
(2015) 12 PAT CK 0063

In the Patna High Court

Case No : Criminal Writ Jurisdiction Case No. 1192 of 2014

Sanjay Kumar Singh and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 21-12-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 156, 156(3), 173, 190, 190(1)
Penal Code, 1860 (IPC) — Section 120-B, 420, 467, 468, 471
Prevention of Corruption Act, 1988 — Section 13, 5, 7

Citation : (2015) 12 PAT CK 0063

Hon'ble Judges : Ashwani Kumar Singh, J.

Bench : Single Bench

Advocate : S.B.K. Mangalam and Shashi Bhushan Singh, Advocates, for the Appellant; Ajay Behari Sinha, SC-19, Neeraj Raj, A.C. to SC-19 and Priyank Deepak, A.C. to SC-19, for the Respondent

Final Decision : Allowed

Judgement

Ashwani Kumar Singh, J.—By way of the present application under Articles 226 and 227 of the Constitution of India, the petitioners seek quashing of the order dated 06.05.2014 passed by the learned Special Judge Vigilance, North Bihar, Muzaffarpur in Complaint Case No. 29 of 2011 by which a direction has been issued to the Officer-in-Charge of Sahebganj Police Station to register First Information Report (for short "FIR") against the petitioners and others and investigate the same. The further prayer of the petitioners is to quash the FIR of Sahebganj P.S. Case No. 259 of 2014 dated 03.09.2014 arising out of Complaint Case No. 29 of 2011.

2. I have heard Mr. S.B.K. Mangalam, learned Counsel for the petitioners and Mr. Ramakant Sharma, learned Senior Counsel for the Vigilance and carefully perused the record.

3. It has been contended by the learned counsel for the petitioners that the

present complaint at the instance of private individual could not have been acted upon against the petitioners, who are public servants, in absence of valid sanction for prosecuting them. He has further submitted that the learned Special Judge Vigilance should not have invoked the power conferred under Section 156(3) of the Code of Criminal Procedure (for short "Cr.P.C.") after taking cognizance of the offence under Section 190(1)(a) of the Cr.P.C. According to him, after taking cognizance of the offence under the procedure prescribed in Chapter XV Cr.P.C., the learned Special Judge could not have switched back to the pre-cognizance stage and directed the police for institution of the FIR.

4. Per contra, Mr. Ramakant Sharma, learned Senior Counsel for the Vigilance has submitted that though there may be some procedural illegalities in the order passed by the learned Special Judge for institution of the FIR against the petitioners and others, the allegations made in the complaint do attract the ingredients of a cognizable offence and in that view of the matter, institution of the FIR and investigation of the same by the police cannot be faulted with.

5. Having heard the rival arguments made on behalf of the parties and perused the record, I find that Respondent No. 5 Navi Hasan had filed a complaint bearing Complaint Case No. 29 of 2011 on 17th June, 2011 in the court of Special Judge Vigilance, North Bihar, Muzaffarpur. After perusing the complaint and the documents submitted therewith, the learned Special Judge Vigilance called for a preliminary enquiry report from the District Magistrate, Muzaffarpur vide order dated 20th June, 2011. Pursuant to the order passed by the learned Special Judge Vigilance, the District Magistrate, Muzaffarpur got an enquiry conducted into the allegations made in the complaint by the Land Reforms Deputy Collector, West Muzaffarpur. The enquiry report was thereafter submitted on 13th December, 2011 in the court of learned Special Judge Vigilance. After receipt of the preliminary enquiry report, the complaint case was adjourned from one date to another several times between 25th January, 2012 and 23rd May, 2012 for hearing on the preliminary enquiry report. After hearing the complainant and perusing the enquiry report, the learned Special Judge Vigilance once again sent a copy of the complaint to the District Magistrate, Muzaffarpur vide order dated 23rd May, 2012 and directed him to get the same enquired by some other officer of the District. In compliance with the order dated 23rd May, 2012 passed by the learned Special Judge Vigilance, the District Magistrate, Muzaffarpur got an enquiry conducted into the complaint once again by the Deputy Collector, Confidential Section, Muzaffarpur, who submitted his report dated 31st December, 2013 in the court of learned Special Judge Vigilance on 20th January, 2014. After receiving the second enquiry report and perusing the same and after hearing the complainant, the learned Special Judge Vigilance directed the Officer-in-Charge of Sahebganj Police Station to institute an FIR against the petitioners and others and investigate the same by order dated 6th May, 2014, pursuant to which Sahebganj P.S. Case No. 259 of 2014 dated 3rd September, 2014 was registered against the petitioners and four others under Sections 420 , 467 , 468 , 471 and 120-B of the Indian Penal Code and Sections

