

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Miscellaneous No.1700 of 2017**

Arising Out of PS.Case No. -null Year- null Thana -null District- BHOJPUR

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1. Surya Kumar Sah, son of Rajendra Prasad, resident of Mohalla- Khetari, Nehru Nagar, South of Jail, Ara Police Station- Ara, District- Ara.

.... .... Petitioner/s

Versus

1. The State of Bihar.  
2. The District Manager, Bihar State Food and Civil Supplies Corporation, Rohtas, Sasaram, District- Rohtas, Sasaram.  
3. Manoj Kumar, son of Mahendra Prasad, Proprietor of Maa Vidhwasani Galla Bhandar, Lessee of Ambikaji Modern Mini Rice Mill Natwar, resident of village- Natwar, P.O.+P.S.- Natwar, District- Rohtas (Sasaram).

.... .... Opposite Party/s

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**Appearance :**

For the Petitioner/s : Mr. Anand Kumar Ojha, Advocate  
For the Opposite Party No.1: Mr. Uday Chand Prasad, Advocate  
For the Opposite Party No.2: Mr. Shailendra Kumar Singh, Advocate  
For the Opposite Party No.3: Mr. Jitendra Singh, Sr. Advocate with  
Mr. Sumeet Kumar Singh, Advocate

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**CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA**

CAV JUDGMENT

**Date: 12-04-2017**

1. This application has been filed for modification/recall of the order dated 16.09.2015 passed in Cr. Misc. No.18917 of 2015 by Hon'ble Mr. Justice Mihir Kumar Jha on the ground that the same was passed without any notice to the petitioner and on the basis of incorrect, misleading and baseless submission and suppression of facts made by the BSFC without any concrete facts leveling against the petitioner for having misappropriated the paddy just to save himself.

2. Heard learned counsel for the petitioner and the learned APP for the State. Also heard learned counsel for the Opposite



Party Nos.2 and 3.

3. It has been submitted on behalf of the petitioner that instant application is maintainable under Section 482 of the Code of Criminal Procedure because order has been passed by suppressing facts or misrepresentation or without hearing the petitioner. It has further been submitted that this petition for recall of the order has been filed pursuant to the liberty granted by Hon'ble Supreme Court in SLA (Cr.) No.17748 of 2016 and, hence, this application is maintainable for consideration on merit. The petitioner has been condemned without any notice and hearing him. It has further been submitted that apart from violation of principles of natural justice, the order is fit to be recalled because vital facts were not placed before the Hon'ble Court. It has further been submitted that non-disclosure of the order dated 15.05.2014 (Annexure-8) passed by the Collector, Rohtas at Sasaram, fully known to the parties, is a case of fraud to give advantage to Opposite Party No3.

4. Written submission has also been filed on behalf of the petitioner giving, in detail, the facts and grounds on which the instant application is maintainable and the impugned order is fit to be recalled by this Court.

5. On the other hand, learned counsel for the BSFC (Opposite Party No.2) and the Opposite Party No.3 have stated that no



suppression of fact was made before this Court during hearing of Cr. Misc. No.18917 of 2015. Order has been passed on merit after hearing submission of the petitioner and the BSFC. The Hon'ble Court has been pleased to grant bail to Opposite Party No.3 on 16.09.2015 on the basis of submission made by the BSFC on merit as will appear from the impugned order. This Hon'ble Court has merely made observation in the impugned order dated 16.09.2015 passed in Cr. Misc. No.18917 of 2015, while granting bail to the Opposite Party No.3, and directed the BSFC to take appropriate action against the erring officials including Mr. Suraj Kumar, (petitioner) for recovery of dues amount involved in the First Information Report by taking appropriate steps in accordance with law.

