

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.67906 of 2023

Arising Out of PS. Case No.-434 Year-2023 Thana- LAHERIYASARAI District- Darbhanga

1. AWADHESH KUMAR Son of Sri Dineshwar Yadav R/o vill - Jagdishpur Chakka, P.S. - Manigachhi, Distt. - Darbhanga
2. Dhirendra Mishra Son of Late Kedar Mishra R/o vill - Bansara, P.S. - Raiyam, Distt. - Darbhanga
3. Dharmandra Kumar Jha Son of Sri Madhu Kant Jha R/o vill - Jadupatti, P.O. - Jadupatti, P.s. - Ghanshyampur, Distt. - Darbhanga
4. Dhiraj Kumar Jha Son of Ram Narayan Jha R/o vill - Dath, P.S. - Ghanshyampur, Distt. - Darbhanga
5. Lalit Narayan Paswan Son of Vishnu Deo Paswan R/o vill - Kanokhar, P.S. - Manigachhi, Distt. - Darbhanga
6. Hari Mohan Yadav Son of Mahesh Kant Yadav R/o vill - Kopi Trimuhani, P.s. - Baheri, Distt. - Darbhanga
7. Sita Devi Wife of Shambhu Paswan R/o vill - Bahadurpur, P.S. - Bahadurpur, Distt. - Darbhanga
8. Sujata Kumari Wife of Sri Bhuneshwar Lal Das R/o vill - Bajitpur, P.S. - Bahadurpur, Distt. - Darbhanga
9. Kajal Devi Wife of Ful Babu Lal Dev R/o vill - Manortha, P.S. - Ashok Paper Mill, Dist. - Darbhanga
10. Rinki Kumari Wife of Sanjay Kumar Chaupal R/o vill - Panta, P.s. - Sonki, Distt. - Darbhanga
11. Anju Devi Wife of Vipin Sahni R/o vill - Mustafapur, P.S. - Bishanpur, Distt - Darbhanga
12. Ranjana Kumari D/o Lal Bahadur Sah R/o vill - Korauni, P.S. - Singhwara, Distt. - Darbhanga
13. Aruna Devi @ Aruna Kumari Wife of Vinay Kumar Jha R/o vill - Kathra, P.S. - Manigachhi, Distt. - Darbhanga
14. Musarrat Fatma @ M. Fatma Wife of Habibullah Hashmi R/o vill - Kazi Bahera, P.S. - Jale, Distt.- Darbhanga
15. Kulsum Begam Wife of Qamrul Rayam R/o vill - Baghras, P.S. - Kiratpur, Distt. - Darbhanga
16. Amar Nath Sharma Son of Udneshwar Sharma R/o vill - Habi Bhauor, P.S. - Bahera, Distt. - Darbhanga. All Petitioners are elected members of Darbhanga Zila Parishad, Distt. - Darbhanga

... .. Petitioner/s

Versus

1. The State of Bihar through the Director General of Police, Bihar, Patna Bihar
2. The Inspector General of Police, Darbhanga Range, Darbhanga Bihar
3. The Senior Superintendent of Police, Darbhanga, Distt. - Darbhanga Bihar
4. The Superintendent of Police City, Darbhanga, Distt. - Darbhanga Bihar
5. The Deputy Superintendent of Police, Darbhanga Sadar, Distt. - Darbhanga



Bihar

6. The Station Head Officer, Laheriasarai Police Station, Distt. - Darbhanga Bihar
7. The Deputy Development Commissioner-cum-chief Executive Officer, Zila Parishad, Darbhanga Distt. - Darbhanga, Bihar
8. Manoranjan Kumar Son of Sri Ambika Chaudhary R/o vill - Bhadoghat, P.O. - Basantpur Ramni, P.S. - Waris Nagar, Distt. - Samastipur, Presently Posted as Fisheries Extension Officer, Darbhanga, Distt. - Darbhanga

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Awnish Kumar
For the Opposite Party/s : Mr.Rajendra Nath Jha
For the Zila Parishad : Mr. Vivek Prasad

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

4 01-07-2024 Heard the parties.

