

(2024) 04 PAT CK 0027

In the Patna High Court

Case No : Criminal Writ Jurisdiction Case No. 1393 Of 2018

Manoj Razak @ Manoj Kumar Razak,

APPELLANT

Vs

Inspector General Of Police

RESPONDENT

Date of Decision : 10-04-2024

Acts Referred:

Indian Penal Code, 1860 — Section 120B, 409, 420, 467, 468, 471, 491
Prevention of Corruption Act, 1988 — Section 7, 10, 13(1)(d), 13(2), 19
Code Of Criminal Procedure, 1973 — Section 154, 156(3), 197, 200, 202, 202(b)

Citation : (2024) 04 PAT CK 0027

Hon'ble Judges : Bibek Chaudhuri, J

Bench : Single Bench

Advocate : Bamdeo Pandey, Ramakant Sharma

Judgement

1. The petitioner is a public servant, presently posted at Motihari as an Additional Collector in the District of Motihari, East Champaran. At the relevant point of time, concerning the instant writ petition, he was posted as a Block Development Officer, Narkatiaganj. Upon a complaint lodged by one Kailash Yadav before the learned Special Judge, Vigilance, North Bihar at Muzaffarpur, alleging, inter alia, that the petitioner in collusion and connivance with the local Gram Panchayat members, executive officer of the Gram Panchayat and others committed misappropriation, cheating by forging documents, by means of corrupt practice, for illegal gain of money in respect of delivery of essential commodities to the citizens belonging Below Poverty Line (BPL) and other sections of poor people (Antayodya). It is alleged that the accused persons committed an offence under Section 409/420/467/468/491/120B of the IPC and Sections 7/10/13(2) read with Section 13(i)(d) of the Prevention of Corruption Act.

2. The said complaint before the learned Special Judge Vigilance at Muzaffarpur gave rise to the registration of complaint case no. 216 of 2008. Amongst the accused persons, there are one Nikhil Ranjan Kumar, Mukhiya of Raj kehuniya Roari Gram Panchayat, one Ravindra Roy and one Manoj Kumar, a dealer of

Public Distribution System, one Ashok Pandey Panchayat Secretary and the petitioner herein, who was posted as B.D.O. of Narkatiaganj Block at the relevant point of time.

3. It is alleged that the above-named accused persons in conspiracy with each other illegally and wrongfully gained lakhs of rupees in course of delivery of red coupons to the BPL card holders and yellow coupons to other card holders who were entitled to get food grain under the Public Distribution System. The complainant, time and again made complaints before various authorities including the police authorities, but no effective step was taken against the wrongdoers. It is alleged by the complainant that in the coupons original names of the BPL and Antyodaya card holders were written but the names were struck down and names of other persons were recorded and the food grains, edible oils, and other articles were given to them. It is also alleged that the coupons were sold out to persons other than BPL and Antyodaya card holders. The above-named persons also misappropriated money from different government schemes for the construction of houses for homeless people of the locality and also under various schemes. On receiving such complaints, the learned Special Judge, Vigilance, North Bihar at Muzaffarpur sent the said complaint for inquiry for investigation. The Investigating Officer (I.O., for short) submitted a charge sheet against Nikhil Ranjan Kumar, Ashok Kumar Pandey, Manoj Kumar Mishra, and Manoj Kumar Razzak under Section 409/420/467/468/471/120B of the IPC and Section 7/10/13(2) read with Section 13(i)(d) of the Prevention of Corruption Act.

4. The learned Special Judge took cognizance of the offence vide order dated 17th January 2017 on the ground that there is sufficient material to proceed against the accused persons and also recorded the fact that sanction order for prosecution against the petitioner was also received. The petitioner being a public servant has filed the instant writ petition praying for quashing the order dated 17th January 2017 by the learned Special Judge, Vigilance at Muzaffarpur.

5. Basically, in the instant writ petition, the question of law which has been raised on behalf of the petitioner are as follows:

(a) Whether taking cognizance by the learned Court below without having proper sanction for lodging the private complaint is violative of Section 19 of the Prevention of Corruption Act.

(b) Whether private complaint can be entertained without a proper sanction under Section 197 read with Section 19 of the Prevention of Corruption Act.

(c) Whether the order of taking cognizance against the petitioner is illegal, arbitrary and abuse of the process of law.

