

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL MISCELLANEOUS No.17011 of 2017

Arising Out of PS. Case No.-211 Year-2009 Thana- DUMRA District- Sitamarhi

Kishor Kumar Singh

... .. Petitioner/s

Versus

State Of Bihar and Anr

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Anil Kumar Sinha

For the Opposite Party/s : Mr.Sri Sanjay Kumar Tiwary

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR

ORAL ORDER

2 09-05-2023 Heard learned counsel for the petitioner and learned
APP for the State.

This application has been filed for quashing of F.I.R vide Dumra P.S. Case No. 211 of 2009 along with the order dated 19.11.2015 passed by learned Chief Judicial Magistrate, Sitamarhi by which learned Magistrate has taken cognizance against the petitioner for the offences under Sections 409, 420 of the Indian Penal Code and Section 4 of Bihar Prevention of Specified Corrupt Practices Act, 1983.

The prosecution story in short is that the informant alleged that the petitioner had not completed the work within stipulated period as per agreement. It has further been alleged that the petitioner found guilty for making recommendation of sub-standard work.

It has been submitted by learned counsel for the petitioner that no offence is made out against the petitioner as for any Breach of Contract which was entered into between the



petitioner and the Government of Bihar and therefore, F.I.R. cannot be filed against him. He also submits that the present case is a *mala fide* one, only to wreak vengeance upon the petitioner this F.I.R. has been lodge by the informant.

Learned counsel for the State submits that after reading of the entire F.I.R, criminal offence is made out against the petitioner because of the sub-standard work, the present F.I.R was filed by the informant.

I have considered the submissions both the parties.

It is the case of the petitioner that he entered into a contract with the Government of Bihar. As per the terms of the contract of clause 13, if there was some sub-standard work done by the petitioner, he is duty bound to rectify/re-construct the sub-standard work.

The Clause 13 of the contract reads as follows:-

“If it shall appear to the Engineer-in-Charge or his subordinate in change of the work that any work has been executed with unsound, imperfect or unskillful workmanship or with materials of any inferior description, or that any materials or articles provided by him for the execution of the work are unsound or of a quality inferior to that contracted for at otherwise not in accordance with the contract, the contractor shall on demand in writing from the Engineer-in-charge specifying the inadvertently passed certified and paid for. forthwith rectify, or remove and reconstruct the work so specified in whole or in



part as the case may remove the materials or articles so specified by the Engineer-In-Charge in his demand aforesaid the contractor shall be liable to pay compensation at the rate of one percent, on the amount of the estimate for every day not exceeding ten days while his failure to do so shall continue and in the case of any such failure the Engineer-in-Charge may certify or remove, and re-execute the work or remove and replace with others, the materials or articles complained of as the case may be at the risk and expense in all respects of the contractor.”

This civil dispute has been given colour of criminal dispute and the present F.I.R. is also *mala fide* in view of the law laid down by the Hon’ble Supreme Court in the case of ***State of Haryana Vs. Ch. Bhajan Lal & Others*** reported in ***AIR 1992 SC 604***, this application is allowed and the F.I.R vide Dumra P.S. Case No. 211 of 2009 along with the impugned order dated 19.11.2015 passed by learned Chief Judicial Magistrate, Sitamarhi are hereby quashed in the interest of justice.

(Sandeep Kumar, J)

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