

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL REVISION No.826 of 2014

Arising Out of PS. Case No.-5 Year-2006 Thana- C.B.I CASE District- Patna

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Shri Chandra Mohan Choudhary, Son of Late Awadh Bihari Choudhary, Resident of 4 C Laxmi Ashram Apartment, Nalanda Colony, Khajpura, P.S. -Rajiv Nagar, Patna-14

... .. Petitioner/s

Versus

1. The State Of Bihar Through The Vigilance Investigation Bureau, Government Of Bihar, Patna
2. Mahanand Prasad Yadav, Son of Late Sukhdeo Yadav, Resident of Village - Bhagwatpur, P.S. - Chatapur, District - Supaul

... .. Respondent/s

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with

CRIMINAL REVISION No. 834 of 2014

Arising Out of PS. Case No.-5 Year-2006 Thana- C.B.I CASE District- Patna

=====

Shri Mundrika Choudhary, Son of Late Muneshwar Choudhary, Resident of Krishi Nagar, P.O.-Ashiana Nagar, P.S.-Shashtri Nagar, District-Patna.-25

... .. Petitioner/s

Versus

1. The State Of Bihar Through The Vigilance Investigation Bureau, Government Of Bihar, Patna
2. Mahanand Prasad Yadav, Son of Late Sukhdeo Yadav Resident of VillageBhagwatpur, P.S.- Chatapur, District-Supaul.

... .. Respondent/s

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Code of Criminal Procedure--- section 164, 239, 240---Prevention of Corruption Act, 1988---Sections 3(1)(d), 7, 13(2) and 13(1)(d)--- Indian Penal Code---section 409, 120B and 109---Revision petition against order rejecting discharge petition filed by Petitioners accused in vigilance case---plea that Petitioners were implicated in the vigilance case only on the basis of an exculpatory confessional statement made by co-accused recorded under Section 164 of the Cr.P.C. which is not admissible--- further argument that no evidence was collected by the Investigating Agency that the informant or any

other witnesses were ever requested by the Petitioners for illegal gratification for release of fund in Indra Awas Yojana.

Held: The only consideration at the stage of Sections 239 and 240 of the Cr.P.C. is as to whether the allegation/charge-sheet is groundless---exculpatory confession implicating some other persons than the maker cannot be treated as a piece of evidence---learned Magistrate failed to record 164 CrPC statement of the co-accused by eliminating the doubt, as to whether the statement was made by the co-accused free from any inducement, undue influence, threat or coercion---furthermore, the statement does not bear essential certification under Section 164 of the Cr.P.C. which is required to be written by the learned Magistrate---only on the basis of statement of the co-accused, recorded under Section 164 Cr.P.C., no prima facie case regarding commission of any offence is made out and it would amount to the charge being groundless---Revision applications allowed. (Para 1, 4, 13, 28, 36, 37)

(2023) 6 SCC 768

.....Relied Upon.

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.826 of 2014

Arising Out of PS. Case No.-5 Year-2006 Thana- C.B.I CASE District- Patna

Shri Chandra Mohan Choudhary, Son of Late Awadh Bihari Choudhary,
Resident of 4 C Laxmi Ashram Apartment, Nalanda Colony, Khajpura, P.S. -
Rajiv Nagar, Patna-14

... .. Petitioner/s

Versus

- 1. The State Of Bihar Through The Vigilance Investigation Bureau,
Government Of Bihar, Patna
- 2. Mahanand Prasad Yadav, Son of Late Sukhdeo Yadav, Resident of Village -
Bhagwatpur, P.S. - Chatapur, District - Supaul

... .. Respondent/s

with

CRIMINAL REVISION No. 834 of 2014

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Shri Mundrika Choudhary, Son of Late Muneshwar Choudhary, Resident of
Krishi Nagar, P.O.-Ashiana Nagar, P.S.-Shashtri Nagar, District-Patna.-25

... .. Petitioner/s

Versus

- 1. The State Of Bihar Through The Vigilance Investigation Bureau,
Government Of Bihar, Patna
- 2. Mahanand Prasad Yadav, Son of Late Sukhdeo Yadav Resident of Village-
Bhagwatpur, P.S.-Chatapur, District-Supaul.

