

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.22480 of 2014

Arising Out of PS.Case No. -117 Year- 2010 Thana -ARWAL District- JEHANABAD

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Hare Krishna Prabhakaqr @ Hare Krishna Prasad Prabhakar Son of Bihari Mahto
resident of village - Khadiahi, P.S. Bibhutipur, Distt. - Samastipur, the then Junior
Engineer Sone Nahar Pramandal, (Arwal)

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Shiw Kumar Prabhakar, Adv.
Mr. Uma Shankar Sharma, Adv.
For the Opposite Party/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date: 02-08-2017

The present case arises out of a complaint filed by the
Chief Executive Officer, District Board-cum-Deputy Development
Commissioner, Arwal dated 23.07.2010 before the Officer-in-charge,
Police Station- Arwal, District Arwal, with regard to commission of
financial irregularity by the petitioner and other accused persons, by
violating the Rules and provisions of Bihar Rajya Gramin Rojgar
Guarantee Scheme, 2005.

2. It has been alleged by the aforesaid complainant that
various officials of the District Board, Arwal have connived together
and misappropriated a sum of Rs. 64, 79, 300/-. The allegation against
the petitioner, the then Junior Engineer, Village Development



Department (Special Division), Arwal, is conniving with the other officials and misappropriating the aforesaid sum. It has been further alleged that the prescribed instructions, Rules, and provisions of Bihar Rajya Gramin Rojgar Guarantee Scheme, 2005 was not adhered to, no proceedings of the meeting of Arwal District Board was prepared and instead 156 schemes were sanctioned by the accused persons illegally and outside the scheme of the Board mentioned in Annexure- 'Wa'. It has been further alleged that a sum of Rs. 64,79,300/- was disbursed in two dates, instead of disbursing the said amount in instalments according to the progress report. Moreover, the name of the Agency which has carried the work has not been mentioned in the sanction order. Even the amount disbursed has not been shown in the serialim of schemes for which the same is being disbursed, though 156 schemes are said to have been sanctioned. There is allegation of scores of violation of the prescribed Rules, Regulation and the provisions of the aforesaid scheme, 2005. It has been further alleged that the Assistant Engineer, namely, Bharat Prasad, out of the total sum received by him i.e. 64,79,300/-, had disbursed a sum of Rs. 38,35,232/- to four other Junior Engineers, one of them being the petitioner herein i.e. Shri Hare Krishna Prasad Prabhakar, who had received a sum of Rs. 12,99, 532. The said Bharat Prasad had kept the balance amount of Rs. 26,44,068/- with him without completing the



scheme, rather without even starting some of the schemes and when enquiry was made, he had admitted to the same. Upon the aforesaid misappropriation on the part of the accused persons coming to light, the then District Magistrate, Arwal constituted three enquiry committees. The said committees have submitted a report finding the petitioner herein to be the main guilty person, who, without getting the work done/ getting the incomplete work done, had shown that the entire work had been completed and thereby had misappropriated the Government money.

3. The aforesaid written complaint of the said Executive Officer, District Board-cum- Deputy Development Officer, Arwal dated 23.07.2010 led to filing of an FIR by the Police, bearing Arwal P.S. Case No.117 of 2010 dated 23.07.2010 against eight accused persons including the petitioner herein for the offence punishable under Sections 406/ 409/ 120(B) of the Indian Penal Code.

4. The learned court of Chief Judicial Magistrate, Jehanabad by an order dated 09.09.2013 has taken cognizance of the offence punishable under Sections 406, 409, 120(B) and 34 of the Indian Penal Code against all the eight accused persons including the petitioner herein.

5. The aforesaid order dated 09.09.2013 passed by the learned Chief Judicial Magistrate, Jehanabad is under challenge in the



present petition filed under Section 482 of the Code of Criminal Procedure by the petitioner herein.

6. The main contention of the learned counsel for the petitioner is that the petitioner was proceeded departmentally and he has been exonerated of the charges levelled against him by an order dated 08.01.2010 passed by the Disciplinary authority i.e. the Chief Engineer (Middle), Water Resources Department, Government of Bihar, which has been annexed as Annexure-4 to the present petition. It has been further submitted by the learned counsel for the petitioner that the petitioner is innocent and has been falsely implicated in the connected FIR whereas the fact is that the main person, who has misappropriated the government fund, is one Bharat Prasad.

7. Having considered the materials on record as also the contention, raised by the learned counsel for the petitioner, I find from bare perusal of the complaint filed by the Executive Officer, District Board-cum-Deputy Development Commissioner, Arwal, dated 23.07.2010 that the same definitely constitute a prima facie offence and disclose a cognizable offence as against the petitioner herein.

8. Another aspect of the matter is that the police has submitted charge sheet under Sections 406, 409, 120(B) and 34 of the Indian Penal Code against the petitioner and other accused persons, which is apparent from perusal of the case diary called for by this



Court and is also mentioned in the impugned order dated 09.09.2013.

9. Now, coming to the main contention of the learned counsel for the petitioner that since the petitioner has been exonerated in the departmental proceeding, the instant case is a fit case where the order taking cognizance, passed by the learned trial court, ought to be quashed. Firstly, it is not clear as to whether the charges levelled in the complaint as well as the charges levelled in the said departmental proceeding were one and the same. Secondly, the complaint dated 23.07.2010, leading to registration of Arwal P.S. Case No. 117 of 2010 dated 23.07.2010 is subsequent in time to the order dated 08.01.2010 passed by the disciplinary authority by which the petitioner has been stated to have been exonerated in the departmental proceeding. Lastly, it is a trite law that exoneration in the departmental proceeding/ civil proceeding cannot be a ground for quashing of the criminal proceeding or for that matter acquittal in a criminal case, for the reasons that the standard of proof in a departmental proceeding is lower than that of criminal prosecution and further the departmental proceeding or for that matter a criminal case has to be decided only on the basis of evidence adduced therein. Truthfulness of the evidence in the criminal case can be judged only after the evidence is adduced therein and the criminal case cannot be rejected on the basis of the evidence in the departmental proceeding or



the report of the enquiry Officer based on those evidences. Reference in this connection be had to a judgment of the Hon'ble Apex Court in the case of **State of N.C.T. of Delhi v. Ajay Kumar Tyagi** reported in *(2012) 9 SCC 685*.

10. For the reasons mentioned hereinabove in the preceding paragraphs, I find no reason for either quashing the order taking cognizance dated 09.09.2013 or the entire criminal prosecution emanating out of Arwal P.S. Case No. 117 of 2010. Consequently, the present petition is dismissed.

11. There shall be no order as to costs.

(Mohit Kumar Shah, J)

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