

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.51798 of 2014

Arising Out of PS. Case No.-306 Year-2014 Thana- ARARIA District- Araria

Md. Tanzilur Rahman @ Tanzilur Rahman @ Wazibur Rahman Son of Late Rayeesuddin Resident of Village - Baluganj, P.S. - Balrampur, District - Katihar.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Madhu Kumari Wife of Rajiv Ranjan Resident of Jaiprakash Nagar, Purnea College, District Purnea, At present Block Development Officer, Araria, P.S. Araria, District - Araria.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Nafisuzzoha, Advocate
For the State	:	Mr. Jharkhandi Upadhyay, A.P.P.

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

ORAL JUDGMENT

Date : 11-02-2019

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 (hereinafter referred to as the 'Code') for the following relief:

“That, this is an application for invoking the inherent jurisdiction of this Hon’ble Court for quashing/ setting aside the order dated 15.11.2014, passed by the Chief Judicial Magistrate, Araria P.S. Case No. 206 of 2014 (G.R. 1810/14) by which, cognizance has been



taken against the petitioner under Section 409, 420 I.P.C. and issued summons to the petitioner.”

3. The allegation against the petitioner, who at the relevant time was *Panchayat Sachiv*, is defalcation of Rs. 4,92,000/-, which he had taken as advance for completion of a particular scheme.

4. Learned counsel for the petitioner submitted that the allegation is not correct for the reason that though he may have taken the amount as advance for the scheme but substantive work had been completed and materials for the remaining work had also been bought and available at the site but due to his transfer, the scheme could not be fully completed. Learned counsel submitted that earlier when the Court was considering the bail petition of the petitioner with regard to the present case, it was noted that out of Rs. 4,92,000/-, work amounting to Rs. 4,07,000/- had been completed and even though the materials bought for completing the remaining works were lying at the spot, though not taken note of by the authorities, still he was ready to deposit the difference amount in Government Treasury, the Court had granted bail by order dated 17.10.2014 in Criminal Misc. No. 42268 of 2014. Learned counsel submitted that the petitioner has since retired and once he has accounted for/made good whatever advance he had



taken, the petitioner be saved from any further harassment in the criminal case.

5. Learned A.P.P. submitted that cognizance has been taken against the petitioner. However, on a query of the Court as to the fact that substantive work had been found to be done by the petitioner and even though the materials lying had not been taken into account, the petitioner having deposited the amount in Government Treasury, why the Court should not exercise its inherent power under Section 482 of the Code, learned A.P.P. submitted that the Court may in its discretion exercise such power.

6. 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. Once the entire amount taken by the petitioner has been accounted for, and without getting into any controversy, the petitioner has also deposited the remaining amount in Government Treasury, allowing the criminal proceeding to continue would not serve the purpose of justice.

7. Accordingly, the application is allowed. The entire criminal proceeding arising out of Araria P.S. Case No. 306 of 2014 (G.R. No. 1810 of 2014), including the order dated



15.11.2014, by which cognizance has been taken by the Court
below, as far as it relates to the petitioner, stands quashed.

(Ahsanuddin Amanullah, J)

P. Kumar

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