... .. Respondent/s

Appearance :
(In CRIMINAL REVISION No. 826 of 2014)
For the Petitioner/s : Mr. Ram Kishore Singh, Advocate
For the Respondent/s : Mr. Arvind Kumar, Spl. PP. Vigilance
(In CRIMINAL REVISION No. 834 of 2014)
For the Petitioner/s : Mr. Amit Kumar Singh, Advocate
For the Respondent/s : Mr. Arvind Kumar, Spl. PP. Vigilance

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
CAV JUDGMENT

Date : 10-04-2024

1. Both the Criminal Revisions are directed against an
order, dated 14th of August, 2014, passed by the learned Special



Judge, Vigilance, Patna in Special Case No. 01 of 2006, arising out of Vigilance P.S. Case No. 5 of 2006, whereby and whereunder, the petitions filed by the above-mentioned Petitioners under Sections 239 of the Cr.P.C., were rejected.

2. At the outset, it is necessary to record the following facts of Vigilance P.S. Case No. 05 of 2006.

On 16th of January, 2006, one Mahanand Prasad Yadav, Mukhiya of Udampur Gram Panchayat, District-Supaul, lodged a complaint before the Additional Director General of Police, Vigilance Investigation Bureau (VIB), Patna (hereinafter described as “VIB”), alleging, inter alia, that the Office Clerks attached to the office of the Deputy Development Commissioner, Supaul, namely, Bachaneshwar Jha and Chandrahas Verma demanded Rs. 1,000/- per house from the above-mentioned complainant for allotment of funds to his Panchayat for construction of houses under Indira Awas Yojana. It was reported by the informant that there were 339 beneficiaries in his Panchayat area, who were entitled to get monetary assistance under Indira Awas Yojana. Their names were forwarded from the Panchayat Office to the Deputy Development Commissioner, Supaul for recommendation of sanction. It was alleged by the informant that the above-named



persons demanded Rs. 3,39,000/- at the rate of Rs. 1,000/- per house for sanctioning funds under Indira Awas Yojana. The informant has further alleged that Panchayats which paid the bribe money, were granted sanction at the rate of 25,000/- per house and as he did not pay the said bribe money, the funds were not released in respect of his Panchayat Area. The informant was told by the above-mentioned persons that the bribe money would be disbursed and distributed to the Deputy Development Commissioner, Director, DRDA, and the District Magistrate and thereafter the rest amount would be distributed amongst them. The complaint was duly verified by Lalbahadur Singh, Inspector, Cabinet, Vigilance and on receipt of verification report, dated 27th of January, 2006, an FIR was registered being Vigilance P.S. Case No. 5 of 2006 against one Bachneshwar Jha.

In order to ascertain the veracity of the complaint, officers of VIB prepared a pre-trap memorandum. As per the pre-trap memorandum, a raid was conducted in the office of DRDA, Supaul on 28th of January, 2006. Accused, Bachneshwar Jha was caught red handed while taking bribe of Rs. 35,000/-. Bribe money was recovered from the right side pocket of his trouser. In addition to the said money, a sum of Rs. 5,180/- was also



recovered from the left side of pocket of his shirt. Different Almirahs, kept in the office of DRDA, Supaul were searched out and in all Rs. 9,11,378.70 was recovered. The said money was kept in the envelopes and on the envelopes the words “DDC”, “Director, DRDA” and “the Chairman, Bihar Board” were written. The accused, Bachaneshwar Jha and Prabhakar Lal Das, who was posted in the said office as Najir failed to give proper explanation for retention of such amount of money in different envelopes or pockets. Therefore, the money with envelopes were seized by the Officer, heading the raiding party, under proper seizure list, as the money received by illegal gratification. Accused, Bachaneshwar Jha was arrested and on 4th of February, 2006. His statement under Section 164 of the Cr.P.C. was recorded by the Jurisdictional Magistrate. On the same day, the present Petitioners in both the revisions were arrested on the basis of the statement of accused Bachaneshwar Jha. Though the Petitioners were not named in the FIR. Official residences of both the Petitioners were searched at Supaul. The Investigating Officer verified the bank accounts of the Petitioners but there was no evidence of disproportionate asset to their known sources of income found by the Investigating Officers. In spite of having no evidence against the Petitioners, the Investigating



Agency filed charge-sheet against the Petitioners on 28th of March, 2006 under Sections 13(2) and 13 (1)(d) of the Prevention of Corruption Act, 1988. The Trial Court took cognizance of the offence punishable under Sections 409, 120 B and 109 of the IPC and Sections 13(2) read with Section 13 (1) (d) of the Prevention of Corruption Act against the charge-sheeted accused persons.

