

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.42147 of 2018

Arising Out of PS. Case No.-250 Year-2015 Thana- SARAIYA District- Muzaffarpur

Anil Kumar Choudhary S/o Kamta Choudhary, R/o Vill.- Bhatauliya, Block
and P.S.- Saraiya, District- Muzaffarpur.

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Sanjay Kumar @ S.K., Advocate

For the Opposite Party/s : Mr.Tapeshwar Sharma, APP

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

- 2 01-05-2024 1. Heard learned counsel for the parties concerned.
2. The present application, under Section 482 of the Code of Criminal Procedure, has been filed for quashing the order dated 16.05.2018, passed by learned Judicial Magistrate-1st class, Muzaffarpur in Trial No. 226 of 2018, corresponding to G.R. No. 1803 of 2015, whereby the discharge petition dated 17.08.2017, preferred by the petitioner, has been rejected.
3. The prosecution story, in brief, as disclosed in the First Information Report, is that the informant; a Block Education Officer, Saraiya, District-Muzaffarpur submitted a written complaint before the Officer-in-charge, Saraiya Police Station stating therein that the District Programme Officer, Primary Education and Sarva Shiksha Abhiyan, Bihar Education Project, Muzaffarpur had directed to lodge an F.I.R. against the



petitioner, the then Chairman of School Education Committee, Village-Bhatauliya, Block-Saraiya, District- Muzaffarpur and one Raj Narayan Singh, the then Headmaster, Upgraded Middle School, Bhatauliya, Village-Pokhraira, Block-Saraiya, District- Muzaffarpur stating that upon inquiry, it has come to light that these two persons have not completed the assigned duty of construction of School building and have embezzled/ misappropriated the Government funds allocated for the purpose of construction of building.

4. On the basis of the aforesaid complaint, Saraiya PS case no. 250 of 2015 was registered against the petitioner on 20.07.2015 for the offence punishable under Section 409 r/w Section 34 of the Indian Penal Code.

5. The Investigating Officer filed charge-sheet dated 31.07.2016 against the petitioner and one another, upon which, cognizance has been taken by learned Sub-Divisional Judicial Magistrate, West, Muzaffarpur on 16.11.2016 for the offences alleged in the F.I.R.

6. The petitioner filed a discharge petition on 17.08.2017 before the learned Judicial Magistrate 1st class, Muzaffarpur, which was rejected by the impugned order.

7. Learned counsel for the petitioner submits that the



petitioner was elected Chairman of Vidyalaya Shiksha Samiti on 07.07.2006. In the year 2006-07, a project of construction of School building was taken up by the School and the petitioner was assigned the duty to construct the School building. There was a fund namely Vidyalaya Shiksha Samiti Vikas Kosh. Any withdrawal from the said fund was done jointly by Secretary of the Samiti and Headmaster of the School and the petitioner being the Chairman of the Committee has no concern with the said Vikas Kosh. After being assigned the work, the petitioner started construction and Headmaster of the School used to provide fund according to necessity and the petitioner used to spend the fund and used to submit voucher and bills accordingly. In the meanwhile, the Headmaster of the School was suspended on 28.12.2007 and thereafter, present case has been lodged against the petitioner and one Raj Narayan Singh with ulterior motive.

It has further been submitted that the petitioner filed an application before the Zila Lok Shikayat Nivaran (District Public Grievance Redressal) Officer, Muzaffarpur on 26.09.2016 i.e. after lodging of the F.I.R., who got the matter inquired and after thorough inquiry and measurement of the work done, the Redressal Officer came to the conclusion that the



allegation against the petitioner is completely false and fabricated. Thereafter, District Programme Officer, Primary Education, vide letter dated 26.12.2016, directed the Block Education Officer, Saraiya, Muzaffarpur to withdraw the case filed against the petitioner. Accordingly, the Block Education Officer, Saraiya, Muzaffarpur filed an application in the court of S.D.J.M. (West), Muzaffarpur with a prayer to discharge the petitioner. In view of the aforesaid circumstances, there exists no ground of presumption that the petitioner has committed any offence. Learned counsel submits that the petitioner is innocent and has falsely been implicated in the present case on the basis of perfunctory inquiry and investigation.

8. I have heard learned counsel for the parties and have perused the impugned order. The allegation against the petitioner made in the First Information Report was investigated by the Police and charge-sheet was submitted against the petitioner along with one another under Section 409/34 of the Indian Penal Code. During the course of investigation, petitioner did not take any steps complaining against the investigation i.e. in the manner, in which the investigation was done by the Investigating Officer. The learned Magistrate found *prima facie* materials against the petitioner and took cognizance of the



offence alleged against the petitioner. Merely because the Public Grievance Redressal Officer has given some findings in favour of the petitioner, it cannot be made a ground for discharge of criminal charges. The learned Magistrate, while considering the materials available on record including the statements of the witnesses recorded during course of investigation, arrived at the finding that *prima facie* material/ evidence is available against the petitioner for framing of charges against him.

It is a settled law that at the time of framing of charge, the Court has to look at the materials placed before it and determine whether a *prima facie* case is made out or not. The Court is not required to consider the evidentiary value of the evidence at that stage including the admissibility or reliability of evidence. The Court cannot held mini trial at the time of framing of charge and also is not required to consider the defense of the accused person.

9. In the circumstances, I do not find any infirmity in the order impugned and accordingly, the present petition stands dismissed.

(Anil Kumar Sinha, J)

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