

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1388 of 2018

Arising Out of PS. Case No.-110 Year-2018 Thana- LAHERIMUHALLA District- Nalanda

Mahabir Prasad S/o Late Laldas Mahto @ Lal Das Prasad, At present R/o Near A to Z Chemistry Point Dhaneshwarghat, Bihar, P.S.- Laheri, District- Nalanda at Biharsharif Permanent R/o Vill.- Ratanpura, P.S.- Noorsarai, Distt.- Nalanda.

... .. Petitioner/s

Versus

1. The State of Bihar, Through The Principal Secretary, Home (police) Department, Patna.
2. The Director , Primary Education, Bihar, Patna.
3. The District Education Office, Nalanda.
4. The District Magistrate, Nalanda.
5. The Superintendent of Police, Nalanda.
6. The Block Education Officer, Biharsharif, Nalanda.
7. The Sub - Divisional Police Officer, Biharsharif, Nalanda.
8. The Station House Officer SHO Laheri, P.S., Nalanda.
9. Tyag Rajan M S, The District Magistrate, Nalanda.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Sanjay Kumar
For the Respondent	:	Mr. Manish Kumar
For the State	:	Mr. Saroj Kumar Sharma, AC to AAG 3
For Resp. No. 8	:	Mr. S. S. Dwivedi, Sr. Advocate
		Mr. R. K. Shukla, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
C.A.V JUDGMENT

Date : 08-08-2018

This writ application has been preferred for quashing of the first information report giving rise to Laheri P. S. Case No. 110 of 2018 under Sections 384, 420 and 409 of the Indian Penal Code lodged by the Block Education officer, Biharsharif, Nalanda against the petitioner.



2. The first information report has been lodged with reference to the letter no. 2653 dated 19.04.2018 written by the District Officer, Nalanda and letter No. 500 dated 04.05.2018 written by the District Education Officer, Nalanda. The nature of the offence as alleged is that the petitioner was allegedly, running a hostel in a Government Modal Middle School, Bhaishasur, Biharsharif (in short hereinafter referred to as the school) privately and was collecting money illegally. The informant has enclosed the copy of the letter written by the District Officer, Nalanda to the District Education officer by which he had directed the District Education Officer to register a first information report in view of the inquiry report submitted by Shri Rabindra Ram, Senior Deputy Collector, Nalanda and to take steps for running the hostel smoothly.

3. The report dated 07.03.2018, which is the sheet anchor of the first information report, refers a letter bearing no. 928 dated 09.02.2018 written by the District Officer, Nalanda to the Senior Deputy Collector, Nalanda and states that on inquiry on the said date of report with respect to the running of the hostel in the residential Modal Middle School, Bhaishasur, he was told by Smt. Sunita Sinha, the Headmistress of the school, that for last several years how the hostel is being run is not known to her as



there is no register, file or letter available in the school. The Headmistress also informed that she had taken charge from Ramshakhi Kumari but she has given in writing that she was not given charge of any such documents.

The report further says that the hostel is being run in the school, students are living there and in the school the Mid Day Meal (in short hereinafter referred to as MDM) facility is provided by the Non-Governmental Organization (in short hereinafter referred to NGO) for which six cooks have been selected and out of them the cooks Sanju Devi, Munni Devi and Manju Devi are working for which Sanju Devi and Munni Devi are getting Rs. 1250/- per month through bank accounts. The rest of the three cooks Karoo Mahto and Rajendra Prasad are looking after the work of the hostel and Sharwan Kumar is doing duty at the school gate. Out of 25, 20 teachers of the school clearly told the inquiry officer that the hostel is being run in 5 rooms and it is being looked after/operated by the ex-headmaster Mahabir Prasad (the petitioner). The inquiry officer was told that this petitioner has done everything for this school. The Government Teachers are not involved in running of the hostel and all of them clearly told the inquiry officer that though the school is a Government School but the hostel is being managed by Mahabir Prasad (the petitioner)



where 60-70 students are living in the hostel and Yuvraj Kumar and Aditya Kumar are looking after the hostel as private teachers.

4. The inquiry officer was also told that in hostel the meals of the students are prepared separately. The Headmistress Sunita Sinha informed that three cooks namely, Karoo, Rajendra and Shrawan have nothing to do with the MDM but they are paid honorarium through MDM as cooks. The students present there informed the inquiry officer that they were living in the rooms, Yuvraj Sir was teaching them and they were paying a sum of Rs. 1500/- to him as monthly expenses, some of the students also informed that one Deepak Sir and Aditya Sir were also staying there and teaching them while some of the students informed that one Janardan Sir was teaching them during night hours.

