

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.45183 of 2012

=====

1. Ashok Kumar Singh S/O Late Janardan Prasad Singh Resident Of
Village- Shambhu Patti, P.S.- Samastipur, District- Samastipur, At Present
Posted As Assistant Settlement Officer, Munger.

.... Petitioner/s

Versus

1. The State Of Bihar

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Prashant Sinha

For the Opposite Party/s : Mr. P.Mehta(App)

=====

**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO**

C.A.V. ORDER

4 20-04-2015

1. I have heard the learned counsel, Mr. Vindhyachal Singh on behalf of the petitioner and the learned A.P.P. on behalf of the State-respondent.

2. This criminal miscellaneous application has been filed by the petitioner, Ashok Kumar Singh, Assistant Settlement Officer, Munger under Section 482 Cr.P.C. for quashing the order dated 05.09.2012 passed by Judicial Magistrate, 1st Class, Khagaria in G.R. No.1105 of 2011 arising out of Khagaria (Chitra Gupta Nagar) P.S. Case No.291 of 2011 whereby the application filed by the petitioner under Section 239 Cr.P.C. has been rejected.

3. It appears that the District Magistrate, Khagaria wrote letter alleging that the petitioner committed mass scale irregularity in providing three decimals of land each to the landholders



Mahadalit family in Rasouk Mauja. The petitioner acquired non-irrigated land being plot Nos.908, 909 and 911 by showing the same as irrigated and because of the said fact the Government money of Rs.3,66,000 has been misappropriated. The land has been allotted to 25 Mahadalit families i.e. total land of 75 decimals and had it been shown as non-irrigated, the Govt. rate of the land would have been Rs.1700 per decimal and total price of 75 decimals of land would have been only Rs.1,27,500. Because the petitioner provided the land showing the same to be irrigated, he paid Rs.19,740 for each three decimals of land as a result of which, Rs.4,93,500 was paid. Therefore, the petitioner is said to have paid excess amount of Rs.3,66,000 which is misuse of Govt. money. The case aforesaid was instituted under Sections 467, 468, 471, 409 and 420 I.P.C. After investigation, charge sheet was submitted against the petitioner under the aforesaid sections. On the basis of charge sheet, cognizance was taken by C.J.M., Khagaria and the case was transferred to the court aforesaid. The petitioner then filed application under Section 239 Cr.P.C. for discharge of the petitioner. By the impugned order, the court below considering the facts and circumstances and after perusal of the materials available on case record, including the case diary, held that sufficient ground is on record for framing charge against

the petitioner and accordingly, the application was rejected.

4. The learned counsel, Mr. Vindhyachal Singh for the petitioner submitted that according to the scheme of the Govt., the maximum price for three decimals was Rs.20,000 and the land must be in the vicinity of Mahadalit tola. The process of purchase of raiyati land was on the basis of negotiation with the landholder. The beneficiaries were given the liberty to select the land. In the scheme, there is no provision showing the price of non-irrigated or homestead land and the price of the land was estimated as per valuation fixed by the Registry Department. Therefore, the petitioner has not violated any rules or conditions mentioned in the scheme and all the lands have been purchased within Rs.20,000 fixed in the scheme. Further, no revisional survey has been done in Khagaria, therefore, the certificate is issued on the basis of cadastral survey entry about the nature of the land whether it is irrigated or non-irrigated and homestead or not. Because of lapse of time, the nature of land has changed but still then on the basis of cadastral survey entry, the nature of the land is being determined.

5. The learned counsel further submitted that some Mahadalit families filed affidavit stating that they have no homestead land and they desired to settle in 75 decimals of plot



Nos.908, 909, 910 and 911 which is situated 200 feet away from the Mahadalit tola. On the basis of the said application, Aam Sabha was called on 20.12.2010 which was attended by various authorities including the petitioner and the Mahadalit families. The land owner filed a petition that the price of the land is Rs.25,000 per three decimals and agreed to sell his land at Rs.20,000 per three decimals. In the sale deed, nowhere it was mentioned the nature of the land to be irrigated or non-irrigated because the land was homestead land and it was not requirement of mentioning the nature of the land. The consideration amount was fixed in presence of S.D.O., D.C.L.R., Circle Inspector and Revenue Karamchari. When the matter was highlighted in print media, the land owner refunded the entire amount of the sale deed which was deposited on 22.07.2011 while the D.M. had ordered for lodging F.I.R. According to the learned counsel, the entire amount alleged to have been misused or misappropriated has already been returned back. In fact, the petitioner has been implicated falsely by one, Mukesh Singh, a local News reporter and one Nagendra Singh Tyagi, State President, Yuva Shakti. The beneficiaries themselves filed application before D.M. stating that they have themselves chosen the suit land for their settlement and they also stated that the price of the land was much more and the



land owner was persuaded in Aam Sabha and then he became ready to sell at the Govt. rate. One Kaushalya Devi beneficiary has also filed miscellaneous application stating the same fact about persuasion to the land owner in Aam Sabha. In support of all the submissions copies of different schemes of the Govt. and other documents have been filed. The learned counsel on the basis of these documents and materials submitted that in fact, no case under any Section is made out and, therefore, the petitioner be discharged but the court below without considering all these facts has rejected the application.

