

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P. No. 537 of 2016**

N. Tirkey S/o Pius Tirkey Aged About 64 Years R/o Opposite Rest House, Kunkuri, Distt. Jashpur Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary Home Department, Mantralaya, Naya Raipur, District Raipur Chhattisgarh
2. Police Station Jashpur Through The Station House Officer, District - Jashpur Chhattisgarh

---- Respondents

For the Petitioner	:	Shri Goutam Khetrapal, Advocate.
For the Respondent/State	:	Shri Ashish Shukla, Government Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**ORDER****16.08.2017**

1. Heard.

2. Learned counsel for the petitioner submits that the petitioner and others are being prosecuted for the offences under Sections 420, 409/34, 467, 468, 471 and 120-B of the Indian Penal Code (for short 'the IPC'). The First Information Report vide Annexure-A/1 was recorded in Police Station Kotwali, Jashpur on 1.3.2013, in which it is mentioned that the date/ period of the incident was between January, 2011 till the date of recording of the FIR. It was alleged that the petitioner, at the relevant time, was posted in capacity of In-charge Executive Engineer of Water Resources Department, Jashpur and he alongwith other accused persons committed financial irregularities and then defalcated and embezzled an amount of

Rs.38,87,733/-. The petitioner was not in continuous posting during the period of incident mentioned. He retired from service on 29.2.2012 vide copy of retirement order Annexure-A/3. The police has not investigated the case in a free and fair manner. The officers who succeeded the petitioner, after his retirement, have not been incorporated as accused in the case, hence, the petitioner cannot be alleged to have the responsibility of all the defalcations and financial irregularities committed during that period.

3. It is submitted that a project for construction of Stop Dam etc was sanctioned under Mahatma Gandhi National Rural Employment Guarantee Act and the work has to be conducted in accordance with the National Rural Employment Guarantee Act, 2005. Under Section 13 of this Act responsibility has been given to village Panchayat to approve the Block level Plan, to supervise and monitor the projects taken up at the Gram Panchayat and Block level. Attention has also been drawn to provision under Sub-section 3 of Section 14 of the Act that the District Programme Coordinator has limited function to review, monitor and supervise the performance of the Programme Officers by making periodic inspection of the works taking place, hence, in this matter the investigation was required to be made at each level including the Panchayat level as well as the District level, which has not been done by the Investigation Authorities. It is submitted by counsel for the petitioners that this case may be disposed off with a direction to the police to re-investigate the case and array the other persons who may be found involved in the commission of offence charged in the charge-sheet.

4. Learned State counsel has opposed the grounds in this petition and the submissions made in this behalf. It is submitted that the case has been

fully investigated and the petitioner and others have been found responsible for the commission of offence of defalcation, embezzlement, forgery and conspiracy, hence, there is nothing left to be investigated in this case. This is not a fit case for admission and it may be dismissed at the admission stage.

5. Perused the record.

6. On perusal of the documents on record, it is found that the allegations of the financial irregularities were at first enquired into at departmental level in-compliance of the order passed by the District Collector, Jashpur and it was the conclusion in the enquiry report that the petitioners and three others were held responsible for the financial irregularities and embezzlement of the amount they were entrusted with. There is nothing to suggest from the material on record that any other persons from the concerned department can be held as responsible for the offences committed. Hence, simply on the basis of the prayer made by the petitioner, any order for reinvestigation of the case cannot be passed. After due consideration of the facts and circumstances of this case, it appears that no case is made out to quash the criminal proceedings pending against the petitioner or to pass order for reinvestigation. Hence, this petition is dismissed at the motion stage.

Sd/-

(Rajendra Chandra Singh Samant)
Judge