

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No. 877 of 2014

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M/s Azad Sales, through its Proprietor Gauri Shankar Azad @ G.S.Azad,
Shashi Complex, Exhibition Road, P.S. Gandhi Maidan, District- Patna.

.... Petitioner/s

Versus

The State of Bihar through the Principal Secretary, Department of Home,
Government of Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s: Mr. Akhileshwar Prasad Singh, Sr. Advocate.
Mr. Ranjan Kumar Sharma, Advocate.

For the State : Mr. Harish Kumar, G.P. 32
Mr. Sanoj Kumar, Advocate.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH

ORAL ORDER

14 29-07-2015

Heard learned counsel for the petitioner and
learned GP-32 for the State.

The present writ application seeks quashing of
the F.I.R. of Darbhanga Town P.S. Case No. 311 of 2013 dated
16.12.2013 registered for offences punishable under Sections
406/408/409/420/467/468/471/120B/34 of the Indian
Penal Code as far as it relates to the petitioner.

As per the allegation the petitioner who is the
proprietor of the firm dealing in PVC Trolley, Dustbin etc. had
supplied certain materials without proper tender and on a
higher rate.

Learned counsel for the petitioner submits that
the allegation that the petitioner had supplied on a higher rate
cannot be a ground for initiating criminal proceeding



inasmuch as the petitioner had submitted his offer to supply various equipments to Darbhanga Municipal Corporation quoting certain rates, the said were accepted and after getting a proper purchase order also supplied the materials. Later on, allegation was made that there was no proper tender and further that the rate at which the petitioner had supplied was in excess of what could have been available at lower rates. Learned counsel submits that the petitioner had not made any misrepresentation or had not been paid in excess to what he had quoted and it was on the discretion of the authority concerned either to accept his offer or to reject but he being a businessman was ready to sell the equipments on his terms at his price for which nobody can question him much less any criminal case be instituted against him. It is submitted that there is no allegation with regard to the petitioner submitting materials which were not of the quality he had offered or there was any other shortcoming in the supply relating to such materials. Learned counsel submits that for non following of the procedure which may be prescribed for such purchase, the petitioner cannot be held responsible since he had made his offer, as in the past also he had supplied such equipments to various municipalities including Darbhanga Municipal Corporation and further that one of the persons who was working for the Darbhanga Municipal Corporation had visited him and asked him to submit his rates. Learned counsel



submits that even with regard to supply already made by the petitioner of various equipments his bill of over Rs. 25,00,000/- is still pending and if at all the authorities feel that there was some excess rate quoted by him, they had the liberty to negotiate with him and then maybe the amount payable to him could have been adjusted, but in no way could a criminal prosecution for such allegation be levelled as far as the petitioner is concerned. Learned counsel further submits that in any view of the matter since the dispute is that the petitioner has supplied certain equipments at a higher rate can only be a civil dispute for which the appropriate remedy is before the Civil Court of competent jurisdiction as it is a purely money matter for which a proper suit for recovery can be initiated. It is submitted that present is an abuse of the process of the Court as till date no nexus of the petitioner having bribed or otherwise used illegal means to get such order has been found by the authorities, even though the case has been instituted in the year 2013.

Learned counsel for the State has opposed the prayer made in the writ petition but is not in a position to controvert the fact that in the two counter affidavits filed on behalf of the State there is not even a whisper as to what materials have come during investigation to show that the petitioner had also committed any criminal offence punishable under various sections of the Penal Code or any other such



law. The only statement is that the investigation is still continuing and various witnesses have supported the prosecution case without there being any specific criminal role assigned to the petitioner and only the general and omnibus allegation that for the materials supplied the price charged was excessive. There is also no whisper about any money being passed on to the accused officers to even indicate any criminal conspiracy despite the investigation going on since the year 2013.

Upon considering the facts and circumstances of the case and submissions of learned counsel for the parties, this Court finds substance in the submissions of learned counsel for the petitioner. The only allegation against the petitioner being that he had charged higher rate for the materials supplied, cannot, in the considered opinion of the Court be a criminal charge since the offer was made by the petitioner to the authorities for selling the materials at a certain rate and the same rate after being accepted, order for supply was given and part payment has been made to the petitioner. The petitioner being a businessman was well within his right to quote a rate for selling his equipment and it was the discretion of the authority concerned either to accept it or reject it or best to go for negotiation with regard to the rate. It is not the case of the parties that any materials supplied were not what was promised or offered or substandard. This Court

is unable to accept the stand of the respondents that investigation is going on as even the witnesses who have been examined have only stated that the payment is more than what ought to have been charged.

In view of the discussions made hereinabove, this Court does not find that the F.I.R. as far as it relates to the petitioner of Darbhanga Town P.S. Case No. 311 of 2013 dated 16.12.2013 can be sustained. Accordingly, the application succeeds. The F.I.R. of Darbhanga Town P.S. Case No. 311 of 2013 dated 16.12.2013, as far as it relates to the petitioner, stands quashed.

However, in view of the stand of the petitioner that still more than Rs. 25,00,000/- is due to him for supplies made and he is agreeable for a negotiated settlement with regard to the rates, the authorities are at liberty to negotiate with the petitioner to ensure that public money is not misused.

Matter stands disposed off.

(Ahsanuddin Amanullah, J.)

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