

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.3044 of 2018

Arising Out of PS. Case No.-94 Year-2015 Thana- DUMRA District- Sitamarhi

Sanjeev Kumar @ Sanjeev Kumar Thakur, Son of Gajendra Narayan Thakur,
Proprietor of Om Shanti Rice Mills, Masaha, Resident of Village- Pipara
Masaha, P.S.- Parihar, District- Sitamarhi.

... .. Petitioner

Versus

1. The State of Bihar, through the Principal Secretary, Home Department, Government of Bihar, Patna.
2. The Principal Secretary, Food & Consumer Department, Government of Bihar, Patna.
3. The Managing Director, Bihar State Food & Civil Supplies Corporation Limited, Daroga Rai Path, Patna.
4. The District Magistrate, Sitamarhi.
5. The District Manager, Bihar State Food & Civil Supplies Corporation Limited, Sitamarhi, Shankar Chowk, Dumra, District- Sitamarhi.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr.Birendra Kumar, Advocate
For the State	:	Mr.Divya Verma, AC to AAG-3
For the B.S.F.C	:	Mr. Satyendra Nr. Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 10-01-2019

Defect, as pointed out by the registry, is ignored.

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

3. This writ petition has been filed by the
petitioner for quashing the first information report (for short
'FIR') of Dumra P.S. Case No. 94 of 2015 dated 18.04.2015
registered under Sections 406, 409 and 420 read with 34 of the
Indian Penal Code (for short 'IPC').



4. Learned counsel for the petitioner submitted that being the proprietor of M/S Om Shanti Rice Mills, Masaha in the district of Sitamarhi. The petitioner was entrusted with certain quantity of paddy by the State Food Corporation (for short 'SFC') and he was required to deposit 67% of custom milled rice (for short 'CMR') in lieu of the paddy received by him within due time. Since the CMR was not deposited with the SFC in time, the instant FIR was instituted. However, subsequently, the petitioner has deposited the amount in cash equivalent to the loss caused to the SFC through cheque. As on date, there is no dues against the petitioner. He submitted that since the FIR is for misappropriation of money and the differential amount has already been paid, no useful purpose would be served by prosecuting the petitioner in a criminal case. In support of his submission, he has placed reliance on the order dated 02.11.2017 passed by this Court in CrWJC No. 799 of 2016.

5. Learned counsel appearing for the SFC submitted that the case is of embezzlement of public money. The petitioner has not deposited the amount of loss caused to the SFC.

6. Learned counsel for the State submitted that



the FIR is of April, 2015 and it is not known as to what has transpired in course of investigation.

7. I have learned counsel for the parties and perused the record.

8. In **M/s Jai Mata Di Rice Mill Vs. State of Bihar** and other analogous cases since reported in **2015 (4) BBCJ V-335**, this Court had considered the pleas advanced by eighty one writ petitioners, who had filed separate cases for quashing of their respective FIRs in which allegations were identical in nature. In those cases lodged in different police stations of the State of Bihar allegations were made that the respective petitioners, being the rice millers, had received paddy from the Bihar State Food and Civil Supplies Corporation for milling the rice, but they failed to return the contracted quantity of rice. They all were alleged to have misappropriated the paddy and, thus, were made accused either under Section 406 or 409 of the IPC. The allegations in those cases were also that the rice millers are under obligation to return the rice to the extent of 67 % of paddy supplied to them and either no CMR was returned or there were huge shortfall in returning the CMR as a result of which the State Food and Civil Supplies Corporation had sustained loss of multi-crore.



9. After elaborate arguments advanced before this Court touching almost all possible points by several lawyers, this Court had come to the conclusion that the allegations made in the FIRs attracted ingredients of a cognizable offence and, thus, the applications for quashing of FIR were dismissed.

10. The case of the petitioner is squarely covered by the decision of this Court in **M/s Jai Mata Di Rice Mill** (Supra), which was decided long back on 05.10.2015. It appears that the said judgment was not brought to the notice of the Court when the order was passed in CrWJC No.799 of 2016 wherein the FIR was quashed on the ground that the petitioner had already deposited his entire dues. With due respect to the order passed by a co-ordinate Bench of this Court in CrWJC No.799 of 2016, I am unable to persuade myself to hold the same view.

11. The offence punishable under Section 409 of the IPC is not compoundable. The subsequent deposit of the amount embezzled or the paddy embezzled cannot be made a ground for quashing the FIR. While dismissing the writ petitions of the petitioners in **M/s Jai Mata Di Rice Mill** (Supra) and other analogous cases, this Court had also expressed its concern, looking at the magnitude of the offence and the Superintendents



of Police of the respective districts were directed to personally supervise and monitor the investigation of the cases in which allegations were made of dishonest misappropriation of paddy. The operative part of the order passed in **M/s Jai Mata Di Rice Mill** (Supra) is as under.

“61. Considering the facts of the cases under consideration and the decisions of the Supreme Court referred to hereinabove, I am of the firm view that the FIRs in question cannot and should not be quashed. The FIRs of the aforementioned cases are nascent documents, averments of which would take tangible shape only after the process of investigation in these cases is complete. On appraisal of the allegations made in the FIRs under consideration, I am unable to hold that they do not disclose the commission of any cognizable Offence, or that they merely disclose a breach of contract, or that existence of an arbitration clause, or pendency of a certificate proceeding or arbitration proceeding, ousts the jurisdiction of the investigating agency to investigate the offences alleged. The hazy picture presented by the allegations made in the FIRs would be rendered more and more clear when all the incriminating materials unfold during investigation. Even the names and other



details of the culprits involved in the crime would be fully revealed only after the investigation culminates. In my opinion, if before all material facts are unearthed by the investigating agency and the FIRs are nipped in the bud, there cannot be greater injustice.

62. Given the quantity and magnitude of the multi-crore paddy scam and loss caused to the exchequer, a thorough probe with fairness and without inordinate delay is the need of the hour. The investigating agency must exhibit sensitivity to pilferage of public money. It must unravel the modus operandi adopted for swindling public money, identify the characters involved and the beneficiaries of the scam, unveil the criminal conspiracy, and the role ascribed to each conspirator.

63. Looking at the magnitude of the offence, the Superintendents of Police concerned are directed to personally supervise and monitor the investigations of the cases in which there is allegation of dishonest misappropriation of paddy. The Superintendents of Police would be at liberty to direct further investigation in terms of clause (8) of Section 173 Cr.P.C. in the cases in which investigation has been completed and reports under clause (2) of Section 173 Cr.P.C. have been submitted, in order to



unravel and unveil the conspiracy leading to the State-owned Corporation sustained huge losses.

64. In view of the discussions made hereinabove, the writ petitions are dismissed.”

12. Regard being had to the discussions made above, since the swindling of public money has been made in an organized manner throughout the State of Bihar and the *modus-operandi* of the scam is identical in every case and the allegations in the FIR clearly attract ingredients of cognizable offence under Section 409 of the IPC, which is a non-compoundable offence, I am not inclined to accede to the prayer made by the petitioner.

13. The application being devoid of any merit is dismissed.

(Ashwani Kumar Singh, J.)

kanchan/SKSuman.

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	15.01.2019
Transmission Date	15.01.2019

