

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL MISCELLANEOUS No.52300 of 2016

Arising Out of PS. Case No.-175 Year-2006 Thana- RAXAUL District- East Champaran

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1. Yogendra Prasad, Son of Late Bantilal Rai, Resident of Village- Bankatwa, P.S.- Jitna, District- East Champaran.
 2. Bachchi Devi, wife of Sri Amar Kumar, Resident of Village- Nai Basti, Tumariya Tola, P.S.- Raxaul Haraiya, District- East Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Kameshwar Singh, the Junior Engineer, Block- Raxaul, District- East Champaran, son of Late Kamal Singh, Resident of Village- Kudwa Mathiya, P.S.- Chanpatia, District- West Champaran.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Umesh Chandra Verma, Advocate
For the Opposite Party/s : Mr. Satyendra Narayan Singh, APP

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL ORDER

3 28-07-2022 Learned counsel for the petitioners is permitted to remove the defect(s), as pointed out by the office, if any, within a period of four weeks from today.

2. Heard Mr. Umesh Chandra Verma learned counsel appearing on behalf of the petitioners and Mr. Satyendra Narayan Singh, learned APP for the State.

3. The petitioner no.1, being the Headmaster of Harihar Primary Middle School, Tumariya Tola and the petitioner no.2, being the Secretary of the Vidyalaya Shiksha Samiti, have filed the present application seeking quashing of



the order dated 14.06.2012 passed by the learned Sub-Divisional Judicial Magistrate, Raxaul, East Champaran in Tr. No. 763 of 2016, arising out of Raxaul P.S. Case No. 175 of 2006, whereby cognizance of the offences under Sections 409 and 420 of the Indian Penal Code has been taken against the petitioners.

4. The short facts, which led to the filing of the present application is summarized herein below:

The opposite party no.2 submitted a written report before the officer-in-charge of Haraiya O.P. alleging inter alia that he received an information that in casting work of the roof of the building of Harihar Primary Middle School, which was being done under Sarva Siksha Abhiyan, sub-standard materials like Cement, chips were used. On the aforesaid information, opposite party no.2, Junior Engineer, Raxaul Block, East Champaran visited the site and found that sub-standard materials were being used in the construction and due to use of inferior quality of materials, the quality of construction works had been badly affected. It is further alleged that under the project of Sarva Siksha Abhiyan, a fund of Rs.2,54,300/- had been sanctioned and the President of the Vidyalaya Shiksha Samiti, the Secretary and the incharge Headmaster were authorized to get the construction work completed and they



were parties to the deed of agreement.

5. After investigation, charge-sheet was submitted against the F.I.R. named accused persons under Section 173 of the Cr.P.C. and having found the prima facie case true under section 420 and 409 of the I.P.C., the impugned order taking cognizance has been passed by the learned Sub-Divisional Judicial Magistrate, Raxaul, East Champaran.

6. Learned counsel for the petitioners submits that from the F.I.R. it is evident that it is not the case of the prosecution that the Government fund was swindled and work was not done, rather it is alleged that sub-standard materials were used in the construction work, though save and except the allegation, there is no enquiry report suggesting that sub-standard material were used. It is further submitted that from the deed of agreement, entered into amongst the parties, it is evident that it is the President, who was entrusted with the job of supervision and petitioner no.1 being the Headmaster and petitioner no.2 being the Secretary of the Vidyalaya Shiksha Samiti were under obligation to get the construction work completed. It is further submitted that on being informed with regard to the use of sub-standard material, the present F.I.R. has been instituted on 20.10.2006, however, the petitioner no.1, who



happens to be the headmaster of the school, in question, on his superannuation had issued “No Dues Certificate” clearly certifying that there had not been any kind of dues to him, or any show-cause was issued regarding irregularity relating to Sarva Shiksha Abhiyan, whereas petitioner no.2, who had worked there as a Secretary of Vidyalaya Shiksha Samiti from 01.08.2002 to 11.09.2004, though the allegation of the use of sub-standard material was levelled in the month of October, 2006.

7. It is next submitted that President of the Vidyalaya Shiksha Samiti, namely, Bharat Prasad, who was also one of the accused in Raxaul P.S. Case No. 175 of 2006, being aggrieved by the order taking cognizance dated 05.08.2010 moved before this Court in Cr. Misc. No. 36196 of 2010 and the Hon’ble Court having considered the materials available on record has been pleased to quash the impugned order of cognizance vide order dated 09.05.2013.

8. On the other hand, learned APP for the State opposes the prayer made on behalf of the parties and submits that there is no infirmity in the order taking cognizance, as the same has been passed after having found the prima facie case true against the petitioners and also on the basis of the materials



available on the record.

9. However, learned counsel for the State is not in a position to satisfy the Court, how a case is made out against the petitioner herein for the offences under Section 409 and 420 of the Indian Penal Code.

10. It is needless to say that if the averments made in the F.I.R./complaint are taken on their face value and accepted in their entirety do not constitute the ingredients necessary for the offence alleged under any penal provisions. The continuation of the proceeding would be an abuse of the process of the Court. The ingredients to constitute an offence of cheating are as follows: (i) There should be fraudulent or dishonestly inducement of a person by deceiving him; (ii) the person, who has induced should be intentionally induced to deliver any property to any person, or to consent that any person shall retain any property; (iii) Or the person, who induced should be intentionally induced to do or to omit to do with anything which he do not do or omit, if he were not so deceived and which act or omission causes or is likely to cause damage or harm to that person, in body, mind, reputation or property. Thus a fraudulent or dishonest inducement is an essential ingredients of the offence under Section 415 of the Indian Penal Code.



11. The Hon'ble Supreme Court in the case of **G. Sagar Suri & Anr. Vs. The State of Uttar Pradesh**, since reported in **(2002) 2 SCC 636** observed that it is the duty and obligation of the criminal court to exercise a great deal of caution in issuing the process, particularly, when matters are essentially of civil nature. Further, the Hon'ble Supreme Court in **R. P. Kapur Vs. State of Punjab**, reported in **1960 SC 866** summarized the categories of cases where inherent power can and should be exercised to quash the proceeding; (i) where it manifestly appears that there is legal bar against institution or continuation such as is want of sanction; (ii) where the allegations in the first information report or complaint taken at their face value and accepted in their entirety do not constitute the offence alleged; (iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charges.

12. It would be apposite to observe that the materials available on record, collected during the course of investigation are not sufficient enough to constitute any offence, as the entire prosecution is based upon a mere allegation without any substance or evidence in support thereof, such as any enquiry report suggesting the use of sub-standard materials.



13. Having regard to the submissions made on behalf of the parties, considering the nature of allegation, which has not been supported by any materials available on record, apart from the settled legal proposition as discussed hereinabove as well as the fact that order taking cognizance with respect to President of Vidyalaya Shiksha Samiti has already been quashed, this Court finds substance in the submissions made on behalf of the petitioners and for the reasons stated above allowing the prosecution to continue as against the petitioners is to be an abuse of the process of the Court, and, accordingly, the impugned order dated 14.06.2012, passed by the learned Sub-Divisional Judicial Magistrate, Raxaul, East Champaran in Trial No. 763 of 2016, arising out of Raxaul P.S. Case No. 175 of 2006, is hereby quashed, so far as the petitioners are concerned.

14. The present application stands allowed.

(Harish Kumar, J)

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