

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11309 of 2013

=====

1. Md. Mahmud Alam S/O Md. Quashim Resident Of Village- Basauli, P.S.
Ghanshyampur, District- Darbhanga

.... Petitioner/s

Versus

1. The State Of Bihar Through The District Magistrate, Samastipur
2. The Deputy Development Commissioner, Samastipur
3. The Director, District Rural Development Agency, Samastipur
4. The Sub-Divisional Officer, Rosera, Samastipur
5. The Certificate Officer, Samastipur
6. The Block Development Officer, Hasanpur, District- Samastipur

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Sunil Kumar Thakur

For the Respondent/s : Mr. Satya Prakash, A.C. to S.C.-22

=====

CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL ORDER

6 09-10-2017 Heard learned counsel for the petitioner and
learned counsel appearing on behalf of the State.

The petitioner seeks to quash the entire certificate proceeding being Certificate Case No. 1/11-12 issued against the petitioner raising a certificate demand and further seeks to quash the order of attachment of property/*kurki japti* warrant against the petitioner issued pursuant to the Letter No. 1975 dated 23.11.2012 written by the Block Development Officer, Hasanpur.

Learned counsel for the petitioner submits that the petitioner was proceeded against for embezzlement of public money. Pursuant thereto, an F.I.R. was also lodged bearing Hasanpur P.S. Case No. 20 of 2007 under Sections



420/467/468/471 and 472 of the Indian Penal Code which is now pending trial.

Learned counsel for the petitioner further submits that in the departmental proceeding a finding of guilt has been saddled on the shoulder of the petitioner, but in view of the settled law of this Court since the petitioner has not agreed to the recovery of any such demand in writing under the Bihar and Orissa Public Demands Recovery Act, 1914, the said cannot be recovered from him and, therefore, the entire proceeding under the certificate laws is bad and stands vitiated.

A counter affidavit has been filed by the Respondent-State of Bihar wherein it has been clearly stated that there was a finding of guilt as against the petitioner which is clearly demonstrated from Annexure -7. He submits that the petitioner had embezzled the Government money and after a due finding in the departmental proceeding wherein he was held guilty, the State authorities sought to recover the embezzled amount by way of public demand and, therefore, a requisition was filed on 26.03.2012 after issuance of Annexure-7.

In this context, learned counsel for the State has referred to a decision of this Court reported in 2009 (2) PLJR



25 (Brij Mohan Prasad V. The State of Bihar & Ors.) wherein this Court while dealing with a similar case has held that in view of Section 3(6) of the Bihar and Orissa Public Demands Recovery Act, 1914, read with Schedule-1 and Public Accountants Default Act, 1850-any money recoverable from “public accountants” as defined in Public Accountants Defaults Act, 1850 for loss caused by them or on account of defalcation in their accounts is recoverable as arrears of land revenue if dues are recoverable as arrears of land revenue, then those dues would fall within the item 3 of the Schedule-1 of the Public Demands Recovery Act and thus would become a public demand.

However, this Court has further gone to hold that the Board’s Instruction 10 clearly states that the liability of the petitioner if not ascertained cannot be recovered. The Court has further gone to hold in paras 10 to 15 that a certificate proceedings are proceedings for recovery of ascertained dues. It is not a proceeding where the Certificate Officer is to act like a Civil Court and determine the liability. The liability is, *prima facie*, predetermined and the proceedings are only for recovery of those predetermined liability. If the liability has not been legally ascertained, there could not be a proceeding for its recovery. The Public



Authority/Accountant can only be proceeded against if in any departmental proceedings he is held guilty.

In the instant case which is at slight variance from the case which has been referred to, the petitioner was, in fact, proceeded against by the authorities and the finding of guilt has been established. However, it appears that on the date when the requisition was made there was no finding of guilt against him in the departmental proceeding and yet the certificate case had been filed and the petitioner was issued notices in the said certificate proceeding. Thus, the dues have not been ascertained and established, the certificate case could not be held to be legally maintainable on the date on which it was initiated.

This Court, however, finds that there is a finding of guilt which came about later.

Notwithstanding the said fact as on date of initiation of proceeding, there being “no ascertained dues” by any competent authority, the certificate proceeding can but be held to be bad in law and has to be quashed.

The proceeding of certificate case bearing Certificate Case No. 1/11-12, thus, stands quashed.

In view of the finding of this Court, it shall, however, be open to the respondent to proceed in accordance



with law by initiating any proceeding if and so advised.

(Anjana Mishra, J)

Saif/-

U			
---	--	--	--

