IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.34014 of 2014

Arising Out of PS.Case No. -72 Year- 2013 Thana -BANKA District- BANKA

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Vivekanand Jha Vivek @ Vivekanand Jha, Son of Late Rameshwar Jha, Resident of Village - Karharia, P.O.- Harnautpur Via Nath nagar, P.S.- Sanjour, District - Bhagalpur

.... Petitioner/s

Versus

1. The State of Bihar
2. Ahsan, son of late Jainddin Siddiki, R/o Laxmipur, P.S- Nautan, P.S.- Nautan, District- East Champaran at present District Programme Officer, Education Department, Banka,

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Pranav Kumar Jha, Advocate.
Mr. Subodh Kumar Jha, Advocate.

For the Opposite Party/s : Mr. Ajay Kumar No. 1, APP.

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 23-01-2018

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

2. Petitioner seeks quashing of cognizance order dated 21.11.2013 passed by the Chief Judicial Magistrate, Banka in Banka P.S.Case No. 72 of 2013 thereby taking cognizance of offence under Section 409 of I.P.C.

3. The brief fact giving rise to the case is that petitioner, a retired teacher, in conspiracy with another co-accused Bindeshwar Chaudhary also now retired headmaster of the concerned Government School, presented false chart of deduction of G.P.F. amount for the period from May, 1998 to December, 1998 and January 1999 to July 2002 and withdrew the G.P.F. amount for that period to the tune of Rs.

31,792/-.

4. Learned counsel for the petitioner submits that earlier petitioner, a retired Government teacher, had filed a writ application before this Court vide CWJC No. 17964 of 2009 which was dismissed with observation that the petitioner, if desires, may file a claim before the Civil Court for recovery of money. Learned counsel submits that no money suit has been filed in the civil court and in the said writ application a counter affidavit was filed by the State, which is annexed with this writ application, and in para-4 thereof, it is admitted by the State that for the period of May, 1998 to December, 1998 and January 1999 to July 2002, salary has been paid to the petitioner and he has unbroken service in view of service book. So if it is accepted that the salary was paid of that period, there could not be any false deduction of G.P.F. of the petitioner. So it's a malicious prosecution as the department admitting the fact that salary has been paid for that period subsequently lodged a false case alleging no salary was paid for that period and falsely deduction was made.

5. Learned counsel for the State also concedes to the point that in the counter affidavit filed in the writ application, it is admitted fact that there is no due of the salary for the period in question and service was unbroken.

6. Having considered the rival submissions and on

perusal of record, it appears that in CWJC No. 17964 of 2009, State Government by filing counter affidavit admits payments of salary for the period May, 1998 to December, 1998 and January 1999 to July 2002 to the petitioner, also there is no breakage in his service, which means he was paid salary on regular basis for the aforesaid period also. In view of these admitted position of the State Government, filing of the FIR is incongruous to the fact that deduction chart submitted by the petitioner for the period May, 1998 to December, 1998 and January 1999 to July 2002 is without payment of salary for the said period; so in view of stand of the Government that there was regular payment of salary including May, 1998 to December, 1998 and January 1999 to July 2002, no prima facie case of any misappropriation of Rs. 31,792/- taking G.P.F. amount for the said period by the petitioner any criminal offence is made out.

7. So the entire criminal proceeding in Banka P.S.Case No. 72 of 2013 pending in the court of Chief Judicial Magistrate, Banka inclusive of the cognizance order dated 21.11.2013 against the petitioner is set aside. The application stands allowed.

(Arun Kumar, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	NA
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