

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No. 45270 of 2013

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Bijay Kumar Bhagat @ Vijay Kumar Bhagat Son of Late Kalika Prasad
Bhagat Resident of Mohalla- Shivpuri, Katihar Town, P.S and District-
Katihar.

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Mukesh Kumar Jha &
Mr. Bhola Prasad

For the State : Mr. Jagdhar Prasad, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH

ORAL ORDER

4 16-07-2015

Heard learned counsel for the petitioner and

learned A.P.P. for the State.

The present application under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Code') seeks quashing of order dated 01.10.2013 passed by the Judicial Magistrate, Ist Class, Kishanganj in Kishanganj P.S. Case No. 304 of 2008 (G.R. No. 1090 of 2008) by which the petition filed by the petitioner for discharge under Section 239 of the Code has been rejected.

The brief facts of the case are that originally the petitioner had written to the department indicating that the previous Junior Engineer namely, Mr. Devendra Kumar Singh had not submitted account for an amount of Rs. 11,46,245/- which was shown pending against him by way of advance and thus the same amounted to defalcation of public money. He

had also directed the Assistant Engineer to lodge police case. The said case was a result of such communication.

Learned counsel for the petitioner submits that the petitioner was in fact the person who had initiated the action against the Junior Engineer namely, Mr. Devendra Kumar Singh who had not accounted for Rs. 11,46,245/- taken by him as advance and surprisingly he has also been made an accused in the case without any factual or legal justification or basis. It is submitted that the amount which is alleged to be defalcated relates to the period 2002-03 whereas the petitioner joined as Executive Engineer in the relevant division only on 11.01.2005 and the transaction relates to a period much prior to his coming on the scene. Learned counsel submits that lateron either due to inadvertence or confusion it has come during investigation that Rs. 40,000/- has been given by Mr. Devendra Kumar Singh to the contractor in cash which was against the existing rules and due to which probably the petitioner has also been implicated in the case as an accused. It is submitted that the same is misconceived since the petitioner was first of all not holding the post at the relevant time and further even if it is taken for argument sake that the amount of Rs. 40,000/- which was given to the contractor in cash, was against the rules, the same can only at best be termed irregular and liable to departmental proceeding but there cannot be any criminal charge since the allegation is

not that the said Rs. 40,000/- was defalcated or not accounted for. Learned counsel submits that the petitioner having taken the bold step for directing for lodging an F.I.R. against an officer of the department is now paying the price as he has been made an accused in the case and is being harassed. It is further submitted that the petitioner had never earlier been charged for any criminal offence by the department.

Learned A.P.P., upon going through the case diary, submits that nothing concrete has come to show that the petitioner is involved in the defalcation of the amount of Rs. 11,46,245/- as the specific allegation is against Mr. Devendra Kumar Singh, the then Junior Engineer and the period also relates to the year 2002-03. However, it is submitted that there are passing references in the case diary with regard to irregular payment of Rs. 40,000/- cash to the contractor but he fairly admits and concedes that the allegation even with regard to the said Rs. 40,000/- is not that it was misappropriated, defalcated or not accounted for.

Considering the facts and circumstances of the case and upon hearing learned counsel for the parties, this Court finds substance in the submissions of learned counsel for the petitioner. From the entire sequence of events and allegations made in the F.I.R. and the materials submitted during investigation, this Court does not find that any criminal act can be attributed on the part of the petitioner. Even with

regard to Rs. 40,000/- in cash given to the contractor, the allegation is not that the same has been defalcated or misappropriated and rather only that it ought to have been given through cheque meaning thereby it is not the case of the prosecution that the same has either been defalcated or misutilized.

Thus, upon a careful consideration, this Court exercising inherent powers under Section 482 of the Code is inclined to interfere in the matter. Accordingly, the impugned order dated 01.10.2013 passed by the learned Judicial Magistrate, Ist Class, Kishanganj in Kishanganj P.S. Case no. 304 of 2008 (G.R. No. 1090 of 2008) rejecting the petition filed by the petitioner under Section 239 of the Code stands quashed. The petitioner stands discharged from the case.

The application stands allowed.

(Ahsanuddin Amanullah, J.)

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