

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.3382 of 2017

Arising Out of PS. Case No.-72 Year-2015 Thana- DHANSOI District- Buxar

Badri Vishal Pandey Son of Late Surendra Prasad Pandey, Resident of
Village- Farna, P.O.- Lohar Farma, P.S.- Barhara, District- Bhojpur.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The State Food Corporation of Buxar.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Rajendra Nath Sinha, Adv.
For the B.S.F.C.	:	Mr. Sanjay Prasad, Adv.
For the Opposite Party/s	:	Mrs. Gulnar Begam, APP

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

2 04-04-2019 Heard learned counsel for the petitioner, learned
counsel representing O.P. No. 2/State Food Corporation, Buxar
as well as learned Additional Public Prosecutor.

The petitioner happens to be an accused in connection
with Dhansoi P.S. Case No. 72/2015 registered under Section
409, 420 of the Indian Penal Code, has prayed for quashing of
the First Information Report as well as the investigation.

Allegation against the petitioner is that he
misappropriated 1292 Quintals of paddy appertaining to Rs.
18,74,595.35840.

The petitioner has raised his grievances on two
aspects. First one is that in spite of the fact that petitioner



happens to be an employee of the O.P. No. 2/State Food Corporation, Buxar, O.P. No. 2 sat idle and the so alleged misappropriation of the year 2012-13 drew attention of the O.P. No. 2 and for that this case was instituted on 24.08.2015. This inordinate delay has not been explained.

Furthermore, it has also been submitted that while petitioner had moved for anticipatory bail, the O.P. No. 2 had appeared and the informant of this case filed counter affidavit wherein, a different stand has been taken. Not only this, it has also been submitted that there happens to be specific disclosure under para 6 thereof with regard to deputation of one another employee namely, Akhilesh Kumar Alok who also indulged in purchasing of paddy on behalf of O.P. No. 2 including the petitioner and if, the same conjointly taken up, there happens to be no misappropriation as the total of purchased paddy by the both employees comes to 37485.40 Quintals. Consequent thereupon, no offence is made out and that being so, whole prosecution is fit to be quashed.

The learned Additional Public Prosecutor as well as learned counsel for the O.P. 2 has submitted that from the averments so made under para 7 of the Counter Affidavit (Annexure-2) there happens to be specific disclosure that the



assertions whatsoever been at the end of the petitioner happens to be false. Further, he is being rightly prosecuted for misappropriation of 1292 Quintals of the paddy, for that the details so enumerated under the Purchase Register has been annexed with the Counter Affidavit.

After hearing the rival submission, it is apparent that apart from admissibility of the Counter Affidavit that too during counter-meeting with the allegation during course of anticipatory bail petition really happens to be admissible under the Evidence Act whereupon, the learned counsel for the petitioner failed to explain. Apart from this, the matter as pleaded appears to be clumsy as well as disputed.

In Tilly Gifford Vs. Michael Floyd Eshwar and Anr. reported in (2018) (11) SCC page 205 it has been held:-

“3. A perusal of the order of the High Court released on 21.05.2015 would indicate that the High Court has gone far beyond the contours of its power and jurisdiction under Section 482 Cr.P.C to quash a criminal proceeding, the extent of such jurisdiction having been dealt with by this Court in numerous pronouncements over the last half century. Time and again, it has been emphasised by this Court that the power under Section 482 Cr.P.C would not permit the High Court to go into disputed questions of fact or to appreciate the defence of the accused. The power to interdict a criminal proceeding at the stage of investigation is even more rare. Broadly speaking, a criminal investigation, unless tainted by clear mala fides, should not be foreclosed by a court of law.”

Consequent thereupon, instant petition lacks merit, is



accordingly, dismissed.

(Aditya Kumar Trivedi, J)

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