

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.567 of 2014

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

Laljee Sah, son of Late Heera Sah, resident of village-Baghauch, Police Station-Kuchaikote, District-Gopalganj. Petitioner.

Versus

1. The State of Bihar through the Principal Secretary, Department of Home (Police) Government of Bihar, Patna.
2. The Sub-divisional Officer, Gopalganj.
3. The Officer-in-Charge, Police Station- Kuchaikote, District-Gopalganj.
4. The Programme Officer, Kuchaikote, District-Gopalganj.

.... Respondents.

Appearance :

For the Petitioner : Mr. Lokesh Kumar Singh, Advocate
For the Respondents : Mr. Y.P. Sinha, AAG-15
Mr. Shankar Kumar, AC to AAG-15.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date: 26-02-2015

This application under Articles 226 and 227 of the Constitution of India has been filed for quashing of the first information report of Kuchaikote P.S. Case No. 87 of 2014 registered for the offences punishable under Sections 406 and 420 read with 34 of the Indian Penal Code.

The aforesaid police case has been instituted pursuant to a written report submitted by the Programme Officer, Kuchaikote to the Officer-in-Charge, Kuchaikote police station on 06th of April 2014. As per written report, the allegation is that under the Mahatma Gandhi Rural Employment Guarantee Act, 2005 (hereinafter referred to as

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“MANREGA”) in execution of a scheme, a J.C.B. machine has been used for resoling the bricks. It has been alleged that the use of J.C.B. machine is prohibited under the MANREGA Act but, despite having knowledge of the same, the petitioner has violated the law. The said written report was submitted to the police under the oral instruction of the Sub-Divisional Officer, Gopalganj. The persons involved in the offence have been indicated as one Lalji Sah, owner of the J.C.B. Machine and three other, namely, Mahesh Prasad, Pankaj Prasad and Murtaza Gaddi apart from the petitioner. On the basis of the aforesaid written report, the F.I.R. was registered and investigation was taken up.

Heard Mr. Lokesh Kumar Singh, learned counsel for the petitioner and Mr. Shanker Kumar, learned JC to AAG 15.

Learned counsel for the petitioner has contended that the petitioner is in no way registered or attached with the scheme of the Panchayat. He does not have any J.C.B. machine and there was no occasion for him to be involved in any manner in execution of any scheme under the MANREGA Act. He is neither the Mukhiya of the Panchayat nor a Government employee. He has been made accused in this case only because

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he happens to be the husband of the Mukhiya of the Panchayat. He has further submitted that even if the written report is accepted at its face value, no cognizable offence is made out and hence the police have no jurisdiction to investigate the case. According to him, it would be apparent from the allegations made in the F.I.R. that no money was entrusted to the petitioner for execution of any scheme and, therefore, there is no question of any misappropriation of money or any criminal breach of trust. He submits that the ingredients of the offences punishable under Sections 406 and 420 of the Indian Penal Code are not attracted to the facts of the case. He has further submitted that Section-25 of the MANREGA Act, which prescribes penalty for non-compliance of any provision of the Act, provides that any person who contravenes the provisions of the MANREGA Act shall, on conviction, be liable to a fine which may extend to Rs. 1,000/- only. The said penalty would not come within the definition of cognizable offence as prescribed under Section 2(c) of the Code of Criminal Procedure (hereinafter referred to as “the Code”).

Learned counsel for the State has contested the matter. He has submitted that since the case is under investigation, it would not be appropriate to arrive at any

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conclusion regarding *bona fide* of the allegations at this stage. However, he concedes that there is no allegation of any entrustment of any property to the petitioner.

Having heard the parties and perused the first information report, I am of the considered opinion that the allegations made in the F.I.R. do not attract any ingredient of the offences punishable under Sections 406 and 420 of the Indian Penal Code. Learned counsel for the petitioner is correct in his submission that even if it is accepted that the petitioner has violated any provision of the MANREGA Act, at best, he would be liable to a fine, which may extend to Rs.1,000/- only on his conviction in terms of Section-25 of the MANREGA Act. The penal provision under Section 25 of the MANREGA Act is definitely a non-cognizable offence in view of classification of offences as prescribed under schedule II of the Code. In a non-cognizable case police have no authority to institute an F.I.R. and investigate the same without any order from competent Magistrate as the same would be contrary to Section 155(2) of the Code.

For the reasons stated hereinabove, the first information report of Kuchaikote P.S. Case No. 87 of 2014 dated 06.04.2014 and the investigation of same are held to be

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bad in law.

Accordingly, the application is allowed. The First Information Report of Kuchaikote P.S. Case No. 87 of 2014 and the entire criminal prosecution arising out of the said case are, hereby, quashed.

(Ashwani Kumar Singh, J.)

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