6. On the other hand, the learned A.P.P. vehemently opposed the prayer and submitted that in fact, the petitioner is insisting upon this Court to give a pretrial judgment. All the matters raised by the petitioner is dependent on the evidence that may be produced but in exercise of jurisdiction under Section 482 Cr.P.C., no judgment can be passed at this stage. The learned A.P.P. submitted that there is no illegality in the impugned order. It is not the case that no offence is made out against the petitioner. When this matter was highlighted in print media the petitioners started creating evidences in his favour and got the application filed by the beneficiaries. However, all these matters can only be decided at the time of final hearing and not at the time of framing

of charge. On these ground, the learned A.P.P. submitted that the application be dismissed.

7. The learned counsel for the petitioner in support of his submission relied upon in the case of **State through the C.B.I. v. B.L.Verma and another, (1997) 10 Supreme Court Cases 772** and submitted that the petitioner has done his duty according to the scheme and, therefore, prior to taking cognizance or framing charge sanction under Section 197 is mandatory but in the present case, no sanction has been obtained. Therefore also, the order is liable to be quashed.

8. The learned counsel next relied upon **(2011) 3 Supreme Court Cases 351(Harshendra Kumar D. v. Rebatilata Koley and others)** and submitted that in order to prevent injustice or abuse of process or to promote justice, High Court may look into materials which have significant bearing on the matter at prima facie stage and High Court can quash complaint if materials relied upon by accused are beyond suspicion or doubt or which are in the nature of public documents and are uncontroverted.

9. The learned counsel next relied upon **2008(1) PLJR 51(SC) (All Cargo Movers(I) Pvt. Ltd. & Ors. v. Dhanesh Badarmal Jain & Anr.)** and submitted that the court may not

only take into consideration the admitted facts but also can look into the admitted documents. Criminal proceedings should not be encouraged when it is found to be mala fide or otherwise an abuse of the process of the Court.

10. In the present case at our hand, it is specific allegation in the complaint made by the D.M. that the land which was purchased for distributing the Mahadalit families was much less than the price in which the same was purchased by the petitioner. According to the complaint of the D.M., the lands are non-irrigated land but the same was purchased by the petitioner showing the same to be irrigated land and, therefore, there is difference of price which has been misappropriated by the petitioner. The I.O. after investigation found the case to be true and then filed the charge sheet. The court below also on the basis of charge sheet took cognizance and then it was transferred to the present court for trial.

11. So far the submission of the learned counsel for the petitioner that whatever has been done by the petitioner is according to the scheme, therefore, he has not committed any error or misappropriated the fund, the nature of the land is determined on the basis of the entry in the C.S. khatiyani and in fact, the land owner did not agree to sell the land in less than Rs.25,000 per



three decimals, however, by much persuasion, he agreed to sell within Rs.20,000 are concerned, it may be mentioned here that all these questions are disputed questions of fact and at this stage, the same cannot be decided conclusively in exercise of jurisdiction under Section 482 Cr.P.C. This Court cannot give a finding that in fact, the land purchased by the petitioner for distributing amongst the Mahadalit families are irrigated land or non-irrigated land and the price of the land is Rs.20,000 per three decimals or Rs.1700 per decimal.

12. So far the question of sanction is concerned, it may be mentioned here that if the petitioner has misappropriated the Govt. fund, it cannot be said that, that part of his act was done by him in performing the official duty, as such, sanction is required. Therefore, the same can only be decided at the trial and not at this stage. The Court cannot presume that while performing official duty, he has embezzled or misappropriated. In other words, it can be very safely said that the act of corrupt is not a part of official duty.

13. So far the decisions relied upon by the petitioner is concerned, there is no dispute about the settled principles of law as laid down by the Supreme Court in the aforesaid decisions but it may be indicated here that the facts of each case always differ and,



therefore, the law has to be applied considering the facts and circumstances of each case. There can be no strait jacket formula. From perusal of the said decisions referred to above, it appears that the jurisdictions of the Court have been defined and the Supreme Court has said that undisputed documents can be looked into. There is no doubt and moreover, in Section 239 Cr.P.C. also, the Court is required to give opportunity to hearing of the accused. The question is whether giving an opportunity to hearing of the accused means that the Court should examine meticulously the evidences/the documents produced by the accused and then give a pretrial judgment acquitting the petitioner.

