

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.49126 of 2012

Arising Out of PS. Case No.-168 Year-2011 Thana- HARNAUT District- Nalanda

Sushil Kumar Sinha, S/o Late Ramlal Singh, Resident of Opposite 12/M2 Flats, Mohalla-Srikrishnapuri, P.S.- Srikrishnapuri, Town and District- Patna, Presently working as Block Development Officer, Akbarpur, District- Nawada
... .. Petitioner/s

Versus

1. The State of Bihar
2. Parvez Alam, S/O Late S.M. Abass, Block Development Officer Harnaut, P.S.- Harnaut, District- Nalanda

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Sudhir Kumar Upadhyay
For the Opposite Party/s : Mr. S.Ehteshamuddin (App)

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR
C.A.V. JUDGMENT

Date : 20-04-2018

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

2. The petitioner invoking inherent jurisdiction of the Court under Section 482 of Cr.P.C. seeks quashing of cognizance order dated 25.04.2012 passed by the learned Chief Judicial Magistrate, Nalanda at Biharsharif in G.R. No. 2045 of 2011 arising out of Harnaut P.S.Case NO. 168 of 2011 thereby taking cognizance of offence under Sections 406 and 420 of I.P.C.

3. The brief fact, giving rise to the case, is that Harnaut P.S. Case No. 168 of 2011 dated 20.08.2011 registered under Sections 419, 420, 467, 468 and 471 of I.P.C. was instituted by Parvez Alam, the Block Development Officer, Harnaut, Nalanda,



against the petitioner, his predecessor, who was Block Development Officer of the concerned Block at the relevant point of time. The FIR was instituted pursuant to direction given by Mr. Jai Singh, I.A.S., the Deputy Development Commissioner, Nalanda, alleging therein that the petitioner, being Block Development Officer, Harnaut, selected list of beneficiaries under the Indira Awas Yojana for the financial year 2011 by violating all the guidelines in the matter and the said wait list did not contain the signature of any of the officials. The police investigated the matter and finding substance in the accusation, submitted charge sheet against the petitioner under Sections 406 and 420 of I.P.C.

4. Learned counsel appearing on behalf of the petitioner submits that the petitioner being Block Development Officer, Harnaut, at the relevant point of time, published wait list of the beneficiaries under the Indira Awas Yojana printing hard copy of CD(Compact Disk) containing wait list of such beneficiaries officially communicated to him by the Deputy Development Commissioner, Nalanda vide letter No. 358 dated 02.02.2011. The wait list was in the soft copy in a CD and direction was given to make out a hard copy of it and notify the same and any deviation in compliance would be deemed as violation of the directives and on receiving any complain, after inquiry, responsibilities would be



fixed. However, the succeeding Deputy Development Commissioner of the previous one overruled the decision of the predecessor and directed the Block Development Officer to follow new procedure. The petitioner was transferred from Harnaut Block to Akabarpur Block vide notification No. 8232 dated 30.06.2011, even his successor Parwez Alam also selected 419 beneficiaries of Indira Awas Yojana consequently sanction letters were issued in their favours in view of compliance of the earlier directives of the then Deputy Development Commissioner. The beneficiaries were also selected on the basis of wait list contained in CD, however, later on, on 17.08.2011, the Deputy Development Commissioner directed Parwez Alam that the selection was to be made on the basis of family survey list published in the year 2010. Learned counsel also submits that financial benefit by that time had not passed to the selected beneficiaries as by that time money was not transferred into their account. It is also contended that petitioner being Block Development Officer, Harnaut, at the relevant point of time, selected the beneficiaries from the wait list provided by the Deputy Development Commissioner and no role was played by him to prepare the wait list of beneficiaries, only directives of the Deputy Development Commissioner was followed, even his successor also followed that directive and selected beneficiaries.



5. Learned counsel for the petitioner reiterates and makes emphasis that as the wait list was prepared as per directives of the Deputy Development Commissioner, so *prima facie* neither offence of cheating is made out nor the offence of breach of trust.

