Sub-Divisional Police Officer, Sadar, Inspector posted in S.P. Office, Block Development Officer, Sugauli, and other police officers. Pre-trap and post-trap memorandum and seizure list were prepared, which shows that 60 notes of Rs. 500/- denomination, one black coloured mobile phone of Motto company and Rs. 31,500/- kept in a lady purse in another room of the quarter of the petitioner were found. The Superintendent of Police has supervised the case and has found the case true against the petitioner. He further submits that from the plain reading of the First Information Report, commission of cognizable offence is made out, as such, preliminary enquiry was not necessary. He further submits that the informant approached the Superintendent of police, the Superintendent of Police constituted a special team, which was headed by the Additional Superintendent of Police, noted the number of the currency notes and marked them. Thereafter, the raid was conducted at the residence of the petitioner, from where all the currency notes were recovered and seized. This fact is substantiated from the case diary also, where the number of all the currency notes re mentioned.

11. Learned Counsel further argued that on the basis of allegation made in the First Information Report, offence under



Section 7(a) of the Act, is made out against the petitioner, which is cognizable offence and thus, prior approval, as contemplated under Section 17A of the Act, is not required.

12. On the point that the Police cannot investigate a case of such nature, it has been submitted that there is no such bar that the Police cannot investigate and Section 17C of the Act, only says that no police officer, below the rank of Deputy Superintendent of Police, shall investigate an offence committed under this Act and in the present case, the Superintendent of Police himself is supervising the case.

13. On the other hand, learned Counsel for the Vigilance argued that the claim of Petitioner that the First Information Report should not have been instituted without there being any preliminary enquiry, in terms of decision of the Supreme Court, in **Lalita Kumari** (supra), does not hold a good ground as in subsequent decisions of the Supreme Court, the scope and parameters of preliminary enquiry has been redefined in no uncertain terms. The preliminary enquiry is only conducted or required when information received is not sufficient to register a regular case. However, when the information received is adequate to register a regular case disclosing commission of a cognizable offence, no preliminary enquiry is necessary. It will depend upon



the facts and circumstances of each case, as the preliminary enquiry cannot be made mandatory for all cases of alleged corruption. This proposition of law finds support from the decisions of the Supreme Court, in the cases of **The State of Telangana v. Managipet**, reported in (2019) 19 SCC 87 and **CBI and Another v. Thommandru Hannah Vijayalakshmi @ T. H. Vijayalakshmi and Another** (AIR 2021 SC 5041).

14. In the present case, bare perusal of First Information Report reveals cognizable offence, as such, the Petitioner cannot claim, as a matter of right, that preliminary enquiry must be done.

15. He further argued that the petitioner has prayed for quashing of the First Information Report claiming immunity under Section 17A of the Act, which bars all enquiry or inquiry or investigation of offences relatable to the recommendation made or decision taken by the public servant in discharge of his official functions or duties, without the previous approval of the competent authority. Bar, under this provision, applies only when the offence allegedly committed by the public servant under the Act relates to any recommendation made or decision taken by such public servant in discharge of his official functions or duties.

16. The grounds, so raised by the petitioner, directly brings us to the knotty issues, legal nodus relating to the



applicability of Section 17A of the Act. which has been adjudicated by various High Courts, including this Court, where the issues which came for consideration could be summed up as follows:

(i) Whether Section 17A of the Prevention of Corruption Act, 1988 is an omnibus prerequisite, applicable to every investigation, enquiry or inquiry?

(ii) Whether prior approval, as contemplated under Section 17A of the Prevention of Corruption Act, 1988, introduced by 2018 Amendment, is required in respect of every act. In other words, whether previous approval/prior approval from the competent authority needs to be obtained for every enquiry, inquiry or investigation, into every offence/act committed by the public servant?

(iii) Whether offences/acts like misappropriation/ swindling of government funds, falsification of accounts, amassing wealth disproportionate to known sources of income by misappropriation or embezzlement, garnishing wealth by corrupt means, indulging in conspiracy with other officials in committing forgery, falsification of accounts and fabrication of documents are protected under Section 17A of the Prevention of Corruption Act, 1988, and whether these acts/offences could, by any stretch of



imagination, be relatable to recommendation made or decision taken by public servant in discharge of official duties?

(iv) Whether any act of a public servant is *ex facie* criminal in nature or constitutes a cognizable offence, prior approval of government/competent authority would be necessary?

(v) Whether, in view of the allegations levelled in the first Information Report and evidence collected during investigation, the acts/offences committed by the petitioner, which is *ex facie* criminal and constitutes a cognizable offence, is protected under Section 17A of the Prevention of Corruption Act, 1988, and whether prior/previous approval in lodging the First Information Report for those acts of the petitioner is necessary?

