

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.36190 of 2015

Arising Out of PS.Case No. -26 Year- 2015 Thana –Koran Sarai District- BUXAR

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Brajesh Kumar Tiwari, Son of late Birendranath Tiwary, Resident of village
and Police Station – Koran Sarai, District – Buxar, Bihar.

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. K.N.Choubey, Sr. Adv
Mr. Ashok Kumar Garg, Adv
Mr. Ambuj Nayan Chaubey, Adv
Mr. Dineshwar Pandey, Adv

For the Opposite Party/s : Mr. S. Eheteshmuddin (App)

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

02/ 19-08-2015

The present application has been filed for
modification of order dated 26.06.2015, passed in Cr. Misc. No.
23824 of 2015 to the extent of waiving the undertaking of the
petitioner to deposit 20% of the alleged due amount within a
period of nine months.

The factual matrix of the case is that the
petitioner preferred Cr. Misc. No. 23824 of 2015 with a prayer for
anticipatory bail in connection with Koran Sarai P.S. Case No. 26
of 2015 registered under Sections 406 and 420 of the Indian Penal

Code.

The prosecution case is that the Buxar unit of Bihar State Food and Civil Supplied Corporation Limited supplied 25311.90 quintals of paddy in the agriculture year 2012 to the petitioner being a rice miller under an agreement in lieu thereof the petitioner was supposed to supply 16958.97 quintals of custom milled rice by 31st of December 2012 but the petitioner supplied only 6001.09 quintals of rice and failed to supply 10957.88 quintals of rice and thereby misappropriated Rs.2,08,54,267/-. The petitioner was granted provisional anticipatory bail for ten months on submission of learned counsel for the petitioner that petitioner is ready to deposit 20% of the alleged amount within a period of nine months. The provisional bail was directed to be confirmed on deposit of 20% of the alleged due amount.

It is submitted by learned senior counsel for the petitioner that for a civil nature of dispute the criminal prosecution has been launched. The condition of deposit of 20% of the alleged amount is onerous and in support of this contention reliance has been placed on a judgment of the Apex Court passed in Cr. Appeal No. 1436 of 2013, in the case of Sumit Mehta Vs. State of N.C.T. of Delhi, reported in 2014(1) PLJR SC 102.

It is submitted by learned counsel for Bihar



State Food and Civil Supplies Corporation Limited that the petitioner failed to supply the rice within stipulated time i.e. by 31.12.2012. The deposit of 20% of the alleged due amount is not a condition fixed by the court rather it was submitted on behalf of the petitioner that the petitioner is ready to deposit the said amount. Hence the modification application is not maintainable. Moreover the petitioner has misappropriated huge amount of public money by not supplying rice, hence the present modification application is not maintainable.

Considering the rival submissions of the parties, this Court finds that learned senior counsel for the petitioner has not made out a case for modification of the order dated 26.06.2015 passed in Cr. Misc. No. 23824 of 2015 since the direction of deposit of 20% of the alleged due amount was not a condition fixed by this Court but it was submitted on behalf of the learned counsel for the petitioner who appeared initially, that the petitioner is ready to deposit 20% of the alleged due amount, hence the judgment relied upon has no application. Moreover, in the State of Bihar it is one of the biggest scam where millions of public money have been misappropriated by the so called rice millers and the authorities of the Government.

However, it is made clear that the above

mentioned deposit will not be treated to be an admission of the petitioner with regard to the claim of the informant but it will be subject to any proceeding pending or being initiated for recovery of the due amount.

Accordingly, this modification application is disposed of.

(Dinesh Kumar Singh, J)

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