

14.12.2022
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SB
Ct. No.236

CRR 2973 of 2009

In the matter of : Khairul Alam

Mr. Sourav Chatterjee
Mr. Priyom Biswas ... for the petitioner

Mr. Madhusudan Sur, Ld. A.P.P.
Mr. Manoranjan Mahata ... for the State

Affidavit of service is taken on record.

This is an application under Section 482 of the Code of Criminal Procedure seeking an order of quashment of proceeding being G.R. No. 516/09 pending before the learned Additional Chief Judicial Magistrate, Alipurduar, Jalpaiguri arising out of Falakata P.S. Case No. 78/09 dated 27.02.2009 under Section 409/120B of the Indian Penal Code and all other orders including the order dated 04.06.2009 and 30.07.2009.

Heard Mr. Chatterjee, learned counsel for the petitioner and Mr. Sur, learned counsel representing the State.

Briefly stated that Sub-Divisional Officer, Alipurduar, Jalpaiguri informed the I / C Falakata P.S. District Jalpaiguri in writing that pursuant to a letter submitted to the B.D.O. Falakata and in an inquiry was conducted by Mr. Samiran Mondal, Deputy Magistrate and Deputy Collector, Alipurduar against the Headmaster of Lachmandabri Nazimuddin High School, Falakata for allegedly misappropriated and / or defalcated in government fund in connivance of Secretary and Managing Committee of this school. The headmaster did not co-operate with Mr. Mondal,

however, the inquiry report reveals that out of sum of Rs. 6,80,000/- allotted for the purpose of construction of the ground floor this school authority spent Rs.6,07,525/- only; for the construction of first floor spent a sum of Rs.3,20,000/- over and above the estimated amount of Rs.1,30,475/-. However, the gentleman holding inquiry considered there was defalcation of Rs.1,89,475/-. The headmaster of the institution admitted to have kept a sum of Rs.44,600/- in hand. Based on such information given by the S.D.O. Falakata P.S. Case No. 78/09 was registered on 27.02.2009. Police took up investigation which culminated into submission of charge sheet and by order dated 13.07.2009 the learned Chief Judicial Magistrate, Alipurduar was pleased to take cognizance of the offence as against the petitioner who being the head of the institution, aided by the government, is a public servant within the meaning of Section 21 of the Indian Penal Code, therefore, learned Additional Chief Judicial Magistrate has exceeded his jurisdiction while passing the order dated 30.07.2009 by usurping the authority of Special Court, competent to consider a case under Section 409 of Indian Penal Code against public servant. Mr. Sur, learned counsel for the State concedes to the submission of Mr. Chatterjee, learned counsel representing the petitioner.

Under such circumstances, I am of the view to allow the proceeding to continue would amount to an abuse of process of law.

Hence the proceeding is quashed.

The copy of the order be sent down to the learned Trial Court for information and necessary action.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties, upon completion of requisite formalities.

(Siddhartha Roy Chowdhury, J.)