

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.21176 of 2012

Arising Out of PS.Case No. -0 Year- null Thana -null District- BUXAR

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1. Ramjee Pandey, S/O late Jaganth Pandey, resident of village- Chini, Ward No. 34 (New), Police Station Gajadharganj, District Buxar.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Santosh Kumar, son of not known to the petitioner, the then Administrator-cum-Co-Operative Extension Officer, Itarhi, District- Bxuar.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mrs. Mahasweta Chatterjee, Advocate

For the Opposite Party/s : Mr. S. Dayal, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

CAV JUDGMENT

Date: 30-01-2017

1. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 17.02.2012 passed by Sri Dwijendra Kumar, Judicial Magistrate, 1st class, Buxar, in Trial No.2013 of 2012/G.R.No.501 of 2011 by which the learned Magistrate has taken cognizance against the accused-petitioner under Section(s) 406 and 420 Indian Penal Code.

2. Learned counsel for the petitioner has submitted that prior to the election in which the petitioner was elected as Chairman, one Saudagar Pandey, who was Executive Member of the Managing Committee of the Society, was made custodian of all the documents by the then Managing Committee. Saudagar Pandey was



not only the custodian of the documents of the society but he was also vested with the power of the earlier Managing Committee to have the total control of sale and purchase on behalf of the Committee. The aforesaid Saudagar Pandey has not been made accused in the instant case. Section 47(3) of the Bihar Co-operative Societies Act, 1935, contemplates that no prosecution for an offence under the Act shall be instituted without previous sanction of the Registrar. Cognizance order has been passed only on the basis of charge-sheet, which is on the basis of the statement of Co-operative Officers/employees.

3. Counsel for the petitioner has relied on the judgment of Hon'ble Supreme Court in the case of *State of Haryana & Ors. Vs. Ch. Bhajan Lal and others* reported in *AIR 1992 SC 604* and *M/s Medchi Chemicals & Pharma P. Ltd. Vs. M/s Biological E. Ltd. and Ors* reported in *2000(3) PLJR SC 56* in support of her submission.

4. Learned APP has submitted that no illegality has been committed by the learned Magistrate while passing the impugned order. The questions raised by the petitioner in this quashing application are all points of facts, which cannot be looked into a petition under Section 482 Cr. P. C. These facts can be seen at the appropriate stage in the lower Court during the course of framing



of charge.

5. Having heard the parties and from perusal of the impugned order as well as the allegation in the written report and the materials available on the record, this Court finds that one Santosh Kumar, Co-Operative Extension Officer-cum-Administrator of Mitra Lok Grih Nirman Sahyog Samiti Limited, Buxar, filed written report before the Officer-in-Charge, Town P.S., Buxar, alleging therein that on his appointment as Administrator of Mitra Lok Grih Nirman Sahyog Samiti Limited, Buxar, he requested the Ex-Secretary of the Managing Committee of the Society, namely, Maha Prasad Kharwar, and Ex-Chairman, Ramjee Pandey to hand over the records of the Society like Registration Certificate, Election Certificate, Proceeding Book, Proceeding of Aam Sabha, Membership and Share register, Accounts Register, Land purchase, Sale and Distribution register etc. but the same was not handed over to him by the accused persons due to which election of the Managing Committee could not be held. In the light of letter no.6483 dated 09.01.2010 of Registrar, Co-operative Society, Bihar, Patna, no enquiry could be done and, therefore, requested the police, as per the provision of Section 45(a) of Bihar Co-operative Societies Act, 1935, to lodge the First Information Report against Sri Maha Prasad Kharwar and Sri Ramjee Pandey for not handing over the documents of the Society to



him. Specific allegations have been made in the written report with regard to illegal sale and purchase/transfer of land, lands allotted to Jagdish Nath Pandey and 45 other persons between 1985-90, were illegally sold by the petitioner. The documents were not produced by the accused persons for administrative action and enquiry upon it.

6. Case Diary had been called for, which has been received. The witnesses in para 2, 5, 54 and 55 have supported the allegations against the accused persons as mentioned in the written report.

7. The police after investigation submitted charge-sheet against the petitioner and another accused, namely, Maha Prasad Kharwar for the offences under Section(s) 406, 420/34 Indian Penal Code. The learned Magistrate after discussing and looking into the materials available in the Case Diary as well as the allegation against the petitioner and other accused persons in the written report found sufficient material to take cognizance against this petitioner and another for the offence under Section(s) 406, 420/34 Indian Penal Code.

8. The Magistrate is only required to see *prima facie* case at the time of taking cognizance on the basis of the materials brought by the police during investigation in the Case Diary and the allegations made in the written report/Complaint Petition. The



Magistrate is not required to appraise the materials brought during investigation in the manner as done in the trial. The learned Magistrate has to see only whether *prima facie* case is made out on the basis of the materials available in the Case Dairy and the allegations made against the accused persons.

9. Therefore, this Court does not find any illegality in the impugned order dated 17.02.2012 passed by Sri Dwijendra Kumar, Judicial Magistrate, 1st class, Buxar, in Trial No.2013 of 2012/G.R.No.501 of 2011 by which he has taken cognizance against the accused-petitioner and others.

10. Accordingly, this Criminal Miscellaneous Application is dismissed.

11. However, liberty is granted to the petitioner to raise all these points before the Court below at the appropriate stage, which shall be considered on its own merit without being prejudiced by this order.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	AFR
CAV DATE	12-01-2017
Uploading Date	05-02-2017
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