

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.53836 of 2013

Arising Out of PS.Case No. -267 Year- 2000 Thana -KISHANGANJ District- KISANGANJ

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1. Arun Kumar Singh Son Of Priyavrata Narayan Singh Resident Of Village-
Bharauli, P.S.- Saharsa, District- Saharsa

.... Petitioner/s

Versus

1. The State Of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Mukesh Kumar Jha

For the Opposite Party/s : Mr. Shardanand Jha

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CORAM: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

C.A.V. JUDGMENT

Date: 25-07-2017

Heard learned counsel for the parties.

Petitioner, by means of these applications under section 482 of the Code of Criminal Procedure, has invoked the inherent jurisdiction of this Court with prayer to quash the order dated 05.12.2012, passed by Chief Judicial Magistrate, Kishanganj in Kishanganj P.S. Case No. 267 of 2000, whereby cognizance for the offence under section 409 of the Indian Penal Code has been taken against the petitioner.

Facts of the case, in short, is that the present first information report was lodged alleging therein that petitioner misappropriated Rs. 3000/- which he had received from police office on 27.03.2000. Police after investigation submitted final form on



11.07.2006 finding lack of evidence for the offence under section 409 I.P.C. After six years by the present impugned order cognizance has been taken.

The contention of the learned counsel for the petitioner is that petitioner has not defalcated any amount. Petitioner had deposited the amount in question. However, due to clerical mistake in place of his name Ashok Kumar Singh was mentioned. It is further submitted that though petitioner had deposited the amount, however to avoid unnecessary harassment he again deposited Rs. 3000/- with the permission of Superintendent of Police, Kishanganj on 03.06.2006. It is further contended that learned Magistrate failed to take into consideration the aforesaid facts and has passed the present impugned order. It is lastly contended that petitioner is a Public Servant, and as such, if any amount was outstanding against him, the same could have been adjusted/deducted from his salary.

From perusal of the material on record and looking into the facts of the case at this stage, this Court finds that the arguments advanced by the learned counsel for the petitioner has force. Magistrate while taking cognizance under section 409 of the Indian Penal Code has failed to consider that final form was submitted finding that there is lack of evidence for the offence under section 409 I.P.C. and further the fact that petitioner has already deposited



the amount in question with permission of his superior authority. Even if any amount was outstanding against the petitioner, the same could have been easily adjusted/deducted from his salary especially when petitioner claims to have deposited the same but due to clerical mistake it has not been shown in his name. Instead, the present prosecution has been started which has continued for about seventeen long years.

In this view of the matter, the entire prosecution including the order dated 05.12.2012, passed by Chief Judicial Magistrate, Kishanganj in Kishanganj P.S. Case No. 267 of 2000, whereby cognizance for the offence under section 409 of the Indian Penal Code has been taken against the petitioner is, hereby, quashed.

The application accordingly stands allowed.

(Arvind Srivastava, J)

Manish/-

AFR/NAFR	AFR
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