IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.1607 of 2014

Arising Out of PS. Case No.-283 Year-2010 Thana- ARARIA District- Araria

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Deepak Kumar, son of late Ramesh Chandra Sharma, resident of village-Bihta, P.O.- Alipur Bihta, Via Khushrupur, P.S.- Bakhtiarpur, District- Patna

... ... Petitioner/s

Versus

1. The State of Bihar
2. Additional Director General of Police, Cabinet Vigilance Department, Government of Bihar, Patna.

... ... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Prabhat Ranjan, Advocate

For the Opposite Party/s : Mr. J. N. Thakur, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

CAV JUDGMENT

Date : 28-08-2019

This application under Section 482 of the Code of Criminal Procedure has been filed on behalf of the Petitioner to quash the order dated 10.05.2013, in so far as it relates to the Petitioner only, passed by the learned Chief Judicial Magistrate, Araria, upon submission of supplementary charge-sheet in connection with Araria P.S. Case No.283 of 2010, whereby and whereunder learned Chief Judicial Magistrate, Araria, has taken cognizance for the offence under Section(s) 406, 409, 420, 467, 468 and 120-B Indian Penal Code.

2. Heard counsel for the Petitioner and the State.

3. Written argument has also been filed on behalf of the Petitioner.

4. Genesis of the present prosecution is the letter of District Magistrate, Araria, as contained in Letter No.855/C which was to the effect that during course of review meeting in the *Vishwash Yatra*, it was pointed out that for the execution of Indira Awash Yojna in the year 2004-05, an amount of rupees eight crore was disbursed to the then Executive Engineer, which amount was further advanced to different Assistant Engineers for execution of the scheme. There is no detail in DRDA, Araria, whether dwelling units were actually constructed or not, utilization report and expenditure report etc. was available with agency or not. The Superintendent of Police was directed to take necessary follow up action in the matter and also consult the Vigilance Department regarding the latest updates of the investigation already instituted earlier which is pending since long. First Information Report is based on the aforesaid letter of the District Magistrate and the case was registered on 24.06.2010 under Sections 406, 409, 420, 467, 468, 120-B Indian Penal Code.

5. Counsel for the Petitioner has submitted that perusal of the First Information Report itself would show that same has been lodged merely in confusion. Letter of the District Magistrate, which is the basis of the present First Information Report, stipulates that first preliminary enquiry should have been made. Thereafter, facts regarding availability of the documents was to be ascertained and current status of the First Information Report against the Petitioner was to be verified and then necessary action was to be taken. The police proceeded to institute fresh case without even verifying about the current status of the case and also whereabouts of the documents. Letter of the District Magistrate, which is the basis of First Information Report, did not disclose any commission of cognizable offence, rather, it was a routine administrative letter issued pursuant to review meeting regarding general pendency of the cases.

6. Counsel for the Petitioner further submits that so far as availability of the documents regarding the scheme of the relevant period is concerned, the same were seized by the Vigilance Department. The police was required to verify the status of the same after obtaining copy from the Vigilance Department and then proceed for preliminary investigation, but police has registered First Information Report.

7. Present First Information Report has been lodged merely on the basis of misunderstanding of mandate of letter of the District Magistrate. First Information Report has been instituted on account of suspicion which has been raised due to non-availability of the relevant records in the office of DRDA wherefrom presumption has been drawn that money has been defalcated.

8. Counsel for the Petitioner submits that while Petitioner was posted as Assistant Engineer, Road Construction Division, Araria, and was on deputation for execution of District Level Development Programmes in the Rural Development Special Division, Araria, a First Information Report being Araria P.S. Case No.298 of 2005 was instituted against him under Section(s) 406, 409, 420, 120-B Indian Penal Code for embezzlement of Rs.5.99 Crores which was entrusted to him for implementation and execution of Indira Awas Yojana in connection with financial year 2004-05. Xerox copy of the FIR of Araria P.S. Case No.298 of 2005 is enclosed as Annexure-2 to the application.

9. A high level interference was made from the Office of the Principal Secretary, Rural Development Department, Government of Bihar, Patna, and it was realized that First Information Report so instituted was mistaken and consequently it was also realized that it is only case of non adjustment of advances which has resulted due to sudden transfer of the Petitioner from Araria. Therefore, deputation of the Petitioner to Araria for adjustment was made by the Principal Secretary. Thereafter, all the matter was set at rest, entire accounts were adjusted, there was proper utilization report, and utilization report travellled up to Government of India. Matter of construction was supervised by the then Commissioner of Purnea, Human Rights Commission, SC/ST Commission of India and also the *Vidhan Sabha Yachika Samiti*. In the meantime, cadre of Petitioner was changed and he was allotted Jharkhand Cadre whereafter only for the purpose of adjustment of the advances his services were deputed in the State of Bihar for one month. Petitioner submitted entire accounts and entire advances were adjusted as against the Petitioner.

