IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.13826 of 2016

CNR No. BRHC010436002016

Arising Out of PS. Case No.-84 Year-2010 Thana- C.B.I CASE District- Muzaffarpur

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Narayan Prasad @ Narain Prasad, son of Late Deoki Rai, Resident of Mohalla - Nalanda Colony Khajpura, P.S. - Rajiv Nagar, District - Patna. the then Circle Officer, Saraiya Block, P.S. - Saraiya District - Muzaffarpur.

... ... Petitioner

Versus

1. The State of Bihar through Principal Secretary, Vigilance Department, Bihar, Patna.
2. Shailendra Kumar, Son of Late Bhag Narayan Singh, Resident of Village - Babu Chapra Pokhraira, P.S. - Saraiya, District - Muzaffarpur.

... ... Opposite Parties

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Appearance :
For the Petitioner/s : Mr.Javed Aslam, Advocate
For the Vigilance : Mr.Anil Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Heard learned counsel for the petitioner and learned counsel appearing on behalf of the Vigilance Department.

1. The present application has been filed for quashing of the order dated 07.09.2015 passed by the learned Special Judge, Vigilance, North Bihar, Muzaffarpur in Vigilance P.S. Case No. 84 of 2010 corresponding to Special Case No.32 of 2010, whereby cognizance has been taken for the offences punishable under Sections 420, 467, 468, 471 and 120(B) of the Indian Penal Code as well as Sections 7, 8 and 13(2) read with Section 13(1)(D) of the Prevention of Corruption

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Act, 1988.

2. The prosecution case, in brief, is that on 11.07.2006 the complainant, namely, Shailendra Kumar, instituted Complaint Case No.25 of 2006 before the learned Special Judge, Vigilance, North Bihar, Muzaffarpur, alleging, inter alia, that his father had authorised him to look after the property in question and to take appropriate legal action. It was alleged that certain accused persons, in connivance with each other and misusing their official positions, issued possession certificate in favour of Ravindra Prasad Singh and facilitated grant of agricultural loan to him, thereby causing wrongful loss to the complainant.

3. On the complaint, an enquiry was directed to be conducted by the Vigilance authorities. Pursuant thereto, a report was submitted by the S.P., Vigilance vide letter No.13/08. Thereafter, the learned Special Judge, Vigilance, vide order dated 05.09.2009, directed institution of the FIR. Accordingly, Vigilance P.S. Case No.84 of 2010 dated 10.12.2010 came to be instituted.

4. During investigation, the materials collected by the

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investigating agency included the relevant land records and the report submitted by the Halka Karamchari, which was forwarded through the Circle Inspector to the concerned Gramin Bank. The allegation against the petitioner, who was then posted as Circle Officer, Saraiya, is not merely of being a person holding an official post, but relates to the manner in which the report concerning the land in question was dealt with and forwarded, allegedly resulting in issuance of possession certificate and grant of loan.

5. Learned counsel for the petitioner has submitted that the petitioner had merely discharged his official duty. It is submitted that the Halka Karamchari had conducted the enquiry, compared the Jamabandi records and submitted his report; the petitioner had only forwarded the said report to the concerned bank. It is further submitted that the loan amount had subsequently been repaid with interest and, therefore, no loss had been caused to the bank. It has also been submitted that the petitioner had rendered long and unblemished service and had retired in the year 2013.

6. Per contra, learned counsel appearing for the

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Vigilance Department has opposed the application. It is submitted that the materials collected during investigation cannot be brushed aside merely on the basis of the defence of the petitioner. The investigating agency, after enquiry and investigation, has submitted charge-sheet and the learned court below, upon consideration of the materials available on record, has taken cognizance. It is submitted that whether the report submitted by the Halka Karamchari was correct, whether the petitioner acted bona fide in forwarding the same, whether there was any irregularity in issuance of the possession certificate and whether the acts of the accused persons were in furtherance of a common design are all matters which require evidence and cannot be adjudicated in exercise of the inherent jurisdiction of this Court.

7. I have considered the rival submissions and perused the materials placed on record.

8. At the outset, it is to be kept in mind that the jurisdiction under Section 482 Cr.P.C. is extraordinary in nature and is required to be exercised sparingly and with circumspection. The Hon'ble Supreme Court in State of

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Haryana v. Bhajan Lal, reported in 1992 Supp (1) SCC 335, has indicated the categories in which interference may be justified, while also cautioning against interference where the allegations disclose a *prima facie* case.

9. In **Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra,** reported in **2021 SCC OnLine SC 315**, the Hon'ble Supreme Court reiterated that the power of quashing is to be exercised sparingly and that the High Court, while examining the allegations, cannot embark upon an enquiry into the reliability or genuineness of the allegations. It was further observed that criminal proceedings ought not to be scuttled at the initial stage.

