

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.9117 of 2015

Arising Out of PS. Case No.-227 Year-2013 Thana- MUNGER MUFFASIL District- Munger

Suresh Chandra Chaudhary son of Late Bano Chaudhary, resident of
Mohalla- Lallu Pokhar, P.S.- Kasim Bazar Distt- Munger

... .. Petitioner/s

Versus

1. The State of Bihar
2. Sri Anil Kumar Srivastava son of Sri Nirsu Narayan Prasad Srivastava, the
then District Programme Officer, Munger, resident of Village- Bande, P.S.
Amnaur, District- Saran

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Alok Kumar Sinha Mr. Bhola Kumar Mr. Ashish Sinha
For the State	:	Mr. Mukeshwar Dayal (App)

**CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA
JAISWAL**

ORAL JUDGMENT

Date : 05-10-2018

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

2. This application under Section 482 of the Code
of Criminal Procedure has been filed for quashing the order
dated 04.07.2014 passed by learned Sub-Divisional Judicial
Magistrate, Munger in G. R. Case no. 2039 of 2013, whereby
the learned Magistrate finding *prima facie* case under Sections
406 and 409 of the Indian Penal Code against the petitioner, has



taken cognizance of the offence under aforesaid Section against the petitioner.

3. Factual matrix of the case is that Muffasil Munger P.S. Case No. 227 of 2013 was instituted under Sections 406 and 409 of the Indian Penal Code against accused Suresh Chandra Chaudhary on the basis of written report of Anil Kumar Srivastava son of Sri Nirsu Narayan Prasad Srivastava District Programme Officer Munger with the allegation, in succinct that the said accused happens to be In-charge-Headmaster of Gandhi High School at Kutlupur district Munger and he has defalcated Rs. 39,50,000/- allotted to the said school under different Government schemes.

4. The aforesaid case was investigated by the police and on conclusion of the investigation, I.O. submitted charge-sheet against the aforesaid accused.

5. On receiving the charge-sheet and the case diary and perusing the same, the learned Magistrate took cognizance of the offence under the aforesaid Sections vide impugned order.

6. It is submitted by learned counsel for the petitioner that the petitioner was subjected to departmental inquiry and the Inquiry Officer has submitted the inquiry report exempting the petitioner from the charges levelled against him



though the said inquiry report has yet not been accepted by the Disciplinary Authority. The petitioner has also deposited the entire alleged defalcated amount in the Department. Hence, the proceeding against the petitioner is nothing but an abuse of process of the Court. Hence, the impugned order is liable to be quashed.

7. On the other hand, learned APP for the State submitted that the departmental inquiry has no bearing on the proceeding of the criminal case as the departmental inquiry is based on the principal of preponderance of probability as opposed to prove beyond reasonable doubt in a criminal proceeding. Moreover, the aforesaid departmental inquiry report has yet not been accepted by the Disciplinary Authority, and the learned Magistrate on perusing the case diary and material available on record and finding *prima facie* case has taken cognizance of the offence against the petitioner vide impugned order, which is liable to be upheld.

8. As Rs. 39,50,000/- is said to have been allotted to the Gandhi High School at Kutlupr district Munger under different Government schemes and the petitioner being in-charge Head Master of said school is said to have defalcated the aforesaid amount and after investigation of the case, I.O.



submitted charge-sheet against the petitioner and on receiving the charge-sheet and the case diary and perusing the same and, finding making out *prima facie* case under Sections 406 and 409 of the Indian Penal Code against the petitioner, the learned Magistrate has taken cognizance against the petitioner, hence, mere submission of the inquiry report in the departmental proceeding exempting the petitioner from the charges levelled against him, in my considered opinion, has no bearing on the aforesaid criminal case. As departmental inquiry/proceeding is distinct from a criminal trial where the Evidence Act or Criminal Procedure Code is strictly applicable. The technical rules of evidence are not applicable in a departmental inquiry and the standard of proof required in a departmental proceeding is preponderance of probability as opposed to proof beyond doubt in a criminal proceeding. Hence, in the aforesaid facts, I do not find any illegality or invalidity in the impugned order. Accordingly, this quashing petition is dismissed.

(Prakash Chandra Jaiswal, J)

rohit/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	09-10-2018
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