

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.43310 of 2013

Arising Out of PS. Case No.-130 Year-2010 Thana- KHAIRA District- Saran

Jagannath Bhagta @ Jagernath S/O Late Shiv Bhagta Resident Of Village-
Koreyan, P.S.- Khaira in the district of Chapra.

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Akhileshwar Pd. Singh, Sr. Advocate with Ms. Anita Kumari Singh, Mr. Abhishek Anand, Mr. Prabhu Narayan Sharma and Mr. Amrit Anunay, Advocates
For the State	:	Mr. Jharkhandi Upadhyay, APP

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 18-04-2019

Heard learned counsel for the petitioner and learned APP
for the State.

2. The petitioner has moved the Court under Section 482
of the Code of Criminal Procedure, 1973 for the following relief:

“That this is an application for quashing the order dated 19th July 2013 passed by Sri A. K. Singh, Judicial Magistrate, Chapra in Tr. No. 2438 of 2013 arising out of Khaira P.S. Case No. 130 of 2010 by which prayer to discharge the petitioner for the offence punishable under Section 409 of the Indian Penal Code, has been rejected.”

3. The allegation against the petitioner is that he, in the
capacity of Incharge Headmaster of Rana Pratap High School,
Rampur Kala, despite having withdrawn Rs. 13.25 Lakhs in the



year 2005-06, the work was not completed within the prescribed time as has been found in inspection conducted on 2nd December, 2010, though, the same had to be done latest by 31st August, 2010.

4. Learned counsel for the petitioner submitted that the allegation against him is totally false. It was submitted that the District Education Officer, Chapra, Saran by letter dated 01.03.2011 to the Public Prosecutor, Saran, Chapra had stated that the entire work was physically verified by him on 08.02.2011 and has been found to have been completed and the quality was also as per the requirement. It was further written that the petitioner be exonerated from the charge of committing any irregularity. Thus, learned counsel submitted that once it has been found that the work has been done, there cannot be any charge of misappropriation as the money was for completing the work and the work has been found to be complete.

5. Learned APP submitted that the District Education Officer, Saran at Chapra has filed counter affidavit in which at paragraph no. 8, a categorical statement has been made that the letter which is being relied upon by the petitioner dated 01.03.2011 purportedly written by the District Education Officer, Saran at Chapra, upon verification, has not been found in the official records. Further, learned APP submitted that bare perusal of the so



called letter dated 01.03.2011 would show that there is no letter number mentioned and at the bottom where the officer has signed, it has been written as “District Education Officer, Chapra, Saran” which is totally erroneous as the nomenclature of the post is District Education Officer, Saran, Chapra, which is also typed in the head of the letter. Thus, learned APP submitted that the said letter which is the sole basis on which the petitioner claims his innocence not being available in the official records, is clear proof of the fact that the letter is manufactured, being forged and fabricated.

6. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court does not find any merit in the present application.

7. The charge levelled against the petitioner of not having completed the work for which money has been taken by him and the defence being solely on the so called letter written by the District Education Officer, Saran, Chapra dated 01.03.2011, which is not available in the official records, cannot be a ground for interference by the Court, especially at the present stage, for the reason that the cognizance of the document or the work having been completed within time and the amount taken by the petitioner having been spent can now be proved only in a full-fledged trial



where the parties shall be at liberty to adduce evidence. At the present stage, it cannot be said that the cognizance taken and rejection of the petition for discharge filed by the petitioner is unwarranted for the reason that there are materials before the Court to proceed for trial. At the cost of repetition, the Court would observe that the petitioner shall have full opportunity to prove his innocence as also the authenticity of the letter dated 01.03.2011, but the same can only be done in trial where he shall be at liberty to produce his witnesses in support of his innocence and not at the present stage where on the basis of averments made or documents relied upon by the petitioner which are not available in official records can be relied upon and the prosecution against the petitioner quashed.

8. For reasons aforesaid, the application stands dismissed.

9. The records received from the Court below be returned forthwith.

(Ahsanuddin Amanullah, J)

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