5. The students also told that those who were living in the hostel were not taking food of MDM and separate preparations were being made for the students living in the hostel. The inquiry officer thereafter, concluded that in inquiry it transpired that the petitioner is running the hostel privately and looking after the students through Deepk, Raushan, Yuvraj and Aditya Kumar. Inquiry officer concluded that the residential schools are to be run through the headmaster of the school and it is his responsibility and it is not proper to hand over the operation of the hostel to an



individual. He has also stated, referring to the department letter, that for running the hostel no financial aid is provided by the department, at the same time the inquiry officer raised a question that if no financial assistance is to be provided by the department for running the hostel, how the hostel may be run and what will be the mode of income and expenditure and how the hostel will be managed ? The inquiry officer also pointed out that there is no guideline as to how the hostel is to be managed, who will run the bank account and if a monthly fee is to be taken from the students then how much amount is to be charged, how much students are to be kept in the hostel. These facts were pointed out in the inquiry report and it was stated that there was no document in respect of these things. At one place, in the inquiry report, the inquiry officer has referred letter dated 10.12.2016, 27.05.2017 and 19.12.2017 written by the Headmistress Smt. Sunita Sinha to make an inquiry and then subsequently by writing letter dated 31.07.2017 to the District Programme Officer (Establishment) she has stated that the hostel is being run in the school in accordance with the Government's directions and with her consent. She has further stated that Shri Mahabir Prasad (the petitioner) is a retired principal of the school and she has no dispute with him and that presently the school is being run properly, therefore, she was



taking back her request for inquiry. At the end, the inquiry officer has stated that it would not be proper to run the hostel in the Government School, privately and the hostel should be run through headmaster or the officer of the Education Department which will be only just and proper.

6. On the basis of the aforementioned written complaint the first information report giving rise to Laheri P. S. Case No. 110 of 2018 under Sections 384, 420 and 409 of the Indian Penal Code has been lodged.

7. While challenging the institution of the first information report, learned counsel for the petitioner has made two fold submissions. His first contention is that the first information report has been lodged on the direction of the District Magistrate, Nalanda who was acting with a malafide intention to harass the petitioner because at the instance of the petitioner, in the contempt application bearing no. MJC No. 2064 of 2017, learned co-ordinate Bench of this Court had called for personal appearance of the District Magistrate (respondent no. 8). The case was fixed for 7th march, 2018 but in between the period 28.02.2018 to 07.03.2018, the District Magistrate, Nalanda constituted an inquiry just to create papers against the petitioner and got prepared an inquiry report dated 07.03.2018 through the Senior Deputy



Collector, Nalanda which has been made basis for lodging of the first information report.

8. Learned counsel has taken this Court through order dated 31.01.2018 passed by a learned co-ordinate Bench of this Court in MJC No. 2064 of 2017. Learned counsel submits that on reading of the said order it would appear that the learned co-ordinate Bench had earlier disposed of a writ application being Civil Writ Jurisdiction Case No. 14018 of 2016 (Mahabir Prasad Vs. The State of Bihar & Ors) with a direction to the District Magistrate, Nalanda to examine as to whether any PCC Road is being constructed over the raiyati land of the petitioner on plot no. 1655, appertaining to khata no. 482 measuring an area of 10 decimals of Majua Sabalpur, District Nalanda or not. He was also directed to examine as to whether such 10 decimals of land belongs to the petitioner or the State ? This Court had directed that the petitioner would appear before the District Magistrate and file his representation on 07.09.2016 along with a copy of the order and after examining the aforesaid issue, if the District Magistrate finds that the 10 decimals land is the raiyati land of the petitioner, Jamabandi has been created in his name then he will proceed to demarcate the land of the petitioner after measuring it in his presence. It was further directed that if any construction has



already been made upon the aforesaid land then that should be removed or a proceeding should be initiated for acquisition of the land in accordance with law, if it is required in public interest. The court expected that the entire exercise would be completed within a period of two weeks. It is submitted that when the order of the learned Writ Court was not complied with, a contempt application was filed and on 31.01.2018 the learned co-ordinate Bench found that the District Magistrate, Nalanda had travelled beyond the direction of the Court and was questioning the Jamabandi which was already existing in the name of the petitioner. Finding that the District Magistrate was travelling beyond the direction of the Court, personal appearance of the District Magistrate was ordered on 7th February, 2018. On 7th February, 2018 the District Magistrate appeared in person before the learned co-ordinate Bench, filed an explanation and requested for time to file further affidavit in the matter. On this the learned co-ordinate Bench adjourned the matter to 28.02.2018 and the personal appearance of the District Magistrate was dispensed with for the present.

