IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12233 of 2017

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Deepak Kumar son of Late Ramesh Chandra Sharma, Resident of Village-Bihta, P.O. Alipur, Bihta, Via Khushrupur, P.S. Bakhtiarpur, District Patna.

... ... Petitioner

Versus

1. The State of Bihar through the District Magistrate, Araria, District Araria, Bihar.
2. The Executive Engineer, Rural Works Department, Works Division, Forbishganj, District Araria.
3. The District Certificate Officer, Araria, District Araria, Bihar.

... ... Respondents

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Appearance :
For the Petitioner/s : Mr. Prabhat Ranjan, Advocate
Mr. Chandan Kumar, Advocate
For the Respondent/s : Mr. Kameshwar Prasad Gupta, GP-10

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CORAM: HONOURABLE JUSTICE SMT. NILU AGRAWAL
C.A.V. JUDGMENT
Date : 30-08-2018

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

2. Petitioner challenges the notice dated 12.07.2017, as contained in Annexure-14, issued by the District Certificate Officer, Araria (Respondent No. 3) in Certificate Case No. 01/2017-18 whereby under Section 7 of the Bihar and Orissa Public Demand Recovery Act, 1940, the petitioner has been asked to reply within 30 days as to why the certificate amount of Rs. 3,38,38,000/- be not recovered from him. Petitioner has also sought quashing of entire certificate proceedings arising out of Certificate Case No. 01/2017-18, pending before the District Certificate Officer, Araria.

3. The facts of the case is that the petitioner, at the relevant time, was posted as Assistant Engineer (Monitoring) in the Road Construction Department, Road Construction Division, Araria from the year 1998 to June 2005. During course of his posting at Araria he was deputed with the Rural Development Special Division, Araria for execution of District Level Developmental Scheme being carried out in the district of Araria and was entrusted with supervision of Indira Awas Yojna, a Government Scheme for rehabilitation of homeless persons. The petitioner was given an advance of Rs. 5,99,88,000/- on different dates between 23.07.2004 to 02.11.2004 by 15 account payee cheques, while two juniors engineers were also posted in the same division. Petitioner had allocated an amount of Rs. 3,30,75,000/- to the two Junior Engineers. The petitioner was suddenly transferred to his parent department from Araria to Patna vide notification No. 4339(S) dated 30.06.2005 (Annexure-1) and was emergently relieved by the Executive Engineer, Road Division, Araria. Petitioner submitted some cash books on 14.08.2005 and for adjustment of the pending advances vide letter dated 29.07.2005(Annexure-3) issued by the Commissioner cum Secretary, Rural Development Department, it was requested to the Secretary to depute the petitioner for one month to reconcile the

accounts and advances, but instead of deputing the petitioner for reconciling the advances, he was asked to submit adjustment of entire pending advances of Rs. 3,38,38,000/- within 12 hours vide letter dated 18.08.2005 (Annexure-4) issued by the Executive Engineer, Araria and an F.I.R. being Araria P.S. Case No. 298/2005 was lodged on 19.08.2005 under Sections 406, 409, 420, 120-B of the Indian Penal Code, as contained in Annexure-5. A certificate case was also instituted against many other persons including the petitioner for Rs. 800 lakhs in which 338 lakhs was the claim made against the petitioner in the certificate case. Apart from F.I.R. so lodged against the petitioner which was without obtaining permission of the Government, a regular departmental enquiry was also initiated against the petitioner to verify the allegations of misappropriation alleged in the F.I.R. After a regular departmental enquiry, enquiry report was submitted by the Enquiry Officer on 09.10.2007, as contained in Annexure-7, wherein with regard to Charge No. 3 related to the petitioner, the Enquiry Officer found that the charges has been levelled on account of non-reconciliation of the pending advances, hence, held that the charges has not been fully proved. The enquiry report as contained in Annexure-7 was reviewed at the level of the Government and at that time the petitioner had been transferred to Jharkhand and under orders of