**6.** The BSFC has, accordingly, taken appropriate action in the matter against the petitioner and notice has been issued by BSFC to the petitioner for realization of the dues amount under Memo No.846 dated 15.06.2016. No fraud has been played by the BSFC during hearing of bail petition. Submissions were made on the basis of records. The BSFC on the basis of the materials available before it has initiated departmental proceeding against the petitioner and notice has been issued to the petitioner for realization of entire dues amount. The petitioner has liberty to file detailed reply in the departmental proceeding to show his innocence, which shall be considered by the



BSFC in accordance with law.

7. It has been submitted on behalf of Opposite Party No.3 that the instant application under Section 482 Cr. P.C. is not maintainable as the order dated 16.09.2015 passed by the Hon'ble Court in Cr. Misc. No.18917 of 2015 is a speaking order on merit and based on submissions made by the parties before the Court. Counsel for the Opposite Party No.3 has pointed out provision of Section 362 Cr. P. C., which clearly lays down that no Court when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error.

8. Learned counsel for the State has stated that there is no illegality in the impugned order.

9. Having heard all the parties in detail and also looking into the written submission filed by the petitioner, this Court finds that on 16.09.2015, a detailed order had been passed in Cr. Misc. No.18917 of 2015 after hearing counsel for the petitioner, and the BSFC granting bail to Opposite Party No.3 and directing the BSFC to take appropriate action against the erring officials including Mr. Suraj Kumar, for recovery of the dues of amount in the FIR by taking appropriate steps in accordance with law for recovery of the amount involved in the First Information Report.

10. First Information Report was lodged by this



petitioner, who, at the relevant time was, Store-cum-Purchase Centre In charge, Natwar, in the district of Rohtas, against Opposite Party No.3, leveling allegation that the Opposite Party No.3 was denying the receipt of paddy to the tune of thirty eight thousand quintals despite having received paddy by his authorized agent. During hearing of bail application, submission was made on behalf of the BSFC (Opposite Party No.2) before the Hon'ble Court that on the basis of instructions and in view of the explanation given by the petitioner, there would be no second thought for the Corporation for conveying to this Court that as per allegation made in the First Information Report of this case, no amount is found to be payable by the petitioner, but the Corporation has been put to loss of the huge amount as alleged in the First Information Report and that entire thing was the creation of Mr. Suraj Kumar, Store cum Purchase Centre In-charge, Natwar. The Hon'ble Court on the basis of the aforesaid submission made on behalf of the BSFC, granted privilege of anticipatory bail to Opposite Party No.3 and directed the Corporation to take appropriate action against its erring officials including Mr. Suraj Kumar, for recovery of dues of the amount in the First Information Report by taking appropriate steps in accordance with law for recovery of the amount involved in the First Information Report. In this manner, the Hon'ble Court has passed the impugned order dated 16.09.2015 in Cr. Misc. No.18917 of 2015 on the basis of



submissions made by the counsel for the BSFC on the basis of instructions received by him from the department.

**11.** As per own statement of the petitioner in the instant petition, the BSFC pursuant to the order of this Court has initiated departmental proceeding against this petitioner and has issued notice for realizing dues amount from him vide Memo No. 846 dated 15.06.2016.

**12.** The contention of the petitioner in the instant case is that the Opposite Party No.3 as well as BSFC has placed false and misleading facts as well as submission before the Hon'ble Court in connivance with each other, which shows fraudulent conduct of Opposite Party Nos.2 and 3. Further contention of the petitioner in the instant case is that the Opposite Party No.3-Manoj Kumar had approached the Hon'ble Court by filing CWJC No.455 of 2013, wherein, the communication of the District Manager calling upon him to deposit the deficient amount of CMRs and/or to pay back cost thereof failing which appropriate proceeding under the Bihar & Orissa Public Demand Recovery Act would be taken and the mill of the petitioner would be sealed/seized were challenged, and the Hon'ble High Court by order dated 28.06.2013 was pleased to remand the matter to the Collector, Rohtas at Sasaram, who was directed to consider the representation of the petitioner(s) after hearing the parties.



