

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1715 of 2023

Arising Out of PS. Case No.-313 Year-2023 Thana- BAHADURPUR District- Darbhanga

Avinash Kumar, Son of Shree Manhar Gopal, Resident of Village- Kharowa,
P.S. Jhanjharpur, Dist. Madhubani

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Home Department, Government of Bihar, Patna.
2. The District Magistrate, Darbhanga, Laheriasarai.
3. The Senior Superintendent of Police, Darbhanga, Laheriasarai.
4. The District Agriculture Officer, Darbhanga.
5. Sub-Divisional Agriculture Officer, Sadar Darbhanga.
6. Block Agriculture Officer, Bahadurpur, District- Darbhanga.

... .. Respondents

Appearance :

For the Petitioner	:	Mr. Y.C. Verma, Senior Advocate Mr. Madhav Raj, Advocate
For the Respondents	:	Mr. Deepak Kumar, AC to GP-4

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

3 02-01-2024 Heard Mr. Y.C. Verma, learned Senior Counsel

assisted by Mr. Madhav Raj, learned counsel for the petitioner

and Mr. Deepak Kumar, learned AC to GP-4 for the State.

2. The petitioner in the present case is seeking the
following reliefs:-

“A. A writ in the nature of CERTIORARI or
any other appropriate writ/s, order/s,
direction/s quashing the First Information
Report of Bahadurpur P.S. Case No. 313 of
2023 instituted for offence under sections 420,
406 and 409 of the Indian Penal Code
instituted on the report of one Vishwanath
Choudhary.

B. A writ in the nature of MANDAMUS or any other appropriate writ/s, order/s, direction/s commanding the respondents for the following:-

i) To hold that the allegation does not constitute any cognizable offence and the police has no power to entertain, register and proceed with the investigation of the case.

ii) To restrain the respondent from proceeding with the aforesaid case, taking any coercive step for his arrest and attaching his properties envisage under section 82 and 83 of the Code of Criminal Procedure.

C. To any other relief/s to which the petitioner is found entitled to.”

3. The first information report as contained in Annexure ‘3’ to the writ application alleges that one Shiv Kumar Singh of village Jivanpatti in the Panchayat Rambhadrapur, Block- Bahadurpur, District- Darbhanga brought a complaint before the Public Grievance Redressal Officer, Darbhanga in which he alleged that the Block Development Officer, Bahadurpur had disbursed crop loss compensation in the financial year 2015-16 to Shri Bhola Singh son of Shri Jharilal Singh, Uma Devi wife of Bhola Singh, Gopal Singh son of Bhola Singh, Ranjana Devi wife of Gopal Singh, Suman Kumar Singh son of Gopal Singh, who all belong to the same and one family and this compensation was paid on the basis of

same and one zamabandi. According to the informant, the allegations made by said Shri Shiv Kumar Singh was got examined and the District Agriculture Officer, Darbhanga sent his report to the Sub-Divisional Agriculture Officer in which he confirmed the allegations. The Sub-Divisional Agriculture Officer found that all the beneficiaries belong to the same and one family. It was also found that there was no application for crop compensation for and on behalf of the daughter-in-law and grandson of Shri Bhola Singh, but in the payment order which has been signed by the Block Development Officer, the name of daughter-in-law and grandson are mentioned which is illegal. The Sub-Divisional Agriculture Officer also found that the list of beneficiaries were not recommended by the *Anushrawan Samiti/Nigrani Samiti*. The wrong payment made to those persons were confirmed by the Block Development Officer, Bahadurpur vide his Letter No. 449 dated 25.03.2023. He also informed that certificate cases have been recommended to realize the wrongly paid amount from the beneficiaries.

4. According to the FIR, the then Halka Karmchari, Block Agriculture Co-ordinator, the then Block Agriculture Officer and the Block Development Officer (the petitioner) had been involved in making wrong payments. In view of what had

transpired in course of inquiry, on the direction of the Commissioner, Darbhanga Division, Darbhanga-cum-Divisional Public Grievance Redressal Officer, the FIR has been lodged.

5. Mr. Y.C. Verma, learned Senior Counsel has raised the following grounds for quashing of the FIR:- (i) there is a delay of about 6-7 years in lodging of the FIR. The allegation relates to the year 2015 whereas the FIR has been lodged in the year 2023; (ii) in a case of the present nature, a preliminary inquiry was required before lodging of the FIR but in this case no preliminary inquiry has been held; (iii) the Public Grievance Redressal Officer has proceeded to call for an inquiry report on the basis of a private complaint and then the present FIR has been lodged without seeking permission of the Head of the Department which was a must in view of the Circular No. 6211 dated 09.06.2008 issued by the State Government.

6. In the case of present nature, it may at best be a case of administrative lapse and no criminal liability may be fastened upon the petitioner.

