

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.17 of 2015

Arising Out of PS.Case No. -null Year- null Thana -null District- PATNA

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1. Gupteshwar Singh Son of Late Rajeshwar Singh
 2. Radhamani Devi Wife of Gupteshwar Singh
- Both are residents of Village-Bichhedi, P.S-Naubatpur, District-Patna
3. Raj Kumar Mastana Son of Birju Rajak, Resident of Village+P.S-Naubatpur, District-Patna.
 4. Santosh Kumar Son of Late Chandrika Prasad Resident of Village-Pakri P.S-Bihta, District-Patna

.... Petitioners

Versus

1. The State of Bihar Through Senior Superintendent of Police, Patna
2. Mutukdhari Singh Son of Sri Ram Nandan Sharma, Resident of Village-Dariyapur, P.S-Naubatpur, District-Patna
3. The I.O. in connection with Naubatpur P.S case No.593/2014, District-Patna
4. D.G.P.Bihar, Patna

.... Respondents

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Appearance :

For the Petitioner : Mr. Dhananjay Kumar, Advocate,
Mr. Sunil Prasad, Advocate.

For the State : Mr. Sanjay Kumar Singh, AC to AAG-12

For O.P. No. 2 : Mr. Jai Prakash Verma, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 30-11-2015

Heard learned counsel for the petitioners, learned counsel
for the State and learned counsel for the informant.

2. By way of the present application under Articles 226



and 227 of the Constitution of India, the petitioners seek quashing of the first information report in Naubatpur P.S. Case No. 595 of 2014 registered under Sections 420, 406, 409, 467, 468, 471 & 120B of the Indian Penal Code (for short “IPC”). From perusal of the allegations made in the FIR, it would transpire that serious charges of misappropriation of public money in execution of various schemes of the Government have been levelled against the petitioners.

3. Learned counsel for the petitioners has submitted that the informant has lodged the criminal prosecution with ulterior motive. The petitioner no. 1 was elected as a Mukhiya of Gram Panchayat, Raj Dariyapur, in the year 2001, who remained Mukhiya till the year 2006 and, thereafter, the petitioner no. 2 was elected as a Mukhiya of the said Gram Panchayat. He has contended that as a matter of fact, the informant of the case had contested the Panchayat election in the year 2001 and was defeated by the petitioner no. 1. He is not a person aggrieved and hence, not competent to institute the FIR. He has further contended that if there is any irregularity in execution of the government schemes, in question, it was only the Officers of the State Government, who could have ordered for institution of an FIR. It is further contended that the State Government has declared Mukhiya of a Gram

Panchayat as a public servant and hence, they are protected from prosecution without obtaining any sanction from the District Magistrate.

4. Per contra, learned counsel for the State has submitted that the FIR has been instituted under Sections 420, 406, 409, 467, 468, 471 and 120B IPC at the direction of jurisdictional Magistrate, who had referred the complaint filed by the complainant for investigation in exercise of powers conferred under Section 156 (3) Code of Criminal Procedure (for short "Cr. P.C."). He has contended that in course of investigation, statements of several witnesses have been recorded under Section 161(3) Cr. P.C. and they have supported the allegations made in the FIR. The matter is still under investigation and in order to come to a definite finding, a deeper investigation is needed.

5. Learned counsel for the informant-opposite no. 2 has submitted that large scale irregularities have been committed by the petitioners in execution of several welfare schemes of the Government. He has submitted that being a resident of the locality, the opposite party no. 2 has simply highlighted those irregularities and simply because he has contested the panchayat election, it cannot be said that the complaint was lodged with ulterior motive. He has further contended that no sanction is required for institution

of FIR in a case under Section 409 IPC.

6. I have heard learned counsel for the parties and perused the record.

7. The allegations made in the FIR do attract the ingredients of a cognizable offence. The documents annexed with the FIR would show that two inquiries were conducted prior to institution of the FIR in respect of irregularities highlighted by the complainant of the case and in those inquiries, the Officers, who have conducted the inquiries, have found serious lapses on the part of the petitioners. I find no illegality in institution of the FIR on the basis of a complaint made by a private person. Section 39 of Cr.P.C. mandates every person aware of the commission of any offence punishable under different Sections of the IPC including Section 409 to forthwith give information to the nearest Magistrate or police officer.

8. Furthermore , the protection given to a public servant from prosecution cannot be claimed immediately after an FIR is lodged. The question of prior sanction could be considered during later stage after filing of a report under Section 173(2) Cr. P.C. in the Court. Moreover, prior sanction of the appropriate authority from prosecution to a public servant is to enable the authorities to scrutinize the allegations made against a public servant to shield

him against frivolous, vexatious or false prosecution initiated with object of causing embarrassment to the public servant for the act done in discharge of official duties. However, such protection cannot be claimed by a public servant in case of misuse and abuse of power vested in a public servant which can never be a part of his official duties.

9. In view of the discussions made hereinabove, I find no merit in this case. Accordingly, the application is dismissed.

(Ashwani Kumar Singh, J.)

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