

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.40296 of 2015

Arising Out of PS.Case No. -96 Year- 2009 Thana -BHANGWANPUR HAT District- SIWAN

=====

Mahabir Ram S/o Late Ghura Ram resident of village - Bairiya, P.S. Mali,
District - Aurangabad At Present Assistant Engineer, Rural Works
Department, Works Division - 2, Siwan, District - Siwan

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Rakesh Singh

For the Opposite Party/s : Mr. S.Dayal(App)

=====

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL ORDER

02/ 01-05-2017

Heard learned senior counsel for the
petitioner and Mr. J.N. Thakur, learned counsel for the State.

The present application has been filed for
quashing the order dated 24.07.2015 passed by learned Sub-
divisional Judicial Magistrate, Siwan in Trial No. 4495 of 2015
arising out of Bhagwanpur P.S. Case No. 96 of 2009, whereby
petitioner's application for discharge under Section 239 Cr.P.C.
has been rejected.

The prosecution case is that on a public
complaint an enquiry was conducted and consequently Panchayat



Secretary, Janak Deo Ram was asked to handover the charge to Sri Ram Bachan Singh in presence of Block Panchayat Raj Officer, Bhagwanpur. In course of handing over the charge, Block Panchayat Raj Officer prepared an enquiry report which reveals that in different schemes like Bihar Rural Employment Guarantee Scheme, 12th Finance Commission, Sampurn Rural Employment Guarantee Scheme, funds were withdrawn, but no work was actually done and on the basis of forged estimate the money was misappropriated leading to registration of Bhagwanpur P.S. Case No. 96 of 2009 under Sections 419, 420, 409, 467, 468 and 471 of the Indian Penal Code. On conclusion of the investigation police submitted final form (charge sheet) wherein name of the petitioner was also figured as an accused, consequently the petitioner filed discharge application which has been rejected by the impugned order.

It is submitted by learned counsel for the petitioner that as per Clause 9 of the National Rural Employment Guarantee Scheme the schemes up to rupees one lakh has to be executed by the Gram Panchayat itself and the Gram Panchayat is the competent authority to give administrative and technical sanction of the work. The petitioner being an Assistant Engineer at the relevant time supposed to give technical sanction of the work



between rupees two lakhs to five lakhs. All the works under the different schemes are below rupees one lakh. None of the documents on the basis of which the alleged work claimed to have been done and money was withdrawn bears the signature of the petitioner. Since the District Magistrate was not on good term with the petitioner since the petitioner protested against the stoppage of his salary by the District Magistrate, hence, as a retaliatory measure the present case has been lodged.

In view of this Court at the stage of exercising jurisdiction under Section 239 of the Code of Criminal Procedure the court has to consider the police report along with the documents and if required/needed examine any accused and after hearing the prosecution and accused he can be discharged if the charges are found to be groundless and for that the reason has to be recorded by the Magistrate. At the stage of framing of charge under Section 239 Cr.P.C. the court basically has to see, prima facie, case and not to make a roving enquiry or to weigh the evidence with the purpose to reach to a conclusion that the materials collected during investigation will ultimately lead to conviction of the accused.

In the circumstances, this Court is not inclined to interfere. Accordingly, this application is disposed of



with liberty to the petitioner to raise all the contentions during trial.

DKS/-

(Dinesh Kumar Singh, J)

U		T	
---	--	---	--

