

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.26082 of 2014

Arising Out of PS.Case No. -194 Year- 2011 Thana -KRITYANAND NAGAR District- PURNIA

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Shambhu Kumar Paswan son of Sri Prem Lal Paswan Dealer, under the Public Distribution System at Parora, Police Station K. Nagar, Distt. Purnia Resident of village Parora, Police Station K.Nagar, Distt. Purnia.

.... Petitioner/s

Versus

1. The State of Bihar .
2. The Deputy Development Commissioner cum Chief Executive Officer, Purnia.
3. The Block Development Officer, K.Nagar, District Purnia.
4. The Programme Officer, K. Nagar Block, District Purnia.
5. The District Magistrate, Purnia.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Rama Nand Poddar, Advocate

For the Opposite Party/s : Mr. Jitendra Kumar Singh 1 (App)

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL ORDER

3 09-08-2017

Heard learned counsel for the parties.

This application under Section 482 of the Code of Criminal Procedure has been filed to quash the order dated 31.01.2014 passed by learned Chief Judicial Magistrate, Purnia, in K. Nagar P. S. Case no. 194 of 2011 by which the learned court below has taken cognizance of the offence against the petitioner under Sections 406, 420 and 409 r/w Section 34 of the Indian Penal Code.

The fact of the case, in brief, is that petitioner is a PDS dealer and was supplied rice to maintain stock for the programme Food for Work under Sampurna Gramin Rojgar Yojna (hereinafter referred to as 'SGRY') for the year 2001-2005. After Scheme was over it was found that rice supplied to different PDS dealers to



maintain stock for distribution among beneficiaries under Food for Work Programme under SGRY Scheme was not fully distributed and a large quantity of rice remained stocked with PDS dealers and they were asked to deposit amount at APL rate of left over rice in Government account. Altogether 626.85 quintal of rice could not be distributed and the same remained with the petitioner under the SGRY Scheme for the period 2001-2005. The Block Development Officer by different letters asked the petitioner to deposit the amount of left over rice but petitioner did not deposit the amount as per direction of the authority.

It has been submitted by the learned counsel for the petitioner that rice could not be distributed because the authority failed to issue permit for the same and the same became rotten due to passage of time. It appears from the notice issued to the petitioner to deposit the amount of left over rice which could not be distributed amongst the beneficiaries. By letters dated 17.06.2011 and 18.06.2011 and 20.07. 2011 the petitioner was directed to deposit the amount of left over rice in the Manerga Office and on failure to do so FIR will be lodged against him. As the petitioner failed to deposit the amount as directed by the authority in the Manerga Office, by letter dated 20.07.2011 an FIR was lodged by the competent authority giving rise to Purnia Sadar K. Nagar P. S. Case no. 194 of 2011 dated 08.08.2011 under Sections 406, 420 and 409 read with Section 34 of the Indian Penal Code. The case was investigated by the police and after investigation police submitted chargesheet under Sections 406 420 and 409 of the Indian Penal Code against the petitioner. On the basis of the police paper and the entire case diary, the court below found prima facie case made out against the petitioner and took



cognizance of the offence under Sections 406, 420 and 409 of the Indian Penal Code by order dated 31.01.2014 and issue summons to the accused-petitioner for his appearance.

Against the order dated 31.01.2014 the accused-petitioner has filed the present petition for quashing the order taking cognizance.

It has been submitted by the learned counsel for the petitioner that against the letter dated 17.06.2011 by which the petitioner was directed to deposit the amount of left over rice, he had filed a writ petition being C.W.J.C. No. 16875 of 2011 and by order dated 30.01.2012 the Hon'ble Court had directed the District Magistrate, Purnia, to decide the dispute with respect to the PDS Dealer under the SGRY Scheme by which the petitioner was directed to deposit the amount of the left over rice which was stocked by him as a PDS Dealer under SGRY Scheme considering the fact that rice is a perishable item and thereafter to pass appropriate order. However, it appears that it was not brought to the notice of Court that prior to passing of the order dated 30.01.2012 FIR was lodged on 08.08.2011 and the matter was being investigated by the police after lodging of the FIR by the competent authority. The petitioner had earlier also moved before this Court in Cr. Misc. No. 17547 of 2013 for institution of FIR against him but the same was dismissed by order dated 06.05.2014 that due to passage of time the petition has become infructuous as the police has already concluded the investigation and submitted chargesheet in the case. The Cr. Misc. No. 17547 of 2013 was dismissed having becoming infructuous. On the basis of the chargesheet, police report and the case diary, the court below has



found prima facie case made out against the petitioner and took cognizance of the offence under Sections 406, 420 and 409 of the Indian Penal Code.

At the initial stage while taking cognizance of the offence the court below has to form a prima facie opinion to proceed against accused on the basis of materials available on record. The court below having found sufficient materials in the case diary, chargesheet and police report to proceed against petitioner.

This Court under Section 482 of the Code of Criminal Procedure is not inclined to interfere with the order of the court below. The defence of the petitioner cannot be examined by the court at this stage. However, petitioner is at liberty to raise all the issues which have been raised in this petition and all other grounds available to him in law at the time of framing of charge, if not already framed.

The petition stands dismissed.

(S. Kumar, J)

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