

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.35711 of 2013

Arising Out of PS.Case No. -14 Year- 2011 Thana -OBRA District- AURANGABAD

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1. Lalan Prasad S/O Late Saja Ram Resident Of Village Dani Bigha, Police Station Aurangabad, District Aurangabad (Bihar).

.... Petitioner/s

Versus

1. The State Of Bihar.
2. Awadesh Kumar Singh S/O Not Known District Education Officer, Aurangabad (Bihar).

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Mrigendra Kumar

For the Opposite Party/s : Mr. Jitendra Kr.Singh (App)

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

3 17-01-2017 This application ha been filed by the petitioner under Section 482 of the Code of Criminal Procedure for quashing order taking cognizance dated 09.05.2013 passed by the S.D.J.M., Daudnagar, Aurangabad in G.R.No.37 of 2011/Tr. No.1848 of 2013 arising out of Obra P.S.Case No.14 of 2011 instituted under Section 409 of the Indian Penal Code against the petitioner, which is pending at present in the court of Sri K.C. Misrha, Judicial Magistrate, Ist Class, Daudnagar, Aurangabad.

The prosecution story in short is that the District Education Officer, Aurangabad in pursuance of confidential letter no.617 dated 20.8.2010 of the Principal Secretary, Human Resources Department, Government of Bihar, directed all the



Headmasters for not spending any fund of the school and also to deposit the unutilized fund in the Treasury and in pursuance of the aforesaid direction, the petitioner reported that Rs.6,50,000/- were lying in the head of Furniture and Rs.25,51,000/- was unspent in the head of building construction but the petitioner deposited Rs.6,50,000/- and Rs. 20,50,000/-, which were lying in the head of furniture purchase and building construction head and the petitioner spent Rs.5,00,000/- without any official order and has not deposited the D.C. bill, as such as per order of the Director of the Secondary School, the District Education Officer, Aurangabad district, the officer –in-Charge, Obra Police Station lodged a written report in Obra Police Station against the petitioner, vide his letter No.97 dated 15.1.2011, on the basis of which Obra Police Station Case No.14 of 2011 dated 16.1.2011 was instituted.

Later on the police, after investigation, submitted charge-sheet against the petitioner and the learned S.D.J.M., Daudnagar (Aurangabad) vide order dated 9.5.2013 passed in G.R.No.37 of 2011/Tr. No.1848 of 2013 has taken cognizance of the offence under Section 409 of the Indian Penal Code against the petitioner. The aforesaid order taking cognizance is under challenge in this case.

It is submitted on behalf of the petitioner that even from



the F.I.R., it appears that he has deposited Rs.6,50,000/- and rest Rs.20,50,000/- through treasury challan and only allegation as per the FIR was that he had not deposited D.C. bill of Rs.5,00,000/-, which was for construction of school building. So far Rs.5,00,000/- is concerned, the petitioner has already spent the same in pursuance of the decision taken by the Managing Committee in its meeting dated 4.9.2010, as per the proposal No.2 and the work was done and measurement book was deposited in the office of the District Education Officer, Aurangabad and the District Education Officer, Aurangabad has also acknowledged, the same, vide order dated 307 dated 15.2.2011 and further the District Education Officer has informed the aforesaid fact to the Investigating Officer. As such so far allegation of not submitting the D.C. bills is concerned, it has been submitted that he has deposited the measurement book etc. before the District Education Officer, who has not sent information to that effect to the I.O. also and from the F.I.R. (Para Nos. 56 and 59), it appears that the I.O. has also received the aforesaid letter in spite of that the charge sheet has not been submitted against this petitioner and even the learned S.D.J.M., Daudnagar (Aurangabad) without proper application of mind and without examining the materials available in the case diary has taken cognizance against the petitioner in a



very mechanical way under Section 409 of the Indian Penal code. It is further submitted that on very face value of the materials available on the record including the case diary, no offence is made out against the petitioner, as such allowing this proceeding to continue, it will be an abuse of the process of the court and will cause harassment and humiliation to the petitioner, who is a retired Headmaster, retired on 31.3.2011.

On the aforesaid submission, the learned counsel for the petitioner has prayed for quashing of the impugned order taking cognizance.

Heard learned A.P.P. also, who has submitted that the learned S.D.J.M., Daudnagar (Aurangabad) after perusal of the materials available and collected during the course of investigation as well as the charge-sheet submitted by the police, has taken cognizance against the petitioner under Section 409 of the Indian Penal Code and there is nothing illegal in it. As such this application is fit to be dismissed.

Having heard both sides. From perusal of the F.I.R. as well as materials collected during the course of investigation, it appears that only allegation in the F.I.R. is that he has not submitted D.C. bill of Rs.5,00,000/- however, from the case diary (Para 56- and 59), it appears that he has already submitted the



measurement book etc. before the District Education Officer and the District Education Officer has forwarded the same to the I.O. but in spite of that the police has submitted charge-sheet against the petitioner in this case and the S.D.J.M. without going into the diary has taken cognizance against this petitioner under Section 409 of the Indian Penal Code.

In view of discussions made above, the order taking cognizance dated 09.05.2013 passed by the S.D.J.M., Daudnagar, Aurangabad in G.R.No.37 of 2011/Tr. N0.1848 of 2013 arising out of Obra P.S. Case No.14 of 2011 appears to be bad in law, hence the same is quashed and the case is remitted back to the court below for passing an order afresh.

(Vinod Kumar Sinha, J)

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