The Opposite Party No.3-Manoj Kumar thereafter approached the Court of Collector, Rohtas at Sasaram and case bearing No.05 of 2013 was registered whereafter the District Manager, BSFC, had filed a report producing proof of 1,10,000 quintals of paddy having been received by the Opposite Party No.3, namely, Manoj Kumar, and on behalf of him by Satyendra Kumar. The Collector, Rohtas at Sasaram, by a detailed order dated 15.05.2014, after considering the plea put forth by both the parties, came to the conclusion that said Manoj Kumar (Opposite Party No.3) has misappropriated 31,281.20 quintal of CMR, valuing to a sum of ₹5,95,32,190.00, which is required to be recovered from him by filing a case under the Bihar & Orissa Public Demand Recovery Act. It has further been submitted on behalf of the petitioner that on 07.09.2015, the BSFC submitted before this Hon'ble Court that Miller accused Manoj Kumar was indulged in misappropriation of the paddy and supported all evidence connected with First Information Report, but suddenly on 16.09.2015, submitted that Manoj Kumar (Opposite Party No.3) is not indulged in misappropriation, rather, the petitioner was indulged in misappropriation of paddy without any supporting evidence or any additional evidence on record. The Hon'ble Court by the impugned order on 16.09.2015 had been pleased to grant bail to accused Manoj Kumar (Opposite Party No.3) on the submission of BSFC (Opposite Party No.2) and had made adverse remarks against



the petitioner.

**13.** As such, from perusal of the entire contention of the petitioner, as stated above, this Court finds that no any fraud or misrepresentation at any stage, was ever alleged against Opposite Party No.3 during hearing of his bail petition on 16.09.2015. The petitioner in this petition has levelled entire allegation of misrepresentation before the Court or making wrong submission against the BSFC (Opposite Party No.2).

**14.** It is mentioned in the impugned order itself that submission was made on behalf of the BSFC by the lawyer in Court during hearing of the bail petition on the basis of instructions received from the Corporation. It further appears from the own submission of the petitioner that pursuant to the order of this Court dated 16.09.2015 passed in Cr. Misc. No.18917 of 2015, departmental proceeding has been initiated against this petitioner and notice has been issued for realization of dues amount from him vide Memo No.846 dated 15.06.2016.

**15.** Therefore, from the submission of the petitioner himself, it appears that no misrepresentation or wrong submission or any fraud was ever committed by Opposite Party No.3 during hearing of the bail petition. Submission was made on behalf of the BSFC (Opposite Party No.2) after seeking instructions and on the basis of



materials available in the Corporation against the petitioner, departmental proceeding has been initiated against him and notice has been issued for realization of dues amount.

**16.** Contentions made on behalf of the petitioner in his defence in the instant application are all matters of facts, which are not required to be seen in this petition to give any definite opinion about justification of making submission by the BSFC against the petitioner on the basis of instructions given from the department during hearing of the bail petition on 16.09.2015. The petitioner will get sufficient opportunity to file proper reply in the departmental proceeding in his defence, which will be looked by the BSFC-Opposite Party No.2 in accordance with law.

**17.** The Hon'ble Supreme Court in the case of ***R. Rajeshwari vs. H. N. Jagadish*** reported in ***(2008) 4 Supreme Court Cases 82*** has clearly held that in view of specific bar created in regard to exercise of jurisdiction by the High Court to review its own order in terms of Section 362 Cr. P. C., ordinarily exercise of jurisdiction under Section 482 Cr. P.C. would be unwarranted. The High Court may do so where a judgment has been obtained from it by practicing fraud. In the instant case, it does not appear that any such case has been made out by the petitioner that order dated 16.09.2015 in Cr. Misc. No.18917 of 2015 has been obtained by the Opposite Party No.3 by practicing fraud



upon the Court.

**18.** Therefore, this Court does not find any merit in the petition filed on behalf of the petitioner for modification/recall of the order dated 16.09.2015 passed in Cr. Misc. No.18917 of 2015.

**19.** Accordingly, the application is dismissed.

**(Sanjay Priya, J)**

*J.Alam/-*

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