17. The defence of the petitioner, on the strength of Section 17A of the Act, (as amended) that without prior approval of the competent authority, the present case could not have been lodged against the Petitioner, is legally untenable and does not hold any ground, at all, in view of the unambiguous statutory provisions and judicial pronouncements of the Hon'ble Courts in this regard.

18. The purpose behind the enactment of Section 17A of the Act is to give protection to the public servants from the threat and ignominy of malicious and vexatious enquiry/investigation



and likelihood of harassment for honest decisions. This provision aims to ensure that those public servants, who have responsibility to take vital decisions, are not subjected to frivolous complaints and to make available a screening mechanism.

19. Thus, what Section 17A of the Act protects is the act done by public servants who discharge official functions/duties with diligence, fairly and in an unbiased manner to the best of their ability and judgment without any motive or intent for their personal advantage or favour.

20. In fact prior approval under Section 17A of the Act is required only where the alleged offences are relatable to any recommendation made or decisions taken by public servant which seems to be the heart and soul of the above section.

21. A close and meticulous scrutiny of Section 17A of the Act reveals indisputably that it is not that every offence alleged to have been committed by the public servant under the Act needs prior approval.

22. He further submits that offences like misappropriation, falsification of accounts, swindling of funds, criminal breach of trust, amassing wealth disproportionate to his known sources of income and garnishing wealth by corrupt means are beyond the scope of protection under this Act. The scope of



Section 17A of the Act specifically confined to 'any recommendation made or decision taken by a public servant' which alone falls within the protective umbrella of Section 17A of the Act. He relies upon the decisions, rendered in the cases of **Devendra Kumar Singh and Others v. CBI and Others**, reported in **2019 (1) Crimes 726:MANU/DE/0065/2019**, **T. O. Suraj v. State of Kerala**, reported in **2021 SCC ONLINE KER 2896**, **Satish Pandey and Others v. Union of India and Others (Crl. M. C. No. 7542 of 2018)** and **Rajendra Prasad v. The State of Bihar**, reported in **2022 (4) BLJ 189**.

23. I have heard learned Counsel for the parties concerned and have carefully gone through the materials available on record.

24. The two major grounds, which has been taken for quashing of the First Information Report, in question, by the petitioner is that before lodging of the First Information Report, no preliminary enquiry has been conducted by the police and further prior approval of the concerned authority was also not taken.

25. A preliminary enquiry, as per the law laid down by the Supreme Court, in various decisions, is only conducted or required when information received is not sufficient to register the First Information Report. However, when the information received



is adequate for registration of the First Information Report, since it discloses the commission of a cognizable offence, no preliminary enquiry is necessary.

26. The Supreme Court, in the case of **Managipet** (supra), has held that it will depend upon the facts and circumstances of each case to hold preliminary enquiry. In each and every cases of alleged corruption, preliminary enquiry cannot be held to be mandatory. Whether a preliminary enquiry is required or not will depend upon the facts and circumstances of each case and it cannot be said to be mandatory requirement without which a case cannot be registered against the accused in corruption cases.

27. The Supreme Court, in the case of **Thommandru Hannah Vijayalakshmi** (supra), has held that a preliminary enquiry is not mandatory when the information received discloses the commission of a cognizable offence. Even when it is conducted, the scope of a preliminary enquiry is not to ascertain the veracity of the information, but only whether it reveals the commission of a cognizable offence. The need for a preliminary enquiry will depend on the facts and circumstances of each case. As an illustration, “corruption cases” fall in that category of cases where a preliminary enquiry “may be made”. The use of the



expression “may be made” goes to emphasize that holding a preliminary enquiry is not mandatory.

28. In **Lalita Kumari** (supra), a constitution Bench of the Supreme Court, in paragraph 119, has held that what is necessary is only that the information given to the police must disclose the commission of a cognizable offence. In such a situation, registration of the First Information Report is mandatory. However, if no cognizable offence is made out in the information given, then the First Information Report need not be registered immediately and perhaps the police can conduct a sort of preliminary verification or inquiry for the limited purpose of ascertaining as to whether a cognizable offence has been committed, but, if the information given clearly mentions the commission of a cognizable offence, there is no other option but to register the First Information Report forthwith. Other considerations are not relevant at the stage of registration of the First Information Report, such as, whether the information is falsely given, whether the information is genuine, whether the information is credible, etc. These are the issues that have to be verified during the investigation of the First Information Report. At the stage of registration of First Information Report, what is to



be seen is merely whether the information given *ex facie* discloses the commission of a cognizable offence.

