

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.34946 of 2018

Arising Out of PS. Case No.-362 Year-2012 Thana- CHANPATIA District- West Champaran

Dr. Vijay Kumar, Incharge Medical Officer, Primary Health Centre Chanpatia,
son of Late Raghav Sharan, Resident of Village- Chanpatia, P.O. Primary
Health Centre Chanpatia, P.S. Chanpatia, District West Champaran, Bettiah.

... .. Petitioner/s

Versus

The State of Bihar.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Bhola Prasad, Advocate
		Mr. Amarnath Singh, Advocate
		Mr. Subodh Jha, Advocate
For the Opposite Party/s :		Mr. Navin Kumar Pandey, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 14-05-2024

1. The present application has been filed for quashing the order dated 29.09.2016 passed in Tr. No. 2408/16 arises out of Chanpatia P.S. Case No. 362 dated 20.12.2012 as passed by learned Additional Chief Judicial Magistrate-IV, Bettiah, whereby and whereunder the learned Additional Chief Judicial Magistrate-IV, Bettiah was pleased to reject a petition dated 06.08.16 filed u/s 239 Cr.P.C. on behalf of petitioner.

2. Prosecution case in brief is that one Dr. Singeshwar Pd. Mandal submitted his typed petition



before Superintendent of police on 18.12.2012 stating that Assistant Chief Medical Officer, informed him to lodge F.I.R. against the petitioner vide memo no.4724 dated 12.12.2012 against the irregularities committed by the petitioner. Thereafter, the S.P. Betiah directed to S.H.O. Chanpatia to lode F.I.R. and investigate and submit compliance report. On the basis of aforesaid written application, Chanpatia P.S. Case No. 362/12 was registered and a formal FIR was drawn.

3. It appears from the written information that petitioner vide letter no. 153 to 158 dated 17.03.2012 withdrawn Rs. 23,693/-, Rs. 19,645/-, Rs. 13,826/-, Rs. 58,645/-, Rs. 3,22,101/- and Rs. 1,21,434/- respectively, as his salary without consent of his superiors, for different months of 2008 and 2009. It is further alleged that the petitioner accepted a bribe of Rs. 4000/- from the husband of one Kishori Devi, who was working at Health Centre as Nurse for transfer at favourable place. On the basis of aforesaid allegation,



the S.H.O. Chanpatia, lodged a police case, as aforesaid, for the offences as alleged to be committed under Sections 420, 409, 467, 468, 471 of the Indian Penal Code on 20.12.2012.

4. After completion of investigation, Investigating Officer submitted charge-sheet on 04.09.2014 for the offence under Sections 420 and 409 of the Indian Penal Code.

5. It is submitted by learned counsel that from the bare perusal of FIR, nothing appears incriminating, as to suggest that petitioner committed *prima facie* the offences as alleged. It is pointed out that the petitioner was made in-charge DDO of Chanpatia, Primary Health Centre, in furtherance of direction of this Hon'ble Court as passed in Civil Writ Petition No. 7465 of 2012 and in that capacity, he withdrawn his salary. Learned counsel for the petitioner further submitted that departmental proceeding with same charges also initiated against the petitioner, where after proceeding, he was exonerated



from the charges and on this score alone this criminal proceeding is liable to be quashed, because as to established a criminal guilt more strict standard of evidence is required. In support of his submission, learned counsel relied upon the legal report of Hon'ble Supreme Court as reported in the matter of ***P.S. Rajya Vs. State of Bihar*** as reported through ***(1996) 9 SCC***

1. It is submitted that there is no allegation of defalcation of any government money against the petitioner and in view of Hon'ble High Court's direction, dishonest intention of petitioner can also not be gathered from very inception of the occurrence. It is submitted by learned counsel that the allegation *qua* accepting bribe of Rs. 4000/- from the husband of the nurse, namely, Kishori Devi for favourable posting is only to aggravate the allegation. It is also submitted by learned counsel that even the impugned order of rejecting the discharge petition is bad in eyes of law, for the reason that same was appears to be passed without supplying police paper



to petitioner under Section 207 of the Cr.P.C., which is suggesting of the fact that petitioner was not in a position to face all the relevant facts before the trial court in support of his discharge petition. It is also pointed out that no recovery *qua* payment of Rs. 4000/- was made from petitioner. Finally, it is submitted that from the narration of FIR, no case is made out against petitioner, and, as such, the order of cognizance dated 10.04.2015 alongwith impugned order passed by learned trial court rejecting petition of petitioner under Section 239 of the Cr.P.C. is liable fit to be quashed and set aside.

6. In support of his submission, learned counsel relied upon the legal report of Hon'ble Supreme Court in the matter of ***State of Haryana and Ors. Vs. Bhajan Lal and Ors.***, reported in ***1992 Supp (1) Supreme Court Cases 335.***

7. Learned APP in-charge, while opposing the application of quashing submitted that the allegation



of accepting bribe is specific against petitioner.

8. It would be apposite to reproduce relevant part of Paragraph No. 17 of **P.S. Rajya Case (supra)**, which reads as under:-

"17. At the outset we may point out that the learned counsel for the respondent could not but accept the position that the standard of proof required to establish the guilt in a criminal case is far higher than the standard of proof required to establish the guilt in the departmental proceedings. He also accepted that in the present case, the charge in the departmental proceedings and in the criminal proceedings is one and the same. He did not dispute the findings rendered in the departmental proceedings and the ultimate result of it. On these premises, if we proceed further then there is no difficulty in accepting the case of the appellant. For if the charge which is identical could not be established in a departmental



proceedings and in view of the admitted discrepancies in the reports submitted by the valuers one wonders what is there further to proceed against the appellant in criminal proceedings.”

9. It would further be apposite to re-produce para 102 of the ***Bhajan Lal 's case (supra)*** which reads as under:

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an



exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first informant report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of nay offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations



made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent persons can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where 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."

10. In view of aforesaid factual and legal submissions, it appears that petitioner was working as In-charge DDO of Chanpatia Primary Health Centre, in furtherance of the order passed in Civil Writ Petition No. 7465 of 2012, in furtherance of which, District



Magistrate, West Champaran, Bettiah issued a letter on 02.06.2012 to Treasury Officer, Bettiah, West Champaran that the petitioner would remain in-charge DDO of Primary Health Centre, Chanpatia till further order. It further appears that the petitioner exonerated from the departmental proceeding with same set of charges.

11. In view of the matter as position of petitioner as DDO in-charge was tested positively by this Court, in its writ jurisdiction, which is sufficient to suggest that the allegation on its face is not *prima facie* constituting the offence as alleged by any prudent imagination, and, as such, by importing the guidelines as available under guidance nos. 1, 5 and 7 of ***Bhajan Lal's Case (supra)*** the impugned order dated 29.09.2016 passed in Tr. No. 2408/16 read with Chanpatia P.S. Case No. 362 dated 20.12.2012 by learned Additional Chief Judicial Magistrate-IV, Bettiah with all its consequential proceedings *qua* petitioner is



hereby quashed and set aside.

12. It is also made clear that in view of above, the cognizance order dated 10.04.2015 is also hereby set aside/quashed.

13. Hence, this application stands allowed.

14. TCR (Trial Court Records), if any, be returned to learned trial court alongwith the copy of this judgment.

(Chandra Shekhar Jha, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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