

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.44458 of 2012

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Sheela Chandra Kumar S/O Late Saudi Das R/O Shanti Nagar, P.S.-
Barbigaha, Dist.- Shekhpura, At Present R/O House No.87/B, Road No.1,
New Patliputra Colony, P.S.- Patliputra, District- Patna

.... Petitioner/s

Versus

The State Of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. S.N.P.Sinha, Sr.Advocate
Mrs. Rina Sinha

For the Opposite Party/s : Mr. Aditya Nr.Singh (App)

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CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL ORDER

2 20-03-2015

Heard learned counsel for the petitioner and the State.

The petitioner seeks quashing of the order dated 05.4.2007 arising out of Gardanibagh (Shashtrinagar) P. S. Case No. 720/2006 passed by the learned Chief Judicial Magistrate, Patna whereby and whereunder the learned Chief Judicial Magistrate has taken cognizance under section 409 of Indian Penal Code.

Learned counsel for the petitioner submits that the petitioner, a Government officer, had been functioning as officer Incharge, Shashtrinagar P.S. By virtue of an order passed by the Transport Commissioner, the petitioner had been assigned the task of collecting money for Special Agreement Card Scheme, which was to be effected from October 2003 to March, 2006.

The allegation against the petitioner is that while the petitioner received 1400 contributions for making special

agreement card of worth Rs. 59,60,000/- he failed to deposit Rs. 32,31,000/- for 580 special agreement card.

Learned counsel for the petitioner submits that the allegation against the petitioner that he defalcated the aforesaid money, was wholly farfetched as after accounting the petitioner deposited rest amount and therefore, no case under section 409 of the Indian Penal Code was made out against him so as to necessitate the passing of cognizance order.

Learned counsel for the petitioner submits that the Investigating Officer in the present case also submitted charge sheet indicating the falsity of the case and also stated that so far as the petitioner is concerned, charge sheet should be submitted only after receiving the order of sanction from the District Magistrate. Moreover, learned counsel for the petitioner has brought on record an application filed by the learned Public Prosecutor, Civil Court, Patna dated 10th November, 2011 in which it has been clearly stated that the accused police officer need not be proceeded against and case be withdrawn against him in public interest. The Public prosecutor has after considering the materials including the Police Report further indicated in a letter that the entire amount has already been deposited, as is evident from letter contained in Memo No. 1185 dated 13.03.2008 issued under the hand of Joint Secretary, Transport Department. Further vide Memo No. 750 dated 19.02.2008 it was, further indicated that the Transport

Commissioner had praised the work of the petitioner particularly at the level of Secretary-cum-State transport Commissioner and there was no necessity to prosecute him as he was a hard working and diligent officer.

Learned counsel for the petitioner submits that though such an application has been filed indicating the falsity of the allegation against the petitioner, the learned Magistrate without waiting for the sanction order, proceeded to take cognizance against the petitioner. It is submitted, that though the case is not made out against him under Section 409 of the I.P.C. there was no specific reason to prosecute the petitioner and the impugned order is fit to be quashed.

Considering the aforementioned submissions that there is no material on record so as to necessitate the taking of the order of cognizance the prosecution of the petitioner is nothing but an abuse of the process of the Court and the same is fit to be set aside.

The order of cognizance dated 05.4.2007 arising out of Gardanibagh (Shashtrinagar) P. S. Case No. 720/2006 is thus quashed, as a result, this application is allowed.

(Anjana Mishra, J)

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