

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.12168 of 2015

Arising Out of PS.Case No. -33 Year- 2012 Thana -GHANSHYAMPUR District- DARBHANGA

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Avinash Kumar Jha @ Pawan Jha, Son of Resident of Village: Pali,
Police Station: Ghanshyampur, District: Darbhanga.

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

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

For the State : Mr. Mushtaque Alam, Advocate.

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 24-07-2018

1. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 23.01.2013 passed by the learned Sub Divisional Judicial Magistrate, Biraul at Benipur in Ghanshyampur P.S. Case No. 33 of 2012 by which the learned Magistrate took cognizance against the petitioner and other accused persons for the offences under Sections 406, 409, 420, 467, 468 and 471/34 of the Indian Penal Code.

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

3. Learned counsel for the petitioner has submitted that petitioner has no role to play with execution of the Project. Police after investigation did not sent up the petitioner for trial. He has



sought information under Right to Information Act about the role of the petitioner in execution of aforesaid Project as mentioned in the written report copy of which, has been enclosed as Annexure-4 wherein it is mentioned that the Project is passed by *Aam Sabha* of *Gram Panchayat* and sent to *Zila Parishad* after endorsement of *Panchayat Samittee*. *Zila Parishad* send the Project for final approval to Government. *Prakhand Pramukh* is Chairman of *Panchayat Samittee*. The petitioner at the relevant time was *Prakhand Pramukh*.

4. Learned A.P.P. has submitted that learned Magistrate after looking into the materials in the case diary and allegation made in First Information Report has taken cognizance against the petitioner along with other accused persons.

5. In the written report there is allegation that *Mukhiya* along with Panchayat Secretary and this petitioner who is *Prakhand Pramukh* has misappropriated money of the project for repairing of Solar Light. Learned counsel for the petitioner has pointed out Annexure-4 which is the information sought under Right to Information Act wherein it is mentioned that *Prakhand Pramukh* (petitioner) is Chairman of the *Panchayat Samittee*. All the Projects which are to be executed are passed in *Aam Sabha* of *Gram Panchayat*. Thereafter, the same is submitted before the *Panchayat Samittee* and after recommendation by the *Panchayat Samittee*, they



are sent to *Zila Parishad* and Zila Parishad send the same for confirmation to the State Government.

6. In this manner, from Annexure-4 itself, it appears that petitioner being the Chairman of Panchayat Samittee, has important role in execution of the Project.

7. The learned Magistrate after looking into the material in the case diary and the allegation in First Information Report has taken cognizance against the petitioner along with other accused persons. The court below is only required to see *prima facie* case at the time of taking cognizance.

8. Therefore, this Court does not find any illegality in the impugned order.

9. This Criminal Miscellaneous application is accordingly dismissed.

10. Petitioner is given liberty to raise all the points as raised in this petition at appropriate state of trial and/or at the time of framing of charge which shall be considered by the court below in accordance with law without being prejudiced by this order.

(Sanjay Priya, J)

S.Ali/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	31/07/2018
Transmission Date	31/07/2018