By an order, dated 11th of February, 2010, the Petitioners and the Director, DRDA were discharged by the learned Special Judge, Vigilance, Patna under Section 239 of the Cr.P.C. In respect of other accused persons, charge was framed under Section 7, 13 (2) and 13 (1) (d) of the Prevention of Corruption Act read with Sections 409, 120B and 109 of the IPC.

The State through VIB challenged the order of discharge of the Petitioners and the Director, DRDA, dated 11th of February, 2010, which was set aside vide order dated 31st of July, 2013 by a Coordinate Bench of this Court and the case was remitted back to the Trial Court to decide the discharge petition filed by the Petitioners afresh in accordance with law. Subsequently, by passing the impugned order, dated 14th of August, 2014, the learned Special Judge Vigilance, Patna rejected the applications filed by the Petitioners praying for



discharging them from the case.

In the meantime, the Petitioners challenged the order passed by a Coordinate Bench of this Court on 31st of July, 2013, allowing the instant revisions and rejecting the order dated 11th of February, 2010, before the Hon'ble Supreme Court in Cr. Appeal No. 377 of 2024. By an order dated 23rd of January, 2024, the Hon'ble Supreme Court was pleased to set aside the impugned judgement and restored the instant revisional applications directing this Court to fix a date for final disposal of the revisional application and proceed to decide the revisional applications in accordance with law.”

3. Therefore, both the revisions were taken up for hearing afresh as per the direction of the Hon'ble Supreme Court on 21st of March, 2014.

4. The learned Advocate for the Petitioners in both the revisions, at the outset, submits that the Petitioners were implicated in connection with Vigilance P.S. Case No. 05 of 2008 only on the basis of a confessional statement made by the accused Bachaneshwar Jha recorded under Section 164 of the Cr.P.C.

5. It is submitted by the learned Advocate appearing on behalf of the Petitioners that a statement of an accused



implicating some other persons in his statement under Section 164 of the Cr.P.C is not admissible against the said persons. In other words inculpatory statement of an accused made under Section 164 of the Cr.P.C may be treated as an offence as against the accused making the confession and exculpatory statement made by him implicating some other persons not named in the FIR is not admissible as against the said third persons and the Petitioners cannot be implicated in a criminal case under the Prevention of Corruption Act read with general provisions of criminal breach of trust and abatement of offence under the IPC on the basis of a confessional statement made by the accused Bachneshwar Jha. In support of his submission, the learned Advocate for the Petitioners first refers to the privy counsel judgement in the case of *Pakala Narayana Swami Vrs. King-Emperor*, reported in *AIR 1939 PC 47*, wherein it was held that a statement in order to be a confession must admit in terms the offence, or at any rate substantially all the facts which constitute the offence. An admission of a gravely incriminating fact, even if conclusively incriminating fact, is not itself a confession; nor can a statement containing exculpatory matter be a confession; if the exculpatory statement is of some fact which, if true, would negative the offence alleged to be



confessed.

6. It is contended by the learned Advocate for the Petitioners that by making a statement under Section 164 of the Cr.P.C., accused Bachneshwar Jha tried to prove himself to be innocent in connection with the offence complained off and try to shift the responsibility upon the Petitioners as perpetrators of offence.

7. The learned Advocate for the Petitioners further submits, placing reliance on a judgement of this Court in the case of *Dr. Jitendra Gupta Vrs. The State of Bihar through Vigilance Investigation Bureau, Patna*, reported in *2016 (4) PLJR 894*, that the confession of co-accused cannot be used to be treated as substantive evidence, in the strict sense, against the Petitioners and cannot be made foundation for conviction of the Petitioners. On the same point, he also refers to the decision of the Hon'ble Supreme Court in the case of *Kashmira Singh Vrs. The State of Madhya Pradesh*, reported in *AIR 1952 SC 59*.

8. It is further submitted by the learned Advocate for the Petitioners that the Investigating Agency took an endeavour to connect the accused persons/Petitioners with the recovery of envelopes with currency notes inside them and on the seized envelopes "DDC" and "Director, DRDA" were written. It is



submitted by the learned counsel for the Petitioners that recovery of the said envelops along with currency notes and “DDC” and “Director, DRDA”, written thereon, does not fasten the Petitioners with the offence.

9. Firstly, the said envelops were not recovered from the possession of the accused persons. Secondly, the recovery of the said envelops and currency notes does not raise any reasonable suspicion to believe that a conspiracy existed and the Petitioners were parties to such conspiracy. If during the trial, the said envelops are proved to have been seized from the Almirahs of the office, such evidence would be admissible under Section 21 of the Evidence Act against accused Bachneshwar Jha and Chandrahas Verma and not against the Petitioners. The VIB also failed to examine any witness to prove the ownership of the Petitioners in respect of the seized envelops.

