

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.45131 of 2015

Arising Out of PS. Case No.-52 Year-1993 Thana- BHAGWANPUR District- Begusarai

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Krishna Mohan Prasad Singh @ Krishna Mohan Singh Son of Sri Mahendra Narayan Singh, Resident of Village- Ektara, P.S. Arer, District Madhubani. At present working and posted as Assistant Engineer, Rural Engineering Organization Runi Saidpur, Sub-Division, P.S. Runi Saidpur, Distt- Sitamarhi.

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Vinay Ranjan, Advocate
For the Opposite Party/s : Smt. Pushpa Sinha, App

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

2 27-07-2023 This application has been filed for quashing of the order dated 3.2.2014 passed by learned Sub-Divisional Judicial Magistrate, Begusarai, by which, the learned Magistrate again rejected the petition filed by the petitioner in connection with Bhagwanpur P.S. Case No. 52 of 1993.

2. The Block Development Officer, Bhagwanpur, District - Begusarai submitted a written report to the officer-in-charge of Bhagwanpur police station *inter alia* alleging therein that in a village altogether 10 schemes were sanctioned for total



estimated cost of Rs. 3,52,760/- in the years 1989-90. Further upon inspection irregularities were found in three schemes. It is also alleged that the estimated cost of scheme no.5 was reduced to Rs. 85,200/- but on the request of mukhiya of concerned gram panchayat the estimated cost was reduced to Rs. 42,600/-. The said changes has been done without the approval of gram sabha. It is also alleged that on spot verification, it was found that the work to the extent of Rs. 5128/- was done whereas the bill of Rs. 13,257/- was prepared. It is further alleged that the estimated cost for scheme no.8 was Rs. 49,600/-. The amount of Rs. 40,000/- was given to the agent, which is against the rule. At best 25% amount should have been advanced to the agent against the estimated amount. It is also alleged that on spot verification, some irregularities have been found in the scheme. Similarly, in scheme no.9 also irregularities have been noticed. Acting upon the letter of the Block Development Officer the present F.I.R. has been lodged against the accused persons including the petitioner. The police after investigation submitted the chargesheet against the petitioner and others. Further one of the accused namely Janardhan Prasad was not sent for trial.

3. Learned counsel for the petitioner has drawn the attention of this Court to a letter dated 26.06.1991 written by the



District Magistrate, Begusarai address to the under secretary Department of Rural Development, Government of Bihar, Patna wherein it has been stated by the District Magistrate that after inspection and verification of schemes it has been found that the allegations levelled of bungling and misappropriation of fund are baseless.

4. Learned counsel for the petitioner also submits that the petitioner has falsely been dragged in this case as except granting technical sanction to the scheme, the petitioner has nothing to do with the execution of the same. He further submits that neither the petitioner has done any measurement work nor prepared or passed the bills in respect of the scheme in question and as such he is neither concerned with the actual execution of the scheme nor payments were made by him in connection with the aforesaid schemes.

5. Learned counsel for the petitioner further submits that the offence, as alleged against the petitioner is direct by concerned with the official duty and therefore, prior sanction from the competent authority as provided under Section 197 of the Cr.P.C. is mandatory but in the present case, the sanction order for prosecuting the accused persons is only one line order.

6. Learned counsel for the petitioner further submits



that the allegation against the petitioner is only to the extent that he granted technical sanction for scheme no.5 for Rs. 85,200/- which was subsequently changed. He further submits that the occurrence is of 1989-90 whereas the present case has been initiated after four years of alleged occurrence.

7. Learned counsel for the petitioner further submits that before framing of charge, the petitioner had filed an application under Section 239 of the Cr.P.C. for discharge, but the same was dismissed on 11.03.2011. Being aggrieved with the said order, the petitioner move before this Court and this Court vide order dated 30.08.2013 quashed the order and remanded the matter for taking fresh decision in pursuance of the aforesaid direction of this Court, the petitioner again filed an application for discharge, which was rejected by the impugned order.

8. Learned APP has very fairly submitted that in view of annexure 2, the letter dated 26.06.1991 the prosecution of the petitioner cannot be continued.

