

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.12958 of 2015

Arising Out of PS. Case No.-3 Year-1999 Thana- SIMRA District- West Champaran

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1. Abhiram Mishra, S/o Braj Kishore Mishra, Resident of Village Tadwalia, P.S. Semara, District West Champaran.
 2. Om Prakash Suman (J.E.), S/o Sri Ram Prasad, Resident of Village Nadwasarai, P.S. Ghosi, District Mau (U.P).

... .. Petitioner/s

Versus

1. The State of Bihar
2. The B.D.O., Bagaha-2, P.S. Bagaha, District West Champaran.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Bimlesh Kumar Pandey, Advocate
For the Opposite Party/s : Mr. J.N.Thakur, APP

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 13-08-2019

Heard learned counsel for the parties.

2. The petitioners are accused in Semara P.S. Case No. 03 of 1999. Their prayer for discharge, under Section 239 Cr.P.C., has been refused by the impugned order dated 03.04.2013.

3. The challenge is on the ground that the matter was of civil dispute and accounting. However, criminal prosecution was lodged, which is an abuse of the process of the Court, without material on the record.

4. According to FIR, petitioner no. 1 was contractor under an agreement to complete the bricks-work on the road in Government Scheme No. 06 of 95-96. On the recommendation of Junior Engineer (petitioner no. 2) based on measurement of the



work already done, different installments of contract money was paid to the petitioner no. 1. Fully detailed in the FIR. The petitioner no. 1 received rupees two lacs sixty seven thousand five hundred. Further petitioner no. 1 actually performed work of rupees two lacs fourteen thousand nine hundred forty two and allegation is that he misappropriated the remaining amount of rupees fifty two thousand five hundred fifty eight.

5. Submission of learned counsel for the petitioners is that the matter was of accounting. The petitioner no. 1 was claiming the actual amount which he had spent. However, the bill amount of several works were not passed and, ultimately, it was held that the petitioner no. 1 had performed work of rupees two lacs fourteen thousand nine hundred forty two only. For recovery of the remaining amount, a certificate case was initiated before the Certificate Officer, Bettiah vide Case No. 23 of 1998-99 and the proceeding was dropped as the petitioner no. 1 had already deposited more than claimed amount to the tune of rupees fifty four thousand. Thereafter, the informant also filed a petition before the investigating officer that no claim against the petitioners remains to be settled.

6. Considering the nature of dispute and the manner of settlement, continuance of the criminal prosecution of the



petitioners amounts to abuse of the process of the Court, hence, the same stands quashed. The application stands allowed.

(Birendra Kumar, J)

Kundan/-

AFR/NAFR	N.A.
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