10. In this context, the learned counsel for the Petitioners refers to a decision of the Hon’ble Supreme Court in case of *Central Bureau of Investigation Vrs. V.C. Shukla & Ors.*, reported in (1998) 3 SCC 410.

11. It is pertinent to mention that in the said report, CBI submitted charge-sheet under the Prevention of Corruption Act against Mr. V.C. Shukla and Mr. L.K Advani on the basis of



recovery of some diaries, notebooks and files regarding details of payment to various persons from the house of one S.K. Jain. The Hon'ble Supreme Court held that even if the entries made in the said diaries, notebooks and files are presumed to be true, yet those entries would not be sufficient to charge L.K. Advani and V.C. Shukla with accusations levelled against them without independent witnesses having been examined in order to prove their trustworthiness.

12. Similarly, the recovery of envelopes with currency notes from the Almirahs of Bachneshwar Jha and Chandrahas Verma cannot be used against the Petitioners.

13. It is submitted by the learned Advocate for the Petitioners that the informant did not make any allegation in his complaint against the Petitioners. His allegation was limited to accused Bachneshwar Jha. There is no evidence collected by the Investigating Agency that the informant or any other witnesses were ever requested by the Petitioners for illegal gratification for release of fund in Indra Awas Yojana. The Trial Court failed to consider the above aspect while rejecting the prayers made by the Petitioners for discharge.

14. The learned Advocates appearing on behalf of the Petitioners have raised complaints as to the applicability of the



charge under Section 3 (1) (d) of the Prevention of Corruption Act and Sections 13 (1) (d) and 13 (2) read with Section 7 of the Prevention of Corruption Act. It is submitted by him, placing reliance upon the decision of the Apex Court, in ***C. K. Damodaran Nair Vrs. Government of India***, reported in (1997) 9 SCC 477 that in order to prove a charge under Section 5(1) (d) read with Section 5 (2) of the P.C. Act, which is *pari materia* with Section 13(1) (d), prosecution is required to prove that the accused obtained the valuable thing or pecuniary advantage by corrupt or illegal means or by otherwise abusing his position as a public servant and that too without aid of the statutory presumption under Section 4(1) of the Act.

15. In my opinion, the above issue raised by the learned Advocate for the Petitioners cannot be decided at the time of consideration of charge. It can only be decided at the time of trial after framing of charge, if, at all, there be sufficient ground to frame charge against the Petitioners.

16. Therefore, I am of the view that at this stage for the purpose of adjudication of the instant revision on the question as to whether the impugned order is legal, valid and proper, the above issue cannot be considered.

17. The learned counsel for the Petitioners concludes



submitting that the materials, i.e., charge-sheet and case diary, on which basis Vigilance sought to prosecute the Petitioners, even if unrebutted or accepted as a whole, do not make out any prima facie case for commission of offence against the Petitioners and they are not sufficient to put the Petitioners to the rigor of trial.

18. In support of his contention, he relies upon the decisions of Hon'ble Supreme Court in *State of U.P through CBI Vrs. Dr. Sanjay Singh & Anr.*, reported in *1994 Supp (2) SCC 707* and *Dipakbhai Jagdishbhai Patel Vrs. State of Gujarat*, reported in *2019 16 SCC 547*.

19. In Cr. Revision No. 826 of 2014, the Respondents did not file any counter affidavit. However, in Cr. Revision No. 834 of 2014, counter affidavit has been filed on behalf of the Opposite Parties on 18th of December, 2014.

20. In the counter affidavit, the VIB relied upon the statement made by Bachneshwar Jha under Section 164 of the Cr.P.C. and recovery of some envelopes in the name of "DDC" and "Director, DRDA" with some currency notes therein.

21. The learned Advocate for the Respondents submits that a racket was going on in the office of DDC, Supaul and



accused Bachneshwar Jha was directed to collect bribes from the Mukhiya of different Gram Panchayats at the rate of Rs. 1,000/- per house under Indira Awas Yojana.

22. Apart from the above-mentioned materials, there is nothing against the Petitioners in both the Criminal Revisions.

23. The question arises for consideration is as to whether the prima facie materials, collected by the Investigating Officer are sufficient to implicate the Petitioners in connection with the said case under the Prevention of Corruption Act.