29. In the aforesaid backdrop of the legal propositions and upon considering the facts of the present case, including perusal of the First Information Report, I am of the opinion that the First Information Report, in question, discloses commission of a cognizable offence. Therefore, in my considered opinion, the claim of the petitioner for quashing of the First Information Report on the ground that the preliminary enquiry was not held prior to the registration of the First Information Report is not tenable in law as well as on facts.

30. The second contention of the petitioners regarding protection and prior approval, under Section 17A of the Act is concerned, I have delved upon Section 17A of the Act and the various judgments passed by this Court.

31. Section 17A of the Act is applicable only when the alleged offences are relatable to any recommendation made or decision taken by a public servant, which seems to be the main ingredient of this section.

32. If the intention of the legislature and object of the statute is to cover every enquiry, inquiry or investigation under this provision, then the words "where alleged offence is relatable to



any recommendation made or decision taken by the public servant" appear to be unnecessary, since even without these words, it would have conveyed the intention. Hence, it is manifestly evident that intention of the Parliament/ Legislation is not to insist for previous approval in relation to enquiry, inquiry or investigation in relation to every offence/acts committed by the public servant, but only in relation to acts/offence relatable to any recommendation or decision taken by public servant in discharge of his official functions or duties.

33. In the case of **Rajib Ranjan v. R. Vijaykumar**, reported in **(2015) 1 SCC 513**, the Supreme Court has held that if a public servant enters into a criminal conspiracy or indulges in criminal misconduct, such misdemeanour on his part is not to be treated as an act in discharge of his official duties and, therefore, provisions of Section 197 of the Code will not be available to him.

34. In **Devendra Kumar Singh** (supra), it has been held that when the act of a public servant is ex facie criminal or constitutes an offence, a cognizable one, prior approval of Government/ competent person would not, at all, be necessary.

35. The protection, envisaged in Section 17A of the Act is not a blanket protection and when the act of any official/persons is ex facie criminal or constitute an offence, and further any act



which involves amassing wealth disproportionate to his known source of income, breach of trust and misappropriation of funds, garnishing wealth by corrupt means being ex facie criminal, prior approval of the Government/competent authority would not be necessary.

36. In the case of **Rajendra Prasad @ Dr. Rajendra Prasad** (supra), a co-ordinate Bench of this Court has eloquently discussed the purpose behind Section 17A of the Act, holding that the purpose behind Section 17A of the Act is to give protection to public servants from the threat and ignominy of malicious and vexatious inquiry/investigation and the likelihood of them being put to trouble for taking honest decisions. Such public servants who have the responsibility to take major decisions must act fairly, fearlessly and impartially. Only to prevent any vexatious criminal action against them, without there being any foundational fact for the same, is prohibited by providing this protective insulation under Section 17A of the Act, in the form of a pre-requisite of prior sanction before launching any investigation or lodging the First Information Report. The protective shield is for an honest public servant and not for a corrupt one. There is a clear division between those acts which constitute an offence and those acts, though done while discharging the official duties of the public



servant, but which do not constitute an act done in exercise of official duties or functions which a public servant cannot act.

37. To insulate an action of a holder of public office, if it is in relation to any recommendation made by him or a decision taken in discharge of his official function or duties, such classificatory protection, which is a shield against unnecessary prosecution of honest officers, cannot be used as a sword to stifle prosecution for per-se criminal offences which can never be in discharge of official duty or in connection with any recommendation made by a high position holder of public office.

38. In view of the aforesaid discussion upon law and the act of the petitioner, as per factual profile, can by no stretch of imagination, be held to be relatable to recommendation or decision taken by a public servant in discharge of his official functions or duties.

39. In the First Information Report, there is specific allegation of demanding money, as bribe, from the informant for manipulating the investigation, in which the petitioner, being the holder of a high post of Station House Officer of a Police Station/Inspector of Police, after pre-trap and post-trap memorandum, was found to be in possession of illegal money allegedly received by him as bribe.



40. Prima facie, on the basis of materials available on record, it appears that the petitioner misused his official position in garnishing wealth by corrupt means, which could not be said to be done in discharge of his official duty. Where a criminal act is involved in the colour of authority, it is for the personal benefit of the public servant himself, then such act shall not be protected under Section 17A of the Act.

41. Accordingly, I hold that the petitioner is not entitled to any protection or no prior approval of the concerned authority is required under Section 17A of the Act in the facts and circumstances of the present case.

42. For the aforesaid reasons, the relief prayed for by the petitioner for quashing of the First Information Report of Sugauli Police Station Case No. 242 of 2020 cannot be granted.

43. This application is, accordingly, dismissed.

44. There shall be no order as to costs.

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

AFR/NAFR	AFR
CAV DATE	31-08-2023
Uploading Date	07-10-2023
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