

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No. 14767 of 2013

Arising Out of PS.Case No. -304 Year- 2008 Thana -KISHANGANJ District- KISHANGANJ

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Nandjee Prasad Son of Krishnadeo Prasad Resident of Village Harua, P.S. Bhagwanpur, District Siwan, Presently Posted as Divisional Account Officer, N.H. Division-2, Muzaffarpur.

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Mukesh Kumar Jha, Advocate.

For the Opposite Party/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH

ORAL ORDER

7 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 05.07.2012 passed by the learned Chief Judicial Magistrate, Kishanganj in Kishanganj P.S. Case No. 304 of 2008 (G.R. No. 1090 of 2008) by which cognizance has been taken under Sections 420/409/34 of the Indian Penal Code and summons issued against the petitioner and others.

The brief facts of the case are that originally the Executive Engineer 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 in the entire sequence of events and from going through the allegations it is apparent that no charge is made out against the petitioner much less under Sections 420/409/34 of the Indian Penal Code since as per the case of the prosecution itself only with regard to an amount of Rs. 40,000/- being paid in cash to the contractor which is alleged to be irregular, the petitioner being the accountant at the relevant time has been made an accused. Learned counsel submits that there is no allegation of any defalcation or not accounting for the said Rs. 40,000/-and at best even it is assumed for the sake of argument that the said payment of Rs. 40,000/- in cash to the contractor was against the rules as the same had to be made through cheque can only constitute a misconduct liable to departmental proceeding but criminal case is clearly misconceived and in fact an abuse of the process of the Court.

Learned A.P.P., upon going through the case diary, does not dispute the aforesaid position and submits that during investigation also it has only come that with regard to the payment of Rs. 40,000/- in cash to the contractor, the petitioner along with others was also responsible and the same was impermissible but he fairly concedes that there is no

allegation of defalcation or misappropriation of the said amount.

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 05.07.2012 passed by the learned Chief Judicial Magistrate, Kishanganj in Kishanganj P.S. Case No. 304 of 2008 (G.R. No. 1090 of 2008) taking cognizance under Sections 420/409/34 of the Indian Penal Code and issuing summons, as far as it relates to the petitioner, stands quashed.

The application stands allowed.

(Ahsanuddin Amanullah, J.)

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