

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.22121 of 2012

Arising Out of PS.Case No. -228 Year- 2010 Thana -null District- KISANGANJ

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Arjun Prasad, S/O Late Ram Lagan Mahto, R/O Village - Pitaungia, P.S. Bhadaur,
District - Patna, At Present Posted At Assistant Godown Manager, Bihar State
Food. Co - Operative Gaya, Distt. - Gaya

.... Petitioner

Versus

The State of Bihar

.... Opposite Party

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Appearance :

For the Petitioner	:	Mr. S.N. Mishra, Advocate
For BSFC	:	Mr. Mayank Shekhar, Advocate
For the State	:	Mr. Dashrath Mehta, APP

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CORAM: HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

Date: 15-09-2017

Heard learned counsel for the petitioner, learned counsel
appearing on behalf of BSFC and also learned A.P.P. for the State.

2. This application has been filed under Section 482 of
the Code of Criminal Procedure to quash the order dated 27.02.2012
passed in Thakurganj P.S. Case No. 228 of 2010 (G.R. No. 1173 of
2010), whereunder the learned Chief Judicial Magistrate, Kishanganj took
the cognizance of the offence under Sections 420, 408 and 409 of the
Indian Penal Code.

3. The fact leading to this application is that District
Manager, BSFC, Katihar gave his written report dated 23.11.2010 before
the Officer-in-Charge, P.S. Thakurganj to the effect that during the
posting of petitioner as Assistant Godown Manager, BSFC Thakurganj in
between 02.06.2008 to 04.09.2009, rice and wheat were found shortage
worth Rs. 4,41,696/-. As such the petitioner being the Assistant Manager,



B.S.F.C. Godown, Thakurganj misappropriated the rice and wheat worth Rs. 4,41,696/-.

On the basis of the written report of the District Manager, BSFC, Katihar, Thakurganj P.S. Case No. 228 of 2010 was instituted on 22.10.2010, under Sections 420, 408 and 409 of the Indian Penal Code. On investigation, the Police submitted Chargesheet. Thereafter, Learned Chief Judicial Magistrate, Kishanganj, on perusal of the Chargesheet and case diary took the cognizance of the offence under Sections 420, 408 and 409 of the Indian Penal Code against the accused/petitioner.

4. Learned counsel for the petitioner submits that, in fact, there was dispute of account in between petitioner and the Manager of the BSFC, Kishanganj, later on after adjusting the alleged defalcation amount in the present case and two other cases, Rs. 7,19,507.28 was paid to the petitioner, which would appear from Annexure-6 to the petition. As such, the impugned order taking the cognizance under Sections 419, 420, 409 and 408 of the Indian Penal Code in Thakurganj P.S. Case No. 228 of 2010 / G.R. No. 1173 of 2010 against the petitioner and further proceeding is illegal.

On the other hand, learned counsel appearing on behalf of BSFC while submits that there is no illegality in the impugned order, but he fairly conceded that after accounting Rs. 7,19,507.28 was paid by the BSFC to the petitioner in the light of order dated 28.02.2012 passed by the Managing Director, BSFC.

5. Admittedly, after accounting Rs. 719507/- of the petitioner was found due against the BSFC and the same is paid to him. As such on taking the cognizance against the petitioner through



impugned order under Sections 420, 408 and 409 of the Indian Penal Code in Thakurganj P.S. Case No. 228 of 2010 / G.R. No. 1173 of 2010 further proceeding appears to be illegal and abuse of the process of Court.

6. In the result, the impugned order dated 27.02.2012 passed in Thakurganj P.S. Case No 228 of 2010, whereunder the learned Chief Judicial Magistrate, Kishanganj took the cognizance against the accused-petitioner under Sections 420, 408 and 409 of the Indian Penal Code in Thakurganj P.S. Case No. 228 of 2010 / G.R. No. 1173 of 2010 and entire criminal proceeding is hereby quashed. Accordingly, this application is allowed.

(Rajendra Kumar Mishra, J)

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AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	20.09.2017
Transmission Date	20.09.2017

