

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.19331 of 2016

Arising Out of PS.Case No. -19 Year- 2016 Thana -BOCHHA District- MUZAFFARPUR

- =====
1. Ranjeet Kumar Yadav @ Ranjeet Yadav S/o Sri Ram Chandra Rai Village- Bhagwanpur, P.S. Bochanha, District Muzaffarpur.
 2. Bipin Koirala S/o late Jagat Narayan Singh R/o Village- Patiyasa Jalal, P.S Ahiyarpur, District Muzaffarpur.
 3. Baiju Prasad Yadav@Baiju Prasad S/o late Rajdeo Rai Village Hamidpur, P.O. Bochaha PS Ahiyarpur, District Muzaffarpur.
 4. Jay Narayan Rai S/o late dvilal Rai R/o Village- Bhagwanpur, P.s Ahiyarpur, District Muzaffarpur.
 5. Mahesh Rai S/o Jainarayan Rai R/o Village- Bhagwanpur, P.S Bochaha, District Muzaffarpur.
 6. Umesh Rai S/o Binda Rai R/o Village- Hamidpur, Po Bochaha, PS Ahiyarpur, District Muzaffarpur.
 7. Veer Kishore Rai S/o Shiv Jee rai R/o Village- Hamidpur, Po Bochaha PS Bochaha District Muzaffarpur.
 8. Ashok Kumar Singh S/o Late Mahesh Singh r/o Village- Patiyasa, Jalal, PS Ahiyarpur, District Muzaffarpur
 9. Papu Singh@Pappu Singh S/o Nantun Singh R/o Vilage- Patiyasa Jalal, Ps Ahiyarpur, District Muzaffarpur
 10. Rajeev Kumar S/o Fakeera Rai R/o Fatahpur, P.S Bochanha , District Muzaffarpur all patners of Maa Vaishno Rice mill, Bhagwanpur, Bochanha, Muzaffarpur.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The District Manager Bihar Food and Civil Supply Corporation District Muzaffarpur.

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Y.V. Giri, Sr. Advocate
Mr. Krishna Mohan Mishra, Advocate
Mr. Arjun Prasad, Advocate

For the State : Mr. Pancha Nand Pandit, A.P.P.

For the Opposite Party No.2 : Mr. Shailendra Kumar Singh, Advocate

=====

CORAM: HONOURABLE JUSTICE SMT. NILU AGRAWAL
ORAL ORDER

5 24-06-2016 Heard learned counsel for the petitioners, learned A.P.P. for the State and the learned counsel appearing for the Opposite Party No. 2, Bihar State Food & Civil Supplies Corporation Ltd, Muzaffarpur.

Petitioners apprehend their arrest in connection with

Bochaha P.S. Case No. 19 of 2016 registered on 15.02.2016 for offence punishable under Sections 409/34 of the Indian Penal Code.

The prosecution case is that the petitioners, who are partners of M/s Maa Vaishno Rice Mill, certain quantity of paddy was given for dehusking and after dehusking specific quantity had to be returned to the respondents, State Food Corporation, but the petitioners had not returned the same. Thus, it is alleged that an amount of Rs. 5, 78, 18,743.06 has been embezzled by them.

Learned counsel for the petitioners subsequently pointed out that on the similar allegations for the same offence by same letter number of the same day another F.I.R. bearing Bochaha P.S. Case No. 39/2016 had been lodged on 13.04.2016 which the learned counsel for the Opposite Party No.2, Bihar State Food and Civil Supply Corporation, Muzaffarpur admits that it was lodged under some misconception.

It has been submitted by the learned counsel for the petitioners that they are innocent and the matter relates to Civil dispute and liability and arises out of an agreement between the petitioners firm and the Bihar State Food and Civil Supplies Corporation. The agreement as contained in Annexure-2, contains clause No. 16 wherein in case of dispute the matter would be settled mutually, which if fails, to be referred to an arbitrator, arbitrator being District Collector of that District.

It has further been submitted by the learned counsel for the petitioners that arbitrator being the District Collector, petitioners have already approached before the District Collector, Muzaffarpur for settlement of dispute, which has not yet been decided.

Learned counsel for the petitioners further refers to the judgement of the Hon'ble Apex Court in the case of Kailash Kumar Sanwatia Vs State of Bihar and another since reported in (2003) 7 SCC 399 and submitted that the ingredients of application of Section 405 or Section 409 of the I.P.C. is not satisfied unless misappropriation or conversion to personal use or disposal of property is established. Hence, learned counsel for the petitioners submit that Section 409 of the I.P.C. is not attracted as misappropriation or conversion to personal use or disposal of paddy for personal gain has not yet been established, matter being pending for arbitration.

Learned counsel appearing on behalf of the Opposite Party No.2, Bihar State Food and Civil Supply Corporation submits that the petitioners have not complied with the terms and conditions contained in Clauses 5 and 11 of the agreement as noted above, huge quantity of paddy i.e. 27537.600 quintals given for milling has not yet been deposited which amounts to embezzlement of huge government money. He further submits that the petitioners have violated the terms of agreement

and huge amount of milled rice is lying with the petitioner.

It has also been submitted that the dispute, if any, can be settled through mutual agreement, through Managing Director of the Bihar State Food & Civil Supplies Corporation Ltd. Clause 16 of the said agreement also speaks that the dispute shall be settled by mutual discussion and learned counsel for the petitioners agrees to negotiate with the Managing Director of the Bihar State Food & Civil Supplies Corporation Ltd.

Accordingly, the petitioners are directed to approach the Managing Director to resolve the dispute where after the Managing Director will fix a date for resolving the said dispute on which date Managing Director and petitioners through their representative will sit across the table and settle the dispute and any inability or otherwise by the petitioners will be brought to the notice of the Court.

Under such circumstances and on such agreement, let the above named petitioners in the event of their arrest or surrender before the Court below within a period of eight weeks from today be released on bail on furnishing bail bonds of Rs. 10,000/- (ten thousand only) each with two sureties of the like amount each to the satisfaction of learned Chief Judicial Magistrate, Muzaffarpur in connection with Bochaha, P.S. Case No. 19/2016 and also Bechaha P.S. Case No.39/2016 which was lodged as agreed by the Opposite Party No.2 on misconception

relating to the same offence for the same period, subject to the conditions as laid down under Section 438 (2) of the Code of Criminal Procedure.

Accordingly, the petitioners are directed to approach the Managing Director to resolve the dispute, whereafter Managing Director will fix a date for resolving the said dispute

Learned counsel for the petitioners agree that if after settlement of the dispute any amount is found due with the petitioners and if they do not deposit the amount without assigning any reason, the bail bonds of the petitioners will be liable to be cancelled without being prejudiced by this order.

(Nilu Agrawal, J.)

Sudha/-

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