

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.39467 of 2021

Arising Out of PS. Case No.-985 Year-2020 Thana- VAISALI COMPLAINT CASE District-
Vaishali

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1. Santosh Kumar Mishra S/O Surendra Mishra R/O Village/Town, Flat No.G1/65, Block No.56, H1 Tech Plaza, P.S-Sundar Pada, District-Bhubneshwar, State-Orissa
 2. Jayanand Das S/O Bansidhar Das R/O Village-Chhadesh, P.S-Rajkanika, District-Kendrapara, District-Orissa

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Sharmanand Rai S/O Lal Bahadur Rai R/O Village-Diwantola, P.S.-GANGA Bridge, District-Vaishali.

... .. Opposite Party/s

with

CRIMINAL MISCELLANEOUS No. 36040 of 2021

Arising Out of PS. Case No.-985 Year-2020 Thana- VAISALI COMPLAINT CASE District-
Vaishali

VIJAY SINGH YADAV S/o Kanwar Singh Resident of Village- House No.1271, Sec. 10A, P.S.- Gurgaon Town, District- Gurgaon, State- Haryana-122001.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Sharmanand Rai S/o Lalbahadur Rai Resident of Village- Deewantok, P.S.- Ganga Bridge, District- Vaishali at Hajipur.

... .. Opposite Party/s

Appearance :

(In CRIMINAL MISCELLANEOUS No. 39467 of 2021)

For the Petitioner/s : Mr. Y.V. Giri, Advocate
Mr. Ashish Giri, Advocate
Ms. Riya Giri, Advocate

For the Opposite Party/s : Mr. Ramchandra Sahni, Advocate

For the State : Mr. Jharkhandi Upadhyay, APP

(In CRIMINAL MISCELLANEOUS No. 36040 of 2021)

For the Petitioner/s : Mr. Anujit Sinha, Advocate

For the Opposite Party/s : Mr. A.G

For the State : Mr. Jharkhandi Upadhyay, APP

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

9 01-05-2023 Since both these cases arise out of same complaint case i.e. Complaint Case No. 985 of 2020, they have been heard together and are being disposed of by this common order.



Heard learned counsel for the petitioners and learned APP for the State.

This application has been filed for quashing of the order dated 09.01.2021 passed by learned Chief Judicial Magistrate, Vaishali at Hajipur in Complaint Case No. 985 of 2020 by which learned Magistrate has taken cognizance against the petitioners for offences under Section 406, 420, 34 of the Indian Penal Code.

The prosecution case as per the complainant is that restoration reconstruction work of Mahatma Gandhi Setu Bridge is being undertaken by Afcons-Sibmost Company for which the complainant and other persons worked as sub-contractors. In March 2019 the Project Director, namely, accused Vijay Singh Yadav declared that the scrap resulting from cutting of the bridges will be sold in open market by co-accused Navneet Vardhan under the guidance of the Project Manager of the company Santosh Kumar Mishra (Petitioner no. 1) and Administration Manager Jayanand Das (Petitioner no. 2). Accordingly, it has been alleged that the interested persons met the petitioners who told them to meet co-accused Navneet Vardhan and submit the money to him and after collection of the money the scrap will be sold in the proportion of money



deposited accordingly. It has been alleged that co-accused Navneet Vardhan has been brought in as Liaisoning office for public dealing. On the basis of said declaration of the company, the complainant and other persons deposited crores of cash with the co-accused Navneet Vardhan and some payment was also made in the bank account of Navneet Vardhan by various persons. It has been further alleged that the sale of scrap in favour of the private individuals were stopped after which the complainant and other persons went to the petitioner no. 1 (Santosh Kumar Mishra), Petitioner no. 2 (Jayanand Dasand). On direction of the petitioners, co-accused Navneet Vardhan returned around Rs. 28 Lac during the period from 03.10.2019 to 30.01.2020. However, the company all of a sudden sent the co-accused Navneet Vardhan in a long break and then the persons who had made payment kept on seeking refund of the amount from the petitioners who informed that Navneet Vardhan has run away leaving the company and since the aggrieved persons had made payment to Navneet Vardhan, as such they were not in a position to repay the amount. It has been alleged that the petitioners and the co-accused has fraudulently misappropriated Rs. 1.49 Crores.

Learned counsel for the petitioners has submitted that



no offence is made out against the petitioners under Sections 420 and 406 of the Indian Penal Code. The order taking cognizance and issuance of summons are not in accordance with the mandatory requirement of Section 202 of Cr.P.C. Vicarious liability is not attracted against the petitioners. The allegation made in the complaint even if they are taken at their face value and accepted in the entirety do not *prima facie* constitute any offence or make out a case against the accused. The uncontroverted allegations made in the complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the petitioners. The present criminal proceeding is manifestly attended with *mala fide* and/or the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

Petitioner no. 1 is the Project Manager and petitioner no. 2 is the Administration-cum-Incharge of Afcons-Sibmost Company and there is no allegation against them in the complaint for taking any money for giving any contract work. The allegation is only against Navneet Vardhan who is now not working with the said company. It has further been argued that it is a *mala fide* prosecution by the complainant, only to pressurize



the petitioners to give further contract work to the complainant.

From reading of the entire complaint, it appears that dispute, if at all of the complainant is against Navneet Vardhan and not with the petitioners. No offence is made out against the petitioners. 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 impugned order 09.01.2021 passed by learned Chief Judicial Magistrate, Vaishali at Hajipur in Complaint Case No. 985 of 2020 is hereby quashed in the interest of justice with regard to the petitioners only.

(Sandeep Kumar, J)

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