9. Learned counsel points out that immediately thereafter, on 09.02.2018 the District Magistrate, Nalanda wrote a letter no. 928 dated 09.02.2018 to the Senior Deputy Collector, Nalanda enclosing therewith a complaint letter said to have been



received from Smt. Sunita Sinha, Headmistress of the Modal Middle School, Bhaishasur and directed him to submit a comprehensive report after inquiry within three days. After asking for the inquiry, the petitioner got notice dated 22.02.2018 under the signature of the Deputy Collector, Land Reforms, Rajgir, Nalanda-cum- Executive Officer, Nagar Panchayat, Rajgir, Nalanda, during the pendency of the contempt application to come and explain everything on 28.02.2018 itself when the case was fixed before the learned co-ordinate Bench. The learned co-ordinate Bench of this Court again on 28.02.2018 passed an interim order directing that no coercive action should be taken against the petitioner till the next date of hearing as the matter is still to be explained by the State. The contempt application was thereafter, fixed for 7th March, 2018. It is on this very day i.e. 07.03.2018 an inspection was allegedly held by the Senior Deputy Collector, Nalanda and on the same day a report was prepared and sent to the District Magistrate which will be evident from the letter no. 250 dated 07.03.2018. The letter specifically says that the inquiry was conducted on 07.03.2018 i.e. the date on which the inquiry report was prepared and sent to the District Magistrate, Nalanda. Learned counsel for the petitioner has contended that the manner in which the things have proceeded in this case, towards



lodging of the first information report, has its genesis in the personal appearance of the District Magistrate which seems to have caused annoyance to him and in order to settle the score with the petitioner, he got prepared an inquiry report and then directed to lodge the first information report.

10. It is submitted that respondent no. 8 has, instead of appreciating the efforts of the petitioner who is the donor of the land on which the school is situated and being ex-headmaster of the school at this age was helping the students of the school by providing them teaching facilities and making arrangements for their stay at the minimal cost, lodged this first information report under various provisions of the Indian Penal Code without there being any basis or materials to suggest commission of the alleged offence by the petitioner. It is submitted that admittedly the Government is not providing a single paisa towards the maintenance of the hostel and in no way any government money has been handed over to the petitioner for running the hostel. The Headmistress of the school Smt. Sunita Sinha was rather compelled to write a complaint against the petitioner which she had withdrawn in writing by stating that the hostel was running with her consent.



11. The second argument of the learned counsel for the petitioner is that in the given facts, as stated in the inquiry report dated 07.03.2018, no offence at all much less any offence under Sections 384, 420 and 409 of the Indian Penal Code is made out. Learned counsel submits that nobody has come forward to allege that the petitioner has committed any act of extortion with him, nobody complained of cheating and in no way it may be said to be a case of criminal breach of trust and therefore, none of the ingredients of Section 384, 420 and 409 of the Indian Penal Code is present to give rise to a prima facie case.

12. It is submitted that without adding or subtracting anything from the inquiry report what may be culled out is that in absence of any arrangement at the Government Hostel to run the hostel of the school, in absence of any funding for running of the hostel and in absence of any facility to be provided by the Government in connection with running of the hostel, it was the petitioner being the ex-headmaster of the school and donor of the land on which the school is situated, in good faith, had been providing teaching to the students who had come from distant villages and were somehow trying to continue with their education living in the rooms meant for the hostel in the school. The students, present in the school, have admitted that they were



getting teaching through some of the teachers and they were paying a sum of Rs. 1500/- towards monthly expenses, none of them has made any complaint at all and therefore, there was no reason for the District Magistrate to get lodged the first information report.

