

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.36746 of 2012

Arising Out of PS.Case No. -10 Year- 1986 Thana -null District- SAMASTIPUR

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Gokul Chandra Agrawal @ Gokul Chand Agrawal, s/o late Tara Chandra Agrawal,
resident of village Waini, P.S. Pusa (Waini), District Samastipur.

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : None.

For the Opposite Party/s : Mr. A.M.P. Mehta, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 31-08-2017

1. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 19.04.2012 passed by the learned Sub Divisional Judicial Magistrate, Samastipur, in G.O. Case No. 31 of 1999, Trial No. 1156 of 2012 arising out of Complaint Case No. 10 of 1986 by which the learned Magistrate has refused to accept the application under Section 321 of the Cr. P.C. for withdrawal of the prosecution by the complainant.

2. Nobody appears on behalf of the petitioner.

3. Learned counsel for the State has appeared.

4. It is mentioned in paragraph-7 of the complaint petition that petitioner Gokul Chandra Agrawal deposited the amount through Bank Draft in favour of the State Food Corporation,



Samastipur. Thereafter, the Deputy Law Officer, Bihar State Food and Civil Supplies Corporation, Patna, vide his letter directed the District Manager, State Food Corporation Samastipur, to withdraw the prosecution against Gokul Chandra Agrawal and accordingly, the District Manager, State Food Corporation, Samastipur, issued letter vide letter No.236 dated 22.2.2012 directing Upendra Nath Tiwari, Departmental Advocate, State Food Corporation, Samastipur, to withdraw the case against the petitioner Gokul Chandra Agrawal. Thereafter, the legal Advisor and Advocate of State Food Corporation, Samastipur, Shri Upendra Nath Tiwary, filed an application under Section 321 of the Cr. P.C. on 23.2.2012 and 27.2.2012 respectively, before the learned Sub Divisional Judicial Magistrate, Samastipur, with a prayer to withdraw the prosecution against the petitioner which was rejected by the court below by its impugned order dated 19.04.2012.

5. Section 321 Cr. P.C. lays down as follows:

“321. Withdrawal from prosecution. – The Public Prosecutor or Assistant Public Prosecutor in charge of a case may, with the consent of the Court, at any time before the judgment is pronounced, withdraw from the prosecution of any person either generally or in respect of any one or more of the offences for which he is tried; and, upon such withdrawal, -



(a) if it is made before a charge has been framed, the accused shall be discharged in respect of such offence or offences;

(b) if it is made after a charge has been framed, or when under this Code no charge is required, he shall be acquitted in respect of such offence or offences:

Provided that where such offence –

(i) was against any law relating to a matter to which the executive power of the Union extends, or

(ii) was investigated by the Delhi Special Police Establishment under the Delhi Special Police Establishment Act, 1946 (25 of 1946), or

(iii) involved the misappropriation or destruction of, or damage to, any property belonging to the Central Government, or

(iv) was committed by a person in the service of the Central Government while acting or purporting to act in the discharge of his official duty,

and the Prosecutor in charge of the case has not been appointed by the Central Government, he shall not, unless he has been permitted by the Central Government to do so, move the Court for its consent to withdraw from the prosecution and the Court shall, before



according consent, direct the Prosecutor to produce before it the permission granted by the Central Government to withdraw from the prosecution.

6. Accordingly, this Court is of the view that the rejection of the aforesaid petition by the court below in mechanical manner by the impugned order, was not in accordance with law.

7. Accordingly, the impugned order dated 19.04.2012 passed by the learned Sub Divisional Judicial Magistrate, Samastipur, in G.O. Case No. 31 of 1999, Trial No. 1156 of 2012 arising out of Complaint Case No. 10 of 1986, is hereby, quashed.

8. The court below is directed to pass appropriate order in accordance with law afresh on the petition filed under Section 321 of the Code of Criminal Procedure by the complainant within a period of three months from the date of receipt of this order.

9. This Criminal Miscellaneous application is accordingly allowed.

(Sanjay Priya, J)

S.Ali/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	21.09.2017
Transmission Date	21.09.2017