7. In this case, sanction under Section 197 Cr.P.C. would also be required which has not been opted.

8. Learned Senior Counsel has further relied upon the following judgments of the Hon'ble Supreme Court:- (i) **P.**

Sirajuddin, ETC. VS State of Madras, ETC. reported in AIR 1971 SC 520 to submit that in this case, the Hon'ble Supreme Court had been pleased to quash the first information report when it was found that the same was not lodged in accordance with law and as no preliminary inquiry was conducted before lodging of the first information report; (ii) **Shashikant Vs. Central Bureau of Investigation and Others** reported in AIR 2007 SC 351 (paragraph '21'). It is submitted that in this case, once again the Hon'ble Supreme Court reiterated the views expressed in **P. Sirajuddin** (Supra).

9. Further reliance has been placed on the judgment of the Hon'ble Apex Court in the case of **S.N. Sharma Vs. Bipen Kumar Tiwari and Others** reported in AIR 1970 SC 786 to submit that in a case of malafide prosecution, the Writ Court would be competent to exercise its constitutional power to quash the first information report. In his case, the present case is not a case of bonafide prosecution of the petitioner, if not malafide prosecution in the facts of the present case.

10. On the other hand, Mr. Deepak Kumar, learned AC to GP-4 for the State submits that on a bare reading of the first information report, it would appear that the petitioner being the Block Development Officer had signed the payment order

which facilitated payment to at least two persons who had not made any application for crop compensation. It is further submitted that if the allegations contained in the FIR are found true after investigation, a prima-facie case would be made out against the petitioner. It is submitted that the present case is not one of those cases in which without adding or subtracting anything out of the FIR, it may be safely said that no case is made out against the petitioner.

11. It is submitted that the FIR itself reveals that before taking a final decision to lodge a first information report in the present case, the Divisional Commissioner who is heading the concerned Division has himself examined the materials. The District Agriculture Officer had conducted an inquiry and the same was again analyzed by the Divisional Agriculture Officer and only after being satisfied with the materials which came in course of inquiry, the FIR has been lodged.

12. It is submitted that the plea of delay in lodging of the FIR and that a preliminary inquiry was not conducted in the matter are not relevant in the facts of the present case where after an inquiry by responsible officers of the District, a decision has been taken to lodge the FIR.

13. Learned counsel for the State further submits that

so far as seeking permission from the highest authority is concerned, even that part has been taken care of inasmuch as the Divisional Commissioner has himself taken a view and his views are based on the materials which were found in course of inquiry by the District Agriculture Officer and Sub-Divisional Agriculture Officer. Thus, no fault may be found in the direction issued by the Divisional Commissioner to lodge the FIR.

14. It is further submitted that the submission of learned Senior Counsel that it may at best be a case of administrative lapse and no criminal liability may be fastened, is a premature submission. The investigation of the case is still going on and in an appropriate case, it is well-settled that besides action for administrative lapse, even a criminal proceeding may be initiated.

15. At this stage, merely FIR has been lodged and it has been well-settled by the Hon'ble Supreme Court in the Constitutional Bench Judgment of **Lalita Kumari Vs. Government of Uttar Pradesh and Others** reported in **(2014) 2 SCC 1** that mere lodging of FIR would not amount to making someone an accused unless the investigation is complete and prima-facie materials are found against him. Thus, at this stage, this Court in exercise of its power under Article 226 of the

Constitution of India may not curtail the investigation of the case. As regards sanction under Section 197 Cr.P.C., learned counsel submits that sanction for prosecution under Section 197 Cr.P.C. would be considered only at appropriate stage and presently for purpose of investigation alone, no sanction is required.

16. On the judgments of the Hon'ble Supreme Court, it has been pointed out that in the case of **P. Sirajuddin** (Supra), the facts were unprecedented which has been noticed by the Hon'ble Supreme Court in paragraph '17' of the judgment. In the said case, the Hon'ble Supreme Court was dealing with an order of the Hon'ble High Court which had refused interfering with the framing of charge against the petitioner. That is not the stage in this case. It is submitted that there is nothing on the record to demonstrate that it may be a case of malafide prosecution, hence, this is not a fit case to interfere with in exercise of its power under Article 226 of the Constitution of India.

17. Having heard learned Senior Counsel for the petitioner and learned counsel for the State as also on perusal of the records, this Court finds force in the submission of learned counsel for the State. On going through the first information

report, it may be noticed that there are specific allegations that this petitioner had signed the payment vouchers. There are also allegations that the list of the beneficiaries were not recommended by the members of the *Anushrawan Samiti/Nigrani Samiti*. Whether these allegations are correct or not cannot be decided by this Court at this stage. The matter is still under investigation. The petitioner wants that this Court should exercise its extraordinary writ jurisdiction to quash the first information report at this stage, however, this Court is of the considered opinion that in the facts of the present case, this Court cannot come to a safe conclusion that even if allegations are found true, no case would be made out against the petitioner.

18. In such circumstance, this Court would not entertain the present writ application for quashing of the FIR at this stage. Let the investigation be completed within a reasonable period. The submissions pressed on behalf of the petitioner would be open to him to be taken at appropriate stage if the occasion so arises.

19. This writ application is dismissed.

(Rajeev Ranjan Prasad, J)

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