

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.23115 of 2016

Arising Out of PS. Case No.-52 Year-1993 Thana- BHAGWANPUR District- Begusarai

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Upendra Prasad Singh @ Upendra Singh son of Late Ram Charitar Singh,
resident of village Dahia, P.S. Bhagwanpur, District Begusarai.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mrs. Archana Sinha, Advocate
		Mr. Alok Kumar @ Alok Kr Shahi, 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 : 30-04-2024

1. This application preferred for quashing of the order dated 14.03.2016 passed by the S.D.J.M., Begusarai in Bhagwanpur P.S. Case No. 52/1993 by which the discharge Petition of the petitioner dated 13.01.1998 filed under Section 239 Code of Criminal Procedure (in short "Cr.P.C.") has been rejected.

2. The prosecution case as disclosed from the written report of the informant forming the basis of the



FIR is that there had been irregularities in the Execution of three Schemes out of total ten schemes in Dahiya Gram Panchayat under Bhagwanpur Block for the year 1989-90. In Scheme no. 5, 1989-90 the original estimated amount was Rs. 35,200/- for construction of the 1700 ft. road the extent of Rs. 5128/- was done, whereas the bill for Rs. 13,257/- was prepared after measurement. A sum of Rs. 8129/- was paid in excess to the agent. Again a sum of Rs. 7000/- was paid as advance to agent Bhushan Choudhary on 04.05.1990, but no work was done as against it. Thus a total sum of Rs. 15,129/- was misappropriated and embezzled. In Scheme no. 8/89-90 sanction was given for estimated an amount of Rs. 49,600/- for construction of road measuring 950 ft. in length. A sum of Rs. 40,000/- was advanced to agent Sri Ramanuj Choudhary which was against the rule. At estimate 25% amount would have advanced to the agent, the estimated amount. On spot verification it was found that the work to the extent of



Rs. 600/- was only done at the spot, whereas the bill was prepared by J E for Rs. 21,785/- and the payment was made by the Mukhiya of the said amount and thus there had been misappropriation of Rs. 15,786/-. In Scheme no. 9/89-90, the estimated amount was at Rs. 49,200/- and agent Ramanand Choudhary was paid a sum of Rs. 2500/- as advance. It appears that JE Ram Shresth Choudhary had prepared the estimate without spot verification though the measurement entered into the MB is correct. It appears that the JE had prepared the incorrect estimate with an intention to misappropriate the government amount. On verification it has been found that in the aforesaid Schemes a sum of Rs. 55914/- has been misappropriated by the acting Mukhiya, Agent JE Assistant Engineer and Executive Engineer, jointly. Bhagwanpur P.S. Case No. 52/93 under Sections 166, 408, 409, 420 and 120B of Indian Penal Code (in short "IPC") was registered.

3. Learned counsel Mrs. Archana Sinha



appearing for the petitioner submitted that the learned Judicial Magistrate, while rejecting the petition for discharge as moved under section 239 of Cr.P.C., failed to appreciate the letter dated 26.09.1991 bearing no. 1111 as issued by then D.M., Begusarai that no such defalcation was made by petitioner and others in Dahiya Panchayat of Bhagwanpur Block, District- Begusarai. It is pointed out that said letter specifically suggests that the entire allegation is baseless despite having such letter, the present FIR was lodged in year 1993 only. It is submitted that petitioner is Mukhiya and he only alongwith Gran Sewak issued the cheque in issue for sum of Rs. 49,200/- for different works executed under Jawahar Rojgar Yojana. It is pointed out that he is not the beneficiary and in view of the aforesaid letter, which was not considered by the learned Jurisdictional Magistrate, the present impugned order is not sustainable under the eyes of law and same is fit to be quashed and set aside.



4. Learned APP Mr. Rana Randhir Singh, while opposing the application submitted that the said letter was also taken into consideration by investigating agency during investigation.

5. Considering the letter of District Magistrate, Begusarai, bearing no. 1111 dated 26.06.1991, which is Annexure-III of the present petition, which clearly speaks that all allegations including petitioner is baseless, the impugned order dated 14.03.2016 *qua* petitioner with all its consequential proceedings, arising thereof as passed in connection with Bhagwanpur P.S. Case No. 52/1993, pending before learned S.D.J.M., Muzaffarpur, is hereby quashed and set aside.

6. It is made clear that the cognizance order dated 11.03.1997 *qua* petitioner, in view of aforesaid, also stands quashed/set aside.

7. Hence, this application stands allowed.

8. TCR (Trial Court Records), if any, be



returned to learned trial court alongwith the copy of this
judgment, immediately.

(Chandra Shekhar Jha, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	01.05.2024
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