14. The Hon'ble Supreme Court in the case of **Sanapareddy Maheedhar Seshagiri and another v. State of Andhra Pradesh and another, (2007) 13 Supreme Court Cases 165** has held at paragraph 31 that "the High Court should be extremely cautious and slow to interfere with the investigation and/or trial of criminal cases and should not stall the investigation and/or prosecution except when it is convinced beyond any manner of doubt that FIR does not disclose commission of any offence or that the allegations contained in FIR do not constitute any cognizable offence or that the prosecution is barred by law or the High Court is convinced that it is necessary to interfere to



prevent abuse of the process of the Court. In dealing with such cases, the High Court has to bear in mind that judicial intervention at the threshold of the legal process initiated against a person accused of committing offence is highly detrimental to the larger public and societal interest. The people and the society have a legitimate expectation that those committing offences either against an individual or the society are expeditiously brought to trial and, if found guilty, adequately punished.”

15. It may be mentioned here that the provision as contained in Section 239 is same and similar to the provision as contained in Section 227. The only difference is that the Magistrate may examine the accused if necessary under Section 227. The Hon'ble Supreme Court considering the provision as contained in Section 227 and 228 in the case of **Amit Kapoor v. Ramesh Chander & Another., (2012) 9 Supreme Court Cases 460** has held that “once the facts and ingredients of the section exists, then the court would be right in presuming that there is ground to proceed against the accused and frame the charge accordingly. This presumption is not a presumption of law as such. The satisfaction of the court in relation to the existence of constituents of an offence and the facts leading to that offence is a sine qua non for exercise of such jurisdiction. It may even be



weaker than a prima facie case. At the initial stage of framing of a charge, the court is concerned not with proof but with a strong suspicion that the accused has committed an offence, which, if put to trial, could prove him guilty. All that the court has to see is that the material on record and the facts would be compatible with the innocence of the accused or not. The final test of guilt is not to be applied at that stage.”

16. In the case of **Som Mittal v. Government of Karnataka, (2008) 3 Supreme Court Cases 753**, it has been held that exercise of power under Section 482 Cr.P.C. is not a rule but an exception. Said power must be exercised sparingly, with circumspection. Said power is not intended to scuttle justice at the threshold.

17. Hon’ble Supreme Court in the case of **Rishipal Singh v. State of Uttar Pradesh and another, (2014) 7 Supreme Court Cases 215** has held that “when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made in the complaint prima facie establish the case and High Court should not convert itself into a trial court and dwell into disputed questions of fact. Object of Section 482 is to prevent abuse of process of court and to secure ends of justice. High Court need to



be circumspect and exercise power under Section 482 is exceptional circumstances depending upon facts of each case. If allegations leading to criminal prosecution prima facie do not disclose or constitute offence, then power under Section 482 can be exercised, however disputed questions of fact cannot be decided like trial court.”

18. In view of the above settled principles of law, now it becomes clear that in appropriate cases, the High Court can exercise jurisdiction under Section 482 Cr.P.C. and can quash the F.I.R., the cognizance order, the entire proceeding or any order but because the High Court has jurisdiction in all cases, that jurisdiction should not be exercised. It is settled principles of law that at the stage of framing of charge the court required to see the prima facie case and not to dwell with meticulously each and every document filed by the prosecution and the defence. The court is not required to give a finding regarding the truthfulness of the allegation of the defence. Even on strong circumstances also, charge can be framed. In the present case, all the documents produced by the accused which have been annexed with this criminal miscellaneous application are the schemes of the Government or the resolution passed in Aam Sabha or the application filed by beneficiaries or the affidavits or the rate of

land. At this stage, unless a full fledged trial is made, no conclusive finding can be recorded that in fact, the land are irrigated land or that the value of the land was Rs.20,000 per three decimal as alleged by the petitioner or that he has not misappropriated the amount alleged. All these matters are disputed questions of fact and in exercise of jurisdiction under Section 482 Cr.P.C., the High Court cannot decide this matter particularly when the court below has clearly recorded the finding that from perusal of the allegation, the charge sheet and after hearing the accused, there is prima facie case to proceed against the petitioner.

19. In the result, I find no merit in this criminal miscellaneous application and accordingly, it is dismissed.

(Mungeshwar Sahoo, J)

Saurabh/-

U		T	
---	--	---	--