

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.2327 of 2015

Arising Out of PS. Case No.-64 Year-2003 Thana- NAVINAGAR District- Aurangabad

Dilip Tiwary @ Dilip Kumar Tiwary Son of Late Shashi Bhushan Tiwary
Resident of Village - Saraiya P.O. Saraiya, P.S- Bounsi, District - Banka,
Bihar,

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Y. V. Giri, Sr. Advocate with Mr. Pranav Kumar, Mr. Ashish Giri and Mr. Rajat Kumar Tiwary, Advocates
For the State	:	Mr. Jharkhandi Upadhyay, APP

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 16-04-2019

Heard Mr. Y. V. Giri, learned senior counsel along with
Mr. Pranav Kumar, learned counsel for the petitioner and Mr.
Jharkhandi Upadhyay, learned APP 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 application is being filed on behalf of the petitioner for quashing the order dated 17.11.2014 by which cognizance has already been taken against the Petitioner vide order dated 04.12.2013 by Shri Hari Shankar, Additional Chief Judicial Magistrate, Aurangabad in Navinagar P.S. Case No. 64/2003 under Section 409, 420, 468, 471, 120(B) of IPC by which the learned A.C.J.M. has taken cognizance against the petitioner under Section 409, 420, 468, 471, 120(B) of IPC and accordingly issued summons for appearance before learned court below.”



3. The allegation against the petitioner and four others in Complaint Case No. 525 of 2003 is with regard to defalcation/misappropriation of Rs. 10,000/-, out of Rs. 18,000/-, which was to be given to the beneficiaries under the *Indira Awas Yojana*. The same, upon being sent by the Court to the police has resulted in institution of Nabinagar P.S. Case No. 64 of 2003.

4. Learned counsel for the petitioner submitted that at the relevant time he is alleged to have been the Block Development Officer, Nabinagar in the district of Aurangabad. Learned counsel submitted that as per the complaint itself which has been sent by the Court to the police under Section 156(3) of the Code for instituting FIR has resulted in Nabinagar P.S. Case No. 64 of 2003 dated 05.07.2003. It was submitted that first and foremost, such casual direction by the Court to the police under Section 156(3) of the Code is not permissible as the law stipulates that the Court has to apply its judicial mind before such discretion can be exercised. It was submitted that such application of judicial mind becomes all the more relevant in the present case, for the reason, that in the complaint itself the allegation against the petitioner relates to his duties/acts in connection with the official post held by him, i.e., of Block Development Officer, Nabinagar Block. It was submitted that the moment there is indication that the



allegations relate to performance of the duty attached to the office held by any accused, it becomes mandatory on the Court to apply its mind, before proceeding, to ensure that there is proper sanction by the Competent Authority for such criminal prosecution. Learned counsel submitted that in the present case, neither there has been any application of mind by the Court while directing the matter to the police for instituting a criminal case nor is there any sanction by the Competent Authority under Section 197 of the Code before the matter was sent to the police. For such proposition, learned counsel referred to the decisions of the Hon'ble Supreme Court in **Anil Kumar v. M.K. Aiyappa** reported as **(2013) 10 SCC 705**, the relevant being at paragraphs no. 5, 9, 11, 16, 17 and 21; **Maksud Saiyed v. State of Gujarat** reported as **(2008) 5 SCC 668**, the relevant being at paragraphs no. 4, 12, 13, 14 and 15 and **N.K. Ganguly v. CBI** reported as **(2016) 2 SCC 143**, the relevant being at paragraphs no. 23, 28 to 30, 34 and 35.

5. Learned counsel submitted that on facts also, in the present case, the petitioner was holding the additional charge of the post of Block Development Officer, Nabinagar under the order of the District Magistrate, Aurangabad for the period 30.05.2001 to 16.02.2002. Learned counsel submitted that in the complaint itself, it has been stated that the amount of Rs. 8,000/- was paid to the



complainant and others in May-June, 2002 which makes it obvious that the petitioner was not holding the post of Block Development Officer, Nabinagar in May-June, 2002 when such payment was made. Learned counsel submitted that even with regard to the allegation of the remaining amount of Rs. 10,000/- not being paid, the same, as per the official records, was paid to them prior to the petitioner having taken up the responsibility of the post of Block Development Officer, Nabinagar, by his predecessor, as has come during police investigation. Learned counsel submitted that in any view of the matter, the petitioner not holding the post of the Block Development Officer, Nabinagar, both on the day when Rs. 10,000/- is alleged not to have been paid to the beneficiaries and even on the date when Rs. 8,000/- was paid to the beneficiaries, coupled with the fact that there was no sanction by the Competent Authority permitting such institution of a complaint case and ignoring all that the matter being sent by the Court to the police under Section 156(3) of the Code, cannot be sustained.

6. Learned APP, upon going through the case diary, submitted that the police having submitted supplementary chargesheet against the petitioner, the Court has rightly taken cognizance as there were materials available. However, on a direct query of the Court with regard to the specific averment made in



the application that the petitioner was not holding the post in question on the relevant dates and further with regard to the decisions of the Hon'ble Supreme Court on which reliance has been placed, which stipulates that the Court prior to sending any complaint to the police under Section 156(3) of the Code has to apply its judicial mind and if the matter relates to an allegation against a public servant in connection with his official duties, the same can be done only after the Competent Authority has given sanction for such prosecution, which admittedly had not been done in the present case, learned APP was not in a position to controvert the same.

7. 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.

8. From the averments made in the application on oath, which have not been controverted, the petitioner, in the capacity of holding the post of the Block Development Officer, Nabinagar, has been made accused and the allegations directly relate to his power/duties/acts done in the capacity of holding such post, i.e., of sanctioning/disbursing of loan amounts to the beneficiaries under the *Indira Awas Yojana*. Moreover, such act clearly having a direct nexus with the role of the petitioner in the capacity of a public



servant, are required to be taken note of by the Court at the time of proceeding with the complaint, which clearly has not been done. Before a complaint is entertained, the Court is required to see that there is sanction for such prosecution by the Competent Authority against that public servant. This too, in the present case, is lacking.

9. The Court finds that the decisions relied upon by learned counsel for the petitioner, thus, cover the issue involved in the present case and definitely go in support of the petitioner.

10. The Hon'ble Supreme Court in **State of Haryana v. Bhajan Lal** reported as **1992 Supp (1) SCC 335**, at paragraph no. 102, has enumerated categories where the Court ought to exercise its inherent power under Section 482 of the Code. The same reads as under:

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.



(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the omission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.



(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

11. The present case, in the opinion of the Court, is covered under category 6 of the aforesaid judgment in **Bhajan Lal** (supra) at paragraph no. 102.

12. The Court, thus, finds that letting the criminal case proceed would be an abuse of the process of the Court.

13. For reasons aforesaid, the application is allowed. The entire criminal proceeding arising out of Nabinagar P.S. Case No. 64 of 2003, including the order dated 17.11.2014, by which cognizance has been taken by the Additional Chief Judicial Magistrate, Aurangabad, as far as it relates to the petitioner, stands quashed.

14. The records received be returned forthwith.

(Ahsanuddin Amanullah, J)

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