His Excellency, the Governor of Jharkhand office order vide Notification No. 7121(s) Ranchi dated 11.11.2008 was issued by the Deputy Secretary, Road Construction Department, Jharkhand, Ranchi whereby the petitioner was absolved of the charges of defalcation of Rs. 3,38,38,000/- and his suspension was revoked with warning to take precaution in future. It is the contention of the petitioner that the Government had absolved the petitioner of all the charges in the departmental proceeding considering the fact that it was a case of mere non-adjustment of advances/ vouchers. Having been exonerated in the departmental proceedings the petitioner sought quashing of his prosecution in Araria P.S. Case No. 298/2005 instituted at the instance of the Executive Engineer, Rural Works Department, Division No. 2, Araria. Initially, the said P.S. Case has been instituted under Sections 406, 409, 420 and 120-B of the Indian Penal Code, but subsequently, in view of the allegations, Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act was also added and was re-designated as Special Case No. 16/2006 before this Court in Cr.W.J.C. No. 764 of 2009, in which while quashing the entire criminal proceedings, this Court vide order dated 03.11.2009 had held as follows :

> *"The allegation in the FIR is basically that the petitioner was entrusted with*

about Rs. 5.99 crores for being used in the Indira Awas Yojna for the financial year 2004-2005. It is alleged that on his transfer to Jharkhand, on cadre bifurcation, he submitted accounts only to the extent of about Rs. 2.61 crores. Thus, about Rs. 3.38 crores have been misappropriated by the petitioner. The case is under investigation. In the meantime, for the alleged defalcation, and explanation was called for from the petitioner. A departmental proceeding was also initiated. In the departmental proceeding, he was given liberty to go to Araria and submit detailed accounts. Petitioner submitted detailed accounts, which he could not submit as he was emergently transferred and was required to handover charge immediately. Inter alia, in the proceeding, the stand was that out of Rs. 3.38 crores, allegedly not accounted for, Rs. 3.30 crores itself had been advanced to two Junior Engineers under order of the Executive Engineer himself. This transaction had not been looked into. For the balance, there were proper vouchers. The explanation having been given, was examined by the Executive Engineer, who had lodged the FIR itself. On examination of accounts now, it was found that the petitioner had fully accounted for the money and there was no embezzlement much less temporary embezzlement. Reports accordingly have been submitted. The petitioner was totally exonerated by the State of Jharkhand as the petitioner was allocated Jharkhand cadre. The *charge of embezzlement much less temporary embezzlement could not be established. As noted above, both the proceedings i.e. criminal proceeding and the departmental proceeding were financially on the basis of same allegation. In my view, the case is squarely covered by a decision of the Apex Court in the case of P.S. Rajya Vrs. State of Bihar since reported in (1996) 9 SCC 1 wherein in similar circumstances and in facts officer was being prosecuted by the Central Bureau Investigation for having disproportionate assets. A departmental proceeding had also been initiated on the same charge. In the departmental proceeding the officer was exonerated and his explanation having been accepted he moved Ranchi High court for quashing the prosecution, which application was summarily dismissed. The Apex Court was then moved and the Apex Court quashed the criminal proceeding holding that when in a departmental proceeding where evidence is to be gone into on basis of preponderance of evidence, the charge could not be established. Then no useful purpose would be served by continuance of the criminal proceeding on the same very charge where in a criminal case, the charge has to be established beyond reasonable doubt.*

The fact is the same and same must be the result. The criminal prosecution cannot be sustained and is quashed accordingly."