13. On the other hand learned counsel representing the State as well as learned Senior Counsel representing the respondent no. 8 have opposed the writ application. It is submitted that no doubt the petitioner is the ex-headmaster of the school and is the donor of the land on which the school is situated but he was running the hostel in the rooms built in the building premises of the school unauthorizedly and was collecting money from the students in the name of providing facilities of fooding and teaching. It is submitted that such act of the petitioner is illegal and in fact a case of extortion, cheating and criminal breach of trust is prima facie made out. Defending respondent no. 8, learned Senior Counsel submits that it cannot be said that respondent no. 8 was acting with malafide intention to harass the petitioner. It is submitted that the plea of malafide taken against respondent no. 8 is not borne out from the materials available on the record and hence, this plea is liable to be rejected. The learned Senior Counsel has relied upon the judgment of the Hon'ble Supreme Court in the



case of **Swaran Singh and Others Versus State through Standing Counsel and Another** reported in (2008) 8 SCC 435 and the judgment in the case of **Teeja Devi alias Triza Devi Versus State of Rajasthan And Others** reported in (2014) 15 SCC 221 to submit that at this stage the correctness or otherwise of the allegation in the first information report is not to be seen and only thing that has to be seen is as to whether on a perusal of the first information report a prima facie offence is made out or not.

14. It is submitted that the contents of the inquiry report is sufficient to make out a case for taking action against the petitioner. Respondent no. '8' has, in his counter affidavit, taken a plea that he had passed the order for inquiry in the routine manner in view of the complaint received from the Headmistress of the school on 05.02.2018. It is submitted that during the inquiry it was detected that though MDM in the Modal Middle School, Bhaishasur is being provided by the NGO but three, out of six cooks, are taking monthly remuneration from the MDM Scheme whereas they were giving their services in the hostel of the school under the influence of the petitioner and thereby a clear case of misappropriation of government funds is allegedly made out against the petitioner. He has denied any intention behind making of the inquiry and harassment to the petitioner.



15. Having heard learned counsel for the petitioner and learned counsel for the State as well as the learned Senior Counsel representing the respondent no. 8, this Court finds that the second argument raised by learned counsel for the petitioner is required to be considered at first instance. On going through the inquiry report, which is the basis of lodging of the first information report on the direction of the District Magistrate, Nalanda, this Court finds that the said inquiry was conducted on 07.03.2018 in view of the letter dated 09.02.2018 received from the District Magistrate, Nalanda. In course of inquiry it was informed that the MDM is being provided through NGO. The food is, therefore, made available by the NGO, however, the other services such as cleaning and serving of food are done by three cooks namely, Sanju Devi, Munni Devi and Manju Devi. About Sanju Devi and Munni Devi it has been stated that they are being paid Rs. 1250/- per month through their bank accounts. Regarding Manju Devi and other three cooks namely, Karro Mahto, Rajendra Prasad and Shrawan Kumar, there is no statement regarding the payment being made to them or the mode of their payment. The inquiry report says that Karro Mahto and Rajendra Prasad are looking after the work of the hostel whereas Shrawan Kumar is doing duty on the school gate. This report nowhere says that for looking after



the work of hostel Karoo Mahto and Rajendra Prasad are being paid by the school or that they are not rendering any service to the school and still they are being paid by the school. In fact the report says that Shrawan is doing duty at the school gate. They are not full time employees of the school on the pay-roll. There is no such allegation at all.

16. In course of inquiry all the teachers of the school made it clear that though the school is a Government School but hostel is being run under the supervision of the Ex-Headmaster Mahabir Prasad who has done everything for this school. Thus, everybody is aware of this fact. In the form of private teachers Yuvraj Kumar and Aditya Kumar were looking after the hostel. The report also says that the Headmistress Sunita Sinha informed that the three cooks namely, Karoo, Rajendra and Shrawan have nothing to do with the MDM but they are paid honorarium as cooks from the MDM. A bare reading of the inquiry report shows that the MDM is provided by a NGO and for this purpose six cooks have been selected and they are being paid honorarium, admittedly, they are not contractual or regular employees of the school and they are engaged and paid only in connection with the MDM. It is not the allegation that those who were working for NGO or were connected to MDM and were being paid honorarium



could not have worked for anybody else. The students who were present in the hostel have not made any complaint against the petitioner. According to the school students, they were being taught by Yuvraj Kumar, Deepak Kumar and Janardan and the students were making payment of Rs. 1500/- to those teachers as monthly expenses. It has been clearly stated and found in course of inquiry that even though the school in question is a residential government school but the government has not provided any money/fund for running of the hostel and since no financial assistance has been provided for running of the hostel in the school, the inquiry officer has raised a question as to how in such circumstances the money will come and expenses will be borne towards the management of the hostel. The inquiry officer has found that there is no Rule relating to management of the hostel, there is no Rule relating to the monthly charges to be taken from the students and further there is no Rule as to how many students are to be kept in the hostel. The inquiry officer could not come across any document showing the formation of a management committee for running the school and therefore, what is apparent from the inquiry report is that in absence of any Rule, guidelines or instructions to run the hostel of the residential school, with the consent of the headmistress Smt. Sunita Sinha the present



petitioner was managing the hostel and was providing food facilities and teaching facilities to the students living there for which monthly expense of Rs. 1500/- was being paid by the students to the concerned teacher.