5 , 7 and 13 of the Prevention of Corruption Act, 1988 (for short "P.C. Act"). The aforesaid order dated 6th May, 2014 and the FIR of Sahebganj P.S. Case No. 259 of 2014 are under challenge in the present application.

6. The allegations made in the FIR, in short, inter alia, is that one day when Respondent No. 5 Navi Hasan reached at the shop of one Mohan Sah, who is a dealer of essential commodities under the Public Distribution System of Ward No. 5 in Sahebganj Nagar Panchayat, then he saw that petitioner No. 1 Sanjay Kumar Singh and one Ashraf Ali were carrying with themselves 20 litres of Kerosene Oil and two bags containing wheat. When respondent No. 5 asked the dealer regarding the said articles being carried by petitioner No. 1 and one Ashraf Ali, he replied that they have valid ration cards of several persons and therefore the said articles have been supplied to them on their behalf. It is further alleged that when the respondent No. 5 sought for information under the Right to Information Act regarding supply of details of ration coupons, the Executive Officer of Nagar Panchayat, Sahebganj gave certain details on the basis of which respondent No. 5 came to know that the accused persons in conspiracy with each other had prepared fake ration coupons. It has been alleged that the accused persons were involved in preparation of fake ration coupons and lifted the food-grains and other articles from the dealer of Public Distribution System.

7. As noted above, in the present case apparently on receiving the complaint petition the learned Special Judge did not refer the matter to the police for investigation under Section 156(3) Cr.P.C. He decided to proceed with the complaint and adjourned the case to different dates. He called for a report from the District Magistrate, Muzaffarpur into the allegations made in the complaint. Further, after receipt of the first enquiry report submitted by the Deputy Collector Land Reforms, the learned Special Judge Vigilance heard the complainant on merits of the enquiry report and directed the District Magistrate, Muzaffarpur to get the complaint enquired into by some other officer of the District and after receipt of the second enquiry report he has directed for institution of the FIR. Apparently, the enquiry reports were being sought for by the learned Special Judge in exercise of powers conferred under Section 202 Cr.P.C.

8. In view of sub-section (4) of Section 5 of the P.C. Act, a Special Judge dealing with offences under the P.C. Act is deemed to be a Magistrate. Being armed with all magisterial powers provided under the Cr.P.C., when a private complaint is filed before a Special Judge, he has two options:-- (a) he may take cognizance of the offence under section 190 Cr.P.C.; or (b) he may proceed further for enquiry or trial. A Special Judge, who is otherwise competent to take cognizance, may, without taking cognizance under section 190 Cr.P.C., direct for investigation under section 156(3) Cr.P.C. When a Magistrate orders investigation under Chapter XII of the Cr.P.C., he does so before he takes cognizance of the offence. However, the investigation referred under Section 202 Cr.P.C. is after taking cognizance. Such investigation is only for the purpose of the deciding whether or

not there is sufficient ground to proceed further.

9. Section 156(3) Cr.P.C. falling under Chapter XII and Section 202 Cr.P.C. falling under Chapter XV, operate in distinct spheres and at different stages. Any Judicial Magistrate when before taking cognizance of the offence orders investigation under section 156(3) Cr.P.C. then, he has not to hear the complainant because he does not take cognizance of any offence therein.