4. The Cabinet Vigilance Department, Government of Bihar, Patna moved a modification application for modification of the order dated 03.11.2009, passed in Cr.WJC No. 764 of 2009 in Cr. Misc. No. 3958 of 2010, which was dismissed on 10.02.2010 with an observation that it was not in dispute that on the same very allegation of alleged embezzlement both the departmental proceeding and criminal proceeding were initiated and the same very Executive Engineer, who was the informant in the criminal case, has fully exonerated the petitioner in the departmental proceeding. In fact, the Department had received full account of money which had been alleged to be embezzled and the only grievance of the Vigilance is that the petitioner had not appeared before the Vigilance and submitted account to the Vigilance. The State of Bihar then moved the Hon'ble Apex Court in SLA (Crl) … 2011 CRLMP.No(s). 11541-11542 which was dismissed by the Hon'ble Supreme Court vide order dated 07.07.2011 as contained in Annexure-12 to the writ application. The Commissioner cum Secretary, Rural Development Department, Purnea Division had also submitted a report dated 19.04.2005, as contained in Annexure-13, whereby it has been observed that about 800 crores was allotted to the engineers for Indira Awas Yojna and it was

found that the quality of the said Yojna was satisfactory in the district of Araria.

5. It is contended on behalf of the petitioner that notwithstanding the above facts and undisputed position that the Government has received the account of all money which was advanced to the petitioner and the same very Executive Engineer, who was the informant in the case, has fully exonerated the petitioner in the departmental proceeding and for the same amount F.I.R. had been quashed, but suddenly a notice under Section 7 of the Public Demand Recovery Act for recovery of Rs. 3,38,38,000/- has been sent to the petitioner vide Annexure-14 without annexing the certificate, which is under challenge.

6. Learned counsel for the petitioner submits that F.I.R., which related to the same very amount of embezzlement, has been confirmed by the same very Executive Engineer and petitioner having been exonerated from the departmental proceeding way back on 11.11.2008 vide Annexure-8 and the F.I.R. having been quashed by this Court, the certificate case so initiated against the petitioner is beyond jurisdiction, contemptuous, reopening of a settled issue, decided more than 12 years back and is also hit by Section 5 of the Limitation Act applicable to proceedings under the Public Demand Recovery Act.

7. Learned counsel appearing on behalf of the State has filed a counter affidavit and a supplementary counter affidavit stating therein that the Officer on Special Duty, Rural Works Department, Government of Bihar vide letter No. 3367 dated 08.11.2016 after considering the reply of the petitioner again directed the concerned Executive Engineers for taking steps for adjustment of advances given to the petitioner and other engineers. Simultaneously, the Joint Secretary, Road Construction Department, Jharkhand vide letter No. 8856 dated 14.12.2016 asked the Executive Engineer of the Araria jurisdiction to make available the details of the entire advances and also the accounts. Thereafter, the Public Account Committee has directed the petitioner to show cause as to why disciplinary proceedings be not initiated against him for keeping the Government advances pending. It is thereafter that the Executive Engineer, Rural Works Department, Works Division, Forbesganj vide letter dated 10.07.2017 after consultation with the Superintending Engineer, Rural Works Department, Work Circle, Kishanganj with four member Enquiry Committee comprising of Divisional Cashier, Rural Works Department, Works Division, Forbesganj, Assistant Engineer, Rural Works Department, Works Sub-Division, Narpatganj, Senior Divisional Accounts Officer, Rural Works

Department, Works Division, Forbesganj and Executive Engineer, Rural Works Department, Works Division, Forbesganj constituted a committee and during course of enquiry it came to the conclusion that against pending advance of Rs. 3,38,38,000/- only total 1915 vouchers amounting to Rs. 3,35,72,500/- have been submitted through 220 number of abstract list for adjustment of advance pending with the petitioner. The Committee found gross irregularity/ discrepancy committed by the petitioner, which is as follows :

a. Vouchers submitted has not been entered into the measurement book.

b. Vouchers submitted have not been entered into the cash book.

c. The aforesaid so called vouchers have not been passed by the concerned Assistant Engineer i.e. the petitioner.

d. Not only this, one such irregularity, which cannot be ignored committed by the petitioner, is that all vouchers with respect to payment has to be maintained in Sub-Divisional cash book and submitted with certified copy along with vouchers and corresponding record but this procedure has not been followed.

e. Most of the vouchers do not have revenue stamp affixed as if payment exceeds Rs. 500/- as per the Finance Act 32 of 1994, it has to be affixed.

f. Lastly, the so called vouchers do not mention the articles purchased from the stated amount by the petitioner.

