
(2016) 04 PAT CK 0061

In the Patna High Court

Case No : Criminal Writ Jurisdiction Case No. 1313 of 2015 (Arising Out of PS.Case No. null Year null Thana null District-Muzaffarpur).

Professor Dr. Dwijendra Gupta

APPELLANT

Vs

State of Bihar through the Principal Secretary, Department of Education, Govt. of Bihar, Patna and Others

RESPONDENT

Date of Decision : 04-04-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 120-B, 34, 409, 420, 467, 468, 477(A)
Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2)

Citation : (2016) 3 BBCJ 169 : (2016) 4 BLJud 31 : (2016) 2 ECrC 750 : (2016) 3 PLJR 450

Hon'ble Judges : Ashwani Kumar Singh, J.

Bench : Single Bench

Advocate : Sanjay Kumar, Advocate, for the Appellant; Mrigendra Kumar, Advocate, Ramakant Sharma, Sr. Advocate and Rabindra Kumar, Advocate and M.K. Singh, SC-6 and Manish Kumar No. 3, A.C. to SC-6, for the Respondent

Final Decision : Dismissed

Judgement

Ashwani Kumar Singh, J. (Oral) - The petitioner has been made an accused in connection with Special Case No. 3 of 2015, arising out of Vigilance P. S. Case No. 10 of 2015, registered under Sections 409, 420, 467, 468, 477(A) read with Section 34 and 120-B of the Indian Penal Code and Sections 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988.

2. One Vishwajeet Kumar Chandel had made a complaint before the Deputy Superintendent of Police, Vigilance on 28.08.2014 making allegation therein of financial irregularity against the petitioner and others, where after a preliminary inquiry was conducted by one R.K. Poddar, Deputy Superintendent of Police, Vigilance, Investigation Bureau. He prima facie found the allegation to be true on the basis of his written report submitted to the Superintendent of Police, Vigilance, Investigation Bureau, Patna, the aforesaid FIR was registered against the petitioner and six others.

3. It has been alleged in the FIR that without any tender notice and without fixing the rate answer-sheets amounting to Rs.2 crores have been purchased and Rs.60-70 lakh has been taken as commission for placing such order with Chandrakala Universal Private Limited (for short "CUPL"), which is a new firm registered as Private Limited Company on 13.12.2013 having no experience in relation to publication of answer-sheets/question papers and without fixing the rate Rs.50 lakh has been paid as advance and thereafter, acceded to his request and final payment has also been made contrary to the tender rules which provide that for purchase beyond Rs.1 lakh tender is to be issued and such purchase order has been made contrary to the objections made by the sub-ordinate officers and thereafter, it has been alleged that the printing of answer-sheet, admit card, registration paper, OMR answer-sheet do not require confidential printing and it has further been alleged that earlier Rs.10.50 was the rate for 40 pages answer sheets whereas Rs.12.50 is the rate fixed for 32 pages answer sheet which has been done with a view to provide benefit to CUPL and has further alleged irregularity in constitution of the Purchase Committee. It has thereafter been said that the aforesaid complaint made by Vishwajeet Kumar Chandal was enquired into and it transpired that there are enhancement in the rate from Rs.10.50 to Rs.12.50 with a view to provide benefit to the supplier. The Purchase Committee has been constituted subsequently and supply was made pursuant to oral orders and an advance to the tune of Rs.50 lakh was made and later on, the same has been regularised by the illegally constituted Purchase Committee and in this way payment to the tune of Rs.1.30 crores has been made and on the pretext of confidential printing Rs.14,88,549/- has also been paid to CUPL. It has been alleged that the entire illegality or irregularity has been committed by the petitioner, who was the then Vice Chancellor of Jai Prakash University in connivance with some other officers of the University.

4. After institution of the FIR, the petitioner filed a criminal writ petition bearing Cr. WJC No. 167 of 2015 before this Court seeking quashing of the first information report and vide order dated 01.09.2015 this Court dismissed the application of the petitioner on the ground that the allegations made in the FIR certainly attract the ingredients of a cognisable offence. On completion of investigation, the Investigating Officer of the case has submitted charge-sheet no. 64 of 2015 dated 12.10.2015 as against the petitioner and others before the court of Special Judge, Vigilance, North Bihar, Muzaffapur on 13.01.2016 after obtaining sanction for prosecution of the petitioner from the competent authority on 04.09.2015.

