

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.51431 of 2023

Arising Out of PS. Case No.-190 Year-2016 Thana- GOPALPUR District- Bhagalpur

Ramnandan Prasad Singh Son Of Late Brahmdev Singh Managing Director Of Ramnan Construction Company Pvt. Ltd., Resident Of Village And P.O.- Mohanpur Via Rajaura, P.S.-Muffassil Thana, Begusarai, District-Begusarai. At Present Resident Of Mohalla-Lohia Nagar, Ward No.-28, P.O.-Suhird Nagar, P.S.-Town Thana, District-Begusarai, Pin-851218.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Er. Virendra Prasad, then the Executive Engineer, Flood Control Division, Naugachia (Bhagalpur) Bhagalpur

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Manish Sahay
For the Opposite Party/s : Mr. Anil Kumar Singh No. 1

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

6 19-09-2024 Heard learned counsel for the petitioner and learned APP for the State.

2. This is an application for quashing of the F.I.R. including the entire criminal prosecution against the petitioner only registered as of Gopalpur/ Rangra P.S. Case No. 190 of 2016 punishable under Section 188, 467, 468, 471, 406, 409/34 of the Indian Penal Code.

3. As per the prosecution case, the informant i.e. Executive Engineer has alleged that two work were allotted to the petitioner's company, and it was found that petitioner's company had committed irregularities in the work. He further



alleged that petitioner's company and others were found guilty for committing breach of contract because said work were not performed as per the specification of the department.

4. It has been submitted by learned counsel for the petitioner that no offence is made out against the petitioner as for any Breach of Contract which was entered into between the petitioner and the Government of Bihar and therefore, F.I.R. cannot be filed against him. He also submits that the present case is a *mala fide* one and only to wreak vengeance upon the petitioner this F.I.R. has been lodge by the informant.

5. Learned counsel for the State submits that after reading of the entire F.I.R, criminal offence is made out against the petitioner and because of the substandard work, the present F.I.R was filed by the informant.

6. I have considered the submissions of the parties.

7. The case of the petitioner is that he entered into a contract with the Government of Bihar. As per the terms of the contract of Clause 16, if any work is found unsound, imperfect or unskillful or with materials of inferior description then the contractor was duty bound to rectify, remove and reconstruct the same.

8. The Clause 16 of the contract reads as follows:-



Clause 16 :- Action in case, work not done as per specification

All works under or in course of execution or executed in pursuance of the contract shall at all times be open and accessible to the inspection and supervision of the Engineer-in- Charge, his authorised subordinates in charge of the work and all the superior officers, officer of the Quality Control Organisation of the Department and of the Cabinet (Technical) Vigilance, and the contractor shall, at all times, during the usual working hours and at all other times at which reasonable notice of the visit of such officers has been given to the contractor, either himself be present to receive orders and instructions or have a responsible agent duly accredited in writing, present for that purpose. Orders given to the Contractor's agent shall be considered to have the same force as if they had been given to the contractor himself.

If it shall appear to the Engineer-in-Charge or his higher authority or his authorised subordinates in charge of the work or to the Cabinet (Technical) Vigilance or his subordinate officers, that any work has been executed with unsound, imperfect, or unskillful workmanship, or with materials or article provides by him for the execution of the work which are unsound or of a quality inferior to that contracted or otherwise not in accordance with the contract the contractor shall, on demand in writing which shall be made within the period specified in schedule - F of contract data from the Engineer-in-Charge specifying the work, materials or articles complained of notwithstanding that the same may have been passed, certified and paid for forthwith rectify, or remove and reconstruct the work so specified in whole or in part, as the case may require or as the case may be, remove the materials or articles so specified and provide other proper and suitable materials or articles at his own charge and cost. In the event of the contractor failing to do so within a period specified by the Engineer-in-Charge in his demand aforesaid, then the contractor shall be liable to pay compensation at the same rate as under clause 2 of the contract (for non-completion of the work in time) for this default.

In such case the Engineer-in-Charge may not accept the item of work at the rates applicable under the



contract but may accept such items at reduced rates as the competent authority may consider reasonable during the preparation of on account bills or final bill if the item is so acceptable without detriment to the safety and utility of the item and the structure and incidental items rectified, or removed and re-executed at the risk and cost of contractor. Decision of the Engineer-in-Charge to be conveyed in writing in respect of the same will be final and binding on the contractor.

9. This civil dispute has been given a colour of criminal dispute and the present F.I.R. is also *mala fide* in view of the law laid down by the Hon'ble Supreme Court in the case of ***State of Haryana Vs. Ch. Bhajan Lal & Others*** reported in ***AIR 1992 SC 604***.

10. Accordingly, this application is allowed and the F.I.R. vide Gopalpur / Rangra P.S. Case No. 190 of 2016 dated 10.09.2016 registered under Section 188, 467, 468, 471, 406, 409/34 of the Indian Penal Code including the entire criminal prosecution against the petitioner is hereby quashed.

(Sandeep Kumar, J)

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