

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 5551 of 2015**

Arising Out of P.S. Case No.-85 Year-2011 Thana- PARIHAR District- Sitamarhi

Shankar Mahto Son of Nanhku Mahto, Resident of Village-Bhisa @
Madhopur Rosan, P.S-Dumra, District-Sitamarhi.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Mrityunjay Kumar, Mr. Amardeep and Mr. Umesh Prasad, Advocates
For the State	:	Mr. Jharkhandi Upadhyay, A.P.P.

**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH**

ORAL JUDGMENT

Date : 01-04-2019

Heard learned counsel for the petitioner and learned
A.P.P. for the State.

2. The petitioner has moved the Court under Section
482 of the Code of Criminal Procedure, 1973 for the following
relief:

*“That this is the petitioner for quashing
the order dated 2/7/2014 passed by learned Neeraj
Kumar II Judicial Magistrate F.C Sitamarhi in
connection with Parihar P.S. Case No. 85/11 dated
23/9/11 G.R. No. 2419/2011 by which learned
Neeraj Kumar II Judicial Magistrate F.C Sitamarhi
took cognizance against the petitioner under
Sections 420/406/409/34 Indian Penal Code and the*



above said case is pending in the Court of learned Sri Neeraj Kumar II J.M. F.C Sitamarhi.”

3. The allegation against the petitioner and others is of making fraudulent payment to fake beneficiaries.

4. Learned counsel for the petitioner submitted that at the relevant point of time, he was the *Nazir* in Parihar Block in the District of Sitamarhi. It was submitted that for such allegation, three cases were filed, including the present one. Learned counsel submitted that the petitioner being a *Nazir* was duty bound to obey the direction of the concerned B.D.O., who was the authority to sanction the amount and who had sanctioned the amount in the present case also and further that his only role was that as per the direction of the concerned B.D.O., he had prepared the list of beneficiaries and the amount payable to them and had sent it directly to the Bank/Post Office for being paid to the beneficiaries. Learned counsel submitted that the petitioner had no role either in sanctioning or in the actual withdrawal of the amount by any of the beneficiaries. In support of such contention, learned counsel referred to various documents, including the order issued by the B.D.O., Parihar to him directing to send the advise for the amount to the concerned Bank/Post Office.



5. Learned A.P.P. fairly submitted that in view of the materials on record, the role of the petitioner does not indicate any direct involvement in making payment to the beneficiaries.

6. Learned counsel produced before the Court copy of order dated 01.02.2019 in Cr. Misc. Case No. 45279 of 2014, in which similar allegations in Bela P.S. Case No. 181 of 2010, filed against the petitioner has been quashed.

7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that a case for interference has been made out.

8. As has rightly been submitted by learned counsel for the petitioner, the petitioner was only carrying out the directions of the concerned B.D.O. in such payment and that too by preparing a cheque and forwarding it to the Bank/Post Office concerned. It is not the case of the prosecution that the petitioner was in any way involved in sanction of the loan or had paid the amount or given the cheque directly to any beneficiary. This being the uncontroverted factual position, the Court finds that continuance of the present criminal case against him would be an abuse of the process of the Court.

9. For reasons aforesaid, the application is allowed. The entire criminal proceeding arising out of Parihar P.S. Case No. 85



of 2011 (G.R. No. 2419 of 2011), including the order dated 23.09.2011, by which cognizance has been taken, as far as it relates to the petitioner, stands quashed.

(Ahsanuddin Amanullah, J.)

P. Kumar

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