IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1960 of 2018

Arising Out of PS. Case No.-208 Year-2017 Thana- KUDRA District- Kaimur (Bhabua)

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M/s Jai Mata Di Mini Rice Mill Through Its Proprietor Arvind Prasad Singh S/o Jamuna Prasad Singh resident of Village- Sakari, P.S. - Kudra, District - Kaimur.

... ... Petitioner

Versus

1. The State of Bihar through the Principal Secretary Department of Home, Govt. of Bihar, Patna
2. The District Magistrate, Kaimur at Bhabua.
3. The State Food Corporation through its Managing Director, Bihar, Patna.
4. The District Manager, State Food Corporation, Kaimur at Bhabua.
5. The Superintendent of Police, Kaimur at Bhabua.
6. The Officer-in-Charge, Kudra Police Station, District - Kaimur.

... ... Respondents

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Appearance :

For the Petitioner/s	:	Mr. Rajesh Singh, Sr. Advocate Mr.Mithilesh Kumar Singh, Advocate
For the SFC	:	Mr. Shailendra Kumar Singh, Advocate Mr. Utkarsh Utpal, Advocate
For the State	:	Mr.Ajay Kumar Sharma, AC to A.G.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

C.A.V. JUDGMENT

Date : 08-09-2022

This writ application has been filed seeking the following reliefs:

> (i) For setting aside the entire proceeding including the F.I.R. of Kudra P.S. Case No. 208/2017 registered u/s 409, 420 of I.P.C. against the petitioner.
>
> (ii) for direction to the respondent concerned to return the money which was deposited in the tune of Rs. 04,64,100/- to the State Food Corporation (referred herein as "SFC") through mode of RTGS from the account of the firm to the account of SFC Ltd. in Indian Bank Panta.
>
> (iii) For respondents be directed to pay compensation for false prosecution and taking money in garb of that

prosecution.
(iv) For any their relief or reliefs as your lordships think fit any proper."

2. Learned senior counsel for the petitioner submits that on a bare perusal of the First Information Report it will appear that in the instant case the dispute arises out of an agreement between the parties. According to him, the dispute is of purely civil nature and earlier when the petitioner had moved this Court in C.W.J.C. No. 10847/2016, this Court had directed the Managing Director, Bihar State Food Corporation (hereinafter referred to as the "BSFC") to look into the grievance of the petitioner and settle the dispute amicably.

3. Learned senior counsel further submits that the F.I.R. alleges that a sum of Rs. 4,64,061/- remained payable by the petitioner. According to learned senior counsel, the F.I.R. should not have been lodged for mere recovery of amount.

4. In his written submissions, learned counsel submits that the petitioner had filed a representation as per direction of the Hon'ble Court in the aforesaid writ application but without entertaining the same a First Information Report has been lodged giving rise to the present case. It is alleged that respondent no. 4 has acted with a malafide intention and lodging of the F.I.R. is a result of an arbitrary exercise of power. It is submitted that the allegations made in the First Information Report, even if taken to be true on it's face value, it does not amount to an offence under Section 409 and 420 I.P.C. It is submitted that there had been a mistake on the part of respondent no. 4 in not showing Lot No. 8 by which CMR of 270 qunitals was received vide Challan No. 86 on 17.05.2012. The petitioner had requested respondent no. 4 to correct this mistake but it has not been done.

5. On the other hand, Mr. Shailendra Kumar Singh, learned counsel for the BSFC submits that the petitioner has deposited Rs. 4,64,061/- only after lodging of the F.I.R. that too for purpose of getting privilege of pre-arrest bail. Referring to a judgment of the learned coordinate Bench of this Court in the batch of cases, the leading case being **M/s Jai Mata Di Rice Mill Vs. State of Bihar** reported in **2015(4) BBCJ 335**, learned counsel submits that identical matters of several rice mill owners have been dismissed by the learned coordinate Bench by a well discussed judgment. It has been submitted that by virtue of the order of the Hon'ble Supreme Court, the present case has also been transferred to the Special Court, Gaya which has been constituted to try the cases of rice mill owners.

6. This Court has heard learned counsel for the parties and perused the records.

7. From the First Information Report, it appears that by different SIOs altogether 5306 quintals of paddy were made available to the petitioner. The petitioner was obliged to supply 67% of Custom Milled Rice (in short 'CMR') which would be equal to 3555.02 qunitals but he made available only 3283.33 qunitals of CMR. In this manner, it is alleged that the petitioner did not supply 271.69 qunital of CMR despite repeated reminders and directions. He had malafide intention to misappropriate the same. The value of the said 271.69 qunital CMR was assessed at Rs. 5,17,061.38. It is alleged that the petitioner accepted the allegations but deposited only Rs. 53,000/- leaving a sum of Rs. 4,64,061.38 which he used for his own gain and in this way he caused loss to the government revenue.

