

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.34276 of 2016

Arising Out of PS. Case No.-75 Year-2009 Thana- NAVINAGAR District- Aurangabad

1. Md. Abdul Qaish Khan and Anr S/o Late Md. Hanif Khan, Resident of Village- Rajpur, P.S.- Kutumba, District-Aurangabad at present posted In-charge, Head Master, Utkormit Middle School Shirpur, Nabinagar.
2. Dharendra Kumar Singh S/o Late Surya Prasad Singh, Resident of Village- Bolace, P.S.- Nabinagar, District- Aurangabad.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Shailesh Kumar Singh, Advocate
For the Opposite Party/s : Smt. Sangeeta Sharma, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

- 7 15-02-2024 1. Heard learned counsel for the petitioners and learned counsel for the respondents.
2. The present quashing petition has been preferred against the order dated 04.03.2016 passed in G.R. No. 1141 of 2009 and Trial No. 927 of 2016 (arising out of Nabinagar P.S. Case No. 75 of 2009), where learned Judicial Magistrate, 1st Class, Aurangabad pleased to take cognizance for the offences punishable under sections 409/420/34 of the Indian Penal Code against the petitioners.
3. The complainant/Opposite Party No. 2, despite valid service failed to join the present court proceedings.
4. The present F.I.R. was lodged on the basis of



information supplied by Narendra Kumar Dubey, Junior Engineer, Bihar Education Project, Aurangabad. Crux of F.I.R. suggest on its face that ongoing upper floor construction in upgraded middle school of Shivrinar, Block-Nabi Nagar school premises suddenly collapsed due to insufficient water and its storage on constructed wall. It further appears that fund of first installment of Rs. 5,25,000/- already allotted to school. Petitioner no. 1 is the headmaster, whereas petitioner no. 2 is technical supervisor deputed over there on behalf of the Bihar Education Project to supervise ongoing construction work.

5. Learned counsel for petitioner submitted that it appears from the face of F.I.R., itself, that there is no allegation regarding criminal breach of trust despite of the fact that money allotted for construction was with petitioner no. 1. It is submitted that allegation regarding negligence appears very general and omnibus and same is not regarding using of sub-standard materials for ongoing construction. It is further submitted that it can be said safely that if F.I.R. be taken into entirety any, *prima facie*, case as alleged made out against petitioner 1 and 2. It is also submitted that inquiry report suggest that as local laborers were not engaged, they might damage the construction work. It is further pointed out from the technical



report itself, as work of lintel/slab was under progress and was yet to complete the present occurrence took place. Learned counsel, while pressing the inquiry report no. 363 dated 02.06.2009, which is the part of F.I.R. itself, submitted that neither any negligence appears to be attributed to petitioners, which may suggest to cause falling of walls of school building, nor any dishonest intention or misappropriation of entrusted property on their part.

6. In support of his submission learned counsel relied upon the report of Hon'ble Supreme Court in the case of **N. Raghavender Vs. State of Andhra Pradesh**, as reported in **(2021) 18 SCC 70**, where learned counsel in particular pressed para no. 45, 46, 47 and 48, which are re-produced below for the sake of better understanding of the legal position:-

45. Section 409 IPC pertains to criminal breach of trust by a public servant or a banker, in respect of the property entrusted to him. The onus is on the prosecution to prove that the accused, a public servant or a banker was entrusted with the property which he is duly bound to account for and that he has committed criminal breach of trust. (See *Sadhupati Nageswara Rao v. State of A.P.* [*Sadhupati Nageswara Rao v. State of A.P.*, (2012) 8 SCC 547 : (2012) 3 SCC (Cri) 979 : (2012) 2 SCC (L&S) 638]).



46. The entrustment of public property and dishonest misappropriation or use thereof in the manner illustrated under Section 405 are a *sine qua non* for making an offence punishable under Section 409IPC. The expression “criminal breach of trust” is defined under Section 405IPC which provides, inter alia, that whoever being in any manner entrusted with property or with any dominion over a property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property contrary to law, or in violation of any law prescribing the mode in which such trust is to be discharged, or contravenes any legal contract, express or implied, etc. shall be held to have committed criminal breach of trust. Hence, to attract Section 405IPC, the following ingredients must be satisfied:

46.1. Entrusting any person with property or with any dominion over property.

46.2. That person has dishonestly misappropriated or converted that property to his own use.

46.3. Or that person is dishonestly using or disposing of that property or wilfully suffering any other person so to do in violation of any direction of law or a legal contract.

47. It ought to be noted that the crucial word used in Section 405IPC is “dishonestly” and therefore, it presupposes the existence of *mens rea*.



In other words, mere retention of property entrusted to a person without any misappropriation cannot fall within the ambit of criminal breach of trust. Unless there is some actual use by the accused in violation of law or contract, coupled with dishonest intention, there is no criminal breach of trust. The second significant expression is “misappropriates” which means improperly setting apart for ones use and to the exclusion of the owner.

48. No sooner are the two fundamental ingredients of “criminal breach of trust” within the meaning of Section 405IPC proved, and if such criminal breach is caused by a public servant or a banker, merchant or agent, the said offence of criminal breach of trust is punishable under Section 409IPC, for which it is essential to prove that:

(i) The accused must be a public servant or a banker, merchant or agent;

(ii) He/She must have been entrusted, in such capacity, with property; and

(iii) He/She must have committed breach of trust in respect of such property.

7. It would be further apposite to reproduce the paragraph no. 102 of the Apex Court decision in the case of *State of Haryana and Others vs. Bhajan Lal and Others* 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.”

8. Learned APP appearing on behalf of State opposes the application.

9. In view of aforesaid factual and legal discussions and on perusal of F.I.R. and inquiry report as discussed, which is also part of F.I.R. it nowhere, appears that petitioners were under “dishonest intention” or misappropriate any entrusted property as to attract a *prima facie*, case under Section 409 and 420 of IPC against them. Accordingly to continue with present proceeding would nothing but abusing the process of law and therefore order dated 04.03.2016 passed in G.R. No. 1141 of 2009 and Trial No. 927 of 2016 (arising out of Nabinagar P.S. Case No. 75 of 2009) with all its consequential proceeding pending before Court of learned Judicial Magistrate, 1st Class,



Aurangabad is hereby quashed and set aside.

10. The application stands allowed.

11. Let a copy of this order sent to learned Trial court,
immediately.

(Chandra Shekhar Jha, J.)

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