

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.57065 of 2015

Arising Out of PS. Case No.-140 Year-2011 Thana- KISHANPUR District- Supaul

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Smt. Sultana Perveen wife of Md. Sagir Alam, resident of village and P.O.-
Kadampura, P.S.- Kishanpur, District- Supaul. Petitioner/s

Versus

The State of Bihar. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Rajesh Kumar Jha, Advocate
Mr. Prem Kumar Jha, Advocate
Mr. Mukesh Mishra, Advocate
Ms. Meenakshi Priya, Advocate
For the Opposite Party/s : Mr. Akbar Ali, APP

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 01-03-2024

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

2. The present petition has been preferred for quashing the impugned order dated 18.11.2014 passed by learned J.M. 1st Class, Supaul in connection with Kishanpur P.S. Case No. 140/11 dated 28.09.2011 (G.R. No. 1204/11) instituted for the offences under Sections 409 and 420 of the Indian Penal Code (in short 'I.P.C.').

3. After considering the materials available on record, as collected during the course of investigation, the discharge petition dated 20.01.2014 of petitioner was rejected by learned trial court as filed under Section 239 of Cr.P.C.

4. As per the case of prosecution, the Child Development Project Officer (C.D.P.O.) Kishanpur, in the light



of letter no. 968 dated 21.09.2011, issued by District Programme Officer (D.P.O.), Supaul, issued a letter no. 272 dated 28.09.2011 to the Officer-in-charge of Kishanpur Police Station directed therein to lodge FIR against petitioner, namely Smt. Sultana Perveen, wife of Md. Sagir Alam, who was working with Anganbari Centre No. 4, (Code No. 114), alleging thereof that she misappropriated the amount of 'Poshahar', remuneration and other funds by way of adopting fraudulent and fictitious ways.

5. It appears that on the basis of aforesaid letter of C.D.P.O., Kishanpur (Supaul), Kishanpur police registered a case against petitioner, which has been registered as Kishanpur P.S. Case No. 140/11 dated 28.09.2011, whereafter investigation, police submitted charge sheet under Sections 409 and 420 of the Indian Penal Code.

6. The learned Judicial Magistrate took cognizance for the offences under Sections 409 and 420 of the Indian Penal Code. The said cognizance order was never challenged by petitioner.

7. It is submitted by learned counsel appearing on behalf of petitioner that the standard of material/evidence as to find out a *prima facie* case for taking cognizance is different



qua standard of materials/evidence as to establish a *prima facie* case for framing charge. Both cannot be equated with same level of materials/evidence. In background of aforesaid submission, learned counsel submitted that after submission of charge sheet, which was submitted on 30.04.2012, the Government of Bihar initiated recovery against petitioner under Bihar and Orissa Public Demand Recovery Act, 1914. It is submitted that during said proceedings, the petitioner was exonerated, where all the villagers and beneficiaries stated specifically that they received 'Poshahar' and other materials timely. It further appears that the amount in issue was not found transferred in the personnel/official bank account of the petitioner. It is pointed out that the withdrawal from committee was possible only under joint signatures, where signature of chairman was mandatory. It is submitted that all such facts were brought on record before the learned trial court while hearing petition under Section 239 of Cr.P.C. but the impugned order is completely silent over all materials and the petition dated 20.01.2014 was rejected by learned trial court in a very mechanical manner without taking note of facts surfaced during proceedings as concluded under Bihar and Orissa Public Demand Recovery Act, 1914 as discussed above. In support of submission, learned counsel



relied upon the report of Hon'ble Supreme Court as reported in the matter ***Dilawar Balu Kurane Vs. State of Maharashtra***, reported in ***(2002) 2 SCC 135***, where para-12 specifically pressed being relevant part of the legal report, which runs as under:-

“12. Now the next question is whether a prima facie case has been made out against the appellant. In exercising powers under Section 227 of the Code of Criminal Procedure, the settled position of law is that the Judge while considering the question of framing the charges under the said section has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out; where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained the court will be fully justified in framing a charge and proceeding with the trial; by and large if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully justified to discharge the accused, and in exercising jurisdiction under Section 227 of the Code of Criminal Procedure, the Judge cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court but should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial [See Union of India Versus Prafulla Kumar Samal.”

8. Learned counsel also referred the legal report of this Court as reported in the matter of ***Cr. Misc. No. 17036 of 2015 dated 04.12.2015*** as reported in the matter of ***Pradeep***



Kumar Bhagat @ Pradeep Bhagat Vs. The State of Bihar & Anr., reported in 2016(2)PLJR 820.

9. From aforesaid factual and legal discussions, it appears that no reason was assigned while rejecting the petition of petitioner under Section 239 dated 20.01.2014.

10. Accordingly, impugned order dated 18.11.2014 passed by learned J.M. 1st Class, Supaul in connection with Kishanpur P.S. Case No. 140/11 dated 28.09.2011 (G.R. No. 1204/11) is hereby quashed and set aside with a direction to learned trial court to pass a reasoned order in accordance with law by taking note of materials available on record, within one month from the date of receipt/production of a copy of this order.

11. The application stands allowed with aforesaid observations.

12. TCR (Trial Court Record), if any, be sent back to learned trial court along with the copy of this order.

(Chandra Shekhar Jha, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	04.03.2024
Transmission Date	04.03.2024