10. The Petitioner after adjustment of entire advances approached this Hon'ble Court for quashing of First Information Report of Araria P.S. Case No.298 of 2005 by filing Cr.WJC No.764 of 2009, which was allowed by order dated 03.11.2009 and First Information Report against Petitioner was quashed. Xerox copy of the order dated 03.11.2009 passed in Cr.WJC No.764 of 2009 is enclosed as Annexure-3 to the application.

11. The Hon’ble Court was pleased to hold that there was no embezzlement much less temporary embezzlement and the situation has arisen only due to sudden transfer of the Petitioner.

12. The Vigilance Department was the investigating agency of Araria P.S. Case No.298 of 2005, which filed modification application for modification of the order dated 03.11.2009 by which First Information Report was quashed, but the same was dismissed by the Hon'ble Court by order dated 10.09.2010 passed in Cr. Misc. No.3958 of 2010. Xerox copy of order dated 10.09.2010 passed in Cr. Misc. No.3958 of 2010 is enclosed as Annexure- 4 to the application.

13. Counsel for the Petitioner further submits that for the same period i.e. 2004-05, for the same scheme Indira Awas Yojna, for the same district and for same allegation, Araria P.S. Case No.298 of 2005 was instituted on 19.08.2005 and the same was quashed. Again, for the same period, for same scheme, and for same district another First Information Report has been instituted, which is against provision of Code of Criminal Procedure. Code of Criminal Procedure prohibits institution of second First Information Report for the same allegation against the same person on the ground of the same being violative of Article 21 of the Constitution of India and being violative of the protection as contained under Article 20(3) of the Constitution of India.

14. From perusal of order of High Court passed in Cr.WJC No.764 of 2009, it would suggest that entire account was adjusted. The department has received full account of money. There is no embezzlement much less temporary embezzlement, Petitioner has been totally exonerated in the departmental proceeding coupled with fact that entire scheme was monitored by the Division Bench. Utilization report for the entire amount in the financial year 2004-05 was forwarded to the office of Deputy Development Commissioner, Araria, by the Executive Engineer vide Letter No.134 dated 24.02.2005. The utilization report was scrutinized and accepted at the level of Rural Development Department, Govt. of Bihar, and up to Government of India. Copy of Letter No.134 dated 24.04.2005 is enclosed as Annexure-6 to the application.

15. Learned counsel for the Petitioner submits that there has been no embezzlement by the Petitioner. The Opposite Party are bent upon to circumvent and over reach the orders of this Hon'ble Court passed in Cr.WJC No.764 of 2009 and subsequent order passed in Cr. Misc. No.3958 of 2010 dated 10.02.2010 merely by changing the place of occurrence and name of the informant as well as increasing the number of accused. Special Leave Application filed by the State against the order passed in Cr.WJC No.764 of 2009 was also dismissed. It has also been submitted that in spite of having knowledge of whereabouts of the documents, the police decided to institute the First Information Report and continued with investigation and submitted charge-sheet without taking any pain to verify the factum of allegation from the documents available with the Vigilance Department.

16. Counsel for the Petitioner submits that the police did not make any effort to verify the current status of the criminal case as referred to in the letter of the District Magistrate and decided to institute the First Information Report. The Petitioner was constrained to file two criminal writ applications being Cr.WJC No.1148 of 2010 and Cr.WJC No.1152 of 2010 before this Hon'ble Court.

17. Cr.WJC No.1148 of 2010 was filed for stay of arrest of Petitioner in connection with Araria P.S. Case No.283 of 2010 (instant case) on the ground that FIR for similar allegation has been quashed by this Hon'ble Court.

18. Another Cr.WJC No.1152 of 2010 was filed for direction to the Vigilance Police to release the papers seized in connection with Araria P.S. Case No.298 of 2005 from the office of DRDA, Araria as it was required in other connected matters and their absence in the office of DRDA has laid to the institution of instant case.

19. Police was restrained from taking any coercive action against the Petitioner vide order dated 01.12.2010 passed in Cr.WJC No.1148 of 2010. Xerox copy of the order dated

01.12.2010 passed in Cr.WJC No.1148 of 2010 is enclosed as Annexure-7.