6. The learned senior counsel on behalf of the petitioner at the outset submits that the impugned order dated 17th January 2017 is illegal, inoperative, and passed without jurisdiction. It appears from the second paragraph of the aforesaid order that the learned Special Judge took cognizance of the offence on

the basis of a charge sheet filed by the I.O. The case was instituted on the basis of a complaint and registered as Complaint Case No. 216 of 2008. The learned Special Judge by an order dated 23rd May 2009 sent the case record to the Superintendent of Police, Headquarter, Vigilance Department Cabinet, 6-Circular Road at Patna for preliminary inquiry and report. On the basis of the said report, he took cognizance of the offence on 17th January 2017, thus no charge sheet was filed against any of the accused persons under the Prevention of Corruption Act.

7. On merit, it is submitted by the learned senior counsel on behalf of the petitioner referring to a decision of the Hon'ble Supreme Court in the case of Anil Kumar v. M.K. Aiyappa, reported in (2013) 10 SCC 705, that the question of sanction is of paramount importance for protecting a public servant who has acted in good faith while performing his duty. The purpose of obtaining the sanction is to see that the public servant is not necessarily harassed in a complaint failing which it would not be possible for a public servant to discharge his duty without fear and favour. It is also submitted by him that the requirement of application of mind by the Magistrate before exercising jurisdiction under Section 156(3) of the CrPC is of paramount importance. The learned senior counsel also submits that the requirement of sanction is a prerequisite even for presenting a private complaint under Section 200 of the CrPC. In other words, no complaint under the Prevention of Corruption Act can be lodged against a public servant without obtaining prior sanction from the sanctioning authority.

8. In Anil Kumar (supra), the Apex Court considered the question as to whether while exercising its power under Section 156(3) of the CrPC, the Magistrate could act in a mechanical or casual manner and go on with the complaint after getting the report. The Hon'ble Supreme Court gave a reply to the above question in paragraph 11 of the said report which is extracted below:-

"11. The scope of Section 156(3) CrPC came up for consideration before this Court in several cases. This Court in Maksud Saiyed v. State of Gujarat, reported in (2008) 5 SCC 668 : (2008) 2 SCC (Cri) 692, examined the requirement of the application of mind by the Magistrate before exercising jurisdiction under Section 156(3) and held that where jurisdiction is exercised on a complaint filed in terms of Section 156(3) or Section 200 CrPC, the Magistrate is required to apply his mind, in such a case, the Special Judge/Magistrate cannot refer the matter under Section 156(3) against a public servant without a valid sanction order. The application of mind by the Magistrate should be reflected in the order. The mere statement that he has gone through the complaint, documents and heard the complainant, as such, as reflected in the order, will not be sufficient. After going through the complaint, documents and hearing the complainant, what weighed with the Magistrate to order investigation under Section 156(3) CrPC, should be reflected in the order, though a detailed expression of his views is neither required nor warranted. We have already extracted the order passed by the learned Special Judge which, in our view, has stated no reasons for ordering

investigation.”

9. An order under Section 156 (3) of the CrPC, therefore, must disclose the application of mind by the Magistrate. The Magistrate is required to apply his mind and the Special Judge/Magistrate cannot refer the matter under Section 156(3) against a public servant without a valid sanction order. The mere statement that he has gone through, the complaint, and the documents filed by him are not sufficient. The order must reflect what went with the Magistrate to order an investigation under Section 156(3) of the CrPC.

10. The above observation of the Hon’ble Supreme Court was reiterated in *Priyanka Srivastava & Anr vs State Of U.P. & Ors.* reported in 2015(6) SCC 287 in paragraph 22 of the aforesaid report; paragraph 11 of *Anil Kumar (supra)* was quoted with approval. In paragraph 23 of the *Priyanka Srivastava*, the Hon’ble Supreme Court referred to a decision of the Apex Court in the case of *Dilawar Singh v. State of Delhi* [(2007) 12 SCC 641 : (2008) 3 SCC (Cri) 330], this Court ruled thus : (SCC p. 647, para 18).

