

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.35623 of 2013

Arising Out of PS.Case No. -76 Year- 2010 Thana -PIRPAINTI District- BHAGALPUR

=====

Bipin Bihari Singh, son of Late Bateshwar Singh, resident of village+ P.O. Barhonia, P.S. Sangrampur, District-Munger, the then Assistant Engineer, Rural Work Department, Work Junior Division, Bhagalpur and presently residing at Manik Sarkar Ghat Road, Bhagalpur near Kali Bari, District-Bhagalpur

.... Petitioner

Versus

1. State of Bihar
2. Gajendra Singh, Assistant Engineer, Rural Work Department, Work Junior Division, Kahalgaon, District- Bhagalpur.... Opposite Parties

=====

Appearance :

For the Petitioner/s : Mr. Abhay Kumar Sinha

For the Opposite Party/s : Mr. Ajay Kumar 1 (App)

=====

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL ORDER

2 13-05-2016 Heard Sri Abhay Kumar Sinha, learned counsel for the petitioner and Sri Ajay Kumar no.1, learned Addl. Public Prosecutor.

The sole petitioner, invoking inherent jurisdiction under Section 482 of the Code of Criminal Procedure, has prayed for quashing of an order dated 31.01.2013 passed by the learned Judicial Magistrate, 1st Class, Bhagalpur in Pirpainty P.S. Case no.76/2010, G.R. No.886/10. By the said order, the petition filed by the petitioner under Section 239 of the Code of Criminal Procedure for his discharge has been rejected.

Learned counsel for the petitioner submits that F.I.R. was itself illegal due to the reason that the F.I.R. was lodged



by the Assistant Engineer and he was not having any authority to file an F.I.R. that too, four years after the occurrence. He submits that earlier after order of cognizance, the petitioner had approached this Court vide Cr.Misc.No.12639 of 2012. However, this Court had declined to interfere with the matter giving liberty to the petitioner to raise all issues at the stage of framing of charge. It has been argued that since there was observation of this Court, to raise all issues at the stage of charge, the petitioner filed a petition for discharge at the stage of charge. He submits that the learned court below ignoring the fact that F.I.R. was lodged by an unthorised person, rejected the discharge petition.

Sri Ajay Kumar, learned Addl. Public Prosecutor has opposed the prayer of the petitioner.

Besides hearing learned counsel for the parties, I have also perused the materials available on record including the impugned order. So far the point, which has been raised by learned counsel for the petitioner, that F.I.R. was lodged by an unauthorized person is concerned, the Court is of the opinion that if there is material to show commission of cognizable offence, then in that event, it's hardly matter as to who has made complaint before the police. After the order of cognizance, same was assailed before this Court and this Court declined to interfere with

the matter. Moreover, it is evident that after lodging the F.I.R., during investigation it was found that it was a case of misappropriation of government exchequer. After collecting material, chargesheet was submitted.

After going through the impugned order, I do not find any apparent error warranting interference. The petition stands dismissed.

Keeping in view the fact that F.I.R. was lodged in the year 2011 regarding misappropriation of government fund , while dismissing the present petition, it is desirable to direct the court below to take expeditious steps, so that the case may come to its logical end without unnecessary delay.

Let a copy of this order be sent to the concerned Superintendent of police for rendering full assistance to the court below for early disposal of the case.

(Rakesh Kumar, J)

NKS/-

U			
---	--	--	--