20. The Vigilance Department was not ready to return the documents in CrWJC No.1152 of 2018 on the ground of likelihood of filing of SLP against the orders of this Hon'ble Court by which First Information Report of Araria P.S. Case No.298 of 2005 was quashed.

21. Two SLPs filed by the Vigilance against the order dated 03.11.2009 (Annexure-3) and 10.09.2010 were registered as SLP No.11541 of 2011 and 11542 of 2011 and was dismissed by Hon'ble Supreme Court. Xerox copy of the order dated 07.07.2011 passed in SLP No.11541 of 2011 and SLP No.11542 of 2011 is enclosed as Annexure-8 to the application.

22. It was brought to the notice of Hon'ble Court and it was requested that a direction be issued to the Vigilance Department for release of the documents for the reasons that absence of the same has laid to institution of the instant case.

23. A Bench of this Court has been pleased to dispose off Cr.WJC No.1152 of 2010 vide order dated 04.07.2013 holding that there is no reason for the Vigilance Department to detain such documents seized and not to release and sent down to the place from where it was seized. Aforesaid order is enclosed as Annexure-9 to the application.

24. The Cr.WJC No.1148 of 2010 has become infructuous by passage of time as the police has submitted supplementary charge-sheet and learned Court below has been pleased to take cognizance against Petitioner by order dated 10.05.2013 in Araria P.S. case No.283 of 2010.

25. Counsel for the Petitioner has submitted that police in spite of repeated request, even after orders of this Hon'ble Court is not interested in getting the documents released from Vigilance Department and scrutinize the same. They have conducted the investigation in very perfunctory manner just in order to denude the Petitioner from the fruits of orders of this Hon'ble Court.

26. The learned counsel for Vigilance has submitted that earlier case i.e. Araria P.S. Case No.298 of 2005 was sent to Vigilance Department for investigation. But, no investigation could be done. The F.I.R. of aforesaid Araria P.S. Case No.298 of 2005 was quashed by Hon'ble Court by order passed in Cr.WJC No.764 of 2009.

27. The instant case has been filed by District Magistrate before police against the accused persons for not giving details of amount of rupees eight crores which was disbursed to them by the then Executive Engineer for execution of Indira Awas Yojna in the year 2004-05. The amount was advanced by the Executive Engineer to different Assistant Engineers for execution of the project. There was no detail in DRDA whether dwelling units were actually constructed or not.

28. This Court by order dated 12.07.2018 had directed learned Advocate General, Bihar, to remain physically present in Court on 19.07.2018 for proper assistance since there is allegation of defalcation of rupees eight crores of government money. The State was also directed to file Counter Affidavit. Learned Advocate General, Bihar, did not appear in Court on 09.08.2018 to assist the Court as per direction.

29. However, one Counter Affidavit, was filed, on behalf of State on 09.08.2018, wherein, there was no clarification with regard to query made by the Court in the order dated 12.07.2018. The only statement made in Counter Affidavit was that police after investigation submitted charge-sheet in the case. The learned Chief Judicial Magistrate after perusal of the case diary took cognizance against accused persons.

30. This Court has observed in the order dated 09.08.2018 that State is not properly assisting this Court in the instant case. The State has not fully complied the order of this

Court dated 12.07.2018 in true spirit. Therefore, State was directed to file fresh Counter Affidavit with costs.

31. Thereafter, fresh Counter Affidavit was filed on behalf of State on 23.08.2018 in compliance of the order dated 09.08.2018. In the Counter Affidavit filed on behalf of State on 23.08.2018, in compliance of the order dated 09.08.2018, it has been stated that Araria P.S. Case No.298 of 2005 and instant case Araria P.S. Case No.283 of 2010 are related to misappropriation of fund of Indira Awas Yojna for the year 2004-05.

32. The Araria P.S. Case No. 298 of 2005 was filed by informant Shiv Lal Rai, Executive Engineer, alleging therein that the then Executive Engineer, Sri Rama Kant Sharma, had given advance of Rs.5,99,88,000/- to this Petitioner for giving to the beneficiaries for construction of houses under Indira Awas Yojna. The Petitioner has submitted voucher of Rs.2,61,50,000/-. The Petitioner neither submitted voucher for rest of the amount nor deposited the amount with concerned office. It was alleged that Petitioner has misappropriated Rs.3,38,38,000/-. Accordingly, First Information Report was registered against Petitioner.