2. The present application has been filed for quashing the FIR Laheriasarai P.S. Case No. 434 of 2023 dated 12.09.2023, in respect whereof the Opposite-party no.8 had filed a written report before the Station Head Officer of Laheriasarai Police- Station on 12.09.2023 attributing offences under Sections 147, 149, 186, 188, 189, 341, 342, 323, 332, 353, 465, 427, 504 and 506 of the Indian Penal Code and Section 3 of the Prevention of Damages to Public Property Act, 1984.

3. The prosecution case, in short, *inter alia* is that on 12.09.2023, the informant Manoranjan Kumar, Opposite-party no.8 filed a written report before the Station Head Officer of Laheriasarai Police Station alleging therein *inter alia* that he was deputed as Magistrate by the sub- Divisional Magistrate,



Sadar Darbhanga vide his letter no. 953 dated 09.09.2023 for the purposes of general meeting of Darbhanga Zila Parishad scheduled to be held on 11.09.2023 and accordingly he was present in the meeting. During the course of meeting some elected members of Zila Parishad namely Swatantra Kumar Jha, Amit Kumar Thakur, Awadhesh Kumar, Dharmandra Kumar Jha, Dhirendra Mishra, Dhiraj Kumar Jha Lalit Narayan Paswan, Hari Mohan Yadav, Sita Devi, Sujata Kumari, Kajal Devi, Rinki Kumari, Musarrat Fatma and Kulsum Begum were creating disturbance in the peaceful conduct of the meeting in accordance with law.

It is further alleged that during the course of nuisance, Sri Swatnatra Kumar Jha tore government documents kept with Presiding Officer and caused loss of public property and while he was trying to persuade the members to maintain peace, Sri Amit Kumar Thakur and other members of Zila Parishad misbehaved with him and he was not allowed to discharge his functions in the capacity of Magistrate.

It is also alleged that above named members of District Board had started *Dharna* in front of the Presiding Officer by creating their group and they had deliberately violated the established norms of conduct of proceeding of an



Institution Zila Parishad.

It is alleged that Sri Swatantra Kumar Jha and Dharendra Mishra were creating pressure upon Chief Executive Officer and the Additional Chief Executive Officer to record their proposal in the proceeding book according to their will and despite request of the Chief Executive Officer, above named, two members tried to snatch the proceeding book.

It is further alleged that after the meeting was over and while the Chief Executive Officer was coming out of the meeting hall, Sri Swatantra Kumar Jha was not permitting the Chief Executive Officer to come out of the meeting hall and effort was made for her detention therein. It is only on the intervention of the police that the Chief Executive Officer and other officers come out from the meeting hall.

It is also alleged that after their departure Swatantra Kumar Jha sat on Dharna outside the office and he was demanding for maintaining the proceeding book in the meeting itself, however, despite intervention of Sub- Divisional Officer Darbhanga Swatantra Kumar Jha and others had created disturbance to the Chief Executive Officer in discharge of her official duty and members had come in front of the vehicle of Chief Executive Officer while he was returning from the office.



4. Learned counsel for the petitioners submits that on the basis of the aforesaid written report of Laheriasarai Police drew up a formal First Information Report and registered a case being Laheriasarai P.S. Case No.434 of 2023 attributing offences under Sections 147, 149, 186, 188, 189, 341, 342, 323, 332, 353, 465, 427, 504 and 506 of the Indian Penal Code and Section 3 of the Prevention of Damages to Public Property Act, 1984.

5. Learned counsel for the petitioners further submits that the petitioners are innocent having committed no offence whatsoever as alleged in the First Information Report and they have been falsely implicated in the present case.

6. Learned counsel submits that the institution of the present First Information Report is glaring example of executive interference in the statutory function of a body of elected representative.

7. Section -69 of the Bihar Panchayat Raj Act, 2006 defines the power, functions and duties of Adhyaksha and Up-Adhyaksha which reads as follows :-

69. Powers, Functions and duties of the Adhyaksha and Upadhaksha -

(1) The Adhyaksha shall -



(a) Convene the preside over and conduct meeting of Zila Parishad

(b) Exercise supervision and control over the Chief Executive Officer and through him all officers and other employees of the Zila Parishad and the officers and employees whose services may be placed at the disposal of the Zila Parishad by the State Government.

