

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.21926 of 2012

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

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Md. Jahangir Alam S/O Late Md. Kalimullah R/O Village - Fatehpur Chain, Tola -
Gangua, Police Station - Avtar Nagar, District - Saran

.... Petitioner

Versus

1. The State Of Bihar
2. Shri Nawal Kishore Singh S/O Late Tapeswar Singh R/O Village - Fanda,
Police Station - Karja, District - Muzaffarpur

.... Opposite Parties

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Appearance :

For the Petitioner : Mr. Navendu Kumar, Advocate
For the State : Mr. Narsingh Tanti, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 27-07-2017

Heard learned counsel for the petitioner as well as
learned Additional Public Prosecutor on behalf of the State.

2. The petitioner has challenged order dated 24.2.2009
passed by S.D.J.M., Muzaffarpur in Complaint Case No.805 of 2008,
thereby taking cognizance of the offence under Sections 406 and 409
of the Indian Penal Code.

3. The petitioner was Incharge Circle Officer in the year
2008. In brief allegation in the complaint is that on petition filed by
the complainant a proceeding under Section 144 of the Cr.P.C. was
initiated in the year 2002. Subsequently, the said proceeding was
converted into a proceeding under Section 145 of the Cr.P.C. and



during pendency of the proceeding under Section 146(2) of the Cr.P.C. Circle Officer of the concerned circle was appointed, receiver, however the said proceeding was continuing till the petitioner was posted there. It is alleged by the complainant, first party of the proceeding under Section 145 Cr.P.C. that the attached land used to be cultivated and its produce sold and misappropriated by second party in collusion with the Circle Officer. On said petition, enquiry was made by Murshid Ahmad, Executive Magistrate, Muzaffarpur West in the month of April, 2008. During enquiry he found standing crop over the attached disputed land and notice was also given to the Circle Officer to deposit the sale proceeds of the crop in Nazarat but it was not done and the accused persons have misappropriated the said amount.

4. The contention of the learned counsel for the petitioner is that further proceeding was initiated in the year 2002 and Circle Officer was appointed as receiver on 26th March, 2003 but at that point of time, the petitioner was not posted as Circle Officer rather he was posted there in the year 2008 so he is not responsible for any misappropriation alleged at that period of time and second contention is that there is legal bar for initiation of criminal proceeding against the petitioner, a public servant as no sanction has been obtained under Section 197 of Cr.P.C. It is further submitted that



this petitioner called for a report regarding identification of the land over which proceeding was initiated and it was reported that at present, the land is not identifiable as it is submerged in flood water.

5. Having considered the contention of the learned counsel for the petitioner and on perusal of record it appears that in the year 2008 itself, an independent enquiry was done by Executive Magistrate who found the crop standing in the attached disputed land under Section 146 Cr.P.C. despite direction for depositing the sale proceed of the crop was not deposited in the Nazarat and the petitioner is alleged to be receiver during a part of the occurrence so there is sufficient material at this stage showing prima facie offence being made out. As far as regarding sanction under Section 197 of Cr.P.C. is concerned, it is not applicable in the facts of the case as there is no nexus between the allegations and the discharge of the official duty of the petitioner as a receiver being Circle Officer at the relevant point of time, therefore, finding no merit in this application, it stands dismissed.

(Arun Kumar, J)

N.H./-

AFR/NAFR	NAFR
CAV DATE	N/A
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