

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.43357 of 2015**

Arising Out of PS. Case No.-37 Year-2005 Thana- MALI District- Aurangabad

Upendra Nath Singh, son of late Sahdeo Singh Resident of Village- Kaithi P.s
Obra District Aurangabad. Petitioner/s

Versus

1. The State of Bihar.
2. The Block Development officer, Nabinager, District Aurangabad.
... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Ramakant Sharma, Sr. Advocate
Mr. Santosh Kumar Pandey, Advocate
For the Opposite Party/s : Mr. Anil Kumar Singh No. 1, APP

**CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT**

Date : 10-04-2024

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

2. The present application has been filed for
quashing the order dated 25.08.2015 passed by learned
Judicial Magistrate 1st Class, Aurangabad, Bihar in G.R.
No. 2119/2005, Trial No. 340/2015 (Arising out of Mali
P.S. Case No. 37/2005, C.I.S. No. 7640/2013), where
learned trial court has rejected the discharge petition
filed by the petitioner under Section 239 of the Code of
Criminal Procedure.

3. Prosecution case in brief is that the Block
Development Officer, Nabinagar lodged a written report



for recording a FIR alleging therein, inter alia that as per order of the Collector's court passed in Misc. Case No. 9/2005 (Suryanarain Singh Vs. State), after hearing Balchand Paswan, Mukhiya, Sori Gram Panchayat, wherein it was directed to launch prosecution against Balchand Paswan, Mukhiya, Sheo Kumar Sao, Panchayat Sewak and the then Junior Engineer for committing financial irregularity. The prosecution was in effect against the Mukhiya, Panchayat Sewak and the then Junior Engineer for defalcation of government money, which was withdrawn for completion of 16 schemes in number, which was not completed and money was misappropriated and defalcated.

4. In the background of aforesaid factual allegation, a Mali P.S. Case No. 37 of 2005 was instituted for the offences under Section 406 of the Indian Penal Code, naming petitioner as one of the co-accused, where police after investigation submitted charge-sheet, for which the cognizance by learned



Judicial Magistrate was taken accordingly.

5. It appears that prior to this petition, petitioner moved a quashing petition also for the quashing of cognizance order through Cr. Misc. No. 33421 of 2010, which has been disposed with liberty to raise all relevant points at relevant stage vide order dated 16.02.2015, and, thereafter, the petitioner raised the issues at the time of framing of charge, which was refused to appreciate through impugned order dated 25.08.2015. Hence, the present quashing petition.

6. It is submitted by learned senior counsel Mr. Ramakant Sharma, appearing for the petitioner that implication of petitioner appears only for sole reason that he was Junior Engineer, posted at Sori Block and he alongwith main co-accused persons, namely, Balchand Paswan and Sheo Kumar Sah committed embezzlement of public money. It is also pointed out that the aforesaid sole ground for involvement of petitioner appears completely false on its face, in view of Annexure-3,



where at the relevant point of time, co-accused Shyam Bihari Mahto was Junior Engineer of Sori Branch not this petitioner. Annexure-3 is order issued from office of Block Development Officer, Navi Nagar through letter No. 588 dated 01.08.2003. It is further submitted by learned senior counsel that State failed to explain said fact through counter affidavit, i.e. Annexure-3, dated 11.03.2024.

7. In support of his submission, learned senior counsel relied upon a legal report of Hon'ble Supreme Court in the matter of ***Harshendra Kumar D Vs Rebatilata Koley and Ors.*** reported in ***(2011) 3 SCC 351***, wherein it has been held that reliable document showing non involvement of petitioner can be considered at the stage of quashing. Learned senior counsel further relied upon the legal report of Hon'ble Supreme Court in the matter of ***Kanchan Kumar Vs State of Bihar*** reported in ***(2022) 9 SCC 577***. Reliance was also made upon in the matter of ***State of Haryana and Ors. Vs.***



Bhajan Lal and Ors., reported in ***1992 Supp (1) Supreme Court Cases 335.***

8. Learned APP while opposing the application submitted that paragraphs of case diary under reference made through impugned order does not shows the involvement of petitioner specifically, rather it is stating only by way of designation i.e. the then "Junior Engineer". Learned APP failed to supply any reason to counter Annexure-3 as discussed above.