(c) Exercise such other powers, perform such other functions and discharge such other duties as the Zila Parishad may by general resolution direct or as the Government may by its rules made in this behalf prescribe;

(d) Exercise overall supervision over the financial and executive administration of the Zila Parishad and place before the Zila Parishad all question connected there with which shall appear to him to require its orders and for this purpose may call for records of the Zila Parishad; and

(e) Have power to accord sanction up to a total sum of rupees one lakh in a year for the purpose of providing immediate relief to those who



are affected by natural calamities in the district.

Provided that the Adhyaksha shall place at the next meeting of the Zila Parishad for its ratification the details of such sanctions.

(2) The Up-Adhyaksha shall In the absence of Adhyaksha of the Zila Parishad preside over the meetings of the Zila Parishad;

Exercise such powers and perform such duties of the Adhyaksha as the Adhyaksha may from time to time, and subject to the rules as may be prescribed delegate to him by order in writing; and

Pending the election of an Adhyaksha or during the absence of the Adhyaksha from the district or by reason of the Adhyaksha being on leave for a period exceeding 15 days exercise the powers and perform the duties of the Adhyaksha.

Provided that as soon as the Adhyaksha returns from absence, he will resume the exercise of all such powers and shall start performing all the functions and discharging all the duties of the Adhyaksha.

8. It is also submitted that even a cursory glance of the provisions contained under Section 74 of the Bihar Panchayat Raj Act, 2006 (hereinafter referred to as the “Gram Panchayat



Act”) defines the general power of Zila Parishad, it would be crystal clear that Zila Parishad is the Apex Body of grass root democracy /Local Self Government for rural areas in the District and it has been entrusted with all powers to do all acts necessary for or incidental to carrying out the function entrusted or delegated to it and in particular and without prejudice to forgoing powers to exercise all powers specified under this Act.

9. Learned counsel argued that though in Darbhanga District, the Panchayat elections were held and concluded by the end of December, 2021 and more than 21 months has gone thereafter, however no District Planning Committee had been constituted for the District and therefore, all the Local Bodies operating in the District were preparing their plan according to their own sweet will but totally unguided by the District Planning Committee Conduct of Business Rules, 2006. Even the authority of the District Administration sitting at the help of affairs has not shown their interest in the constitution of District Planning Committee for development of Darbhanga District and has given free hand to all Local Self Institution to prepare their different schemes according to their own sweet will.

10. It is next submitted that so far Darbhanga District Board is concerned, the Chairman of District Board is the



Chairman of District Planning Committee but no interest has been shown by the Chairman of District Board in connivance with the Deputy Development Commissioner to take steps for constitution of District Planning Committee and the above mentioned two Officers of Zila Parishad were siphoning out the entire fund of District Board even when there is no budget of the District Board for the financial year 2022-23 and 2023-24.

11. He submits that the District Board was constituted in December, 2021 and till date seven meetings of Zila Parishad were convened, however, the only agenda for all the meetings of Zila Parishad was selection of Development Schemes for different territorial constituencies and nothing else.

12. It is also submitted that whenever there was a meeting of Zila Parishad, the elected members, who have been made accused in the First Information Report were protesting the illegal move of Adhyaksha and the Chief Executive Officer as to how the funds were being released from Zila Parishad Fund when there is no budget of Zila Parishad either during the Financial Year 2022-23 or 2023-24, however the Adhyaksha and Chief Executive Officer were not listening the objection raised by the elected members.

13. Learned counsel for the petitioner submits that a



petition was filed by the petitioner no.2 before the Chairman and the Chief Executive Officer of Zila Parishad on 08.09.2023 and a copy thereof was also sent to the District Magistrate, Darbhanga and the Divisional Commissioner, Darbhanga Division, Darbhanga, when a notice was circulated by the Chief Executive Officer to all the members of Zila Parishad vide his letter no.761 dated 30.08.2023 requesting the members to attend the meeting of Zila Parishad on 11.09.2023 but again only for selection of the scheme from the funds of 15th Finance Commission.

