

**IN THE HIGH COURT OF JHARKHAND, RANCHI**

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**Cr.M.P. No. 162 of 2014**

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Yogendra Prasad Singh ..... Petitioner  
-- Versus --  
The State of Jharkhand and Another ..... Opposite Parties

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**CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI**

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For the Petitioner :- Mr. Saurabh Shekhar, Advocate  
For the State :- Mrs. Priya Shrestha, Spl.P.P.

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**8/22.12.2023** Heard Mr.Saurabh Shekhar, the learned counsel for the petitioner and Mrs. Priya Shrestha, the learned counsel appearing on behalf of the respondent State.

2. This petition has been filed for quashing of the order dated 06.12.2013 passed by the learned Special Judge, Vigilance, Ranchi in Vigilance P.S.Case No.30 of 1999 (Special Case No.07 of 1999) whereby the learned court has been pleased to issue the non-bailable warrant of arrest against the petitioner on the basis of a petition contained in letter no.13175 dated 06.12.2013 along with the Memo of Evidence filed by the Inspector of Police-cum-investigating officer of this case wherein nothing was maintained that the petitioner has tampered the evidence or evading arrest of having allegation of heinous crime whereas the earlier final form vide 12/2000 dated 06.06.2000 was already submitted by the Deputy Superintendent of Police-cum-investigating officer, Vigilance BSEB, Patna wherein the petitioner was exonerated which was accepted by the learned Special Judge, Vigilance, Ranchi in Vigilance P.S.Case No.30/1999 (Spl. Case No.07 of 1999) by an order dated 05.05.2001 by which

cognizance was taken against seven other accused persons. The prayer is further made for quashing of entire criminal proceeding of Vigilance P.S. Case No.30 of 1999 (Special Case No.07 of 1999) with respect to the petitioner which is pending before the learned Special Judge, Vigilance, Ranchi.

3. Mr. Saurabh Shekhar, the learned counsel for the petitioner submits that the Vigilance has registered a case being Vigilance Case No.30 of 1999 (Special Case No.07 of 1999) in the year 1999 wherein number of persons have been made accused including this petitioner who at the relevant point of time was the Superintendent Engineer, Bihar State Electricity Board. The matter was taken up for investigation. The police has submitted final form on 5.5.2001 including the petitioner. From the accusation which was accepted by the first learned court if more than six years an application has been filed by the investigating officer before the learned court for allowing him to go for further investigation against the petitioner and others. He submits that application was rejected on 16.04.2007 on the ground that the investigating officer has not come forward with any further material. He submits that order was never challenged by the investigating officer. He submits that in the year 2010 again an application was filed allowing the investigating officer to take up the matter for further investigation without disclosing any fresh material but that prayer was allowed by the learned court. Though, on the same day, on the similar facts it has been rejected and thereby the order under which the matter was allowed to be taken up for fresh investigation suffers from illegality. He submits that in course of time the learned court has issued the warrant of arrest on the requisition submitted by the investigating officer vide order dated 06.12.2013 and that is the cause of action of the petitioner to approach this Court. He submits that no arrest order has been passed by this Court on 24.02.2014 and the matter is still

pending. To buttress his all these arguments, he draws the attention of the Court to the impugned order dated 06.12.2013 and submits that all these points have already been investigated by the police that was disclosed in that letter and thereafter the charge sheet was submitted. He further submits that in this letter itself there is endorsement of issuing non-bailable warrant against the petitioner which is without applying the judicial mind. He further refers to Annexure-13 which is dated 31.12.1998 and submits that by letter no.1954 the petitioner has already requested the General Manager-cum-Chief Engineer, S.B and C.N Area, Electricity, Ranchi -2 to cancel the sanction load to the M/s Spriha Steel Private Limited and the reasons have been disclosed wherein why the such request was made. He further submits that along with the letter dated 01.12.2013 the points made therein are erroneous as the letter dated no.1954 dated 31.12.1998 issued by this petitioner was already investigated by the investigating agency and the Peon of the office of the General Manager has accepted that letter was received in the office of the General Manager. He further submits that the identical was situation in one of the another co-accused namely, Deo Mani Singh which case has been allowed by the coordinate Bench of this Court in Cr.M.P. No.239 of 2013 by order dated 07.08.2013 and the entire criminal proceeding has been quashed. He further submits that the spirit of section 173(8) Cr.P.C has been considered by the Hon'ble Supreme Court in the case of ***Vinay Tyagi v. Irshad Ali @ Deepak and Others, (2013) 5 SCC 762*** and further in the case of ***K. Chandrasekhar v. State of Kerala and Others, (1998) 5 SCC 223***. On these grounds, he submits that unnecessarily an aged person who is the petitioner aged about 80 years is subjected to trauma.

