

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.35954 of 2012

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Riyaz Ahmad Son of Zakir Alam, Resident of Mohalla - New Colony,
Railway Crossing Chowk, Thakurganj, P.S. - Thakurganj, District -
Kishanganj

.... Petitioner/s

Versus

1. The State Of Bihar
2. The District Magistrate, Kishanganj
3. The Superintendent of Police, Kishanganj
4. The Block Development Officer Cum Executive Officer, Thakurganj,
District - Kishanganj
5. The Investigating Officer, Thakurganj, P.S. & District - Kishanganj

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Bhola Prasad

For the Opposite Party/s : Mr. P.K.Jha, APP

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL ORDER

4 01-04-2015

Heard the parties.

The petitioner has approached this Court in the present proceeding filed under Section 482 Cr. P. C. for quashing the F.I.R. of Thakurganj P.S. Case No. 55 of 2012 dated 15.05.2012 registered for the offences under Sections 171 E and 171 F of the Indian Penal Code as also under Section 136 (1)(b) of The Representation of People Act, 1951.

Learned counsel appearing on behalf of the petitioner submits that the F.I.R. vide Annexure-1 was lodged by the B.D.O., Thakurganj alleging therein that the accused persons have violated the Model Code of Conduct issued by the State Election Commission for the municipal election held in the year 2012 in the district of Kishanganj. According to him, admittedly, the work orders were issued to the petitioner as also one Rajesh Kumar Pandit on 04.04.2012 under two different schemes of two ward members of Nagar Panchayat, Thakurganj in the district of



Kishanganj and thereafter they started execution of the aforesaid schemes. It is pointed out that the election of aforesaid Nagar Panchayat was notified on 16th April, 2012. Therefore, the petitioner, one more executing agent and two ward members are alleged to have violated the model code of conduct and thereby committed the offences in question. However, according to him, the ingredients for constituting the offences alleged are not available in the aforesaid criminal case. It is next contended that municipal election was over way back in the year 2012. It is also brought to the notice of this Court that by virtue of the stay order passed by a Bench of this Court earlier on 01.05.2013, the criminal proceeding against the petitioner and other accused persons has not proceeded further.

Learned Additional P.P. appearing on behalf of the State has not been able to point out that the ingredients for constituting the offences under Sections 171 E and 171 F of the Indian Penal Code as also section 136(1) (b) of the Representation of the People Act, 1951 are available in the impugned criminal prosecution.

After having heard the parties and taking into consideration the entire materials available on record, this Court is of the opinion that the criminal prosecution against the petitioner as also against other accused persons named in the F.I.R. vide Annexure-1, if allowed to stand, would result in miscarriage of justice. The accused persons are alleged to have violated the model code of conduct in the municipal election held in the year 2012. Admittedly, works orders were issued to the executing agents including the petitioner before enforcement of the model code of conduct. Even if the prosecution case, as per the F.I.R., is accepted to be true, then also this Court finds that none of the

ingredients for constituting the offences under Sections 171 E and 171 F of the Indian Penal Code as also under Section 136(1)(b) of the Representation of the People Act, 1951 are available. Therefore, continuance of the criminal prosecution against the petitioner as also other accused persons shall be abuse of the process of the Court.

For the reasons recorded above, the F.I.R. vide Annexure-1 of Thakurganj P.S. Case No. 55 of 2012 dated 15.05.2012 registered for the offences under Sections 171 E and 171 F of the Indian Penal Code as also under Section 136(1) (b) of The Representation of People Act, 1951 as also the entire consequential criminal prosecution of the petitioner as also the other accused persons are hereby quashed. The entire criminal prosecution with respect to aforesaid criminal case against the petitioner as also all other accused persons is hereby directed to be dropped by the learned C.J.M., Kishanganj or the transferee Magistrate at Kishanganj.

The petition stands allowed.

(Birendra Prasad Verma, J)

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