

(2017) 05 PAT CK 0050

In the Patna High Court

Case No : 747 of 2017

Awadhesh Kumar Ojha s/o Sri Ram Binod Ojha

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 17-05-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 154](#) - Information in cognizable cases
[Prevention of Corruption Act, 1988](#), [Section 13\(2\)](#), [Section 13\(1\)\(e\)](#) -

Citation : (2017) 05 PAT CK 0050

Hon'ble Judges : Birendra Kumar

Bench : SINGLE BENCH

Advocate : P.K.Shahi, Arun Kumar, Ramakant Sharma

Judgement

1. The petitioner is an accused in connection with Special Vigilance Unit Case No. 01 of 2017, dated 23.03.2017 registered under Section 13(2) read with 13(1)(e) of the Prevention of Corruption Act, 1988.

2. The petitioner has invoked the writ jurisdiction of this Court for quashing of the FIR of the aforesaid P.S. Case corresponding to Special Case No. 16 of 2017 on the ground that allegation of corruption against the petitioner was received on 23.03.2017 from source, name not disclosed, orally and on the same day FIR has been lodged without preliminary enquiry relying on the judgment of Hon'ble Apex Court in the case of Lalita Kumari -v- Govt. of U.P. reported in 2014(2) SCC 1 vide

Writ Petition (Criminal) No. 68 of 2008.

3. Submission is that the FIR is contrary to the conclusion/ direction in Lalita Kumari's case. Direction no. (vi) contained in paragraph 111 of the judgment is relevant for the purpose , which reads as follows-

"As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under: (a) Matrimonial disputes/ family disputes. (b) Commercial offences. (C)Medical negligence cases (d) Corruption cases. (e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay."

4. Contention is that in the present matter the name of the informant is not disclosed nor there is any written complaint, hence before initiation of the FIR on the date of receipt from the secret source, preliminary inquiry should have been conducted in view of the aforesaid guidelines in the case of Lalita Kumari (supra).

5. Learned counsel for the petitioner has relied on the judgment in the case of Surjit Sarkar -v- State of West Bengal reported in (2013) 2 SCC 146 for his submission that after perusal of the provision of Section 154 Cr.P.C,. the Hon"ble Apex Court in para 34 of the judgment observed as follows:

"A bare reading of this section makes it clear that even though oral information given to an officer in charge of a police station can be treated as an FIR, yet some procedural formalities are required to be completed. They include reducing the information in writing and reading it over to the informant and obtaining his or her signature on the transcribed information".

6. Learned counsel has placed reliance on the judgment in the case of T.T.Antony -v- State of Kerala reported in (2001)6 SCC 181. In para 17 of the judgment the Hon"ble Apex Court has held as follows:

"17.Sub-section (1) of Section 154 Cr.P.C. contains four mandates to an officer

in charge of a police station. The first enjoins that every information relating to commission of a cognizable offence if given orally shall be reduced to writing and the second directs that it be read over to the informant; the third requires that every such information whether given in writing or reduced to writing shall be signed by the informant and the fourth is that the substance of such information shall be entered in the station house diary."

7. Learned counsel for the Special Vigilance Unit,
Government of Bihar prays for four weeks time to file counter affidavit.

8. Considering the aforesaid factual and legal position of the case, no coercive step shall be taken against the petitioner in connection with Special Case No. 16 of 2017 arising out of Special Vigilance unit P.S.Case No. 01 of 2017 pending before the Special Judge Vigilance, 1st, Patna, till further orders.

9. List this case after Summer Vacation.