

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.4892 of 2017

Arising Out of PS. Case No.-250 Year-2015 Thana- MUFFASIL District- Aurangabad

Shadan Arshi Samshi @ Shada Arshi Shamsi D/o Late Md. Bahauddin Shamsi, R/o Vill+P.O.- Bharthauli, P.S.- Aurangabad Mufassil, District- Aurangabad, presently posted as Assistant Teacher, Utkramit Middle School, Chatra District- Aurangabad. Petitioner/s

Versus

1. The State Of Bihar
2. Sri Abhay Narayan Prasad, (Block Resource Person) S/O Sri Gupteshwar Ram R/O- Village- Manora, Gulzar Bigha, P.S. Owara, District-Aurangabad Opposite Party/s

Appearance :

For the Petitioner/s : Mrs.Roona, Adv
For the Opposite Party/s : Mr.Sri Harendra Prasad, Adv

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 05-12-2019

Heard the parties.

2. The petitioner has sought for quashment of the order of cognizance dated 25.05.2016 passed in Aurangabad Muffasil P.S.Case No.250 of 2015 whereby cognizance has been taken against the petitioner for offence under Sections 409 and 420 of I.P.C.

3. The enclosure to the FIR would reveal that on receiving complain that the head teacher (the petitioner) of Rajkiya Madhya Vidyalaya, Babhandi in the district of Aurangabad is not providing mid-day-meal to the students, on 08.10.2015 the school was inspected and the godown was sealed. Thereafter, information was collected that in September, 2015, 450 quintals of rice was allocated to the school for mid-day-meal of Class-I to V students



and 150 quintals was allocated on 07.10.2015 for mid-day-meal of students of Class-VI to VIII. When the sealed godown was reopened, the stock register and actuals were verified and it was found that there is missing of 85 Kgs of rice and allegation is that the petitioner misappropriated the same.

4. Learned counsel for the petitioner has challenged the entire criminal proceeding on the ground that without any evidence of measurement, it cannot be alleged that 85 Kgs was missing from the huge quantity kept in the stock. Therefore, the trial is bound to fail and in case where there is very bleak chance of success in trial, allowing criminal prosecution would amount to abuse of the process of the court.

5. Learned counsel has drawn attention to the seizure list which also does not reveal that any measurement of rice was done while giving an estimate that in a drum three quintals of rice was there, in 10 bags 25 Kgs of rice was there and in a bag 6.5 Kg of rice was there. Learned counsel for petitioner has drawn attention to the letter dated 08.10.2015 addressed to the Programme Officer wherein it is specifically mentioned that the petitioner admitted about the aforesaid allotment of 600 Kgs of rice and stated that on 21.09.2015 the same was returned for the reason that due to some internal dispute and differences, the mid-



day-meal in the school was closed and accordingly the authorities were asked to remove the said rice from the school. The petitioner had further informed that in the school, there is no accommodation for stay of the police force, hence, it could not be managed further. On the prayer, the authorities immediately removed the rice to Madhya Vidyalaya, Barawa, Basantpur. However, later on they got information regarding restoration of normalcy in the school, therefore on 07.10.2015, again the allotted rice was sent to the school of the petitioner.

6. Submission is that the statement made in the letter at page-18 of the FIR does not find corroboration from the stock register, moreover, it is not definite as to what quantity was sent to the school on 07.10.2015.

7. After hearing the parties, I find serious infirmity in the collection of material by the prosecution. There is no measurement done by the authorities to ascertain the actual missing of rice, hence, the quantity of 85 Kgs decided by the authorities is based on imagination. There is no mention that what was the available stock, and what was the utilization last done according to the stock register and thereafter what was the actual availability of rice ascertained by actual measurement. Therefore, the statement of missing of 85 Kgs of rice is bald statement.



Hence, criminal prosecution of the petitioner is an abuse of the process of law.

8. In the case of **Narindra Singh & Ors Vs. State of Punjab & Anr**, reported in **(2014) 6 SCC 466**, the Hon'ble Supreme Court summed up the principles for guidance to the exercise of power under Section 482 Cr.P.C. and one of the considerations laid down was that where the possibility of conviction in the case is remote and bleak and continuation of the criminal case would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal cases.

9. Besides as discussed in Para No.-7 above, the record does not reveal that the petitioner was custodian of the godown and he was only responsible for the missing. Only for the reason that the petitioner was Incharge Headmaster, it would amount to putting the petitioner to extreme in justice, if the trial is going to be allowed in absence of cogent material to assume any positive result in the trial.

10. Accordingly, the impugned order is hereby quashed and this application is allowed.

(Birendra Kumar, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	11.12.2019
Transmission Date	11.12.2019

