

IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM RESIDENTIAL OFFICE VIA VIDEO APPLICATION)
Criminal Writ Jurisdiction Case No.2190 of 2017

Arising Out of PS. Case No.-76 Year-2017 Thana- SHAMBHUGANJ
District- Banka

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Mahendra Kumar Mandal Son of Late Mahabir Mandal, Resident of Village and P.O.- Basgara, P.S.- Forbesganj, District- Araria, presently posted as Labor Enforcement Officer, Kasba, District- Purnea.

... .. Petitioner/s

Versus

1. The State Of Bihar, through The Principal Secretary, Food And Civil Supplies
2. Bihar State Food and Civil Supplies Corporation Ltd., Patna through its Managing Director, Patna.
3. District Manager, Bihar State Food and Civil Supplies Corporation Ltd., Banka.
4. Collector-cum-District Magistrate, Banka.
5. Superintendent of Police, Banka.
6. Officer-in-Charge, Shambhuganj Police Station, District- Banka.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajendra Narayan, Sr. Advocate
Mr. Anant Kumar Sinha, Advocate

For the Respondent/s: Mr. Utkarsh Uppal, AC to
Mr. Shailendra Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date : 01-07-2022

Heard Mr. Rajendra Narayan, learned Senior Counsel for the petitioner and Mr. Utkarsh Uppal, learned Assistant Counsel to Mr. Shailendra Kumar Singh, learned Advocate for the Bihar State Food & Civil Supplies Corporation Limited (hereinafter referred to as 'the Corporation').



The petitioner in the present case is seeking quashing of the First Information Report being Shambhuganj P.S. Case No. 76 of 2017 dated 03.05.2017 instituted for the alleged offences under Sections 420, 409, 120B and 34 of the Indian Penal Code.

On perusal of the First Information Report it appears that there is an allegation against the petitioner that being the incharge of the purchase centre of Shambhuganj, he along with the Agriculture Coordinator Chandan Kumar had purchased 34967.20 quintal of paddy from the farmers and out of that they delivered 27144.40 quintal of paddy to the millers. It is alleged that after giving the said quantity of paddy to the millers, there was a balance of 5822.80 quintals but after auction of the said paddy on 22.12.2015 only 4452.39 quintal of paddy could be made available to the auction purchaser. It is alleged that 1370.41 quintal of paddy was not available in the purchase center. It is alleged that as regards the loss/misappropriation of paddy a notice was issued to the petitioner calling upon him to give the reasons but no clear reply could be provided.

It is alleged that the petitioner and Shri Chandan Kumar Singh had conspired with each other and they had misappropriated 1370.41 quintal of paddy. The District Manager, State Food Corporation, Banka lodged the F.I.R. with the aforesaid allegations giving rise to the present case.

Learned Senior Counsel for the petitioner submits that the petitioner was incharge of the purchase center during the paddy season 2012-13. He, at the relevant time was posted as Labour Enforcement



Officer, Shambhuganj and as directed by the Collector Banka, he had worked as the incharge of the procurement center with two others who were also deputed there. It is his submission that under the general transfer order issued by the Labour Commissioner, Government of Bihar vide office order no. 44 dated 30.06.2012 he was transferred from Shambhuganj, Banka to Munger Sadar. As per the said order it was effective immediately and in any case those who were under order of transfer would stand automatically relieved from 07.07.2012 and would join at the transferred place from where they would have drawn their salary.

The case of the petitioner is that the Collector Banka did not allow him to be relieved and he had written a letter to the Labour Commissioner, Government of Bihar to extend the date of relieving from 07.07.2012 to 14.08.2012. The petitioner continuously worked and requested the Collector, Banka on 14.08.2012 to relieve. It is stated that vide memo No. 138 dated 30.05.2013 the Collector, Banka finally issued an office order to the effect that petitioner and two others would stand relieved on 16.06.2013 and so the persons named in the said office order should take charge from the transferred officer on 15.6.2013. From the petitioner one Sri Siddhanath Singh, Assistant Manager, SFC, Shambhuganj had to take charge.