10. The present case, in my considered view, does not fall within the exceptional category warranting exercise of inherent jurisdiction. The petitioner seeks to demonstrate that the report submitted by the Halka Karamchari correctly reflected the position of the land and that he had merely discharged his official duty by forwarding the same. Such submission essentially relates to the appreciation of the materials collected during investigation. At this stage, this

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Court cannot conduct an enquiry as to whether the said report was factually correct or whether the petitioner had acted bona fide.

11. The Hon'ble Supreme Court in **Central Bureau of Investigation v. Aryan Singh and Others,** reported in **2023 SCC OnLine SC 379 : (2023) 18 SCC 399**, has reiterated that at the stage of exercising power under Section 482 Cr.P.C., the High Court is not required to conduct a mini trial. The Court is required to consider whether sufficient material is available to proceed against the accused and whether the accused is required to be tried. The question as to whether the allegations would ultimately be proved is a matter for trial.

12. The plea that the petitioner had merely forwarded the report also cannot, at this stage, be accepted as conclusively exonerating him. The prosecution case has to be considered on the basis of the materials collected during investigation as a whole. The fact that the initial report was prepared by the Halka Karamchari or that the petitioner had forwarded the same does not, by itself, completely exclude

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the possibility of his role in the alleged transaction. The extent of his involvement, the correctness of the report, the manner of its verification and forwarding, and the existence or otherwise of any dishonest or culpable intention are matters which can appropriately be tested only during trial.

13. In this connection, reliance placed by the learned counsel for the Vigilance Department upon the judgment of the Hon'ble Supreme Court in **Station House Officer, CBI/ACB/Bangalore v. B.A. Srinivasan and Another, Criminal Appeal No.1837 of 2019**, decided on 05.12.2019, reported in **(2020) 2 SCC 153; 2019 SCC OnLine SC 1555**, is apposite. The Hon'ble Supreme Court, while considering the requirement of sanction and the protection available to a public servant, specifically considered the position where the public servant had already retired when cognizance was taken.

14. In paragraph 11 of the said judgment, the Hon'ble Supreme Court, relying upon **S.A. Venkataraman v. The State**, held that the protection under the concerned provisions would not be available to a public servant after he

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had "demitted his office or retired from service". The Court further noted that where the accused had ceased to be a public servant at the time when the Court was asked to take cognizance, the requirement of previous sanction under the corresponding provision was absent.

15. It would be apposite to reproduce Para No. 11, 12 and 13 of the **Station House Officer Case (Supra)**

> ***"11.*** *In S.A.Venkataraman v. State [S.A.Venkataraman v. State, 1958 SCR 1040 : AIR 1958 SC 107 : 1958 Cri LJ 254] while dealing with the requirement of sanction under the pari materia provisions of the Prevention of Corruption Act, 1947, it was laid down that the protection under the provisions concerned would not be available to a public servant after he had demitted his office or retired from service. It was stated: (AIR p. 111, para 14)*
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> *"14. … if an offence under Section 161 of the Penal Code was committed by a public servant, but, at the time a court was asked to take cognizance of the offence, that person had ceased to be a public servant one of the two requirements to make Section 6 of the Act applicable would be lacking and a previous sanction would be unnecessary. The words in Section 6(1) of the Act are clear enough and they must be given effect to. There is nothing in*

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the words used in Section 6(1) to even remotely suggest that previous sanction was necessary before a court could take cognizance of the offences mentioned therein in the case of a person who had ceased to be a public servant at the time the court was asked to take cognizance, although he had been such a person at the time the offence was committed."

12. *The law so declared by this Court has consistently been followed. For example, in Labh Singh [State of Punjab v. Labh Singh, (2014) 16 SCC 807 : (2015) 3 SCC (Cri) 601] it was observed: (SCC p. 810, para 9)*

"9. In the present case the public servants in question had retired on 13-12-1999 and 30-4-2000. The sanction to prosecute them was rejected subsequent to their retirement i.e. first on 13-9-2000 and later on 24-9-2003. The public servants having retired from service there was no occasion to consider grant of sanction under Section 19 of the PC Act. The law on the point is quite clear that sanction to prosecute the public servant for the offences under the PC Act is not required if the public servant had already retired on the date of cognizance by the court. In S.A. Venkataraman v. State [S.A.
Venkataraman v. State, 1958 SCR 1040 : AIR 1958 SC 107 : 1958 Cri LJ 254] while construing Section 6(1) of the Prevention of Corruption Act, 1947