10. The word "cognizance" has not been defined in Cr.P.C. but the said expression has been considered by the Courts several times. The conditions in which cognizance can be taken are stated in Clauses (a), (b) and (c) of Section 190(1) Cr.P.C. Whether the Magistrate has or has not taken cognizance would depend on the circumstances of a particular case including the mode in which the case is sought to be instituted and the nature of action, if any, taken by the Magistrate. When on receiving a complaint the Magistrate applies his mind for the purpose of proceeding under section 200 Cr.P.C. and proceeds in terms of the procedures prescribed in Chapter XV Cr.P.C., it would be presumed that he has taken cognizance within the meaning of Section 190(1)(a) Cr.P.C. If, instead of proceeding under Chapter XV, at the very initial stage the Magistrate orders investigation under Section 156(3) of the Cr.P.C., such investigation would be of a different kind. Such investigation would end up with a police report contemplated in Section 173 of the Cr.P.C.

11. In the matter of Mohd. Yousuf Vs. Smt. Afaq Jahan and Another--> , the Supreme Court has elaborately dealt with the difference between an investigation under chapter XII and an investigation under chapter XV Cr.P.C. in Paras 6 to 10 which read as under:--

"6. Section 156 falling within Chapter XII, deals with powers of police officers to investigate cognizable offences. Investigation envisaged in Section 202 contained in Chapter XV is different from the investigation contemplated under Section 156 of the Code.

7. Chapter XII of the Code contains provisions relating to "Information to the police and their powers to investigate", whereas Chapter XV, which contains Section 202 , deals with provisions relating to the steps which a Magistrate has to adopt while and after taking cognizance of any offence on a complaint. Provisions of the above two chapters deal with two different facets altogether, though there could be a common factor i.e. complaint filed by a person. Section 156 , falling within Chapter XII deals with powers of the police officers to investigate cognizable offences. True, Section 202 , which falls under Chapter XV, also refers to the power of a Magistrate to "direct an investigation by a police officer". But the investigation envisaged in Section 202 is different from the investigation contemplated in Section 156 of the Code.

8. The various steps to be adopted for investigation under Section 156 of the Code have been elaborated in Chapter XII of the Code. Such investigation would start with making the entry in a book to be kept by the officer in charge of a

police station, of the substance of the information relating to the commission of a cognizable offence. The investigation started thereafter can end up only with the report filed by the police as indicated in Section 173 of the Code. The investigation contemplated in that chapter can be commenced by the police even without the order of a Magistrate. But that does not mean that when a Magistrate orders an investigation under Section 156(3) it would be a different kind of investigation. Such investigation must also end up only with the report contemplated in Section 173 of the Code. But the significant point to be noticed is, when a Magistrate orders investigation under Chapter XII he does so before he takes cognizance of the offence.

9. But a Magistrate need not order any such investigation if he proposes to take cognizance of the offence. Once he takes cognizance of the offence he has to follow the procedure envisaged in Chapter XV of the Code. A reading of Section 202(1) of the Code makes the position clear that the investigation referred to therein is of a limited nature. The Magistrate can direct such an investigation to be made either by a police officer or by any other person. Such investigation is only for helping the Magistrate to decide whether or not there is sufficient ground for him to proceed further. This can be discerned from the culminating words in Section 202(1) i.e. "or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding".

10. This is because he has already taken cognizance of the offence disclosed in the complaint, and the domain of the case would thereafter vest with him."

12. In the matter of Rameshbhai Pandurao Hedau Vs. State of Gujarat, , while dealing with the difference between an investigation ordered by the Magistrate under Chapter XII containing "Section 156(3) Cr.P.C." and under Chapter XV containing "Section 202 Cr.P.C.", the Supreme Court held as under in para 23 to 25:--

"23. Reference was also made to the decision of this Court in Mohd. Yousuf Vs. Smt. Afaq Jahan and Another--> , where it has been held that when a Magistrate orders investigation under Chapter XII of the Code, he does so before he takes cognizance of the offence. Once he takes cognizance of the offence, he has to follow the procedure envisaged in Chapter XV of the Code. The inquiry contemplated under Section 202(1) or investigation by a police officer or by any other person is only to help the Magistrate to decide whether or not there is sufficient ground for him to proceed further on account of the fact that cognizance had already been taken by him of the offence disclosed in the complaint but issuance of process had been postponed.

24. The law is well-settled that an investigation ordered by the Magistrate under Chapter XII is at the pre-cognizance stage and the inquiry and/or investigation ordered under Section 202 is at the post-cognizance stage. What we have to consider is whether the Magistrate committed any error in refusing the

appellant's prayer for an investigation by the police under Section 156(3) of the Code and resorting to Section 202 of the Code instead, since both the two courses were available to him.

