

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. M.P. No. 2865 of 2017

Umesh Kumar Singh @ Umesh Prasad Singh, S/o Late Ramraj Singh, resident of village- Madhubana, P.O. Sakadippa, P.S.- Pipra, District- Palamu, Jharkhand ... Petitioner

Versus

The State of Jharkhand through S.P. Anti-Corruption Bureau (Vigilance) ... Opposite Party

Coram: HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

For the Petitioner : Mr. Saurabh Shekhar, Adv.
For the A.C.B. : Mr. T.N. Verma, Adv.

05 / 07.07.2020 Heard the parties through video conferencing.

2. It is submitted by learned counsel for the petitioner that this petition has been filed invoking the jurisdiction of this Court under section 482 of code of criminal procedure with prayer to quash the entire criminal proceeding as well as the order taking cognizance dated 20.04.2017 passed by Special Judge, Vigilance A.C.B., Hazaribagh whereby and where under the learned court below has taken cognizance *inter alia* against the petitioner. Learned counsel for the petitioner submits that in this petition the name of the Court which passed the said order dated 20.04.2017 has been mentioned as Special Judge, A.C.B., Hazaribagh because of printing error but in fact, the said order is of Special Judge, A.C.B., Ranchi, hence, the name of the court which passed the impugned order be read as Special Judge, A.C.B., Ranchi.

3. The brief facts of this case is that the petitioner was an accused in Vigilance P.S. case no. 41 of 2013 and after completion of the investigation, A.C.B. submitted charge sheet against the co-accused persons but did not send up the petitioner for trial showing lack of evidence against him but learned Special Judge, A.C.B. Ranchi in the impugned order observed that I.O. has not submitted all the documents relating to the payments to the farmers by said accused Umesh Kumar Singh, as such he directed the I.O. to submit all such original documents but by the same order dated 20.04.2017 in the later part, he has taken cognizance for the offence against the

petitioner as well. It is next submitted by learned counsel for the petitioner that in the preliminary enquiry it was found that the co-accused Umesh Kumar Yadav in collusion with 40 other villagers has taken illegal benefits of the scheme and has misutilized the public fund to their benefits and the allegation against the petitioner is that he being the Branch Manager, co-operative Bank, Barkagaon was responsible for distribution of cheques of crops insurance amount, which was to be paid to the beneficiaries after cross-checking it with those mentioned in the list given to him by the authorities. It is also alleged that the cheques that have been encashed were distributed by the petitioner and even minor children have got the amount, who had their names in the list forwarded by the authority, whereas the original beneficiary farmers have been deprived of getting the financial benefit. It is next submitted that the Managing Director of Hazaribagh Central Co-operative Bank, Hazaribagh directed in his letter to make payment to the farmers through account payee cheques. It is further submitted that it has come in the report that the petitioner has distributed the cheques in the village general assembly in presence of people's representatives hence; he has not committed any irregularity/ illegality. It is next submitted that no sanction of prosecution of the petitioner has been obtained from the department before taking cognizance in the matter and none of the offence as alleged have been committed by the petitioner. Relying upon the judgment of Hon'ble Supreme Court of India in the case of *Vishnu Kumar Tiwari v. State of U.P.* reported in (2019) 8 SCC 27, paragraph 8 of which is as under:

"8. The order passed by the Chief Judicial Magistrate shows that there is consideration of the protest petition. Neither the Chief Judicial Magistrate nor the Additional Sessions Judge have failed to apply the correct principles of law. In this regard, it is apposite to notice the following observations made in the impugned judgment of the High Court: (Shiv Shanker Ojha 2017 SCC OnLine All 2895, para 10)

"10. In Pakhandu v. State of U.P 2001 SCC OnLine All 967, it is opined by the Court that in the case of final report the Magistrate has four options:

(1) He may agree with the conclusion of the police and accept the final report and drop the proceeding.

(2) *He may take cognizance under Section 190(1)(b) Cr.P.C. and issue process straightaway to the accused without being bound by the conclusion of the investigating agency where he is satisfied that upon the facts discovered by the police, there is sufficient ground to proceed.*

(3) *He may order for further investigation if he is satisfied that the investigation was made in a perfunctory manner.*

(4) *He may without issuing process and dropping the proceedings under Section 190(1)(a) Cr.P.C. upon the original complaint or protest petition treating the same as complaint and proceed to act under Sections 200 and 202 Cr.P.C. and thereafter whether complaint should be dismissed or process should be issued."*

4. It is next submitted by learned counsel for the petitioner that learned Special Judge, having made a direction to the I.O. to submit all the original documents he could not have taken cognizance till he went through entire documents. Hence, it is submitted that entire criminal proceeding as well as the said order taking cognizance dated 20.04.2017 be quashed.

5. Mr. T.N. Verma, learned counsel for the A.C.B. on the other hand defended the impugned order and submitted that there is allegation against the petitioner but he fairly submits that the petitioner after investigation was not sent up for trial because of the lack of evidence.