14. It is also submitted that the petitioners would like to bring on record the relevant proceedings of the Zila Parishad, Darbhanga dated 07.11.2022 and more particularly its Agenda No.7, according to which an undertaking was given by the Chairman in the meeting of Zila Parishad that she would convene a special meeting of Zila Parishad for sanction of supplementary budget for the financial year 2021-22 and for consideration of budget of the financial year 2022-23. The financial year 2022-23 has come to an end on 31.03.2023, however, neither any special meeting has been convened by the Chairman for sanction of budget for the financial year 2022-23 nor any supplementary budget for the financial year 2021-22



has been placed by the Chairman in any meeting of Zila Parishad for its approval.

15. He submits that without there being any provision in the budget in the meeting dated 11.09.2023, the Chief Executive Officer had placed before the Zila Parishad, a long list of schemes which the Chairman and Chief Executive Officer have sanctioned for different territorial constituencies under Darbhanga Zila Parishad, according to their whims and pressure was created upon the members to accept the list so that it can be uploaded on e-gramswaraj portal so that those schemes can be implemented even when in absence of any budgetary provision in this regard and in the absence of preparation of detail project report by the District Panchayat Planning Committee.

16. It is submitted on behalf of the petitioners that it is also relevant to state that the schemes listed in the list produced by the Chairman and Chief Executive Officer has never been sanctioned by the Zila Parishad, yet the list was prepared and the amount for completion schemes has also been mentioned against the name of the schemes but without any project report. This would clearly show that how the Chairman and Chief Executive Officer are mercilessly misappropriating the funds of Darbhanga Zila Parishad when without preparing the estimate of



a development schemes, they are sanctioning the amount for its completion.

17. It is also submitted that the State Government in the Department of Panchayati Raj has published a booklet in order to assist the public representatives and employees of the Panchayati Raj Institution. Paragraph no.9 of the aforesaid booklet categorically mentions that in the meeting of Zila Parishad, the draft of District Panchayat Development Schemes shall be placed for approval and it should be approved by the Zila Parishad after due consideration and it is only thereafter that the development schemes, so approved by the Zila Parishad would be uploaded on e-gramswaraj portal and only thereafter it should be implemented.

18. He also submits that up till now, no District Planning Committee has been constituted for the District of Darbhanga, yet the funds of local Authorities namely Zila Parishad, Panchayat Samiti, Gram Panchayat, Municipal Corporation Municipal Councils and Municipal Panchayats are being spent by the Executive Officers of Local Bodies in connivance with the elected Chairpersons of local bodies and few members, who are in the group of either the Chairperson or the Executive Officers others are being ignored, if they are



insisting for strict compliance of legal provision before withdrawing any amount from the funds of concerned local authority.

19. The petitioners would cite the example of their own Zila Parishad. A bare perusal of the meeting of Zila Parishad dated 11.09.2023, it would be evidently clear that in the territorial jurisdiction of 25 members of Zila Parishad, schemes involving huge money has been sanctioned by the Respondent nos. 6 and 8 whereas in 17 territorial constituencies, the scheme has been sanctioned for Rs. 8 Lacs, Rs. 9 Lacs and Rs.10 Lacs respectively.

20. It is also submitted that not even a single scheme has been sanctioned for Territorial Constituency Nos.10/01 and 42-15/01 whereas in the territorial constituency of Chairman the value of total schemes sanctioned runs in more than crores but this has not been reflected in the list and in the territorial constituency of Deputy Chairman though 14 different schemes has been sanctioned however amount has not been mentioned in the list.

21. Learned counsel for the petitioners submits in the meeting dated 11.09.2023, when the Deputy Development Commissioner -cum- Chief Executive Officer had produced the



list of different development schemes and the members were asked to approve the list in the meeting that the members started their protest and they were raising their questions after questions about the manner in which District Board was functioning in their District. At any cost, they were not permitting the Deputy Development Commissioner to get it passed and they were persuading the Chief Executive Officer to record the proceeding of meeting dated 11.09.2023 in the meeting hall itself and closed the proceeding before the meeting is over, however, the Deputy Development Commissioner was not prepared for that.