9. It would be apposite to reproduce relevant Paragraph Nos. 24 and 25 of ***Harshendra Kumar D Vs. Rebatilata Koley and Ors. (supra)***, which reads as under:-

24. *In Awadh Kishore Gupta [(2004) 1 SCC 691 : 2004 SCC (Cri) 353] this Court while dealing with the scope of power under Section 482 of the Code observed: (SCC p. 701, para 13)*

"13. It is to be noted that the investigation was not complete and at that stage it was impermissible for the High Court to look into materials, the acceptability of which is essentially a matter for trial. While exercising jurisdiction under Section 482 of the Code, it is not permissible for the court to



act as if it was a trial Judge.”

25. *In our judgment, the above observations cannot be read to mean that in a criminal case where trial is yet to take place and the matter is at the stage of issuance of summons or taking cognizance, materials relied upon by the accused which are in the nature of public documents or the materials which are beyond suspicion or doubt, in no circumstance, can be looked into by the High Court in exercise of its jurisdiction under Section 482 or for that matter in exercise of revisional jurisdiction under Section 397 of the Code. It is fairly settled now that while exercising inherent jurisdiction under Section 482 or revisional jurisdiction under Section 397 of the Code in a case where complaint is sought to be quashed, it is not proper for the High Court to consider the defence of the accused or embark upon an enquiry in respect of merits of the accusations. However, in an appropriate case, if on the face of the documents — which are beyond suspicion or doubt — placed by the accused, the accusations against him cannot stand, it would be travesty of justice if the accused is relegated to trial and he is asked to prove his defence before the trial court. In such a matter, for promotion of justice or to prevent injustice or abuse of process, the High Court may look into the materials which have significant bearing on the matter at prima facie stage.”*

10. It would also be apposite to reproduce relevant Paragraph No. 15 of **Kanchan Kumar**



(supra), which reads as under:-

15. Summarising the principles on discharge under Section 227CrPC, in *Dipakbhai Jagdishchandra Patel v. State of Gujarat* [*Dipakbhai Jagdishchandra Patel v. State of Gujarat*, (2019) 16 SCC 547 : (2020) 2 SCC (Cri) 361] , this Court recapitulated : (SCC p. 561, para 23)

"23. At the stage of framing the charge in accordance with the principles which have been laid down by this Court, what the court is expected to do is, it does not act as a mere post office. The court must indeed sift the material before it. The material to be sifted would be the material which is produced and relied upon by the prosecution. The sifting is not to be meticulous in the sense that the court dons the mantle of the trial Judge hearing arguments after the entire evidence has been adduced after a full-fledged trial and the question is not whether the prosecution has made out the case for the conviction of the accused. All that is required is, the court must be satisfied that with the materials available, a case is made out for the accused to stand trial. A strong suspicion suffices. However, a strong suspicion must be founded on some material. The material must be such as can be translated into evidence at the stage of trial. The strong suspicion cannot be the pure subjective satisfaction based on the moral notions of the Judge that here is a case where it is possible that the accused has committed the offence. Strong suspicion must be the suspicion which is premised on some material which commends itself to the court as



sufficient to entertain the prima facie view that the accused has committed the offence."

8. It would further 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.”

10. In view of aforesaid factual and legal submission, as the Annexure-3, clearly indicates that petitioner was not “Junior Engineer” for Sori Block at relevant point of time, hence, the entire implication is *prima facie*, nothing but a malacious prosecution without having any basis, which is fairly covered under guideline nos. 1, 5 and 7 of ***Bhajan Lal,s Case (supra)***, accordingly, impugned order dated 25.08.2015 passed by learned Judicial Magistrate, 1st Class, Aurangabad, Bihar is hereby set aside and quashed *qua* petitioner with all its consequential proceedings.

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

(Chandra Shekhar Jha, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19.04.2024
Transmission Date	19.04.2024

