

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.24334 of 2013

Arising Out of P.S.Case No. -814 Year- 2011 Thana -NALANDA COMPLAINT CASE District-
NALANDA (BIHARSHARIFF)

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1. Permanand Choudhary, son of Late Medni Choudhary, Executive Engineer, Rural Works Department, Works Division, Rajgir,
 2. Sri Ajit Kumar Srivastava, son of Late B.P.Srivastava, Ex-Executive Engineer, Rural Development Department, Works Division-2 Hilsa, Nalanda, Technical Advisor, Rural Works Department, Works Circle, Sitamarhi,
 3. Ashok Kumar, son of Late Kamta Prasad Singh, Assistant Engineer, Local Area Engineering Organization, Works Division-1, Patna,
 4. Sri Shyam Narayan Thakur, son of Late Sonai Thakur, Junior Engineer, Rural Works Department, Works Division, Rajgir,
 5. Sri Navin Kumar Singh, son of Late Upendra Narayan Singh, Executive Engineer, N.H.Division, Madhepura,
 6. Uday Shankar Prasad, son of Late L.K.Sharma, Assistant Engineer, Minor Irrigation Sub-division, Sheikhpura & Akhilesh Kumar Mandal, son of Sri Shiv Pujan Singh, Junior Engineer, Rural Works Division, Munger

.... Petitioners

Versus

1. The State of Bihar &
2. Avinash Kumar Mohan, son of Sri Mahesh Kumar Mohan, resident of village Parthu, P.S.-Ekangarsarai, District-Nalanda

.... Opposite Parties

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Appearance :

For the Petitioners : Mr. Ansul, Advocate.
: Mr. Archit Rajpal, Advocate.
For the Opposite Parties : Mr. Humayu Ahmad Khan, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 12-07-2017

Heard.

2. This is an application under Section 482 of the Cr.P.C. for quashing the entire proceeding of Complaint Case No.814C of 2011 pending in the Court of SDJM, Hilsa, District-Nalanda including the order dated 18.03.2013 taking cognizance for the offence under Sections 341, 323, 420, 467, 468, 471 and 504/34 of the IPC.



3. The facts in brief is that the Opposite Party No.2 filed a complaint case on the file of SDJM, Hilsa on 12.10.2011 alleging inter-alia that he being the Director of Jai Om Engicon Pvt. Ltd. entered into an agreement as Rural Works Department, Works Division-1, Hilsa for construction of bridge near the field of Ramji Ram in between Dhekwaha to Chulahanbiga Road on the Langri Payen situated near Jalwar River. An agreement bearing No.7F2/2009-10 for an amount of Rs.9,61,350/- was executed. The said works was executed by Dilip Kumar who was working with his firm under the supervision of the Departmental Engineers. In spite of sufficient fund available with the department, they did not pay an amount of Rs.1,50,000/-. The department tampered the report of quality control with respect to the work. In this regard, the complainant filed several representation before the District Magistrate, Nalanda but he did not take any step in the matter in collusion with other officers. The complainant executed several works through the employee of the firm. On the order of Engineers Work to the tune of Rs.25 lacs was executed but payment of only Rs.18 lacks was made to the firm. On repeated demand, the complainant was given assurance that as the estimate has been revised and so the payment would be made according to the revised rate. Subsequently the officers of the department implicated the complainant in a false



case of forgery in order to harass the complainant by tampering a cheque. The accused persons have thus committed the offence under the aforesaid sections. The complainant and his witnesses supported the allegation at the time of enquiry and accordingly the court below took cognizance of offence.

4. Learned counsel for the petitioners submits that the petitioners are Executive Engineers, Assistant Engineers and Junior Engineers and they acted as per rules and regulations. The reason behind lodging the complaint case by Opposite Party No.2 is that he had committed fraud and forgery in order to misappropriate the Govt. money. The department had issued a cheque for an amount of Rs.1,09,351/- vide cheque no.250446 dated 30.12.2010. The complainant by interpolation in the figure converted the cheque amount of Rs.1,09,351/- into Rs.9,09,351/- and got it encashed in his account and thereby defalcated/misappropriated Rs.8 lacks of the government. The fraud was detected from the account and a police case vide Bihar P.S.Case No.71 of 2011 (dated 28.03.2011) for the offence under Sections 467, 468, 471, 420 and 120B of the IPC was registered against the Opposite Party No.2. The District Magistrate, Nalanda vide letter no.903 dated 15.04.2011 had directed the Executive Engineer, Rural Works Department, Hilsa to stop payment of any further amount to the firm of complainant in respect of two



other works allotted to him in the Works Division on account of forgery and fraud committed by the complainant. The petitioners obeyed the directions of the higher authorities and stopped payment to the complainant. The Opposite Party No.2 filed a CWJC No.1812 of 2012 for quashing the order of District Magistrate whereunder the payment was stopped. The Hon'ble Court vide order dated 05.12.2012 was pleased to dismiss the same. He further submits that the complainant had filed complaint case against altogether 28 government officials including District Magistrate and Superintendent of Police. The court below took cognizance against these petitioners and left few officers considering the fact that prosecution for their sanction was not obtained. These petitioners are also gazetted officers and so without obtaining sanction, they cannot be prosecuted. The court below in the above background has erred in taking cognizance and so the order is fit to be quashed.

5. On perusal of Annexures available on record, I find that the criminal case bearing Bihar P.S.Case No.71 of 2011 was registered under Sections 467, 468, 471, 420 and 120B of the IPC on 28.03.2011 against the complainant. After institution of the said case, the present complaint case was filed. The allegation against these petitioners appears omnibus. It further appears that the court below did not take cognizance against few other government officials, i.e.,



District Magistrate and Superintendent of Police considering the necessity of sanction for their prosecution under Section 197 of the Cr.P.C. is granted. These petitioners are also gazetted officers and they cannot be prosecuted unless sanction under Section 197 Cr.P.C. is granted. The court below has not considered this aspect.

6. In view of the discussions made above, I find that the impugned order taking cognizance is not sustainable in the eye of law. Accordingly, the order dated 18.03.2013 passed in Complaint Case No.814C of 2011 by SDJM, Hilsa, District-Nalanda is quashed and this criminal miscellaneous application is allowed.

(Sanjay Kumar, J)

B.Kr./-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	19.07.2017
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