

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.40458 of 2015

Arising Out of PS. Case No.-191 Year-2013 Thana- BENIPATTI District- Madhubani

Sudhir Jha @ Sudhir Kumar Jha Son of Sada Nand Jha Resident of Village -
Bankatta, P.S. - Benipatti, District - Madhubani.

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Sanjay Kumar Jha, Advocate

For the Opposite Party/s : Ms.Sangita Sharma, APP

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

- 4 18-04-2024 1. Heard learned counsel for the parties concerned.
2. The petitioner has filed the present application for quashing the order dated 13.05.2015, passed by the learned Judicial Magistrate- 1st class, Madhubani in Trial No. 417 of 2015, arising out of G.R. No. 3060 of 2013, in connection with Benipatti PS case no. 191 of 2013, by which the learned court has dismissed the petition for discharge, filed by the petitioner under Section 239 of Code of Criminal Procedure.
3. The brief facts of the case are that the informant, who is the beneficiary of Indira Awas Yojana, lodged a complaint before the Sub-Divisional Officer, Benipatti, Madhubani dated 27.11.2013 against the petitioner alleging misappropriation/ fraudulent withdrawal of first instalment of Rs. 30,000/- payable to the informant under Indira Awas Yojana



by committing forgery in the postal records. It has further been alleged that in the year 2011, Rs. 30,000/-, by way of first instalment, was sent vide Advice No. 54 to Post Office, Bankatta. The informant was tendered a sum of Rs. 20,000/- only by the petitioner which was refused by him but subsequently, another Postmaster, after taking two photos and identification of the informant, tried to pay a sum of Rs. 10,000/- only and upon refusal by the informant, he was being threatened that he would pay bribe of Rs. 10,000/- to the officers connected with the affairs of the petitioner for payment of amount towards Indira Awas Yojana and shall close the entitlement of the petitioner for all time to come.

4. The Sub-Divisional Officer, Benipatti, Madhubani forwarded the complaint of the informant to the police vide letter no. 2400 dated 07.12.2013 and on the basis of the informant's letter, a formal F.I.R. has been lodged on 09.12.2013 bearing F.I.R. No. 191 of 2013. The Police, after investigation, submitted charge-sheet, upon which cognizance was taken.

5. Learned counsel for the petitioner submits that when the first instalment of the informant was received at the post office, he was not available in the locality and when he came back, he started demanding the amount allotted to him but



the amount was not paid by the petitioner due to insufficient amount available in the Post Office. Therefore, he requested the informant to come back after some time. Ultimately, the amount was paid to the informant, after lodging of the First Information Report, when the amount was made available in the Post Office.

6. He further submits that the amount was paid after some delay due to the fact that the informant was not available in the village, when the amount was being distributed. He next submits that no amount has been misappropriated by the petitioner by manipulating the records of the Post Office. The allegation in the First Information Report that petitioner being the Postmaster was tendering Rs. 20,000/- out of Rs. 30,000/- as first instalment and it was the second Postmaster, who wanted to pay a total amount of Rs. 10,000/- is not correct. Learned counsel also submits that the petitioner filed discharge petition stating entire facts but the same has been dismissed without appreciating the materials on record.

7. I have heard learned counsel for the parties. From perusal of the allegation made in the First Information Report, it appears that the informant is the beneficiary of Indira Awas Yojna and the allegation against the petitioner is that he being the Postmaster of the concerned Post Office, misappropriated



the first instalment of the amount under Indira Awas Yojana, payable to the informant. After investigation, police submitted charge-sheet, upon which, cognizance of the offence was taken against the accused/ petitioner under Sections 467, 468, 471, 419, 420, 406, 409 of the Indian Penal Code.

8. From perusal of the discharge petition filed under Section 239 Cr.PC., it appears that the petitioner has taken the ground for discharge that no case under the aforesaid sections are made out against the petitioner. The police has not investigated the case properly, inasmuch as the wife of the informant has herself stated during investigation that her husband was not present at the time of opening of the Indira Awas Account. The two Advices, which were sent to the concerned Post Office show that Account No. 337625 runs in the name of Kala Devi related to Ganguli Post Office and Account No. 338865, which runs in the name of informant, was opened on 14.10.2011, in which, after opening of account, no transaction was made till 05.06.2014. The petitioner has neither misappropriated the amount nor forcibly obtained the thumb impression of the informant on the memory register, as no amount was sanctioned in the account by the Head Post Office, wrong account numbers were put in the advice sent by the



Block Development Officer, Benipatti, Madhubani.

9. From perusal of the impugned order dated 13.05.2015, it appears that that learned Magistrate, after going through the materials available on record, such as advice slip, further statement of informant, supervision note and other documentary evidence has come to the conclusion that there is sufficient materials against the petitioner to frame charge and accordingly, rejected the discharge petition dated 07.04.2015.

10. Considering the aforesaid facts in totality and the conclusion arrived at in the impugned order dated 13.05.2015, by the learned court of Judicial Magistrate 1st class, Madhubani, I do not find any merit in the present application and accordingly, the same stands dismissed.

(Anil Kumar Sinha, J)

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