24. The learned Advocate for the VIB submits that the law on this point is well settled that at the time of taking cognizance, the Court has merely to peruse the evidence in order to proceed against the accused. At the stage of taking cognizance, the Court should not make any roving enquiry into the pros and cons of the matter and weigh the evidences as if it was conducting a trial.

25. It is submitted by the learned Advocate that on due consideration of materials available on record and the case-diary, it can be ascertained beyond any iota of doubt that the cognizance was taken by the Court considering the materials on record in respect of offences against the accused persons.



Therefore, the charge ought to have been framed on the basis of prima facie materials on record and the Trial Court is not in a position to ascertain the weigh of evidence at the time of consideration of charge.

26. This Court is not in a position to fully agree with the view made by the learned Advocate appearing on behalf of the Opposite Parties. When the accused is implicated on the basis of inadmissible evidence and no direct or circumstantial evidence was brought forth to implicate them under the Prevention of Corruption Act, they are entitled to be discharged.

27. The Petitioners were Director, DRDA and DDC, Supaul at the relevant point of time. No incriminating material was seized from them. There is no evidence that they claimed bribe from any Panchyat Member within their jurisdiction against disbursement of money under Indira Awas Yojana. No trap was conducted in respect of the Petitioners. From their physical possession, no tainted money was recovered. Only because some envelops were found, on which “DDC” and “Director, DRDA” were written, cannot be held to be sufficient material for framing charge against the Petitioners. The V.C. Shukla (supra) may be taken into consideration to arrive at such decision.



28. It is needless to say that at the stage of Section 239 Cr.P.C., the Court has to only look into the prima facie case and the obligation to discharge the accused under Section 239 Cr.P.C. arises when the Magistrate considers the charge against the accused to be groundless. The word 'groundless' would connote no basis or foundation in evidence and, thus, test which may be applied for determining whether charge should be considered groundless is that where the materials are such that even if unrebutted would make out no case whatsoever. It is consistently held by the Apex Court that no detailed evaluation of the materials or meticulous consideration of the possible defence need to be undertaken at the stage of consideration of an application under Section 239 of the Cr.P.C. This is not the stage of conducting an exercise of weighing materials collected by the Investigating Agency in golden scale of beyond reasonable doubt case. The only consideration at the stage of Sections 239 and 240 of the Cr.P.C. is as to whether the allegation/charge-sheet is groundless. This should not be the stage for weighing the pros and cons of the implications of the materials nor for sifting the materials placed by the prosecution, because the exercise at this stage is to be confined to consider the police report and the documents to decide whether the



allegations against the accused can be said to be groundless.

29. Even a very strong suspicion founded upon materials before the Magistrate which leads the same to form a presumptive opinion as to the factual existence of the ingredients constituting the offence alleged may justify the framing of charges against the accused in respect of the offence, and the suspicion must be founded upon the materials placed before the Magistrate which leads him to form a presumptive opinion as to the existence of factual ingredients constituting the offence.

30. It is held in *State of Tamil Nadu. Vrs. R. Soundirarasu & Ors.*, reported in (2023) 6 SCC 768 that interference with the order declining prayer for discharge or framing of charge in revision by High Court is permissible in the rarest of rare case only to correct the patent error of jurisdiction and the revisional power cannot be exercised in a casual or mechanical manner and it can only be exercised to correct manifest error of law or procedure which would occasion injustice, if it is not corrected. The revisional power cannot be equated with the appellate power and thus, a Revisional Court cannot undertake meticulous examination of the material on record as it is undertaken by trial court or



appellate court. In Paragraph 62 to 64 **R. Soundirarasu** (supra), the Hon'ble Supreme Court held as hereunder :-

“62. Section 239CrPC lays down that if the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused. The word “groundless”, in our opinion, means that there must be no ground for presuming that the accused has committed the offence. The word “groundless” used in Section 239CrPC means that the materials placed before the court do not make out or are not sufficient to make out a prima facie case against the accused.

63. The learned author Shri Sarkar in his Criminal P.C., 5th Edn., on p. 427, has opined as:

“The provision is the same as in Section 227, the only difference being that the Magistrate may examine the accused, if necessary, of also Section 245. The Magistrate shall discharge the accused recording reasons, if after (i) considering the police report and documents mentioned in Section 173; (ii) examining the accused, if necessary and (iii) hearing the arguments of both sides he thinks the charge against him to be groundless i.e. either there is no legal evidence or that the facts do not make out any offence at all.”

64. In short, it means that if no prima facie case regarding the commission of any offence is made out, it would amount to a charge being



groundless.”

