

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.50684 of 2017

Arising Out of PS.Case No. -37 Year- 2009 Thana -PASRAHA District- KHAGARIA

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Ashok Kumar Singh son of Late Shiv Ratan Prasad Singh, resident of village-
Akhtiarpur, P.S.-Vikram, District-Patna Petitioner/s

Versus

1. The State of Bihar
2. Shambhu Saran Singh, the then Officer-in-Charge Pasraha P.S., District-
Khagaria Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ashok Kumar, Advocate
For the State : Mr. Dr. Ajeet Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 24-07-2018

Heard learned counsel for the petitioner and learned counsel
for the State.

2. This application under section 482 of the Code of Criminal Procedure has been filed by the petitioner for quashing the order dated 07.01.2011 passed by the learned Chief Judicial Magistrate, Khagaria in Pasraha P.S. Case No.37 of 2009 whereby and whereunder finding a prima-facie case to be made out for the offences punishable under sections 406, 409 and 120B of the Indian Penal Code (for short 'I.P.C.'), the petitioner has been summoned along with others to face trial.

3. The contention of the learned counsel for the petitioner is that even if the entire allegations made in the complaint are believed to be true at their face value, none of the ingredients of the offences punishable under section 406, 409 or 120B of the I.P.C. would be



attracted against the petitioner. He has submitted that save and except the allegation that the petitioner is owner of a J.C.B. Machine, which was being used for cutting soil under MNREGA Scheme in village Bandehra, Pachiyari Tola by one Surendra Kumar, Panchayat Rozgar Sevak, Bandehra, there is no other allegation in the FIR against the petitioner.

4. Learned counsel appearing for the State submitted that allegation is that under MNREGA Scheme use of J.C.B. Machine is prohibited. Since the petitioner is owner of the J.C.B. Machine, he cannot escape from the liability of misuse of the said machine in execution of work under the MNREGA Scheme.

5. I have heard learned counsel for the parties and perused the record.

6. The FIR has been instituted on the basis of self statement of the Officer-in-charge of Pasraha Police Station, namely, Shambhu Sharan Singh. He has alleged in his written statement that soil cutting work under MNREGA scheme in village Pachiyari Tola was being done by J.C.B. Machine by one Surendra Kumar, Panchayat Rozgar Sewak. The use of J.C.B. Machine under such scheme is not permitted. In course of enquiry, it transpired that for executing the work Panchayat Rozgar Sewak Surendra Kumar had appointed a middle man, namely, Sunil Kumar Yadav. It is further alleged that



since the work was being done on low cost by use of J.C.B. machine, the agent of the scheme misappropriated government money by making forged bill in the name of labourers.

7. On completion of investigation the police submitted charge sheet against the petitioner and two others, namely, Sunil Kumar Yadav and Surendra Kumar vide charge sheet number 59 of 2010 dated 31.07.2010 under sections 406, 409 and 120B of the I.P.C. On perusal of materials available on record, the learned Chief Judicial Magistrate, Khagaria vide impugned order dated 07.01.2011 took cognizance of the offences under which charge sheet was submitted and summoned the petitioner to face trial.

8. From the material available on record, it would be manifest that save and except the allegation that the J.C.B. Machine belonging to the petitioner was utilized by the Panchayat Rozgar Sewak and the middleman Sunil Kumar Yadav, there is no other allegation against him. It is an admitted case of the prosecution that the execution of work was assigned to the Panchayat Rozgar Sewak Surendra Kumar, who had entrusted the work to middleman Sunil Kumar Yadav. Hence, the petitioner was not in any way concerned with the preparation of bill or receipt of any money from the government. He was not even involved in any manner alleged in the execution of work in question. Simply because he is owner of a J.C.B.



Machine, which was used by the other accused in execution of work contract, in the opinion of this court, none of the ingredients of offences alleged would be attracted against him.

9. I am of the opinion that the learned Chief Judicial Magistrate, Khagaria even without appreciating the nature of allegation made against the petitioner mechanically summoned him on perusal of the police report along with co-accused persons. It is well settled position in law that summoning of a person in a criminal case is a serious matter. At this stage, the Magistrate is required to apply his judicial mind to the materials available on record.

10. In view of the discussions made above, the order of summoning, as far as the petitioner is concerned, cannot be sustained. Accordingly, the order dated 07.01.2011 passed in Pasraha P.S. case No. 37 of 2009, as far as the petitioner is concerned, is set aside.

11. The application stands allowed to the extent indicated above.

Md.S./-

(Ashwani Kumar Singh, J)

AFR/NAFR	NAFR
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