

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.42379 of 2019

In
Criminal Writ Jurisdiction Case No.758 of 2019

Arising Out of PS. Case No.-15 Year-2018 Thana- NARALI KALA KHURD District-
Aurangabad

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Arjun Singh Son of Sakal Deo Singh Resident of 5A, Shaktidham Apartment
Near Baba Lodge, S.K. Nagar, P.O. - G.P.O, P.S.- Kotwali, Distt. - Patna.

... .. Petitioner

Versus

1. The State of Bihar through Principal Secretary Home Department Bihar
2. Abhishek Ghosh Son of Mr. Subvata Ghosh On behalf of Simplex Infrastructure Limited, 12/1, Neillce Sen Gupta Sarani, P.O.- New Market, P.S.- Shakeshpere, Kolkata - 700087, West Bengal.

... .. Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Mayank Singh, Adv.
Mr. Saroj Kumar, Adv.

For the Opposite Party/s : Mr. Pancha Nand Pandit, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 11-09-2019

This application under Section 482 of the Code of Criminal Procedure has been filed by the petitioner for restoration of Cr.W.J.C. No. 758 of 2019, which has been dismissed for want of prosecution vide order dated 14.05.2019.

2. It is submitted by learned counsel for the petitioner that since he was suffering badly from poor health, he could not attend the Court on 14.05.2019 as a result of which the case went unattended when it was taken up. He contended that there is no laches on the part of the petitioner and if the application is not restored, the petitioner would suffer irreparable injury.



3. Considering the submissions made above, the application is allowed. Cr.W.J.C. No. 758 of 2019 is restored to its original file.

Criminal Writ Jurisdiction Case No.758 of 2019

Arising Out of PS. Case No.-15 Year-2018 Thana- Narari Kala Khurd District- Aurangabad

Arjun Singh Son of Sakal Deo Singh, aged about 41 years, Gender- Male, Resident of 5A, Shaktidham Apartment Near Baba Lodge, S.K. Nagar, P.O. - Khagaul, P.S.- Phulwari, Distt. - Patna (Bihar).

... .. Petitioner

Versus

1. The State of Bihar through Principal Secretary Home Department, Patna
2. Abhishek Ghosh Son of Mr. Subrata Ghosh, On behalf of Simplex Infrastructure Limited, 12/1, Neillce Sen Gupta Sarani, P.O.- New Market, P.S.- Shakeshpere, Kolkata - 700087, West Bengal.

... .. Respondents

Heard learned counsel for the petitioner.

2. This application under Articles 226 and 227 of the Constitution of India has been filed by the petitioner for quashing the first information report (for short 'FIR') of Narari Kala Khurd P.S. Case No. 15 of 2018 dated 11.04.2018 registered under Sections 406, 420, 467, 468 and 471 read with 34 of the Indian Penal Code.

3. The FIR was registered on the basis of the written complaint made by one Abhishek Ghosh, a senior officer of Simplex Infrastructure Ltd. (for short 'SIL'). In his written complaint addressed to the Officer-in-charge of Narari Kala Khurd Police Station, he has alleged that SIL had got one work order



from Nabinagar Power Generating Company Pvt. Ltd. (for short 'NPGCL') in the year 2014. After getting the said work order, SIL engaged ARCON Project Private Limited (for short 'APPL') as sub-contractor for supply of earth in the project site and accordingly, SIL and APPL entered into an agreement in this regard in October, 2014. In view of the said agreement, APPL was required to deposit the royalty with the Mining Department, Aurangabad. Subsequently, SIL released a sum of Rs.25,77,179/- as adhoc towards payment of royalty and APPL received the same and issued a money receipt on 19th December, 2015. Thereafter, SIL made another payment of Rs.21,86,528/- vide three separate cheques drawn on the State Bank of India. In total, Rs.47,63,707/- was paid to the APPL. Thereafter, on 19th December, 2015, the authorized representative of APPL, namely, Prince Lath submitted one affidavit saying that if any royalty challans submitted by them is found to be forged and/or otherwise duplicate, APPL shall be fully liable for any legal hassles. Thereafter, the said APPL submitted some royalty payment challans of Rs.11,09,760/- with SIL. Subsequently, the SIL received a communication from NPGCL saying that those royalty challans are fake and/or manipulated and/or fabricated and the same were not issued by the Mining Department, Aurangabad. Thereafter, the SIL



communicated the aforesaid issue with APPL, mainly with the petitioner Arjun Singh, Director and Prince Lath several times, but they never paid attention to the communication and overlooked the same.

4. On the basis of the aforesaid allegations, the informant alleged that the APPL, the petitioner Arjun Singh and Prince Lath criminally conspired together and dishonestly misappropriated an amount of Rs.11,09,760/- by submitting false and fabricated challans and thereby they cheated SIL with the knowledge that wrongful loss may ensure to SIL which they are legally bound to protect.

5. It is submitted by the learned counsel for the petitioner that the allegation made in the FIR are absolutely false. The same have been made with oblique motive, as the District Mining Officer, Aurangabad vide letter dated 19.04.2017 had made recommendation for instituting FIR under Section 420 of the Indian Penal Code against SIL. He contended that no such recommendations had ever been made by the Mining Department against the petitioner Director or any other representative of APPL. He submitted that the original work order dated 06.08.2014 was issued to SIL and not to the petitioner or his company. It was the liability of SIL to pay royalty to the Mining Department. If there



was any forged challans, it is the informant or his company SIL, which alone can be held responsible and not the petitioner or the company APPL.

6. On the other hand, learned counsel appearing for the State submitted that the defence taken by the petitioner cannot be made a ground for quashing the FIR, especially, when the allegations made in the FIR would attract the ingredients of the offences alleged.

7. Having heard learned counsel for the parties and perused the materials on record, I find that the allegations made in the FIR do attract the ingredients of the offences alleged. To hold investigation into a cognizable offence is the statutory right of the police. An investigation into a cognizable offence can be made only after institution of the FIR. As far as the defence of the petitioner is concerned, it has rightly been submitted by the learned counsel for the State that the same cannot be made a ground for quashing the FIR. The petitioner can put forth his defence before the investigating officer of the case in course of investigation and in case an adverse police report is filed, he may take his defence at appropriate stage in accordance with law.

8. Since the allegations made in the FIR do attract the ingredients of a cognizable offence, no illegality can be found



either in institution of the FIR or in conducting the investigation into the allegations made in the FIR.

9. The application, being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	23.09.2019
Transmission Date	23.09.2019