17. The inquiry officer has found that even the School Education Committee has never discussed about the management of the hostel of the school and the District Programme Officer (Establishment) as also the District Education Officer, Nalanda when contacted they could only say that the matter has been referred for inquiry but it has not been inquired into. A bare reading of the inquiry report shows that so far as the students and the guardians of the students are concerned, none of them has made any complaint of extortion, cheating or criminal breach of trust. Sections 384, 420 and 409 of the Indian Penal Code read as under :

“384.Punishment for extortion.- Whoever commits extortion shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both”

“420. Cheating and dishonestly inducing delivery of property.- Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part



of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

409. Criminal breach of trust by public servant, or by banker, merchant or agent.-

Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

18. ‘Extortion’ has been defined under Section 383 IPC, cheating has been defined under Section 415 IPC and criminal breach of trust is defined under Section 405 of the Indian Penal Code which are quoted herein for ready reference:

“383. Extortion.- Whoever intentionally puts any person in fear or any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security, or anything signed or sealed



which may be converted into a valuable security, commits “extortion”.

415. Cheating.- Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property is said to “cheat”.

405. Criminal breach of trust.- Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge or such trust, or willfully suffers any other person so to do, commits “criminal breach of trust”.

19. On going through the definition of Section 383 IPC, it is apparent that to bring a case within the scope and ambit of Section 383 IPC, the person from whom any property or valuable security has been taken must have been put in fear and any injury or have



been dishonestly induced so by putting him in fear to deliver to any person any property or valuable security, or anything signed or sealed which may be converted into a valuable security. In the present case not a single person has come forward with an allegation that he was ever put in fear of any injury or was dishonestly induced by putting him in fear to deliver any property. Apparently, the allegations as appearing in the first information report are not covered under Section 383 of the Indian Penal Code. Similarly in order to bring home the allegation of cheating, it must be shown that the person committing the offence has committed an act of cheating by deceiving a person fraudulently or dishonestly to deliver any property to any person or to consent with any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property. In the present case the petitioner is said to be running a hostel privately by taking money from the students. Admittedly, the petitioner has not received any money from the Government to run the hostel. There is no allegation by any student or his guardian that the petitioner has indulged in any act deceiving any persons. There is no allegation of fraudulently or



dishonestly inducing any person to deliver any property to any person. At the same time, there is no allegation that the petitioner has fraudulently or dishonestly induces any person or to consent that any person shall retain any property. The allegation is not of retaining any property or deceiving any person. The allegation is that the petitioner was illegally managing the hostel by collecting money from the students.

20. In the opinion of this Court, if the allegations that the petitioner was illegally or dishonestly collecting money from the students has not been alleged by the students or their guardians, in absence of any such allegation coming through the students or their guardian, only because the students were paying Rs. 1500/- per month towards expenses whereunder they were being facilitated food and teaching facilities by some teachers, the District Magistrate cannot draw an inference that the petitioner was indulged in an act of cheating.

21. The hostel was managed without getting any financial assistance, such management by a private person may not be desirable or permissible from administrative point of view but in absence of any Rule, guidelines or instructions to manage the hostel, if the petitioner who was an ex-headmaster of the school and a donor of the land of the school was being allowed by the



Headmistress for a long time to run the hostel through private management and this fact was well known to all the teachers and the headmistress of the school who has in fact later on stated that the petitioner was managing the hostel with her consent, it cannot be said that for the administrative lapses in running the hostel or supervision on the part of the authorities of the State, the petitioner will be taken to have committed an act of cheating or criminal breach of trust.

22. The allegations as contained in the inquiry report, based on which the first information report has been lodged, would not satisfy any of the ingredients of the offences of cheating and criminal breach of trust, therefore, in the opinion of this Court, the nature of the allegations in the inquiry report, giving rise to the first information report, one indicating is substance about the administrative failure in running of the hostel. In absence of any fund allocation or administrative instruction to run the hostel there being no effort on the part of the concerned authorities to run the hostel, petitioner was only facilitating the students coming from the far distant places in staying there and getting their food and teaching facilities. This Court is unable to understand how the District Magistrate, Nalanda would sense a commission of offence by the petitioner in the facts of the present case.