8. Thereafter at paragraph 13 of the said counter affidavit, it has been stated thus :

> *"13. That the aforesaid Enquiry Committee in course of enquiry came to the conclusion that against the Pending Advance of Rs. 3,38,38,000.00 (Three Crore Thirty Eight Lakh and Thirty Eight thousand only), total 1915 vouchers amounting to Rs. 3,35,72,500.00 (Three Crore Thirty Five Lakh Seventy Two Thousand and Five Hundred) only have been submitted through 220 numbers of Abstract Lists by Deepak Kumar, the petitioner. Further it has also been found that total 1915 vouchers attached with 220 numbers of Abstract Lists are amounting to Rs. 3,35,72,500.00. Amount of total 220 numbers of Abstract Lists enclosed with 1915 vouchers has been found to be Rs. 3,42,77,500.00 (Three Crore Forty Two Lakh Seventy Seven*

> *Thousand and Five Hundred only). So, there is substantial discrepancy between the amount shown by the 220 numbers of Abstract Lists and the amount of 1915 vouchers (enclosed with the Abstract List)."*

9. Thus, from the plain reading of the counter affidavit of the Respondent-State, it appears that at paragraph 11, the total vouchers 1915 have been stated to be amounting to Rs. 3,35,72,500/-, whereas in paragraph 13 the amount of total 220 number of abstract list enclosed with 1915 vouchers has been found to be Rs. 3,42,77,500/- which is in itself a contradiction.

10. Having heard the rival submissions of the parties and from perusal of the counter affidavit, two things are apparent. Firstly, the Department does not know as to on what ground they have proposed to reopen the already concluded matter, which was concluded way back in 2008 whereby the Enquiry Officer also found that on account of non-adjustment of pending advances such allegations have been made, which was not fully proved resulting in revocation of suspension and setting at rest the departmental proceeding by the orders of His Excellency, the Governor of Jharkhand. It is not evident as to on whose behest the departmental proceeding has been proposed to be reopened when the explanation having been given by the petitioner was examined by

the same Executive Engineer, who had lodged an F.I.R. against the petitioner and was the basis for initiation of departmental proceeding. From the examination of accounts it was found that the petitioner had fully accounted for the money and there was no embezzlement, much less, temporary embezzlement. The proceedings initiated by the Department, at whose behest the proceedings were initiated by the Department nobody knows, and overreaching the order passed under the orders of Governor of Jharkhand exonerating the petitioner vide Annexure-8 dated 11.11.2008. Secondly, the statements made in paragraphs 11 and 13 of the counter affidavit are itself contradictory, as on one hand, the Department submits that after examination of 1915 vouchers a sum of Rs. 3,35,72,500/- has been submitted through 220 abstract list by the petitioner, if the amount of Rs. 3,35,72,500/- has been submitted, acknowledged and adjusted how can again the amount would remain static at Rs. 3,38,38,000/-, which is the amount sought to be recovered in the certificate proceeding No. 01/2017-18. Further the counsel for the State has not been able to show as to why again the amount, which had already been adjusted way back prior to 2008 and criminal proceedings having been quashed by this Court with no interference even by the Hon'ble Supreme Court, the certificate proceeding has been sought to have been initiated without any amount, which has been found to be recoverable. Hence, the notice dated 12.07.2017 (Annexure-14) as well as the Certificate Case No. 01/ 2017-18 is held to be void *ab initio* and are, accordingly, quashed.

11. Writ application is allowed as above.

(Nilu Agrawal, J)

Rajesh/-

AFR/NAFR	AFR
CAV DATE	24.08.2018
Uploading Date	30.08.2018
Transmission Date	NA