At this stage the case of the petitioner is that when he wanted to hand over the charge to said Sri Siddhanath Singh, he refused to take charge from the petitioner and the reason for that has been stated



by the petitioner in his letter dated 17.06.2013 addressed to the District Manager, SFC as contained in Annexure 11/b of the writ application. According to this letter, some of the paddies were kept outside and were yet to be sent to the storeroom and some torn/damaged jute bags containing paddies were required to be packed in new jute bags and for all these reasons the counting of bags and weighing of the paddy could not become possible as a result whereof the handing and taking over the charge could not take place on 17.06.2013. The petitioner left to join at his transferred place Munger after submitting this letter dated 17.06.2013 to the District Manager, State Food Corporation, Banka.

Learned Senior counsel for the petitioner submits that though, the petitioner was sent to Shambhuganj on some occasions in the year 2013-14 to handover the charge but it could not become possible. Learned Senior counsel has drawn the attention of this Court towards the enclosures to the F.I.R. at page 35 to submit that after first auction vide memo No. 2778 dated 13.09.2014, the auction purchaser was given a letter to lift the auction purchased paddy from Shambhuganj Center and in this letter the number of jute bags has been shown as 19557 with a quantity of 7822.80. He was directed to deposit the total auction amount of Rs. 99,74,070/-. It is, thus submitted that apparently before conducting auction sale the balance quantity of 7822.80 quintal of paddy were shown available to the auction purchaser. If this quantity is added to the quantity 27144.40 quintal which were



supplied to miller then it would be equal to the quantity of total purchased paddy i.e. 34967.20 quintal.

Learned Senior counsel submits that when auction purchaser did not turn up to lift the paddy again an auction sale took place in the year 2015 which may be found from memo No. 06 dated 02.01.2016 and this time 5822.80 quintals of paddy were sold to the auction purchasers namely Shiv Shakti Traders proprietor Ajay Kumar. It is, thus, his submission that after the first auction and before second auction itself the quantity of paddy available in the purchase centre had got reduced from 7822.80 quintal to 5822.80 quintal. The difference is of 2000 quintal.

Mr. Narayan, learned Senior counsel has drawn the attention of this Court towards the relevant part of the minutes present at page '38' of the writ application wherein it is recorded that pursuant to the auction sale conducted on 03.09.2014, the auction purchaser had not lifted the paddies. It is because of this the auction sale was again conducted and this time 5822.80 quintals of paddy were auction sold to Shiv Shakti Traders proprietor Ajay Kumar.

It is, thus, his submission that if 7822 quintal of paddy were available in the year 2014 and 27144.40 quintals of paddy were already given to the millers then there cannot be a case of misappropriation of paddy at the end of the petitioner because $27144.40 + 7822.80$ quintals would make it total quantity 34967.20 quintals of paddy which were purchased at Shambhuganj Centre.



Learned Senior counsel thus, submits that after one and half year, if 1370.41 paddy were not found in the purchase centre, the said loss has not taken place during the tenure of the petitioner and this cannot be said to be a case of misappropriation.

It is his submission that investigation of the case is still pending and the F.I.R. in the given facts of the case is liable to be quashed as no case is made out against the petitioner.

On the other hand, learned counsel representing the Corporation has opposed the application. It is submitted that investigation is still pending and it would not be appropriate to scuttle the investigation at this stage when the investigating agency has yet to come out with the result of investigation.

Having heard learned Senior Counsel for the petitioner and learned counsel for the Corporation as also keeping in view the materials placed on record, this Court is of the considered opinion that the allegation against the petitioner is that of misappropriation of 1370.41 quintals of paddy. His stand that the said quantity of paddy had been lost during the period when he was not there as incharge of the center is the point which is still under investigation. The investigating agency has no doubt taken too much time in completion of investigation but that alone, in the opinion of this Court, would not be a ground to scuttle the investigation. At the same time, this Court would take a view that the investigating agency while conducting the investigation of the case must investigate it taking into consideration all aspects of the



matter and the supervising authority should ensure that the investigation is properly done to find out the truth within a reasonable time. More than 5 years have already gone after lodging of F.I.R.

This Court would not interfere with the First Information Report but directs the Superintendent of Police, Banka to supervise the case if the investigation is still pending with police. He should ensure completion of the investigation and submission of the police report in the court of learned jurisdictional Magistrate within a reasonable period.

This writ application stands disposed of with the aforesaid observations and directions.

(Rajeev Ranjan Prasad, J.)

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AFR/NAFR	
CAV Date	
Uploading Date	02.07.2022
Transmission Date	02.07.2022

Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.