4. The said argument is resisted by Mrs. Priya Shrestha, the learned counsel appearing on behalf of the respondent State on the

ground that section 173(8) Cr.P.C is the statutory provision where that power is there. She submits that the learned court has rightly passed the order.

5. It is an admitted fact that the petitioner's case was investigated by the investigating agency. On 31.01.2000 the charge sheet was submitted against one of the co-accused and the investigation was kept open so far other accused persons are concerned. On 6.6.2000 the supplementary charge sheet was submitted wherein the petitioner was exonerated and it has been pointed out that the said supplementary charge sheet was having the approval of Director General of Police. The learned court has accepted the said final form on 05.05.2001. The application for re-investigation was filed by the investigating agency on 22.02.2007 and the same was rejected on 16.04.2007. Again an application was filed on 19.09.2008 for re-investigation of the case of the petitioner and one Deo Mani Singh. The case of Deo Mani Singh has already been quashed in Cr.M.P. No.239 of 2013. However, the prayer for re-investigation was allowed by the learned court on 12.04.2010. By way of referring the order dated 10.09.2012, it has been pointed out that the prayer of Deo Mani Singh was rejected by the learned court on the ground that there was no sufficient material on the record to suggest that any case of re-investigation was made out. These facts have not been denied by the learned counsel for the respondent State and these are the admitted position. The spirit of Section 173(8) Cr.P.C speaks to continuation of investigation but it bars re-investigation and a reference may be made to the case of ***Vinubhai Haribhai Malaviya and Others v. State of Gujarat and Another, (2019) 17 SCC 1***, wherein at paragraph no.40 of the said judgment, it has been held as under:

*40. Having analyzed the provisions of the Code and the various judgments as aforeindicated, we would state the following conclusions in regard to the powers of a Magistrate in terms of Section 173(2) read*

*with Section 173(8) and section 156(3) of the Code:*

*40.1 The Magistrate has no power to direct 'reinvestigation' or 'fresh investigation'(de novo) in the case initiated on the basis of a police report.*

*40.2 A Magistrate has the power to direct 'further investigation' after filing of a police report in terms of section 173 (6) of the Code.*

*40.3 The view expressed in sub para 40.2 above is in conformity with the principle of law stated in Bhagwant Singh case by the three-Judge Bench and thus in conformity with the doctrine or precedent.*

*40.4. Neither the scheme of the Code nor any specific provisions therein bars exercise of such jurisdiction by the Magistrate. The language of Section 173(2) cannot be construed so restrictively as to deprive the Magistrate of such powers particularly in face of the provisions of section 156(3) and the language of section 173(8) itself. In fact, such power would have to be read into the language of section 173(8).*

*40.5. The Code is a procedural document thus it must receive a construction which would advance the cause of justice and legislative object sought to be achieved. It does not stand to reason that the legislature provide power of further investigation to the police even after filing a report, but intended to curtail the power of the court to the extent that even" where the facts of the case and the ends of justice demand the court can still not direct the investigating agency to conduct investigation which it could do on its own.*

*40.6. It has been a procedure of propriety that the police has to seek permission of the court to continue 'further investigation' and file supplementary charge sheet. This approach has been approved by this Court in a number of judgments. This is such would support the view that we are taking in the present case.*

6. In the aforesaid judgment, it has been clearly held that a Magistrate has no power to direct for re-investigation or fresh investigation *denovo* in a case initiated on the basis of police report. In the case in hand, once even the said prayer is rejected by the learned court and again it was allowed by the another learned court which is not in accordance with law and further it has been observed on 06.12.2013 by way of only endorsement at the top of the letter of investigating agency and the court has been pleased to direct non-bailable warrant

which further suggest that there is non-application of judicial mind. It is well settled that liberty of any person cannot be taken away in light way and there are parameters of issuing such orders which is not followed.

7. In view of the above facts, reasons and analysis, the entire criminal proceeding including the order dated 06.12.2013 passed by the learned Special Judge, Vigilance, Ranchi in Vigilance P.S.Case No.30 of 1999 (Special Case No.07 of 1999) whereby the learned court has been pleased to issue the non-bailable warrant of arrest against the petitioner, pending before the learned Special Judge, Vigilance, Ranchi are quashed.

8. Cr.M.P. No.162 of 2014 is allowed and disposed of in the above terms.

9. The learned court shall proceed against the other accused persons against whom the trial is pending and against whom the charge sheet has already been submitted by the investigating agency in accordance with law.

10. Pending petition if any also stands disposed of accordingly.

**( Sanjay Kumar Dwivedi, J.)**

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