22. He submits that looking to the protest of the members and her defeat in the meeting, the Chairman of Zila Parishad and the Deputy Development Commissioner were leaving the place of meeting but without declaring the meeting to be over and without preparing the proceedings of the meeting in the meeting hall itself against which the members again protested and this time they were pressurizing the Chief Executive Officer to prepare the proceeding and close it in the meeting itself before leaving the meeting hall.

23. Learned counsel for the petitioners further submits that looking to the situation and the serious protest of the matter, the Chief Executive Officer asked the informant to call the



police force and as per the direction of Chief Executive Officer, the informant called huge number of police force even inside the meeting hall for the purposes of threatening the members protesting against the illegal move of the Chief Executive Officer but since the Chief Executive Officer was also adamant not to maintain the proceeding book in the meeting hall itself and for its closing, the aggrieved members sat on *Dharna* in front of Chamber of Chief Executive Officer at whose instance all illegal acts are being done in Darbhanga Zila Parishad in connivance with Adhyaksh.

24. He also submits that since the petitioner no.2 has complained against the illegal withdrawal of money by the Deputy Development Commissioner from Zila Parishad fund, therefore, on the instructions of Deputy Development Commissioner, the informant has filed the present First Information Report against the petitioners alleging various act of cognizable offences.

25. It is also submitted that the petitioners are elected members of a democratically constituted Institution of a Local Self Government as a Member of the Local Self Government , they have every right to protest against the illegal movement of the Officers and if they have done it in the meeting of Zila



Parishad, they have not committed any offence.

26. Learned counsel also submits that if they were sitting on *Dharna* in front of Chamber of Deputy Development Commissioner for legitimate purposes and they were demanding for closing the proceeding book in the meeting itself after mentioning the agendas considered and passed for which the Deputy Development Commissioner was not prepared, the petitioners have committed no offence.

27. Learned counsel for the petitioners further submits that if the petitioners were raising the issues of misappropriation of fund, in the meeting of Zila Parishad without there being any budget of Zila Parishad for the two financial years, but the Deputy Development Commissioner and the Chairman were not prepared to listen to their objections, if they had raised their voice in the House, they had committed no offence.

28. Learned counsel also submits that the members are elected from their constituencies to raise voice of public importance in the meeting of the elected bodies and if they were demanding for equal distribution of development funds to all the territorial constituencies constituting Darbhanga Zila Parishad after preparation of plan for development of Darbhanga District, by the District Planning Committee, they have committed no



offence.

29. It is further submitted that from the allegations made in the First Information Report and the facts stated hereinbefore, it is evidently clear that by lodging the First Information Report against the petitioners, the informant in connivance with the Deputy Development Commissioner have made attempt to strangle the democratic Institution and democratic norms, so that office bearers sitting at the helm of affairs can easily take away the public money to their home and the elected members of the House may not come in their way.

30. Learned counsel for the State has opposed the application and has submitted that the petitioners had created a ruckus in the meeting and did not allow the meeting to proceed and therefore, the offences as alleged in the F.I.R. under the relevant provisions is made out against the petitioners.

31. I have considered the submissions of the parties.

32. From the reading of the F.I.R., it appears that the petitioners are elected members of the Zila Parishad and they were protesting against the alleged highhandedness of the Chairman and the Deputy Development Commissioner.

33. The right of protest exercised by the elected members of the Zila Parishad cannot be termed as a criminal act



and the petitioners cannot be prosecuted for a protest inside the meeting hall. In my opinion, no offence is made out against the petitioners.

34. This application is allowed.

35. Accordingly, the FIR i.e. Laheriasarai P.S. Case No. 434 of 2023 registered for the offences under Sections 147, 149, 186, 188, 189, 341, 342, 323, 332, 353, 465, 427, 504 and 506 of the Indian Penal Code and Section 3 of the Prevention of Damages to Public Property Act, 1984 is hereby quashed.

(Sandeep Kumar, J)

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