

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No. 923 of 2014

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Raj Kishore Dinkar, Son of Late Jugal Kishore Sah, Prakhand Vikas
Padadhikari, Mild Pakri, P.S. - Bhairampur, District- Vaishali.

.... Petitioner/s

Versus

1. The State of Bihar, through Principal Secretary, Home Department,
Government of Bihar, Patna.
2. The District Magistrate, East Champaran, Motihari.
3. Superintendent of Police, East Champaran, Motihari.
4. Dy. Superintendent of Police, Areraj, East Champaran, Motihari.
5. Sub-Divisional Officer, Areraj, East Champaran, Motihari.
6. Investigation Officer, Paharpur Police Station, Areraj, East Champaran.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr.
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH

ORAL ORDER

8 22-07-2015 Heard learned counsel for the petitioner and
learned AC to GA-5 for the State.

The present writ application has been filed for
quashing the F.I.R. of Paharpur P.S. Case No. 188 of 2013
dated 07.08.2013 registered for offences punishable under
Sections 420/409/467/468/471 and 120B of the Indian
Penal Code.

The allegation is that in the particular Block

people who are not entitled to get money under the Indira Awas Yajna have been given so in connivance with the public servants at the Block level.

Learned counsel for the petitioner submits that at the relevant time he was the Block Development Officer, Paharpur Block, Areraj in the District of East Champaran. It is submitted that even if the allegations in the F.I.R. are found true, the petitioner in the capacity of a Block Development Officer was not the authority to have verified whether the medical certificates issued to the beneficiaries were correct or not. Learned counsel has referred to the circular of the State Government dated 28.05.2009 relating to the scheme of distribution of funds for Indira Awas Yajna and according to him the only role of the petitioner was that if the disbursed amount was found to be wrongly given he would initiate action for recovery of the amount. Learned counsel has also drawn the attention of the Court to the circular of the State Government of the Home Department dated 09.06.2008 relating to lodging of case/F.I.R. against Government officers/employees in which it has been directed that it would be the duty of the superior officer to be satisfied that the officer should be proceeded against had any *mens rea* and has also clarified that all losses were not criminal losses. It has further been directed that the concerned officer would also determine whether the allegation is with regard to violation of

administrative rules for which departmental proceeding should be initiated or criminal in nature.

Learned counsel has also drawn the attention of the Court to the show cause issued by the petitioner to various beneficiaries for return of the money on the ground that they had given certificates showing them to be handicapped though not being so. Learned counsel submits that even certificate cases have been lodged against such beneficiaries for recovery of the said amount.

Learned counsel for the petitioner has relied on a decision of the Hon'ble Supreme Court in the case of **Binod Kumar v. State of Bihar** reported in **(2014) 10 SCC 663** in which the criminal complaint was quashed holding that even if all the allegations in the complaint taken at the face value are true, the essential ingredients of dishonest misappropriation and cheating were not present, since criminal proceedings were not a shortcut for other remedies.

A counter affidavit has been filed on behalf of the respondent no. 3 in which basically the stand is that the petitioner also had a role in this illegality. Learned counsel submits that the circular of the State Government dated 28.05.2009 clearly indicates that it was the duty of the Block Development Officer for getting the signature/thumb impression of the beneficiary to be made in his presence. It is thus submitted that the petitioner could not have been



oblivious to the fact as to whether the person coming before him to affix his signature/thumb impression was handicapped or not. The petitioner not having done so is clearly indicative that he was involved in the illegality and was also party to persons not belonging to the handicapped category getting the benefit under the said category. Learned counsel submits that the letter of the State Government dated 09.06.2008 also does not come to the help of the petitioner inasmuch as it has only been clarified that the authority should first look into the matter as to whether there was criminal intent on the part of the concerned before lodging of the F.I.R. In the present case, the facts themselves disclose the nature of the illegality committed by the petitioner which clearly have criminal connotation as he is an active and willing party to the commission of offence of defalcation of Government money when persons not entitled to receive any amount under the Indira Awas Yajna have been given the said amount and the petitioner has shirked his responsibility to raise any objection at the stage when the beneficiary was required to be physically present before him to affix his signature/thumb impression and furthermore, the Government circular dated 09.06.2008 relates to the procedure where the criminal case is instituted by the department/officer whereas in the present case the informant is a private person not amenable to such direction.

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 State. This Court also find that the decision of the Hon'ble Supreme Court relied upon by learned counsel for the petitioner is not appropriate in the facts and circumstances of the case since from the plain reading of the F.I.R. itself, it is clear that a complaint has been made with regard to misappropriation and defalcation of public money and the petitioner being a public servant and having a key role in distribution of the said amount, it cannot be said that the ingredients of various sections under the Indian Penal Code are not made out from a plain reading of the F.I.R. Under the circumstances, this Court is not inclined to exercise its discretionary prerogative writ jurisdiction to interfere in the matter.

Accordingly, the application stands dismissed.

From the stand taken in the counter affidavit it appears that the case is still under investigation. This Court would only like to express its concern for the situation where even after three years the police have not completed the investigation inspite of the fact that the allegations made are not of such a complicated nature so as to justify continuation of the investigation for such a long period. This Court would thus expect the police to complete the investigation and submit its report to the Court below without any undue delay,

preferably within four months.

Registry shall communicate the order to the Superintendent of Police, East Champaran through Fax also latest by tomorrow.

(Ahsanuddin Amanullah, J.)

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