6. Learned counsel for the State submits that Indira Awas Yojana is a Central Government sponsored scheme and in the year 2011, the beneficiaries were to be selected from the 'family survey list 2010', but the petitioner selected the beneficiaries arbitrarily giving benefit to selected persons. The wait list of the beneficiaries contained in the CD does not bear signature of any of the authorities concerned and in investigation, it was revealed that there is difference in between the beneficiaries selected from the list contained in the CD and from the family survey list, 2010. During investigation, it also transpired that 'family survey list 2010' was also communicated to the Block Development Officer vide letter no. 1898 dated 20.08.2011 and it contains the signature of concerned authorities, whereas the list contained in CD is not signed by any authority.

7. Having considered the rival submissions of both sides and on perusal of the record, the Court finds that crux of allegation is that the petitioner being Block Development Officer, Harnaut, at the relevant point of time, selected beneficiaries of Indira Awas



Yojana from the wait list not bearing signature of any authorities concerned rather during investigation, it transpired that categorical direction was to propose the wait list according to the 'family survey list 2010'. Indira Awas Yojana is a housing programme to provide house to the poor people living in the rural areas, belonging to scheduled castes, scheduled tribes, freed bonded labourees, minorities in the BPL category and non-SC/St BPL rural households, widows and next-of-kin to defence personnel/paramilitary forces killed in action residing in rural areas , ex-servicemen and retired members of paramilitary forces fulfilling other conditions. Such category of people are selected on the priority basis considering the family survey list 2010 to provide monetary benefit to selected persons fulfilling eligibility criteria in the order of preference considering selected parameters. But in the present case, investigation reveals that there is difference in the list of the 'family survey list 2010' and the list followed by the petitioner, which also does not bear signature of any of the concerned authorities making the document questionable. Therefore, it is not that the allegation levelled in the FIR and the material contained in the case diary do not make out a case against the petitioner.



8. The Court is of the view that the petitioner is challenging the criminal proceeding inclusive cognizance order taking defence that wait list of the beneficiaries selected under the Indira Awas Yojana was prepared as per the direction and the list contained in CD sent by the Deputy Development Commissioner but the same becomes a disputed document as it is alleged tht it does not bear signature of any concerned authority making the document questionable. So such question of fact can only be determined by the trial court on the basis of evidence produced in the matter. In the case of *HMT Watches Ltd. v. M.A.Abida* reported in *(2015) 11 SCC 776*, the Apex Court has held that disputes questions of facts cannot be considered at the stage of quashing of criminal proceeding. Paragraph 10 of the judgement is relevant which reads as follows:

“10. Having heard the learned counsel for the parties, we are of the view that the accused (Respondent 1) challenged the proceedings of criminal complaint cases before the High Court, taking factual defences. Whether the cheques were given as security or not, or whether there was outstanding liability or not is a question of fact which could have been determined only by the trial court after recording evidence of the parties. In our opinion, the High Court should not have expressed its view on the disputed questions of fact in a petition under Section 482 of the Patna High Court Cr.Misc. No.12239 of 2014 dt.06-04-2018 Code of Criminal Procedure, to come to a conclusion that the offence is not made out. The High Court has erred in law in going into the factual aspects of the matter which were not admitted between the parties. The High Court further erred in



observing that Section138(b) of the NI Act stood uncomplied with, even though Respondent 1 (accused) had admitted that he replied to the notice issued by the complainant. Also,the fact, as to whether the signatory of demand notice was authorised by the complainant company or not,could not have been examined by the High Court in its jurisdiction under Section 482 of the Code of Criminal Procedure when such plea was controverted by the complainant before it.”

9. Similarly in the case of *Sampelly Satyanarayana Rao v. Indian Renewable Energy Dvpt. Agency Ltd.* reported in *AIR 2016 SC 4363*, the Hon’ble Supreme Court has held that while dealing with the quashing petition, the court has ordinarily to proceed on the basis of averments in the complaint and the defence of the accused cannot be considered at this stage.

10. The principle decided in the aforesaid referred two cases of the Apex court is also applicable in the case at hand. The defect of the accused cannot be considered at this stage. Moreover, so called C.D. containing the wait list not bearing signature of any authority is not an impeachable or sterling document to place reliance. Hence, finding no merit, the application stands dismissed.

(Arun Kumar, J)

sujit/-

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