9. I have heard the learned counsel for the parties and perused the materials on record. It appears that earlier the petitioner had filed a discharge application before the court below, which was rejected vide order dated 11.03.2011. Against



the aforesaid order, the petitioner had moved before this Court in Cr. Misc. No. 21691 of 2011. This court after vide order dated 30.08.2013 has passed the following order.

Heard learned counsel for the petitioner and learned counsel for the State.

This application is filed for quashing the order dated 11.03.2011 passed by learned S.D.J.M., Begusarai in connection with Bhagwanpur P.S. Case No. 52 of 1993 corresponding to G.R. No. 2552 of 1993.

In brief, petitioner filed two petitions; one after another dated 06.11.1995 and 25.11.1995 to discharge him as he was innocent as no charge was liable to be framed against him. He did not sign any bill nor misappropriate any amount. Specifically, it is stated on his behalf that he had given technical sanction only. Petition is dismissed, same is challenged on the ground that dismissal is basing that petitioner was F.I.R. named accused, charge sheet was submitted against him and cognizance was taken on the material collected by the I.O.

I agree with the submission advanced by learned counsel for the petitioner that the above observation of the Court may not be said a reasoned order, in absence of which order is not liable to sustain. It is made clear that it is for the trial Court to reply the points taken for innocence of the petitioner.

In result, this quashing application is allowed. Order in question dated 11:03 2011 passed by learned S.D.J.M., Begusarai in connection with Bhagwanpur P.S. Case No. 52 of 1993 corresponding to G.R. No. 2552 of 1993 is hereby quashed (set aside).

However, case is sent back to the trial Court for deciding the same afresh in accordance with law.

Let this order be communicated to the Court below through Fax at the cost of



the petitioner.

10. Pursuant to the order of this Court, the petitioner again filed a discharge application, which was rejected by the impugned order. From the perusal of the impugned order it appears that the trial Court has not considered the submission of the petitioner though there was specific direction by this Court that the trial Court should pass a reasoned order. Further during the entire investigation, nothing has come against the present petitioner. The letter dated 26.06.1991 written by the District Magistrate to the Under Secretary, Department of Rural Development, reads as under :

उपर्युक्त विषयक प्रसंग में दहिया पंचायत के संबंध में किये गये परिवाद के संबंध में सूचित करना है कि उक्त पंचायत की योजनाओं का जांच ग्रामीण विकास, बिहार, पटना में एक कार्यपालक अभियंता द्वारा किया जा चुका है। उसके बाद अधोहस्ताक्षरी द्वारा की उक्त पंचायत की योजनाओं की जांच की गयी है। परन्तु जिसके अनुसार लगाये गये सभी आरोप निराधार पाये गये।

11. From reading of the aforesaid letter dated 26.06.1991 it appears that the District Magistrate had written to the Under Secretary, Department of Rural Development that after inquiry, no irregularities or illegalities have been found in the schemes and the allegations are found to be false. Moreover, the petitioner being the Assistant Engineer has the protection of Section 197 of the Cr.P.C. The sanction order as contained in



annexure 6 is one line order for prosecuting the accused persons of Bhagwanpur P.S. Case No. 52 of 1993.

12. In my opinion, the sanction order is no order in the eye of law as it is a cryptic and non-speaking order. While granting sanction for prosecution the authority has to apply its mind and examine the records. The authority has to give reasoned order for grant of sanction.

13. In these circumstances, the trial Court ought to have passed a order discharging the petitioner. In the opinion of this Court, the trial Court has acted as a post-office. The Hon'ble Supreme Court in the case of Kanchan Kumar vs. State of Bihar reported in 2022 9 SCC 577 has held that the trial Court cannot act merely as a post-office or a mouthpiece of the prosecution, but has to consider the broad possibilities of the case and the total effect of the evidence and the documents produced before it. Since the petitioner is facing this criminal case from 1993 and earlier also the case was remitted back to the trial Court for passing fresh order on discharge, no useful purpose will be served by remitting back the matter again to the trial Court for passing fresh order as the petitioner has already suffered a lot. In view of the aforesaid facts, this application is allowed. Accordingly, the F.I.R. in connection with Bhagwanpur



P.S. Case No. 52 of 1993 and all consequential proceedings arising out of aforesaid F.I.R. including the order of cognizance dated 03.02.2014 passed by the learned Magistrate is quashed with respect to present petitioner.

(Sandeep Kumar, J)

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