23. The inquiry report has gone to the extent saying that even the School Management Education Committee, the District Education Officer, the District Programme Officer and other officers who were contacted could only reply that they are looking into the matter or inquiring into. This is being a case of failure of the administration in taking care of the hostel facilities of the school and in absence of any steps being taken by the school and the department, merely because the petitioner was running and managing the hostel to some extent that too with the knowledge and consent of the teachers and the Headmistress, no case of extortion, cheating or criminal breach of trust is prima facie made out from reading of the inquiry report. This case is covered under one of the seven exceptions provided by the Hon'ble Supreme Court in the case of **State of Haryana and Others v. Ch. Bhajan Lal and Others** reported in **AIR 1992 Supreme Court 604**. The contention of the learned counsel for the State and learned Senior Counsel representing the respondent no. 8 that a prima facie case is made out is totally misconceived and this Court would not accept the same.

24. The another submission of the learned counsel for the petitioner as regards the malafide intention on the part of the respondent no. 8 has also got force. The sequence of events, the



order passed by the learned Writ Court directing the District Magistrate, Nalanda to act in terms of the order of the Writ Court and then in contempt application the Court finding that the District Magistrate was travelling beyond the direction of the Court and then, calling upon personal appearance of the District Magistrate are some of the facts which are apparent on the face of the record. The coincidence of the dates and events taking place simultaneously and side by side are also apparent on the records. The fact that by travelling beyond the direction of the learned Co-ordinate Bench of this Court, the District Magistrate had questioned the Jamabandi of the petitioner with respect to the land in question and then the case was fixed for 28.02.2018 but six days before that a notice was served on the petitioner on 22.02.2018 by the Deputy Collector, Land Reforms calling upon him to appear on the same date on which date the case was fixed before the High Court are the facts which cannot be overlooked by this Court. The materials available on the record in the form of the order passed by the learned co-ordinate Bench, the order passed in the contempt application and the events and developments which have taken place during the pendency of the contempt application leading to lodgment of present F.I.R. in the opinion of this Court, clearly indicate that the District Magistrate,



Nalanda was not happy with the move of the petitioner before this Court in the contempt application and therefore, in haste, he directed the Senior Deputy Collector, Nalanda to submit a report on the complaint of the Headmistress which was also received on 05.02.2018 surprisingly only two days before the date fixed in this Court in the contempt application. The respondent no. 8 got an inquiry done in one day i.e. on 07.03.2018 itself and the report was also submitted to him on the same day and thereafter, he directed to lodge the first information report without even calling for a report from the Education Department as to the available guidelines or instructions or directions with regard to running of the hostel in the residential school. The District Magistrate, in the opinion of this Court, was bent upon lodging of the first information report against the petitioner. The learned counsel for the respondent no. '8' has relied upon the two judgments which have been referred hereinabove, however, I find that those two judgments of the Hon'ble Supreme Court were rendered in a totally different facts situation wherein the Hon'ble Supreme Court had found that the allegations made in the first information report were prima facie disclosing the commission of offence, whereas in the facts of the present case, without adding or subtracting anything out of the report dated 07.03.2018, this Court



has found that no prima facie case of extortion, cheating and criminal breach of trust is made out against the petitioner. The report is rather indicating the failure of the concerned authorities in not taking care of the hostel facility in the school in question. The petitioner who happens to be ex-headmaster of the school and donor of the land of the school is being harassed in the name of running a hostel or managing the hostel unauthorizedly. Fact remains that admittedly the Government has never provided a single paisa for running of the hostel and management of the hostel and at no point of time any Rule or direction or instructions have been framed and issued which can be said to have been violated in this case, moreover the Headmistress has also come out with a written letter that the petitioner was managing the hostel with her permission. In the opinion of this Court, the petitioner has been able to make out a case for quashing of the first information report.

25. In the result, the first information report giving rise to Laheri P.S. Case No.110 of 2018 is quashed. The Writ application is allowed.

26. It appears that the Block Education officer, Biharsharif, Nalanda has been made party just below the Superintendent of Police (respondent no. 5) but serial number has



not been provided whereof, as a result, in stead of 9 respondents, only 8 respondents have been shown in the writ application. To meet this situation, respondent Block Education Officer, Biharsharif, Nalanda will be treated as respondent no. 5A.

(Rajeev Ranjan Prasad, J)

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AFR/NAFR	NAFR
CAV DATE	26.07.2018
Uploading Date	08.08.2018
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