

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.77672 of 2019

Arising Out of PS. Case No.-6 Year-2016 Thana- DINARA District- Rohtas

DAYA SHANKAR SINGH Son of Late Banke Bihari Singh Resident of
Village- Baradhi, P.S.- Dinara, District- Rohtas, then PACS Chairman,
Lilwachh, P.S.- Dinara, District- Rohtas.

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. The District Manager, the Bihar State Food Corporation, Rohtas at Sasaram.
Rohtas at Sasaram.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr.Rajani Kant Singh
For the Opposite Party/s	:	Mr.Zainul Abedin
For the B.S.F.C.	:	Shailendra Kumar Singh
		Mr. Nirala Kumar Singh

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 28.11.2019

The present petition has been filed for quashing the order dated 02.01.2017 passed by the learned Judicial Magistrate-1st Class, Bikramganj, District-Rohtas in connection with Dinara P.S. Case No. 06 of 2016, whereby and whereunder cognizance has been taken under Sections 406, 407, 408, 409, 419, 420, 467, 468, 120B and 34 of the Indian Penal Code.

The brief facts of the case are that the present prosecution has been lodged on the basis of a complaint lodged before the Officer In-Charge, Dinara Police Station by the District Manager, Bihar State Food Corporation, Rohtas at Sasaram to the effect that the petitioner and other accused persons



have committed irregularities in procurement of paddy for the financial year 2014-15.

The learned counsel for the petitioner has submitted that the petitioner is innocent and the dispute is purely civil in nature, hence no offence is made under the provisions of the Indian Penal Code under which the FIR has been lodged against the petitioner. The learned counsel for the petitioner has also submitted that the farmer of Lilawachh PACS in collusion with other officials have falsely implicated the petitioner herein.

I have heard the learned counsel for the parties and perused the materials on record and it is apparent from the impugned order dated 02.01.2017 that charge sheet dated 31.12.2016 has already been submitted by the Police i.e. the Investigating Officer concerned, for the offences under Sections 406, 407, 408, 409, 419, 420, 467, 468, 120B and 34 of the Indian Penal Code against the FIR named accused persons including the petitioner herein. It is only after considering the charge sheet and the relevant papers submitted under Section 173 Cr.P.C., the learned Judicial Magistrate, 1st Class, Bikramganj (Rohtas), has found a prima facie case to have been made out against the FIR named accused persons including the petitioner herein and has, accordingly, taken cognizance under Sections 406, 407, 408, 409, 419, 420, 467, 468, 120B and 34 of the Indian Penal Code.



Having considered the facts and circumstances of the case and upon perusal of the materials on record, besides considering the submissions made by the learned counsel for the petitioner, it is apparent that charge sheet has been submitted by the Police in the present case for the offences, as alleged, against the accused persons including the petitioner herein and the learned Magistrate has taken cognizance vide the impugned order dated 02.01.2017, after having perused the charge sheet and the relevant papers submitted under Section 173 of the Cr.P.C. as also after finding that a prima facie case is made out against the accused persons, under the aforesaid provisions of the Indian Penal Code.

At this juncture, it would be relevant to state that it is a well settled law that at the time of cognizance, the learned court below is only required to see as to whether on the basis of materials collected during the enquiry, prima facie offences is made out or not, so as to proceed against the accused persons and the defence of the accused persons cannot be looked into at the stage of taking cognizance.

Thus, this Court is of the considered opinion that since a prima facie case has been made out against the petitioner herein, as aforesaid, the learned court below has rightly taken cognizance against the petitioner herein. This Court is of the further view that it is not the case of the petitioner that the order of cognizance is



without jurisdiction or there is any technical error. The only argument which has been advanced on behalf of the petitioner is that the matter is required to be examined on merits, however, this Court is of the opinion that since the Code of Criminal Procedure itself provides certain remedies to the accused persons, order of cognizance, in absence of any illegality, is not required to be interfered with.

Considering the aforesaid facts and circumstances of the present case as also there being no apparent error in the impugned order dated 02.01.2017, this Court is of the opinion that the impugned order dated 02.01.2017 does not suffer from any infirmity so as to warrant any interference, hence the present petition stands dismissed, however, with an indication that the petitioner may take all the pleas, which have been taken in the present petition, at an appropriate stage i.e. at the stage of framing of charge by the learned court below.

(Mohit Kumar Shah, J)

S.Sb/-

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