

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.25214 of 2021**

Arising Out of PS. Case No.-58 Year-2017 Thana- VIGILANCE District- Patna

=====

NIRAJ KUMAR @ NEERAJ KUMAR S/o- SRI VIJAY KUMAR
SRIVASTAVA Resident of Sendha, P.S.- Tarai, District- Bhojpur

... .. Petitioner/s

Versus

THE STATE OF BIHAR THROUGH THE CABINET VIGILANCE, PATNA
Bihar

... .. Opposite Party/s

=====

Appearance :

For the Petitioner/s	:	Mr.Archana Shahi, Sr. Advocate
For Vigilance	:	Mr.Arvind Kumar, Advocate
For the Opposite Party/s	:	Mr.Khurshid Anwar, APP

=====

**CORAM: HONOURABLE MR. JUSTICE ANSUL
CAV JUDGMENT**

Date : 27-05-2026

Heard learned counsel for the petitioner as well as
learned counsel for the opposite parties.

2. The present quashing application has been filed on
behalf of the petitioner for quashing the order taking cognizance
dated 12.11.2020 passed by the learned Special Judge (Vigilance),
Patna in connection with Special Case No. 44 “A” of 2017 arising
out of Vigilance P.S. Case No. 58 of 2017 whereby the learned
Special Judge (Vigilance), Patna has been pleased to take
cognizance under Sections 8, 7, 13(2) read with Section 13(1)(d)
of the Prevention of Corruption Act, 1988.



3. The factual matrix of the prosecution case is that the complainant Rakesh Kumar vide his written complaint dated 14.07.2017 addressed to the Superintendent of Police, Vigilance, had alleged that the petitioner had demanded Rs. 20,000/- (Twenty Thousand) as illegal gratification from the complainant for registration of a plot pertaining to Mauza – Telmar, bearing Khata No. 412, Khesra No. 2230, admeasuring 76 decimals. It is further alleged that on 14.07.2017 the complainant along with his mother had gone to the Registrar Office at Bihar Sharif for registration of the aforesaid plot, and that when the documents were presented before the petitioner, who was then posted as District Sub-Registrar, Bihar Sharif, he had demanded the aforesaid sum as gratification for completing the process of registration. On the basis of the aforesaid allegations, verification was conducted by the Assistant Sub-Inspector on 17.07.2017 and a report was submitted before the Superintendent of Police on 20.07.2017. Pursuant thereto, a trap team was constituted on 21.07.2017. The raid was conducted, the petitioner was arrested and the Post Trap Memorandum was prepared on 21.07.2017. Subsequently, the FIR bearing Vigilance Case No. 58 of 2017 under Sections 7, 8, 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 was registered against the petitioner.



4. The petitioner had previously moved this Court against the cognizance order dated 06.11.2018 passed in connection with Special Case No. 44 “A” of 2017 in Cr. Misc. No. 44971 of 2019. vide order dated 16.09.2019, this Court set aside the said cognizance order and remitted the matter to the learned Special Judge with a direction to pass a fresh order in accordance with law. The fresh cognizance order dated 12.11.2020, which is presently impugned, has been passed in compliance with that remand order. A perusal of the said order reveals that the learned Special Judge has applied his mind afresh to the materials placed before him and has recorded reasons for taking cognizance. The deficiency which led to the earlier remand must therefore be treated as cured.

5. The petitioner was posted as District Sub-Registrar, Bihar Sharif, Nalanda since August 2014 and continued to discharge his duties in that capacity.

6. Learned counsel for the petitioner submits that a mere perusal of the complaint filed by the complainant would reveal that it is a concocted and manufactured complaint. It is submitted that the complainant had no *locus standi* in the matter, much less the status of a complainant, inasmuch as by his own admission in the complaint petition dated 14.07.2017, he was neither the



vendee of the land to be registered nor was he named as a witness in the sale deed. It is further submitted that since the sale deed was executed by the vendor Mr. Sachidanand Prasad in favour of vendee Mrs. Vidyavati Devi, the complainant had no reason or occasion to approach the petitioner, and no authority had been conferred upon him by either the vendor or the vendee to do so. It is therefore contended that the entire story of the complainant approaching the petitioner for registration of the sale deed is false and concocted.

