

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.87239 of 2019

Arising Out of PS. Case No.-871 Year-2018 Thana- BEGUSARAI COMPLAINT CASE
District- Begusarai

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1. Md. Mojahid Hussain Son of Late Hafiz Mohiuddin (Sonma PACS Ltd. Chairman), resident of Village- Sonma (Pranpur), P.S.- Bakhri, District- Begusarai.
 2. Bimal Soren Son of Shital Soren Senior Auditor Officer, Co- operative Society, Begusarai, Resident of Village- Narganjo, P. O. and P.S.- Jhajha, District- Jamui, presently posted as Senior District Audit Officer, Begusarai Office, Pokhariya, Saryug Sadan, Dak Bungalow Road, Begusarai.
 3. Awadesh Choudhary @ Awdeah Chaudhary Son of Late Ramgulum Choudhary Presently Chairman Sonma PACS Ltd., resident of Village- Simri, P.S.- Bakhri, District- Begusarai.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Sriram Chaudhary Son of Late Ramdarshan Chaudhary Ex- Manager, Sonama PACS Limited, resident of Village- Simri, P.S.- Bakhri, District- Begusarai.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr.Sanjay Kumar Mr. Ram Sumiran Rai
For the State	:	Ms. Puspa Sinha, APP

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

2 10-01-2020 Heard learned counsel for the petitioners as well as
learned Addl. Public Prosecutor for the State.

This application has been filed for quashing of order dated 03.08.2019 passed by the learned Judicial Magistrate, Begusarai in Complaint Case no. 871C of 2018 whereby he has taken cognizance under sections 465 and 471 of the IPC against the petitioners and directed to issue summons against them.



Prosecution case as stated in the complaint petition is that erstwhile Chairman and Auditor of the PACS in question have indulged in misappropriation of fund of PACS and for misappropriation of fund, they have created forged and fabricated documents.

The allegations have led to the order taking cognizance dated 03.08.2019.

Counsel for the petitioners has assailed the order taking cognizance by submitting that much prior thereto on 10.04.2017 petitioner no.1 while he was in service had lodged F.I.R against opposite party no.2 (complainant of the instant case). It is his submission that instant case has been lodged with *mala fide intention* only to scuttle the prosecution arising out of earlier F.I.R being Bakhri P.S. Case no. 85 of 2017 (Annexure 3).

Submission is that it is only when officials submitted a report against the complainant of the instant case that he has lodged the complaint in question.

Entire allegations as per submissions made by petitioners' counsel are false and motivated on account of earlier prosecution.

The court while considering the complaint petition for the purpose of taking cognizance was required to see whether un-controverted allegation made in the complaint petition would



make out a case for cognizance or not.

Having gone through the complaint petition specifically, paragraphs 2, 3 and 4, this court would observe that *prima facie* ingredient for the offences under sections 465 and 471 of the IPC for limited purpose of taking cognizance has been stated in the complaint petition. Complainant has also been examined on solemn affirmation and the allegation has been supported. The order taking cognizance dated 03.08.2019 therefore, cannot be faulted.

The case of the petitioners that in fact, complainant is the person liable for misappropriation and that earlier F.I.R lodged by him states the true state of affairs are issues to be examined at the trial in the proceedings arising out of Bakhri P.S. Case no. 85 of 2017 which are independent of the instant proceedings and are to be decided in independent proceedings.

In the instant case, *prima facie* ingredients are alleged and cognizance has been taken by the court. Alleged falsity of the allegation is an issue which will be considered at appropriate stage in accordance with law.

In view of the aforesaid observations, this court would dismiss the instant quashing application.

Any observation made in the instant order shall not



prejudice the petitioners' defence, which has to be considered at
the appropriate stage in accordance with law.

Application is dismissed.

(Madhuresh Prasad, J)

s.hassan/-

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