

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.62795 of 2017

Arising Out of PS. Case No.-637 Year-2016 Thana- PHULWARISHARIF District- Patna

1. Shiv Shankar Pathak and Ors S/o- Sri Nirsu Pathak, Resident of Mohalla- Nehru Nagar Shrdha Lok Apartment Flat No.- 301 D, P.S. Patliputra, District- Patna.
2. Ram Ekbal Sharma, S/o- Baidhnath Sharma, Resident of Mohalla- Vasant Bihar Colony, P.S.- Rajeev Nagar, District- Patna.
3. Deepak Kumar, S/o- Binod Kumar @ Binod Prasad, Resident of Mohalla- East Nand Gola Madho Mills, P.S.- Malsalami, District- Patna at Present Assistant FSO, Darbhanga.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Food Corporation of India through it's Regional Manager F.C.I. District Office Patna- 1.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Mukesh Kumar No-1, Advocate
For the Informant	:	Mr. Prabhakar Tekriwal, Sr. Advocate
For the Opposite Party/s	:	Dr. Rabindra Kumar, APP

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

2 23-06-2022 Heard learned counsel for the petitioners, learned senior counsel for the informant and learned A.P.P. for the State.

The petitioners seek quashing of the F.I.R. being Phulwarisharif P.S. Case No. 637 of 2016 registered for the offences punishable under Sections 406 and 409 of the Indian Penal Code.

Learned counsel for the petitioners submits that the informant in the F.I.R. alleges that on 02.10.2016 at 6.08 AM two trucks bearing number BR-1C-7461 and BR-1B-6841 or BR-1-



6841 illegally entered F.C.I. godown at Fulwarisharif, it is next alleged that sacks of wheat were illegally loaded on the aforesaid two trucks which is evident from CCTV footage. It is further alleged that from CCTV footage it can be culled out that there is footage of entry of the truck but it appears that thereafter the employees and the labourers present in the godown purposely switched off the CCTV so that the occurrence is not recorded, accordingly the informant was informed about the occurrence by the SIS guards who were guarding the godown, thus it is alleged that the said occurrence was committed in connivance with the named accused persons, including the petitioners.

Learned counsel for the petitioners submits that the petitioners have been falsely implicated in the present case as *prima-facie* no case is made out against them, it is next submitted that the F.I.R. is nothing but an abuse of process of Court, it is next submitted that from perusal of Annexure-2 i.e., the verification report of the godown in question and from perusal of the report it does not appear that there was any shortage of the wheat bags. Learned counsel next submits that Annexure-3 is also a report dated 19.11.2016 with respect to monthly stock statement for the month of October, 2016 in respect of all commodities and from perusal of the said report also it would manifest that the same does not record any shortage. It is further



submitted that from perusal of of the report annexed at Annexure-4 dated 31.10.2016 it would manifest that the same records the gain and ultimately it observes that “however, committee observed storage gain on the basis of above trend which has already been recorded in monthly stock account. As per committee observation regarding excess/shortage of bags have been accounted for in shed register and also in the master ledger of the depot”.

Learned counsel for the petitioners further submits that all the petitioners in the quashing application are employees of the F.C.I. against whom a departmental inquiry was also initiated with respect to the allegations as alleged in the present F.I.R., it is next submitted that in the departmental inquiry in the cross examination of Shri O.P. Singh, D.G.M. Vigilance a query was made – Is there any shortage found in PV done by FCI RO. Committee? To this query the DGM answered - There is no shortage of stock in shed no. 2 and shed no. 6 against the book balance and census provided by Manager (D). Learned counsel thus submits that on the basis of aforesaid submission it can be safely culled out that petitioners are innocent and have been falsely implicated in the present case as from the submission made hearinabove it is clear that there was no shortage in the aforesaid sheds where the occurrence had taken place.



Learned A.P.P. for the State and the learned senior counsel for the informant vehemently oppose the submissions made by the learned counsel for the petitioners and submits that it appears that learned counsel for the petitioners is not even aware of the basics of quashing application that what are the grounds on which the quashing application can be allowed, it is next submitted that as far as the contention of the learned counsel for the petitioner that no prima-facie case is made out, in that respect it is submitted that from bare perusal of the F.I.R. it would manifest that there is a specific allegation in the FIR that two trucks illegally entered the F.C.I. godown and thereafter bags of wheat were siphoned off from there and the CCTV which could have recorded the occurrence was purposely switched off. It is further submitted that as far as contention of the learned counsel for the petitioner that it is an abuse of the process of Court, the learned senior counsel for the informant submits that it absolutely does not stand to reason that on what basis the said submissions have been made when the investigation is still in progress.

At this stage, learned counsel for the petitioners submits that he does not have instruction that as to whether investigation in the case has been completed or not, the Court is shocked at the submission made by the learned counsel for the



petitioners that even after five years of filing of the present quashing application, the learned counsel for the petitioners still does not have proper instruction and information of the case and is making arguments.

Learned senior counsel for the informant further submits that the submission made by the learned counsel for the petitioner with respect to cross examination of their D.G.M. is fallacious and misconceived, it is submitted that in the departmental inquiry in cross-examination what the D.G.M. has said that is not the ultimate truth, ultimately it has to be decided by the Inquiry Officer and the Disciplinary Authority, learned senior counsel submits that all the petitioners, based on the findings arrived at the departmental inquiry, have been indicted, learned senior counsel thus submits that when the department has itself indicted its own employees based on the allegations as alleged in the F.I.R. there is no question of quashing the present F.I.R. as *prima-facie* case is made out.

The quashing application is thus dismissed.

(Satyavrat Verma, J)

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