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which provision is in pari materia with Section 19(1) of the PC Act, this Court held that no sanction was necessary in the case of a person who had ceased to be the public servant at the time the Court was asked to take cognizance. The view taken in S.A. Venkataraman [S.A. Venkataraman v. State, 1958 SCR 1040 : AIR 1958 SC 107 : 1958 Cri LJ 254] was adopted by this Court in C.R. Bansi v. State of Maharashtra [C.R. Bansi v. State of Maharashtra, (1970) 3 SCC 537 : 1971 SCC (Cri) 143] and in KalicharanMahapatra v. State of Orissa [Kalicharan Mahapatra v. State of Orissa, (1998) 6 SCC 411 : 1998 SCC (Cri) 1455 : AIR 1998 SC 2595] and by the Constitution Bench of this Court in K. Veeraswami v. Union of India [K. Veeraswami v. Union of India, (1991) 3 SCC 655 : 1991 SCC (Cri) 734] . The High Court [Sikandar Singh v. State of Punjab, Criminal Revision No. 1743 of 2005, order dated 17-1-2006 (P&H)] was not therefore justified in setting aside the order passed by the Special Judge insofar as charge under the PC Act was concerned."

13. Consequently, there was no occasion or reason to entertain any application seeking discharge in respect of offences punishable under the Act, on the ground of absence of any sanction under Section 19 of the Act. The High Court was also not justified in observing "that the protection available to a public servant while in service, should also be available

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after his retirement". That statement is completely inconsistent with the law laid down by this Court in connection with requirement of sanction under Section 19 of the Act."

16. In paragraph 14, the Hon'ble Supreme Court further clarified the position under Section 197 Cr.P.C. It held that protection under the provision is available when the offence is alleged to have been committed while acting or purporting to act in discharge of official duty; however, where the acts are performed using the office as a mere cloak for unlawful gains, such acts are not protected. The Court thus drew a clear distinction between a genuine act in discharge of official duty and an alleged criminal act merely facilitated by the official position.

17. The aforesaid principle has direct relevance to the present case. The petitioner admittedly retired in the year 2013, whereas cognizance was taken on 07.09.2015. Therefore, the protection under Section 19 of the Prevention of Corruption Act cannot be invoked on the ground that the petitioner was a public servant when the alleged occurrence took place. Further, the plea of protection under Section 197

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Cr.P.C. cannot be accepted merely because the alleged acts were performed during his tenure as Circle Officer. Whether the acts complained of were genuinely connected with the discharge of official duty or whether the official position was used in furtherance of the alleged irregularity is a matter which requires examination on the basis of evidence.

18. In the present case also, the petitioner cannot seek a finding at this preliminary stage that the entire action was nothing but discharge of official duty. More particularly, the petitioner had retired in the year 2013, whereas cognizance has been taken on 07.09.2015. Thus, the mere fact that the alleged acts were performed during the tenure of the petitioner as Circle Officer cannot, by itself, furnish a ground to terminate the prosecution.

19. The further submission that the loan amount was subsequently repaid with interest also does not, at this stage, wipe out the allegations relating to the manner in which the loan was sanctioned or the alleged acts committed in connection with the possession certificate and the land records. Subsequent repayment of the loan may be a

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circumstance which can be brought on record during trial, but it cannot by itself lead to quashing of the criminal proceeding.

20. It is also relevant that the investigation has already culminated in submission of charge-sheet and cognizance has been taken by the competent court. Once the materials collected during investigation disclose a prima facie case requiring adjudication, the High Court ought not to substitute its own appreciation of such materials for that of the trial court. The principles laid down in Amit Kapoor v. Ramesh Chander, reported in (2012) 9 SCC 460, also require the power of quashing to be exercised very sparingly and with circumspection, particularly where the allegations disclose a triable case.

21. On an overall consideration of the materials placed on record, this Court is unable to hold that the allegations against the petitioner, even if taken at their face value, are so inherently improbable or absurd that the continuance of the criminal proceeding would amount to abuse of the process of the Court. On the contrary, the materials

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collected during investigation disclose sufficient matter requiring the petitioner to face trial.

22. It is made clear that this Court has not expressed any opinion on the merits of the allegations or the defence of the petitioner. The learned Trial Court shall consider the evidence independently and uninfluenced by any observation made in the present order.

23. Accordingly, the Court finds no merit in the present application. The same is, accordingly, dismissed.

24. The interim order, if any, stands vacated.

25. The learned Trial Court shall proceed with the case in accordance with law.

26. Let a copy of this judgment be sent to the learned trial court forthwith.

(Chandra Shekhar Jha, J.)

Rajeev/-

AFR/NAFR	**AFR**
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