> The F.I.R. further states that in C.W.J.C. No. 10847/2016 the Hon'ble High Court had issued certain directions whereupon the Managing Director considered the representation of the petitioner and ultimately concluded that against the petitioner rice mill a sum of Rs. 4,67,061.39 was outstanding for which a certificate case no. 194/2014-15 has been

lodged. A reasoned order was passed by the Managing Director, SFC, which form part of the F.I.R.

8. In the counter affidavit filed on behalf of the BSFC it is submitted that it is a case in which both civil and criminal cases can go together and only because the act of the petitioner would also give rise to a civil dispute that does not mean that it cannot have criminal liability.

9. Learned counsel for the BSFC has also placed on record a copy of the order dated 28.02.2017 passed by Hon'ble Supreme Court in Petition for Special Leave to Appeal (SRL) No. 1779/2016 arising out of judgment and order dated 14.09.2015 in CRLMN No. 31117/2015 passed by this Court. These petitions were filed by the BSFC against the orders passed by this Court granting anticipatory bail in connection with the cases. In the said case submission was made that huge sum of about Rs. 1500 Crores in all has been allegedly misappropriated by the accused for which 600 F.I.Rs. have been filed. The Hon'ble Supreme Court was informed that agreements for billing of paddy were entered into with a different rice mills in pursuance of which paddy was handed over for milling but the rice from the milled paddy was not returned or was returned partly. Thus, there were huge misappropriation and in such circumstances grant of anticipatory bail would seriously hamper the investigation/trial resulting in huge loss to the State.

10. The Hon'ble Supreme Court while considering those applications of BSFC thought it just and proper not to cancel the anticipatory bail but modify the order/conditions. Those are mentioned hereunder for a ready reference:

> *"(1) The accused in all the FIR(s), will ensure that bank guarantee, if not furnished, is furnished and if lapsed, is renewed within a period of one month from today failing which the anticipatory bail/bail granted will stand cancelled.*
> *(2) The accused will cooperate with investigation/trial and their failure to appear, when required, will be a ground for cancellation of anticipatory bail/bail. An order of cancellation will be passed by the trial court on being satisfied about such failure.*
> *(3) The investigation will be completed within a period of three months.*
> *(4) All the accused will be tried only at five places viz. Patna, Gaya, Chhapra, Darbhanga and Purnia by officers of the appropriate rank determined by the High Court within one week from today. The High Court may specify the area of jurisdiction of the said five courts by a public order. If required by the High Court, the State Government may sanction extra strength of officers within requisite infrastructure so that normal work of courts is not disturbed on account of the special arrangement for these cases.*
> *(5) The officers posted will deal with these cases exclusively. If free from their work, any other work may be assigned to the said officers.*
> *(6) The concerned authorities will be at liberty to encash the bank guarantee(s) after holding that there is a breach of terms of the agreement which decision will be subject to appropriate*

remedies of the parties.
(7) If not otherwise encashed, the bank guarantee will be kept alive till the trial is over. However, deposits/furnishing of bank guarantees will be abide by further orders of the trial court, interim or final.
(8) If any amount is deposited by the accused, the said amount will be adjusted in the amount of the bank guarantee, which is to be furnished by the accused.
(9) The accused will surrender their passports to the respective courts within a period of four weeks from today and will not leave the country without prior permission from the concerned court."

11. This Court further finds that a learned coordinate Bench of this Court had occasion to consider identical issues. The whole batch of petitions were dismissed. Paragraph '48' of the said judgment is being reproduced hereunder for a ready reference:-

"48. Since the writ petitioners seek quashing of respective FIRs lodged against them, the question before this Court is whether the FIRs can be quashed under Article 226 of the Constitution of India at the threshold when the matter is still under investigation. In my opinion, the FIRs under consideration do attract ingredients of a cognizable offence. There is allegation of dishonest misappropriation of paddy in huge quantity. Though the rice millers were under obligation to return the rice to the extent of 67% of the paddy supplied to them, in several cases, either no CMR was returned at all or there was huge shortfall in returning CMR. This Court would take judicial notice of the fact that the Corporation has sustained loss of multi-crores due to non-delivery of several lakh quintals of CMR

against the paddy released to the rice millers in advance in almost all the districts of the State of Bihar. The paddy was given to the rice millers without taking rice from them. It is a matter of concern as to how an offence of identical nature could happen throughout the State of Bihar. There is also an allegation of conspiracy in many of the FIRs under consideration. It has been brought to the notice of the Court that many officials of the Corporation are also being prosecuted for their alleged involvement in siphoning off huge public money."

12. Considering the nature of allegations and the magnitude of the offences alleged, this Court has no reason to take a different view. This writ application is dismissed, accordingly.

(Rajeev Ranjan Prasad, J.)

Rajeev/-

AFR/NAFR	
CAV DATE	24.08.2022
Uploading Date	08.09.2022
Transmission Date	08.09.2022

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'.