33. The instant Araria P.S. Case No.283 of 2010 has been registered by the police on the basis of letter of District Magistrate dated 18.06.2010 against the then District Magistrate, Araria, Sri

Amrendra Narayan Singh, the then Deputy Development Commissioner, Araria, Sri Balmiki Prasad, the then Executive Engineer, Sri Rama Kant Sharma, and other concerned Officers for misappropriation of rupees eight crore of government money.

34. During investigation, it has come that the then Executive Engineer has given money to this Petitioner, who was Assistant Engineer, for giving to beneficiaries towards construction of houses under Indira Awas Yojna. There was neither any record maintained with regard to houses constructed under Indira Awas Yojna nor there was any utilization report in this regard. No record of money advanced could be found in DRDA Office. The name of the Petitioner has come during investigation in Araria P.S. Case No. 283 of 2010 for defalcation of amount of Indira Awas Yojna.

35. One of the accused of this case was Informant of Araria P.S. Case No.298 of 2015 i.e. Executive Engineer, who had made allegation that he had given Rs.5,99,88,000/- to this Petitioner through different cheques against advance. The Petitioner submitted voucher for only Rs.2,61,50,000/- and misappropriated Rs.3,38,38,000/-. Araria P.S. Case No.298 of 2005 was sent to Vigilance Department for investigation.

36. The instant Araria P.S. Case No.283 of 2010 has been investigated by the police. The police after investigation has found sufficient material against the Petitioner and, accordingly, submitted charge-sheet against him and other accused persons.

37. The point for consideration by this Court is whether quashing of First Information Report of Araria P.S. Case No.298 of 2005 filed against the Petitioner for misappropriation of Rs.3,38,38,000/- by this Hon'ble Court vide order dated 03.11.2009 passed in Cr.WJC No.764 of 2009 will exonerate the Petitioner from investigation by the police made in instant case i.e. Araria P.S. Case No.283 of 2010, lodged on the basis of letter of the District Magistrate for misappropriation of total amount of rupees eight crore of Indira Awas Yojna for the year 2004-05.

38. During course of investigation by the police, name of the Petitioner has surfaced. The police has found allegation of misappropriation of money of Indira Awas Yojna against the Petitioner and other accused persons correct and submitted charge-sheet in the case.

39. It has been submitted in the Counter Affidavit that in earlier case i.e. Araria P.S. Case No.298 of 2005, Executive Engineer was informant. It has been alleged that the Executive Engineer gave amount of Rs.5,99,88,000/- to this Petitioner through different cheques. The Petitioner submitted voucher of only Rs.2,61,50,000/- and accordingly, misappropriated Rs.3,38,38,000/-.

40. From perusal of the order passed in Cr.WJC No.764 of 2009, it appears that the Hon'ble Court has been pleased to quash the First Information Report of Araria P.S. Case No.298 of 2005 on the ground that Petitioner was exonerated by the State of Jharkhand from the charge of embezzlement. The Hon'ble Court in the aforesaid order has relied on the judgment of Hon'ble Supreme Court in the case of ***P. R. Rajya Vs. State of Bihar*** reported in ***(1996) 9 SCC 1.*** The Hon'ble Court has quashed the proceeding holding that when in a departmental proceeding where evidence is to be gone into on the basis of preponderance of evidence, the charge could not be established, then no useful purpose would be served by continuance of the criminal proceeding on the same very charge where in criminal case the charge has to be established beyond reasonable doubt.

41. As a consequence of quashing of First Information Report by the Hon'ble Court, no investigation was done by the Vigilance Department in the case with respect to allegation made against the Petitioner in Araria P.S. Case No.298 of 2005.

42. In the instant case, from perusal of the case diary, it appears that during investigation police recorded statement of several beneficiaries of Indira Awas Yojna. All of them have stated that they have either not received any money or have received lesser amount. The police has recorded statement of such beneficiaries in para 47 to 78, 89 to 106, 149 to 169, 338 to 399 of Case Diary, wherein, all of them have stated that they were either not given amount or given lesser amount by the Petitioner under Indira Awas Yojna. The police has mentioned about statement of transactions of money in account of Petitioner in paragraph 325 of Case Diary, which shows, that huge amount of money has been transferred in the account of Petitioner, who was working as Assistant Engineer.

43. The Government of Bihar has given necessary sanction for prosecution against the Petitioner on 27.07.2012 as would appear from para 11 of supplementary case diary.

44. The learned Chief Judicial Magistrate after looking into entire allegation levelled in the written report and materials available in case diary after investigation has found *prima facie* case and has taken cognizance against Petitioner along with other accused persons named in the written report for the offence under Section(s) 406, 409, 420, 467, 468, 120-B Indian Penal Code.

