IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No. 30631 of 2016

Arising Out of PS.Case No. -47 Year- 2016 Thana -AKHODHIGOLA District- SASARAM (ROHTAS)

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Rajiv Ranjan Kumar S/O Sri Ganesh Prasad Gupta @ Hari Charan Prasad, Mohalla-New Sidhauli (Bank) P.S.- Akorhigola, District- Rohtas. Proprietor/ Director- Guptaji Brothers Rice Mill private limited.

.... Petitioner/s

Versus

1. The State of Bihar
2. The District Manager, Bihar State Food and Civil Supplies Corporation, Rohtas, Sasaram.
3. The Sub-Divisional Officer-cum-Certificate Officer, Dehri, Rohtas, Sasaram.

.... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. K. M. Mishra, Advocate
For the B.S.F.C.	:	Mr. Anjani Kumar, Sr. Advocate
		Mr. Shailendra Kumar Singh, Advocate
For the State	:	Mr. Ashok Kumar Singh No. 1, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date: 21-02-2018

Heard learned counsel for the petitioner; State and Bihar State Food and Civil Supplies Corporation Limited (hereinafter referred to as the 'Corporation').

2. The petitioner has moved the moved the Court for anticipatory bail in connection with Akorhi Gola P.S. Case No. 47 of 2016 instituted for alleged offences under Sections 406, 409 and 420

of the Indian Penal Code.

3. The matter was first taken up on 08.08.2016 and the Court had granted protection from coercive steps against the petitioner in view of the allegation made that there were some discrepancies in the calculation made by the Corporation. Thereafter, the interim protection was reiterated by order dated 22.10.2016, where the Court having accepted the contention of learned counsel for the petitioner that he is agreeable to pay the dues had directed, by way of indulgence, and that too, in the background of the stand taken on behalf of the petitioner himself that he was ready to deposit the amount within nine months, had fixed a time schedule so as to ensure that the entire amount was cleared by 31st July, 2017. The first ⅓rd installment was to be paid by 31st January, 2017, the second ⅓rd by 30th April, 2017 and the final by 31st July, 2017. The matter was directed to be listed on 8th February, 2017, when the petitioner was required to file affidavit showing that he had deposited the first ⅓rd installment. Nether the case was taken up nor any affidavit was filed, but from the record it transpires that a supplementary affidavit was filed by the petitioner on 10th April, 2017 enclosing copy of demand draft of Rs. 24,70,229/-, which is claimed to have been paid on 27.01.2017 to the Corporation. After that no money was paid and the matter was against taken up on

16.08.2017, when the Court had recorded the stand of learned counsel for the petitioner that the proposal of the Corporation that the mortgaged properties/assets of the petitioner be sold through opposite party no. 2 (Corporation) or the Certificate Officer concerned, may be acceptable to him, the matter was adjourned for 23rd August, 2017. On 23rd August, 2017, a detaled order was recorded in which the Court had noticed that an application has been filed for extending the time granted for depositing the entire due amount of the petitioner. The Court had also recorded the reason why the same was unreasonable and had thus, rejected the prayer for extending the time. However, on the categorical stand taken by learned counsel for the petitioner that the mortgaged properties/assets of the petitioner be sold through the Corporation or the Certificate Officer was acceptable to him, the Court had given two months to the authorities to do the same and petitioner or any person brought by him was also made eligible to take part in the said auction. The matter was directed to be listed on 13th December, 2017. However, it was finally taken up on 20.12.2017 and was adjourned for 10th January, 2018. On 24.01.2018, the Court had noticed that the Certificate Officer was not co-operating with the Corporation and thus, the Court had made him a party in the proceeding and had directed the Corporation as well as the Certificate Officer to file affidavit as to what steps were taken by them in terms of the order dated 23.08.2017. After that, the matter has been taken up today and show cause has been filed on behalf of the Corporation whereas supplementary counter affidavit has been filed on behalf of the Sub Divisional Officer-cum-Certificate Officer, Dehri, Rohtas. They have taken a stand that twice earlier attempt was made for auction but nobody turned up and, thus, the matter was deferred and finally the 3rd round of auction has been scheduled for 20th March, 2018.

4. At this juncture, the Court called upon learned counsel for the petitioner to elucidate his view, on suggestion made by learned counsel for the Corporation, as to whether the petitioner would be bringing any buyer, as was clamed by him, or in the alternative, if nobody turned up, the Corporation be permitted to retain the mortgaged properties/assets on the basis of its value assessed by the competent authority, learned counsel for the petitioner was non-committal.

5. The petitioner, on such reasonable offer coming from the learned counsel for the Corporation, being non committal, the Court has no hesitation to record that such stand reflect total dishonesty on the part of the petitioner and in the opinion of the Court, it has been mislead and taken for a ride by giving the impression that the petitioner genuinely wanted to repay the amount,

whereas the real intention of the petitioner all along was not to do so and only buy time from the Court. Since, August, 2016, the petitioner is enjoying the interim protection and from time to time, to suit his interest, stand is taken to create the impression that if given time, he would clear the entire dues. Even upon the Court acceding to his proposal and giving him sufficient time, of the three installments fixed, he only deposited the 1st installment. The Court would pause here and record that on 22.10.2016, when it had accepted the proposal of the petitioner that he was ready to deposit the amount within nine months, the Court had granted him the full time prayed for by him and thus, had fixed the installements, which was to end by 31st July, 2017 i.e., after more than 9 months. The petitioner, from his conduct, which is reflected in the orders passed by the Court in the present proceeding as well as the pleadings, has left no doubt in the mind of the Court that his intentions are not clean and that there is no *bona fide* desire or effort to clear the dues of the Corporation, which are not denied and are legitimately due for payment to the Corporation by the petitioner.

6. Having recorded the aforesaid, the Court finds that in view of what has been recorded hereinabove, especially the conduct of the petitioner before the Court in the present proceeding, where he has neither been fair to the Court nor has been able to demonstrate

any *bona fide* with regard to his intentions, in the considered opinion of the Court, any further indulgence to the petitioner is uncalled for.

7. Accordingly, the application stands dismissed. The interim protection stands vacated.

8. The authorities are free to proceed in the matter, both with regard to the criminal case as well as for recovery of the amount, in accordance with law.

(Ahsanuddin Amanullah, J.)

P. Kumar

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