6. Having heard the rival submissions made at the Bar and after going through the evidence in the record, it is pertinent to mention here that it is a settled principal of law that as has been held by Hon'ble Supreme Court of India in the case of *Abhinandan Jha and others v. Dinesh Mishra* reported in *AIR 1968 SC 117* that when a report is submitted that there is no material that any case is made out for sending the accused for trial, the Magistrate then cannot compel the police to change their opinion and to file a charge-sheet. However, the Magistrate is free to not accept such report and he may take suitable action. The Magistrate may in such a case direct further investigation under section 156 (3) Cr.P.C. and he may direct further investigation when he feels that the investigation is unsatisfactory or incomplete and he may also direct further investigation in a case where there is scope for further investigation. In the case of *H.S. Bains, Director, Small Saving-cum-Dy. Secy. Finance v. State (Union Territory of Chandigarh)* reported in (1980)

4 SCC 631, Hon'ble Supreme Court has held as under in paragraph

6:

"6. It is seen from the provisions to which we have referred in the preceding paras that on receipt of a complaint a Magistrate has several courses open to him. He may take cognizance of the offence and proceed to record the statements of the complainant and the witnesses present under Section 200. Thereafter, if in his opinion there is no sufficient ground for proceeding he may dismiss the complaint under Section 203. If in his opinion there is sufficient ground for proceeding he may issue process under Section 204. However, if he thinks fit, he may postpone the issue of process and either enquire into the case himself or direct an investigation to be made by a police officer or such other person as he thinks fit for the purpose of deciding whether or not there is sufficient ground for proceeding. He may then issue process if in his opinion there is sufficient ground for proceeding or dismiss the complaint if there is no sufficient ground for proceeding. On the other hand, in the first instance, on receipt of a complaint, the Magistrate may, instead of taking cognizance of the offence, order an investigation under Section 156(3). The police will then investigate and submit a report under Section 173(1). On receiving the police report the Magistrate may take cognizance of the offence under Section 190(1)(b) and straight away issue process. This he may do irrespective of the view expressed by the police in their report whether an offence has been made out or not. The police report under Section 173 will contain the facts discovered or unearthed by the police and the conclusions drawn by the police therefrom. The Magistrate is not bound by the conclusions drawn by the police and he may decide to issue process even if the police recommend that there is no sufficient ground for proceeding further. The Magistrate after receiving the police report, may, without issuing process or dropping the proceeding decide to take cognizance of the offence on the basis of the complaint originally submitted to him and proceed to record the statements upon oath of the complainant and the witnesses present under Section 200 of the Criminal Procedure Code and thereafter decide whether to dismiss the complaint or issue process. The mere fact that he had earlier ordered an investigation under Section 156 (3) and received a report under Section 173 will not have the effect of total effacement of the complaint and therefore the Magistrate will not be barred from proceeding under Sections 200, 203 and 204. Thus, a Magistrate who on receipt of a complaint, orders an investigation under Section 156(3) and receives a police report under Section 173(1), may, thereafter, do one of three things: (1) he may decide that there is no sufficient ground for proceeding further and drop action; (2) he may take cognizance of the offence under Section 190 (1)(b) on the basis of the police report and issue process; this he may do without being bound in any manner by the conclusion arrived at by the police in their report; (3) he may take cognizance of the offence under Section 190(1)(a) on the basis of the original complaint and proceed to examine upon oath the complainant and his witnesses under Section 200. If he adopts the third alternative, he may hold or direct an inquiry under Section 202 if he thinks fit. Thereafter he may dismiss the complaint or issue process, as the case may be."

7. So far as facts of the instant case is that learned Special Judge, A.C.B. has categorically directed the I.O. to submit all the original documents regarding illegality committed during opening of bank account obviously as he was of opinion that the same has a bearing on the case and he did not know the contents of the documents

called for by him. It may so happen upon looking into those documents the learned Special Judge might have come to the conclusion that the police rightly did not send up the petitioner for trial but without waiting for the said documents, by the same order, he has taken the cognizance against the petitioner also, without mentioning any justifiable reason as why he did so. It is however, crystal clear that on the one hand, when learned Special Judge, A.C.B. has called for original documents regarding opening of the bank account and payment made to the minors, he acted in an illegal and mechanical manner by taking cognizance against the petitioner also without showing any reason as to why he is taking such cognizance even though the final form was submitted mentioning lack of evidence against the petitioner and there is no sanction for prosecution of the petitioner in the record.

8. Accordingly, this Court is of considered view that the portion of the said impugned order dated 20.04.2017 passed by learned Special Judge, A.C.B., Ranchi so far it relates to taking cognizance against the petitioner is not sustainable in law and is liable to be quashed. Accordingly, the said portion of the impugned order taking cognizance dated 20.04.2017 passed by learned Special Judge, A.C.B., Ranchi so far it relates to taking cognizance against the petitioner is quashed and set aside.

9. This Criminal Miscellaneous Petition is disposed of accordingly.

(ANIL KUMAR CHOUDHARY, J.)

AFR-Smita/-