“18.....”11. The clear position therefore is that any Judicial Magistrate, before taking cognizance of the offence, can order investigation under Section 156(3) of the Code. If he does so, he is not to examine the complainant on oath because he was not taking cognizance of any offence therein. For the purpose of enabling the police to start investigation it is open to the Magistrate to direct the police to register an FIR. There is nothing illegal in doing so. After all registration of an FIR involves only the process of entering the substance of the information relating to the commission of the cognizable offence in a book kept by the officer in charge of the police station as indicated in Section 154 of the Code. Even if a Magistrate does not say in so many words while directing investigation under Section 156(3) of the Code that an FIR should be registered, it is the duty of the officer in charge of the police station to register the FIR regarding the cognizable offence disclosed by the complainant because that police officer could take further steps contemplated in Chapter XII of the Code only thereafter.”

11. Further, referring to the decision of *Ramdev Food Products (P) Ltd. v. State of Gujarat*, reported in (2015) 6 SCC 439. It is submitted by the learned Advocate appearing on behalf of the petitioner that on receiving a complaint, the Magistrate has the following courses of action:-

(a) He may take cognizance of offence after the initial inquiry holding, inter alia, that the complainant has disclosed a prima facie case of commission of a cognizable offence.

(b) Direct investigation under Section 156(3) of the CrPC, and,

(c) Direct further inquiry under Section 202 to seek a report from the police after investigation to enable the Magistrate to proceed further and issue process are qualitatively different and are in different chapters of the Code.

12. Thus, as per the scheme of the Code, initial inquiry under Section 200 and

direction for investigation under Section 156(3) by the police are not the same. The Magistrate has discretion either to direct registration of a case under Section 156(3) or to conduct inquiry himself as the situation may warrant. This discretion is to be exercised by the Magistrate in his wisdom and having regard to the nature of material available. The direction under Section 156(3) to register a criminal case and to investigate is to be exercised where the Magistrate is satisfied that prima facie a cognizable offence has been committed. On the contrary, where he thinks it necessary to conduct further inquiry before deciding whether he should proceed further in the matter, the matter has to be dealt with under Section 202. Mere allegation of forgery is not enough to require the Magistrate to pass order under Section 156(3). In *Ramdev Food Products (P) Ltd.* (supra) also, the observation of Anil Kumar (supra) in paragraph 11 was quoted and relied upon. Paragraph 11 of Anil Kumar (supra) runs thus:-

"11. The scope of Section 156(3) CrPC came up for consideration before this Court in several cases. This Court in *Maksud Saiyed* case [(2008) 5 SCC 668 : (2008) 2 SCC (Cri) 692] examined the requirement of the application of mind by the Magistrate before exercising jurisdiction under Section 156(3) and held that where jurisdiction is exercised on a complaint filed in terms of Section 156(3) or Section 200 CrPC, the Magistrate is required to apply his mind, in such a case, the Special Judge/Magistrate cannot refer the matter under Section 156(3) against a public servant without a valid sanction order. The application of mind by the Magistrate should be reflected in the order. The mere statement that he has gone through the complaint, documents and heard the complainant, as such, as reflected in the order, will not be sufficient. After going through the complaint, documents and hearing the complainant, what weighed with the Magistrate to order investigation under Section 156(3) CrPC, should be reflected in the order, though a detailed expression of his views is neither required nor warranted. We have already extracted the order passed by the learned Special Judge which, in our view, has stated no reasons for ordering investigation."

13. In the instant writ petition, the writ petitioner has filed the Photostat copy of the certified copy of the order passed in C216 of 2008 which was converted to Special Case No. 27/2013. The case was instituted on the basis of the complaint. By an order dated 23rd May 2009, the complaint was sent to the Superintendent Office, Headquarter Vigilance for preliminary inquiry and report. It appears from the supplementary affidavit filed on behalf of the Vigilance Bureau that they treated the complaint as FIR and instituted Vigilance P.S. Case No. 39/2013. It is needless to say that unless and until there is a specific order under Section 156(3) of the CrPC passed by the Magistrate/Special Judge, directing the police authority to treat the complaint as an FIR and register a specific case, any complaint sent for inquiry under Section 202 of the CrPC cannot be registered as FIR. In the instant case, on receipt of the complaint, the Vigilance Investigation Bureau did not proceed with the inquiry. On the other hand, the Vigilance Investigation Bureau registered Vigilance P.S. Case No. 39 of 2013 on the basis of the complaint filed by the complainant, i.e., Kailash Yadav. Thus, the Vigilance

Inquiry Bureau committed jurisdictional error. At the same time, a learned Sessions Judge could not take cognizance of the offence on the basis of the charge sheet filed by the Vigilance Investigation Bureau.