31. In the instant case, the Petitioners were initially discharged. Subsequently, CBI preferred Criminal Revision before this Court. The revisional application was allowed and the case was remitted back to the Trial Court to consider the materials on record to come to a specific finding as to whether there were actually ingredients to frame charge under the different provisions of the Prevention of Corruption Act.

32. Against the said orders passed by the Hon’ble High Court, the accused persons moved in appeal on special leave before the Hon’ble Supreme Court. The Hon’ble Supreme Court allowed the appeal and set aside the order passed by this Court on the ground that the Revisional Applications were disposed of mechanically and in a casual manner without assigning any reason.

33. I have already held that at the stage of consideration of charge, the Trial Court is not under obligation to examine the materials on record, in the same manner, which is required to be examined during trial. Detailed evaluations of the materials and consideration of all the pros and cons of all the implications of the materials or for sifting the materials are not required by the Trial Court at the time of consideration of charge. A very strong



suspicion founded upon materials before the Magistrate which may lead him to form a presumptive opinion as to the factual ingredients constituting the offence, is sufficient to frame charge against the accused.

34. Bearing this principle in mind, let us now consider the materials placed before the learned Trial Judge to frame charge against the Petitioners. The principle evidence which relied upon by the prosecution against the Petitioners is the statement of Bachneshwar Jha recorded under Section 164 of the Cr.P.C. It is needless to record that an inculpatory part of the confessional statement is admissible only against the maker of the statement.

35. In *Surinder Kumar Khanna Vrs. Directorate of Revenue Intelligence*, reported in (2018) 8 SCC 271, it is held by the Hon'ble Supreme Court that confession has, no doubt, to be regarded as amounting to evidence in a general way but in cases against an accused persons, the Court cannot start with confession of a co-accused person; it must begin with other evidence adduced by the prosecution and after it has formed its opinion with regard to the quality and effect of the said evidence, then it is permissible to turn to the confession in order to receive assurance to the conclusion of guilt which the judicial mind is about to reach on the said other evidence. In other



words, as against the co-accused, a statement under Section 164 of the Cr.P.C. cannot be held to be substantive evidence. It may be treated as a circumstance of corroboration if on the basis of independent evidence, the prosecution is able to prove the charge against the co-accused. Therefore, confession of co-accused cannot be the sole basis of conviction, nor substantive piece of evidence. Moreover, exculpatory confession implicating some other persons than the maker cannot be treated as a piece of evidence.

36. In the instant case, if the statement made by Bachneshwar Jha under Section 164 of the Cr.P.C. is looked into, it would be found that the learned Magistrate failed to record such statement in accordance with the requirements which are to be observed for recording a statement under Section 164 of the Cr.P.C. The said statement was not even recorded by eliminating the doubt, as to whether the statement was made by the above-named accused free from any inducement, undue influence, threat or coercion. The statement does not bear essential certification under Section 164 of the Cr.P.C. which is required to be written by the learned Magistrate. Therefore, on prima facie perusal of the said statement, there is a reasonable doubt as to whether the said



statement would be admissible in evidence, and, if, at all, admissible, the said statement cannot be used against the Petitioners.

37. The Vigilance Investigation Bureau also relied on some envelopes with currency notes with letters “DDC” and “Director, DRDA”, written thereon. Admittedly, the said envelopes were recovered from the possession of the Petitioners, there is no independent evidence other than the evidence of accused, Bachneshwar Jha that the Petitioners were paid shares of bribe money. This evidence is not admissible as against the Petitioners. The Investigating Agency did not find any incriminating material from the respective residence of the Petitioners at Supaul and Patna. No case is made out with regard to disproportionate asset to the known sources of income of the Petitioners against them. Therefore, only on the basis of statement of the co-accused, recorded under Section 165 Cr.P.C., no prima facie case regarding commission of any offence is made out and it would amount to the charge being groundless.

38. For the reasons stated above, I have come to the irresistible conclusion that the prosecution failed to make out any prima facie case against the accused or even established a



sufficient ground of suspicion against them so that a charge can be framed against the accused.

39. Accordingly, both the Revisions are allowed.

40. The Petitioners are discharged from the case being Vigilance Case No. 01 of 2006 and Vigilance Case No. 05 of 2006.

41. Let a copy of this order be sent to the learned Special Judge, Vigilance, Patna.

(Bibek Chaudhuri, J)

skm/-uttam

AFR/NAFR	
CAV DATE	21.03.2024
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