45. The Hon'ble Supreme Court in the judgment reported in ***(2006) 2 SCC 255*** in the case of ***Chairman cum MD, TNCS Corporation Ltd. Vs. K. Meerabai*** has held that the scope of disciplinary proceedings and the scope of criminal proceedings in a Court of Criminal law are quite distinct, exclusive and independent of each other. In a departmental enquiry, penalty can be imposed on the delinquent officer on a finding recorded on the basis of "preponderance of probability". In the criminal case, charges levelled against the accused persons shall be proved by the prosecution beyond all reasonable doubts.

46. The Hon'ble Supreme Court in the case of ***M. Paul Anthony Vs. Bharat Gold Mines Ltd.*** reported in ***(1999) 3 SCC 679*** has held in para 22 as follows:

> "**22**. The conclusions which are deducible from various decisions of this Court referred to above are:
> (i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.
> (ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.
> (iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge sheet.
> (iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

> (v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, the administration may get rid of him at the earliest."

47. In the instant case, from perusal of allegation in the written report and the materials available in the case diary, this Court finds that police has found sufficient material against the Petitioner of committing misappropriation of huge amount of government money of Indira Awas Yojna. The police has recorded statement of several beneficiaries of Indira Awas Yojna in the case diary as mentioned above. They all have stated that either they have not received the amount or have received lesser amount. The police has also mentioned in the case diary statement of account of transactions of money in the account of this Petitioner, who was then Assistant Engineer, in para 325 of the case diary, from which it appears that huge amount of government money has been transferred to the aforesaid account of Petitioner.

48. In the earlier First Information Report filed by the then Executive Engineer against this Petitioner, it was alleged that amount of Rs.5,99,88,000/- had been transferred in the account of this Petitioner for execution of work of Indira Awas Yojna for the financial year 2004-05. The Petitioner was posted as Assistant Engineer during financial year 2004-05. The Petitioner submitted voucher of Rs.2,61,50,000/-. The Petitioner neither submitted voucher for rest amount nor deposited amount with concerned office. Xerox copy of the First Information Report of Araria P.S. Case No. 298 of 2005 is enclosed as Annexure-2. The case was sent to Vigilance for investigation.

49. The First Information Report of that case was quashed by this Hon'ble Court by order dated 03.11.2009 passed in Cr.WJC No.764 of 2009 holding that when in a "departmental proceeding where evidence is to be gone into on the basis of preponderance of evidence, the charge could not be established, then no useful purpose, would be served by continuance of the criminal proceeding, on the same very charge where in a criminal case the charge has to be established beyond reasonable doubt.

50. As such, no investigation was done by the Vigilance Department.

51. In the instant case, police has investigated the allegation against Petitioner along with other accused persons and has submitted charge-sheet after finding sufficient material against Petitioner along with other accused persons named in the First Information Report with regard to misappropriation of huge amount of government money. The learned Chief Judicial Magistrate has found *prima facie* case against the Petitioner on the basis of materials available in the Case Diary. Cognizance has, accordingly, been taken against the Petitioner and other accused persons as named in the First Information Report.

52. Section 156 Cr.P.C. empowers the police to investigate any cognizable offence without the order of a Magistrate after receiving information under Section 154 of the Code of Criminal Procedure. The police after proper investigation of this case has submitted report under Section 173 Cr.P.C. finding sufficient material against the Petitioner and other accused persons as named in the First Information Report for the offence under Section(s) 406, 409, 420, 467, 468, 120-B Indian Penal Code. Accordingly, charge-sheet was submitted for the offence under Section(s) 406, 409, 420, 467, 468, 120-B Indian Penal Code against the accused persons. The State Government also granted sanction against Petitioner for prosecution by order dated 27.07.2012.

53. The learned Chief Judicial Magistrate after looking into the allegation in the written report and materials available in the case diary has found *prima facie* case against the Petitioner and other accused persons as named in the First Information Report and has taken cognizance against them by the impugned order.

54. The Court below is only required to see *prima facie* case at the time of taking cognizance.

55. Therefore, this Court does not find any illegality in the impugned order passed by the learned Court below.

56. This application is, accordingly, **dismissed**.

57. The Court below is directed to proceed in the case in accordance with law.

58. The Petitioner will be at liberty to raise necessary points, as permissible in law, at the time of framing of Charge in the case, which shall be considered and disposed off by the Court below in accordance with law without being prejudiced by this order.

(Sanjay Priya, J)

J. Alam/-

AFR/NAFR	AFR
CAV DATE	12.07.2019
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