

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.16627 of 2018

Arising Out of PS. Case No.-116 Year-2017 Thana- BIRAUL District- Darbhanga

Suresh Kumar Jha @ Suresh Jha Son of Late Shyam Sundar Jha, resident of village- Bheja, P.S. Madhepur, District- Madhubani, at present posted as Executive Engineer, Rural Works Department, Works Division, Pupri, Sitamarhi.

... .. Petitioner/s

Versus

1. State Of Bihar and Anr
2. Shambhu Bhagat, Son of Late Prabhu Bhagat, Block Program Officer, Biraul Block, District- Darbhanga, Permanent resident of village- Babhangama, P.S.- Virpur, District- Begusarai.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr.Ashok Kumar Choudhary, Sr. Advocate Mr. Anjani Kumar Choudhary, Advocate Mr. Akshansh Ankit, Advocate
For the Opposite Party/s	:	Mr Akhileshwar Dayal, APP

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

8 04-04-2023 Heard the parties.

The following order was passed on 10.10.2018:-

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

Learned counsel for the petitioner submits that this petitioner happens to be the Assistant Engineer in Rural Development Department, Government of Bihar. At present he is Executive Engineer. It is submitted that earlier one FIR (Annexure-1) was lodged in the year 2009 giving rise to Biraul P.S. Case No.105 of 2009 against the petitioner and others for the alleged excess payment made to the Contractor in respect of the scheme mentioned in the FIR. It is submitted that in the said case after investigation police did not find any material to proceed against the petitioner, the final form (Annexure-2) was filed which was accepted and thereby by an order of SDJM, which is annexure-3, the petitioner got discharged and the investigation of the case was closed.

Learned counsel submits that after about



eight years from the date of closure of the first case on an application submitted by the opposite party no.2, the District Magistrate directed for registration of an FIR and for the same allegations in respect of the same scheme the present FIR being Biraul P.S. Case No.116 of 2017 has been registered. Learned counsel submits that it is a case of mala-fide prosecution of the petitioner as the second FIR with respect to the same allegations has been lodged.

In the aforesaid view of the matter, let notice be issued to the opposite party no.2 both by registered cover with A/D as well as ordinary process for which requisites etc. must be filed within one week after Puja Holidays, failing which this application shall stand dismissed without further reference to a Bench.

List this case immediately within a week after receipt of service report.

Call for a legible carbon/Photostat copy of the case diary of Biraul P.S. Case No.116 of 2017 from the court of learned Additional Chief Judicial Magistrate, Biraul, Darbhanga.

In the meantime, further proceeding in Biraul P.S. Case No.116 of 2017 pending in the court of learned Additional Chief Judicial Magistrate, Biraul, Darbhanga as against the petitioner shall remain stayed.”

Shri Ashok Choudhary, learned senior counsel appearing for the petitioner as argued that the then Lokayukt could not have ordered for registration of fresh F.I.R. once the matter was investigated and the petitioner was exonerated and the final form was accepted.

Learned counsel for the opposite party no. 2 has submitted that the petitioner has accepted his guilt as he has deposited the amount in dispute before the Certificate Officer in the certificate proceeding.

Mere deposit of the amount before the Certificate



Officer is no admission of guilt. Once when the police has exonerated the petitioner in a proper investigation, the second F.I.R. for the same offence is not made out.

In that view of the matter, this application is allowed only with regard to the petitioner. The F.I.R. in connection with Biraul P.S. Case No. 116 of 2017 dated 29.03.2017 against the petitioner is hereby quashed.

The F.I.R. in connection with Biraul P.S. Case No. 116 of 2017 dated 29.03.2017 may continue with regard to the other accused.

(Sandeep Kumar, J)

Shishir/Vikas

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