

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL MISCELLANEOUS No.36429 of 2015**

Arising Out of PS. Case No.-5 Year-2005 Thana- DUMRAO District- Buxar

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Santosh Sahay, Son of Late Radha Krishna Sahay, resident of Village- Dehari-on-Sone, Police Station- Dehri, District Rohtas, At present posted as Block Slatistical Supervisor Ara P.S. District Bhojpur. ... .. Petitioner/s

Versus

1. The State of Bihar.
2. Kishori Choudhary, Son of Sri Dasrath Choudhary, the then Block Development officer, Dumraon, village and P.S. Dumraon, District- Buxar.  
... .. Opposite Party/s

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**Appearance :**

For the Petitioner/s : Mr. Rajiv Kumar Verma, Sr. Advocate  
Mr. Umesh Kumar Mishra, Advocate

For the Opposite Party/s : Mr. Rana Randhir Singh, APP

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**CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA**  
**ORAL JUDGMENT**  
**Date : 24-06-2024**

1. Heard learned counsel appearing on behalf of the parties.

2. The present application has been filed for quashing the entire criminal proceeding including the First Information Report, relating to Dumraon P.S. case No. 05/2005 registered on 6.1.2005 for offences under Section 409 of the Indian Penal Code on the basis of written report of one kishori Choudhary, the then B.D.O, Dumraon, Section 420 of the Indian Penal Code was added later on vide an order dated 14.9.2009. The above referred proceeding is pending before learned Chief Judicial



Magistrate, Buxar.

3. Prosecution case in brief is that one Santosh Sahay the then Statistical Supervisor has been transferred. He had taken advance in several Schemes but the work was not done. In these schemes, amounts are lying with him which is recoverable. Offence of defalcation of Government amount is made out against him. The District Collector had issued orders for lodging First Information Report against Mr. Sahay for temporary defalcation of Government money vide letter no. 1302/VI-dated 05.11.2004. The following amounts are lying with Mr. Sahay in different schemes.:-

| Sl.No. | Scheme No.                   | Advance    | Cost or work done | Dues against shri Sahay |
|--------|------------------------------|------------|-------------------|-------------------------|
| 1.     | 2.                           | 3.         | 4.                | 5.                      |
| 1      | 17.03.04                     | 1,09,660/- | 61,613/-          | 47,987/-                |
| 2.     | 13.03.04                     | 1,35,280/- | 45,665/-          | 89,615/-                |
| 3.     | 11.02.04                     | 1,69,765/- | 1,41,006/-        | 28,759/-                |
| 4.     | Anjore Scholar ship pension. |            |                   | 1,77,537                |
| Total  |                              |            |                   | 3,43,838/-              |

In these circumstances offence of temporary



defalcation of government money is made out against Mr. Sahay, posted in Shahpur Block.

4. Travelling further with submission as advanced by learned senior counsel Mr. Rajiv Kumar Verma appearing on behalf of petitioner as he was submitted on previous occasion that the investigation in this case completed long back as per his information but charge-sheet till date could not submitted before the learned trial court, reason best known to investigating agency. It is further submitted by Mr. Verma that in terms of annexure-2, of counter affidavit, now no advance money is dues to petitioner. It is further submitted that petitioner was working as Statistical Supervisor and having no role towards any financial or budgetary allocations, and as such, the allegation of defalcation raised against him is having no basis and as such, ingredient of "dishonest intention" is not available as to make out *prima facie* case under Section 409 of the Indian Penal Code and also under Section 420 of the Indian Penal Code. Learned senior counsel relied



upon legal report of Hon'ble Supreme Court as referred in the matter of ***State of Haryana and Ors. Vs. Bhajan Lal and Ors.***, reported in ***1992 Supp (1) Supreme Court Cases 335,***

5. Mr. Rana Randhir Singh, learned APP while appearing on behalf of opposite parties submitted that the para-3 of the counter affidavit wrongly shows an amount of Rs. 4,41,006/-, due to typographical error, which be read as 1,41,006/-.

6. The learned counsel appearing for the State could not satisfactory explained the Annexures- 1 and 2 of the counter affidavit of opposite party no. 2. The B.D.O., Dumraon also could not explain Annexure-2 of the counter affidavit and he accepted before this Court that now there is no dues against this petitioner.

7. S.P., Buxar is also present before this Court and he fairly accepted that investigation of this case was completed in year 2012 itself and due to certain reasons, the charge-sheet could not communicate to learned trial



court till now. It is also stated by him that the copy of case diary is also not available with department.

8. It would be apposite to re-produce para 102 of the ***State of Haryana and Ors. Vs. Bhajan Lal and Ors.***, reported in ***1992 Supp (1) Supreme Court Cases 335***, 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."*

9. Considering the nature of allegation, inordinate and unexplained delay of investigation for about nineteen (19) years and further with the fact that as per Annexure-2 of counter affidavit filed by opposite party no. 2 now there is no dues survives against petitioner, FIR relating to Dumraon P.S. case No. 05/2005 registered on 6.1.2005, along with all consequential proceedings, if any, *qua* petitioner, pending before learned Chief Judicial Magistrate, Buxar are hereby quashed and set aside.

11. The presence of B.D.O., Dumraon and S.P.,



Buxar and I.O. of this case are dispensed with.

12. Let copy of this order be sent to the trial court, without delay.

**(Chandra Shekhar Jha, J)**

veena/-

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|-------------------|------------|
| AFR/NAFR          | NAFR       |
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