7. Learned counsel for the petitioner further submits that the arrest of the petitioner on 21.07.2017 was made in utter violation of the mandatory requirements of law. It is submitted that no reasons for the arrest were recorded in writing as required under Section 41(1)(e) Cr.P.C. It is further submitted that no memo of arrest was prepared, and neither the time nor the place of arrest nor the venue of custody was noted therein, in violation of Section 41B Cr.P.C. Reliance is placed upon the directions of the Supreme Court in *Shri D.K. Basu, Ashok K. Johri v. State of West Bengal, State of U.P.*, AIR 1997 SC 610. It is additionally submitted that the arresting officer was not bearing a clear, accurate and visible identification of his name, in further violation of Section 41B(a) Cr.P.C.



8. Learned counsel for the opposite parties has vehemently opposed the prayer for quashing the order taking cognizance dated 12.11.2020 and has supported the impugned order.

9. This Court has carefully considered the submissions advanced by the parties and has perused the materials on record. Before examining the merits, it is necessary to set out the governing legal framework. The jurisdiction of this Court under Section 482 Cr.P.C. to quash a cognizance order is well-settled but narrow. As the Supreme Court held in *State of Haryana v. Bhajan Lal*, reported as *1992 Supp (1) SCC 335*, and reiterated in *Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra*, reported as *(2021) 19 SCC 401*, this Court should be loath to interfere at the pre-trial stage unless the FIR or complaint, read on its face, discloses no cognizable offence, or the prosecution is manifestly actuated by mala fides, or the continuation of proceedings would amount to an abuse of the process of the court. These are exceptional circumstances and the jurisdiction must be exercised sparingly.

10. These submissions made by the learned counsel, though attractively framed, do not withstand scrutiny. First, there is no provision under the Prevention of Corruption Act, 1988



or under the Code of Criminal Procedure which restricts the right to lodge a complaint only to a person who is himself a party to the corrupt transaction. A trap case is, by its very nature, frequently set in motion by a third party or by a *panch* witness acting in the public interest. Second, the presence or absence of the complainant at the Sub-Registrar's office on the relevant date, and the authority or occasion for his being there, are questions of fact which fall to be adjudicated at the stage of trial upon the basis of evidence. They cannot be resolved on affidavits at the stage of a quashing petition. Third, and most importantly, the Supreme Court has consistently held that the truth or otherwise of the complainant's version cannot be examined in proceedings under Section 482 Cr.P.C. As held in *State of Haryana v. Bhajan Lal*, reported as *1992 Supp (1) SCC 335*, the High Court while exercising its jurisdiction under Section 482 Cr.P.C. cannot embark upon an enquiry as to the reliability or genuineness of the allegations made in the FIR or complaint. Acceptance of the petitioner's submission at this stage would amount to conducting a trial on affidavits, which is wholly impermissible.

11. These submissions, while raising procedural irregularities that are not to be taken lightly, do not constitute a ground for quashing the cognizance order. The law on this point is



well-settled. In *Arnesh Kumar v. State of Bihar*, reported as **(2014) 8 SCC 273**, the Hon'ble Supreme Court laid down guidelines regarding arrest procedure but did not hold that non-compliance therewith vitiates the trial. The legal position, consistently affirmed, is that an illegal arrest goes to the liberty of the individual and may entitle him to seek appropriate remedies, but it does not, by itself, render the prosecution bad or warrant the quashing of proceedings. Cognizance is taken of the offence disclosed by the materials, not of the arrest. The Post Trap Memorandum, the tainted currency recovered from the petitioner, the complaint and the verification report are independent materials which stand on their own footing and are not infected by any procedural irregularity attending the arrest. In *Bhim Singh v. State of J&K*, reported as **(1985) 4 SCC 677**, the Hon'ble Supreme Court affirmed that an illegal arrest does not automatically entail the quashing of the FIR or the prosecution. Accordingly, this submission, even if accepted in its entirety for the sake of argument, furnishes no ground to interfere with the impugned cognizance order.

12. It is equally trite law that at the stage of taking cognizance under Section 190 Cr.P.C., the Court is not required to be satisfied of the guilt of the accused beyond reasonable doubt.



