

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (Cr.) No. 12 of 2017**

Purushottam Sao S/o Shri Barun Sao, Aged About 31 Years Ex Assistant Clerk, Gramin Sewa Sahkari Samiti Maryadit, Gadhfuljhar (Regd. No. 1350), R/o Village Kudaribahara, Police Station Basna, Revenue Tahsil Basna, Pin 493554, District Mahasamund, (Chhattisgarh)

---- Petitioner**Versus**

1. State Of Chhattisgarh Through: Officer In Charge, Police Station Basna, Revenue Tahsil Basna, Pin 493554, District Mahasamund, (Chhattisgarh)
2. Manager, Gramin Sewa Sahkari Samiti Maryadit, Gadhfuljhar (Regd. No. 1350) District Mahasamund (Chhattisgarh)
3. Deputy Registrar, Cooperative Societies, Mahasamund, District Mahasamund, (Chhattisgarh)

---- Respondents

For the Petitioner	:	Shri V.G. Tamaskar, Advocate.
For the Respondent/ State	:	Shri Anil S. Pandey, Government Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**ORDER****11.07.2017**

1. Heard.
2. This Petition under Article 226 of the Constitution of India has been brought by the petitioner for quashing the proceedings of criminal case, which was registered against him on the basis of Crime No. 81 of 2014, under Sections 420, 409 of the Indian Penal Code, pending in the Court of Judicial Magistrate First Class, Basna, District Mahasamund, Chhattisgarh.

3. Learned counsel for the petitioner submits that the petitioner is a public servant. He was appointed as Assistant Clerk in Gramin Sewa Sahkari Samiti Maryadit, Gadhfuljhar, bearing registered No. 1250. On the date of incident, the petitioner was an employee in the said registered Cooperative society. Section 87 of the Chhattisgarh Co-operative Societies Act, 1960 provides that every officer or person as well as employee of a Cooperative Bank or a cooperative society or an authority exercising or authorised to exercise the powers under the said Act or the Rules or bye-laws made thereunder shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code, 1860. Hence, for this reason when any offence is committed by a public servant during the performance of his official duty, previous sanction for the prosecution is a necessity. In this case, no previous sanction has been obtained to prosecute the petitioner. Hence, it is prayed that the petition be allowed and the criminal proceedings against the petitioner be quashed.

4. Learned State counsel submits that the petition is misconceived and one First Information Report was lodged by one Prakash Bibe, Nodal Officer of Nodal Office, Mahasamund against the petitioner alleging that the petitioner was incharge of Paddy Collection Centre, Gadhpuljhar. On inspection made by the complainant on 28.2.2014 of this centre a shortage of 1046.85 quintals of paddy and 245 jute bags were found which amounted to Rs.13,95,253/-, which was alleged that the petitioner has misappropriated and embezzled the property entrusted to him. Hence, looking to the facts and circumstances of this case, there is no scope for interference by exercising the powers under Article 226 of the Constitution of India.

5. Learned counsel for the petitioner relied on the judgment of the Hon'ble Supreme Court passed in **D.T. Virupakshappa vs. C. Subhash** reported in **AIR 2015 SC 2022** in which the offence was registered against the police officer on the issue of the petitioner exceeded in exercising his power during investigation, for which requirement of sanction of prosecution under Section 196 of the Cr.P.C. was held to be mandatory. Reliance has also been placed on the judgment of the Hon'ble Supreme Court in the case of **Umesh Kumar vs. State of Andhra Pradesh** reported in **AIR 2004 SC 1106**, in which it was held that though an accused has option to argue on discharge of the petitioner, the petition under Section 482 of the Cr.P.C. can be entertained even in that case.

6. It is well settled that availability of protection in cases of offence committed by a public servant during the discharge of official duty, the act complained must have the official colour. In case the offence is totally unconnected with official duty, then provision under Section 197 of Cr.P.C. or any other provision of the relevant act cannot be invoked. It was settled by three Judges Bench in **B. Saha Vs. M.S. Kochar** reported in **(1979) 4 SCC 177**, which is still a good law has been recently relied upon by the Supreme Court in case of **Punjab State Ware Housing Corporation Vs. Bhushan Chandar and others**, reported in **(2016) 13 SCC 44**.

7. This is a case of misappropriation, defalcation and embezzlement as alleged in FIR against the petitioner. Hence, under these circumstances, following the settled principle of law in this matter, it is found that this is not an appropriate case, where the powers under Article 226 of Constitution of

India can be exercised in favour of the petitioner. Hence for these reasons, this petition is devoid of any substances and it is dismissed accordingly.

Sd/-

(Rajendra Chandra Singh Samant)
Judge

Nimmi