

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.35092 of 2015

Arising Out of PS. Case No.-20 Year-2015 Thana- KALER District- Jehanabad

Sachchidanand Singh, Son of Masahid Singh, Resident of Village- Nai Pokhar, Police Station- Rajgir, District - Nalanda.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Arvind Kumar Mishra, Son of Kapileshwar Mishra, Managing Director, Bihar State Food and Civil Supplies Corporation Limited, Jehanabad-cum-Arwal, resident of village - Paroriya, Police Station- Ujiyarpur, District - Samastipur.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Manish Kumar No-2
For the Opposite Party/s : Mr. Ram Chandra Singh (App)

CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA
ORAL JUDGMENT

Date : 03-07-2018

Heard learned counsel for the petitioner and the State.

2. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the First Information Report of Kaler P.S. Case No. 20 of 2015 instituted for the offence under Section(s) 409, 420 Indian Penal Code pending in the Court of the Chief Judicial Magistrate, Arwal.

3. The FIR has been filed with allegation against this petitioner that while he was posted as Supply Inspector, Kaler, he purchased 8862.80 quintal paddy for State Food Corporation. But he has supplied only 8839.60 to the mill owners and 23.20 quintal paddy was not supplied. The rate of paddy was Rs. 1127.98 per quintal. There is allegation against the petitioner that he has misappropriated an amount of Rs. 26169/- The FIR was lodged against this petitioner after his retirement on 07.04.2015. The petitioner has retired from service in January, 2014.



4. Learned counsel for the petitioner has submitted that the District Magistrate, Arwal by his letter dated 11.07.2013 (Annexure-2) has informed Managing Director, BSFC that after enquiry it was found that there was no defalcation. The entire paddy was kept in open field and due to rain some paddy has been damaged.

5. Learned counsel for the petitioner further submits that proceedings was initiated against this petitioner before the Certificate Officer by Bihar State Food Civil Supply Corporation. The petitioner was directed to make payment of Rs. 26,174/-. Letter issued from the Certificate Officer is annexed as Annexure-3. The petitioner in compliance of the aforesaid order deposited Rs. 26170/- in the account of Bihar State Food and Civil Supply Corporation, through Demand Draft No. 565783.

6. Learned counsel for the petitioner submits that the letter was issued by District Manager, Bihar State Food and Civil Supply Corporation dated 22.05.2015 stating that the amount of Rs. 26170/- has already been deposited by the petitioner vide Annexure-4.

7. All these facts were brought to the notice of the police during investigation which will also find mention in the case diary.

8. Learned counsel for the petitioner referred to paragraph 95 of the case diary, wherein, letter of the District Magistrate, Arwal finds mention. The police has also mentioned about the deposit of an amount of Rs. 26170/- by Demand Draft No.565783 by the petitioner.

9. Learned counsel for the petitioner submits that no illegality has been committed by the petitioner. An inquiry was conducted and it has come after inquiry that no defalcation was made and due to rain some paddy has been damaged. The letter dated 11.04.2013 of the District Magistrate, Arwal



has been annexed as Annexure-2, whereby the District Magistrate has observed that no defalcation has been made. The paddy was kept in open and the same has been damaged.

10. From perusal of case diary, it appears that aforesaid facts has been taken note of by the police as stated in paragraph 95 of the case diary.

11. The police has still submitted charge-sheet against this petitioner under Section 420,409 of the IPC, in spite of having knowledge of all these facts.

12. During hearing of this petition a report about the present stage of the case was called for from the court below which has been received. The Court below has submitted in the report that charge-sheet has been submitted in the case. The case is pending for appearance of the petitioner, after taking cognizance against him by order dated 06.01.2017 for the offence under Section 420,409 of the IPC and Section 7 of the E.C. Act.

13. Learned counsel for the petitioner has relied upon decision of the Hon'ble Supreme Court reported in **2011 (7) SCC, 59 (Joseph Salvaraj A. Vs. State of Gujarat & Ors.)**, wherein, the Hon'ble Supreme Court has held, even if charge-sheet was filed, High Court could have still examined whether alleged offences were prima facie made out from First Information Report, charge-sheet, documents, etc. or not. Purely civil dispute is sought to be given colour of criminal offence to wreak vengeance against appellants. It does not meet strict standard of proof required to sustain a criminal accusation. In such type of cases, it is necessary to draw a distinction between civil wrong and criminal wrong. The appellant cannot be allowed to go through the rigmarole of a criminal prosecution for long number of years,



even when admittedly a civil suit has already been filed between the parties and the same is subjudice.

14. In the instant case, after looking into the material on record of the case, it appears that prior to submission of the charge-sheet by the police, the entire dues amount has been paid by the petitioner.

15. The District Magistrate has also recommended for exonerating the petitioner from the charges. All these facts were taken note of by police during investigation as mentioned in paragraph 95 and paragraph 114 of the case diary. The police has still submitted charge-sheet against the petitioner for the offence under Section 420,409 of the IPC and Section 7 of the E.C. Act. The court below subsequently took cognizance against petitioner for the offence under Section 420,409 of the IPC and Section 7 of the E.C. Act.

16. In view of aforesaid fact and circumstances of the case, this Court is of the view that continuance of the criminal proceedings against the petitioner would be mere harassment and abuse of the process. The Hon'ble Supreme Court has also taken view in **1992 Supp (1) Supreme Court Cases 335, (State of Haryana and Ors. Vs. Bhajan Lal and Ors.)**, that prosecution is liable to be quashed, if no offence is made out from the facts of the case as laid down in paragraph 102 of aforesaid judgment.

17. Therefore, submission of the charge-sheet by the police against the petitioner was not in accordance with law. Accordingly, the



F.I.R. of Kaler P.S. Case No. 20 of 2015 along with the subsequent order dated 06.01.2017 passed by the learned Chief Judicial Magistrate, taking cognizance and the entire criminal proceeding is hereby quashed.

18. This application is, accordingly, allowed.

(Sanjay Priya, J)

khushbu/-

AFR/NAFR	A.F.R.
CAV DATE	N/A
Uploading Date	25/07/2018
Transmission Date	25/07/2018