25. The power to direct an investigation to the police authorities is available to the Magistrate both under Section 156(3) Cr.P.C. and under Section 202 Cr.P.C. The only difference is the stage at which the said powers may be invoked. As indicated hereinbefore, the power under Section 156(3) Cr.P.C. to direct an investigation by the police authorities is at the pre-cognizance stage while the power to direct a similar investigation under Section 202 is at the post cognizance stage."

13. In *Dharmeshbhai Vasudev bhai and Others Vs. State of Gujarat and Others*, , while considering the power of the Magistrate to recall an order passed by him under section 156(3) Cr.P.C., the Supreme Court observed that before taking cognizance the Magistrate can invoke his powers under section 156(3) but once he takes cognizance, he has to proceed in accordance with the procedure involved in Chapter XV thereof including the power to take enquiry or investigation under section 202 Cr.P.C.

14. In *Suresh Chand Jain Vs. State of Madhya Pradesh and Another*, , while considering the powers of a Magistrate under section 156(3) , the Supreme Court held that such power is vested in the Magistrate before taking cognizance of the offence and not thereafter.

15. The cases referred to hereinabove make it clear that the investigation contemplated in Chapter XII Cr.P.C. can be commenced by the police without the order of a Magistrate. However, a Magistrate may also order investigation under Section 156(3) Cr.P.C. In both cases investigation must end up with the report submitted under Section 173 Cr.P.C. But the investigation referred to under Section 202 Cr.P.C. is after taking cognizance and of a limited nature. Such investigation is only for helping the Magistrate to decide whether or not there is sufficient ground for him to proceed further. A Magistrate would not be authorized in law to order investigation under Chapter XII Cr.P.C. after taking cognizance of the offence. Once he takes cognizance of the offence he has to follow the procedure envisaged in Chapter XV Cr.P.C. The object of an investigation under Section 202 Cr.P.C. is not to initiate afresh police case but to assist the Magistrate in completing proceedings already instituted upon a complaint before him.

16. In the present case, apparently after receiving the complaint petition, the learned Special Judge Vigilance did not refer the matter to the Vigilance Investigation Bureau for investigation under section 156 (3) of the Cr.P.C. before taking cognizance of the offence. He decided to proceed with the complaint and called for an inquiry report from the District Magistrate, Muzaffarpur. The moment he retained the complaint with himself and called for an enquiry report from the police, it would mean that he had taken cognizance of the offence and

was proceeding for an enquiry as contemplated under Section 202 Cr.P.C. in Chapter XV. After receiving the first enquiry report, he heard the complainant and perused the enquiry report submitted by the Deputy Collector Land Reforms, Muzaffarpur and thereafter directed the District Magistrate, Muzaffarpur to get the complaint enquired by another officer of the District. On receipt of the second enquiry report, he referred the matter to the police for investigation. The entire exercise conducted by the learned Special Judge Vigilance before referring the matter under Section 156(3) of the Cr.P.C. was under Chapter XV of the Cr.P.C., which contains Section 202(1) of the Cr.P.C., which reads as under:--

"202. Postponement of issue of process (1) Any Magistrate, on receipt of a complaint of an offence of which he is authorized to take cognizance or which has been made over to him under section 192 , may, if he thinks fit, postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding"

17. Apparently, the learned Special Judge Vigilance was exercising his powers at the post-cognizance stage under Chapter XV Cr.P.C.. Under such circumstances, he was not competent to switch back to the pre-cognizance stage and to issue a direction under section 156(3) Cr.P.C. for investigation. The entire procedure adopted by him in the matter was wholly illegal and impermissible in law.

18. For the reasons, aforementioned, the impugned order dated 06.05.2014 passed by the learned Special Judge Vigilance, North Bihar, Muzaffarpur in Complaint Case No. 29 of 2011 is hereby set aside, resulting into quashing of the FIR of Sahebganj P.S. Case No. 259 of 2014 dated 03.09.2014 pending before the learned Special Judge Vigilance, North Bihar, Muzaffarpur.

19. The application stands allowed.