5. The present criminal writ has been filed by the petitioner, inter alia, for quashing of the sanction order dated 04.09.2015 issued under the signature of Principal Secretary to Hon'ble Governor-cum- Chancellor of Universities, Bihar, whereby order of sanction for prosecution of the petitioner had been communicated in connection with the aforesaid criminal case and for quashing of the final report (charge-sheet) no. 64 of 2015 dated 12.10.2015 submitted in connection with the said case and for stay of further proceedings as well as for

restraining the respondent authorities from taking any coercive action against the petitioner in connection with the said case.

6. It has been contended by the learned counsel for the petitioner that the investigation conducted by the police is tainted. There is no illegality either in purchase of the answer-sheets or in making payment to CUPL, there is no cogent material on the basis of which charge-sheet could have been submitted against the petitioner under various provisions of Indian Penal Code as also the offences prescribed under the Prevention of Corruption Act, 1988. Learned counsel for the petitioner has further contended that the sanctioning authority ought to have gone into the merits of the allegation before according sanction for prosecution of the petitioner. According to learned counsel for the petitioner, on its face, the sanction order suffers from non-application of mind.

7. On the other hand, Mr. Ramakant Sharma, learned Senior Counsel for Vigilance has contended that the present application lacks merit. There is allegation relating to misappropriation of fund by the petitioner by allowing huge payments to one firm to supply answer-sheets without issuing any tender or fixing any rate. The alleged act of misappropriating Government money has been done by the petitioner in his official capacity and there is no illegality either in the police report or in the sanction order. He has further contended that the application is also premature as it is for the learned Spl. Judge before whom the police report has been filed to apply his mind and pass order in accordance with law. Mr. Sharma has further contended that in a case where the validity of the sanction order is sought to be challenged on the ground of non-application of mind, such challenge can only be made in course of trial. In this regard, he has placed reliance upon a judgment of the Supreme Court in the matter of Prakash Singh Badal and Anr. v. State of Punjab and Ors [(2007) 1 SCC 1].

8. In reply, learned counsel for the petitioner has contended that the sanction is not intended to be nor is an empty formality but a legitimate and sacrosanct act which offers protection to the public servants against frivolous prosecution and it is a weapon to ensure discouragement of frivolous and vexatious prosecution.

9. I have heard learned counsel for the parties and perused the record.

10. I find substance in the arguments advanced by Mr. Ramakant Sharma, learned Senior Counsel appearing for the Vigilance. The allegations made in the FIR are quite serious. On completion of investigation, the investigating officer has submitted his report under Section 173(2) of the Cr.P.C. in the court of Special Judge along with all the relevant documents. In the opinion of this Court, at this stage, it would not be proper for this Court to make any comment on the merits and outcome of the investigation. It is for the Special Judge, before whom the police report has been laid to apply his mind first to the allegations made in the FIR, statements of the witnesses recorded under Section 161(3) of the Cr.P.C., the police report submitted under Section under Section 173(2) of the Cr.P.C. and other relevant documents and pass appropriate order in accordance

with law.

11. So far as the provisions contained in Sections 19(1)(2)(3)(4) of the Prevention of Corruption Act are concerned, they came up for consideration before the Supreme Court in the matter of Prakash Singh Badal (supra). In para 47 and 48 of the judgment, the Supreme Court held as follows:-

"47. The sanctioning authority is not required to separately specify each of the offences against the accused public servant. This is required to be done at the stage of framing of charge. Law requires that before the sanctioning authority materials must be placed so that the sanctioning authority can apply his mind and take a decision. Whether there is an application of mind or not would depend on the facts and circumstances of each case and there cannot be any generalised guidelines in that regard.

48. The sanction in the instant case related to the offences relatable to the Act. There is a distinction between the absence of sanction and the alleged invalidity on account of non-application of mind. The former question can be agitated at the threshold but the latter is a question which has to be raised during trial."

12. Thus, it would be evident from the ratio laid down by the Supreme Court in the matter of Prakash Singh Badal (supra) that the absence of sanction could be raised at the inception by an aggrieved person. However, when sanction order exists and its legality and validity is questioned, such issue has to be raised in course of trial.

13. In view of the above conditions and factual and legal position, indicated above, this Court is satisfied that the application is devoid of any merit. Accordingly, it is dismissed.