14. The learned senior counsel, on behalf of the petitioner, also refers to the following decisions of this Court:-

(i) Alka Jha v. State of Bihar, reported in 2016 SCC OnLine Pat 4419 : (2016) 4 PLJR 207,

(ii) Dr. Nehal Akhtar vs. State of Bihar, reported in (2018)3 PLJR 263 and,

(iii) Manoj Kumar Razak v. State of Bihar, reported in 2017 SCC OnLine Pat 152.

15. In Alka Jha (supra), it is held by a Co-ordinate Bench of this Court that the issue framed by the Supreme Court in the case of Anil Kumar (supra) was "Whether the Special Judge/Magistrate is justified in referring a private complaint under Section 200 of CrPC for investigation by the Deputy Superintendent of Police, Karnataka, Lokayukta in exercise of powers conferred under Section 156(3) of the CrPC without the production of a valid sanction order under Section 19 of the Prevention of Corruption Act. The Supreme Court taking note of the judicial pronouncements rendered on the issue in the cases of Subramanian Swamy v. Manmohan Singh reported in (2012) 3 SCC 64; State of Uttar Pradesh v. Paras nath Singh [(2009)6 SCC372]; State of W.B. v. Mohd. Khalid [(1995) 1 SCC 684]; Additional Director General, Army Headquarters v. C.B.I. [(2012) 6 SCC 228], while upholding the right of an individual to file complaints under the PC Act, 1988 has proceeded to clarify that in absence of previous sanction for prosecution of 'public servant' charged with acts of corruption, the Magistrate concerned can neither take cognizance and hold inquiry under Section 202 of the CrPC nor can order for investigation against the public servant under Section 156(3) of the CrPC. Thus, obtaining of sanction to prosecute a public servant charged for acts of corruption was held an essential for filing of the complaint by a private individual under the provisions of the PC Act, 1988. The same view was taken by this Court in Dr. Nehal Akhtar (supra) and Manoj Kumar Razak (supra).

16. The factual circumstances and subsequent development of the instant case are squarely similar to Alka Jha (supra). The petitioner did not file the complaint after obtaining a sanction order under Section 19 of the Prevention of Corruption Act read with Section 197 of the CrPC. Secondly, the learned Magistrate did not examine the complainant and his witnesses on a say under Section 200 of the CrPC on the contrary, he postponed the issue of process and directed the senior Superintendent of Police, Vigilance Investigation Bureau to inquire into the case or direct an investigation to be made by a police officer or by such other persons as he thinks fit for the purpose of deciding whether or not there is sufficient grounds for proceeding. Proviso to Section 202 of the CrPC states that the Magistrate cannot pass any order under Section 202(b) where the complaint has not been made by a Court unless the complainant and witnesses personally have been examined on oath under Section 200, therefore, it was the duty of the

learned Special Judge to examine the complainant and the witnesses under Section 200 of the CrPC and then to consider as to whether sufficient case for further proceeding had been established by the complainant against the accused persons. If the Magistrate was not satisfied, he could have taken the resort of Section 202. In the instant case, the Magistrate directly sent the complaint to the police for inquiry under Section 202 of the CrPC.

17. Police did not inquire into the case but, registered a case under Section 154 of the CrPC and finally submitted a charge sheet against the petitioner. Since, the case was not instituted on the basis of an FIR, under Section 154 of the CrPC or under Section 156(3) of the CrPC, the charge sheet against the petitioner is bad in law. Moreover, relying on Anil Kumar (supra) which was followed by this Court in Alka Jha (supra), Dr. Nehal Akhtar, and Manoj Kumar Razzak (supra), since, the complaint filed by the complainant is not supported by a previous sanction against the public servant, the trial court cannot take cognizance of offence on the basis of the said complaint.

18. For the reasons stated above, the Complaint Case No. 216 of 2008 corresponding to Special Case No. 27 of 2013, is quashed against the present petitioner.

19. Let a copy of this order be sent to learned Special Judge Vigilance, Muzaffarpur.