What is required is that the materials placed before it disclose, on a prima facie reading, the commission of an offence. As held by the Hon'ble Supreme Court in *State of Bihar v. P.P. Sharma*, reported as *AIR 1992 SC 1731*, that the standard at the cognizance stage is one of prima facie satisfaction, and cognizance must be taken if the materials are not wholly incredible. Furthermore, as held in *Pepsi Foods Ltd. v. Special Judicial Magistrate*, reported as *(1998) 5 SCC 749*, the submissions and explanations of the accused cannot be weighed or considered at this stage; they are matters for the trial. Even charges, it is trite, may be framed on the basis of grave suspicion.

13. Applying the aforesaid standard to the facts of the present case, this Court is satisfied that the materials on record disclose a prima facie case. It would be relevant here to quote Section 7 of the Prevention of Corruption Act, 1988 which is as under: -

7. Offence relating to public servant being

bribed—Any public servant who,

- (a) obtains or accepts or attempts to obtain from any person, an undue advantage, with the intention to perform or cause performance of public duty improperly or



dishonestly or to forbear or cause forbearance to perform such duty either by himself or by another public servant; or

(b) obtains or accepts or attempts to obtain, an undue advantage from any person as a reward for the improper or dishonest performance of a public duty or for forbearing to perform such duty either by himself or another public servant; or

(c) performs or induces another public servant to perform improperly or dishonestly a public duty or to forbear performance of such duty in anticipation of or in consequence of accepting an undue advantage from any person, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

Explanation 1—For the purpose of this section, the obtaining, accepting, or the attempting to obtain an undue advantage shall itself constitute an



offence even if the performance of a public duty by public servant, is not or has not been improper.

Illustration—A public servant, ‘S’ asks a person, ‘P’ to give him an amount of five thousand rupees to process his routine ration card application on time. 'S' is guilty of an offence under this section.

Explanation 2—For the purpose of this section,— (i) the expressions “obtains” or “accepts” or “attempts to obtain” shall cover cases where a person being a public servant, obtains or “accepts” or attempts to obtain, any undue advantage for himself or for another person, by abusing his position as a public servant or by using his personal influence over another public servant; or by any other corrupt or illegal means; (ii) it shall be immaterial whether such person being a public servant obtains or accepts, or attempts to obtain the undue advantage directly or through a third party.

14. The aforesaid section penalises a public servant who accepts, or obtains, or agrees to accept any gratification other than legal remuneration as a motive or reward for performing or forbearing to perform an official act. The ingredients of the



offence are: (i) that the accused is a public servant; (ii) that he accepted or agreed to accept gratification; and (iii) that such gratification was sought in connection with an official act. In the present case, the petitioner was admittedly a District Sub-Registrar — a public servant within the meaning of Section 2(c) of the Act. The complaint dated 14.07.2017 specifically alleges a demand of Rs. 20,000/- as gratification for completing the process of registration of a sale deed — an act falling squarely within the petitioner's official functions. The trap conducted on 21.07.2017, the Post Trap Memorandum, and the recovery of tainted currency prima facie corroborate both the demand and the acceptance. The verification report of the ASI dated 17.07.2017 lends further credence to the prosecution case. The ingredients of the offences under Sections 7, 8 and 13(2) read with Section 13(1)(d) of the Act are therefore prima facie made out on the materials available.

15. In the aforesaid circumstances, this Court finds no ground to interfere with the impugned order taking cognizance dated 12.11.2020. None of the exceptional circumstances recognised in *Bhajan Lal (Supra)* and *Neeharika Infrastructure (Supra)*, warranting the exercise of the inherent jurisdiction of this Court, are present in the instant case. The instant petition is accordingly dismissed.



16.The prayer for quashing the order taking cognizance dated 12.11.2020 passed by the learned Special Judge (Vigilance), Patna in connection with Special Case No. 44 “A” of 2017 arising out of Vigilance P.S. Case No. 58 of 2017 is hereby rejected, so far as the petitioner is concerned.

(Ansul, J)

amitkr/-

AFR/NAFR	NAFR
CAV DATE	13.03.2026.
Uploading Date	28.05.2026
Transmission Date	28.05.2026

