

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.1265 of 2017

Arising Out of PS. Case No.-20 Year-2011 Thana- PALASI District- Araria

Rupam Jha w/o Awadhesh Pathak r/o village Bhatottar Chakla, PS Barhara Kothi, District Purnea.

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Sanat Kumar Mishra, Adv.

For the Opposite Party/s : Mr. Abhay Kumar Roy, APP

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

2 14-02-2019 Heard learned counsel for the petitioner as well as learned APP.

2. On account of refusal by the learned lower court to discharge in accordance with Section 239 of the CrPC, petitioner has challenged the same under the present petition.

3. The allegation so attributed is that there was deposit in Dehti PACS relating to different Government Schemes which was illegally withdrawn by the different accused persons so named therein after hatching a conspiracy and at Serial No.8, there happens to be presence of petitioner, Rupam Jha with an allegation to have withdrawn Rs. 1,50,000/-.

4. The case was investigated followed by submission of charge-sheet. At present stage, as is evident, the matter is pending for framing of charge or charge might have been



framed.

5. It has been submitted at the end of petitioner that it happens to be out and out a civil dispute and for that, neither prosecution is permissible nor the order of cognizance and in likewise manner, the order impugned also happens to be contrary to the spirit of law. It has further been submitted that there should have been relevant documents at the end of the prosecution in order to attract the relevant Sections whereunder charge is going to be framed as observed by the learned lower court. Mere oral statement of witnesses would not justify the allegation. So, the order is fit to be set aside whereupon, the petitioner be discharged.

6. Learned APP opposed the same.

7. So far present stage is concerned, paragraph-17 in the case of *Amit Kapoor v. Ramesh Chander* as reported in **(2012)9 SCC 460**, it has been held that for the purpose of consideration of the material at the stage of framing of charge, it should be weaker than the *prima facie* case. From the perusal of the order impugned, it is evident that the learned lower court has properly identified presence of sufficient material under paragraphs-8, 9, 10, 11, 12, 14 and 17 of the case diary, which has not been controverted at the end of petitioners. Whether on



account of absence of documentary evidence, conviction could be recorded or not is to be considered by the trial court itself during course of final adjudication of the trial on the basis of materials so available on record and not at the present stage.

8. That being so, instant petition sans merit and is accordingly, dismissed.

(Aditya Kumar Trivedi, J)

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