

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 71974 of 2019

Arising Out of PS. Case No.-354 Year-2019 Thana- MAKHDUMPUR District- Jehanabad

AWANI KANT DWIVEDI S/o Rangnath Dwivedi Resident of Village- Thana
Road Near Dardha Pool kutiya per, Jehanabad, P.O. Jehanabad, P.S.-
Jehanabad, District- Jehanabad.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Managing Director, Bihar State Co- Operative Marketing Union Ltd.
Biscomaun, Patna Bihar
3. Sri Dinesh Chandra Singh, Chief Engineering Services, Biscomaun, Patna.
Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Manish Kumar

For the Opposite Party/s : Mr.Umeshanand Pandit

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 14-05-2024

1. At the outset, learned counsel for the petitioner submitted that he be permitted to amend the prayer portion as to quash the order of cognizance also which was taken subsequently, after filing of this petition, on 30.01.2022 for the offences punishable under Section 409 of the I.P.C. by taking a different note of findings of investigations, as the petitioner upon investigation was exonerated by investigating agency.



2. Accordingly, learned counsel for the petitioner is permitted to make necessary correction in prayer portion during the course of the day itself and same be read as amended.

3. This application is being preferred for quashing the F.I.R registered under Makhdumpur P.S. Case No. 354 of 2019 on dated 08.08.2019 u/s 409 of I.P.C. lodged by Dinesh Chandra Singh, Chief Engineering Services, Biscomaun, Patna.

4. The prosecution case as per the F.I.R. filed by the informant namely Dinesh Chandra Singh, Chief Engineering Services, Biscomaun, Patna that the accused person namely Awani Kant Dwivedi, who was an Assistant Store Manager-cum-Incharge, Farmer Service Center, Makhdumpur, Jehanabad has misappropriated the selling amount of Government Fertilizer of Rs. 73,677/- (Seventy Three Thousand Six Hundred Seventy Seven Only) by not depositing the same in the government account of Biscomaun in his capacity of a



public servant and therefore committed the Criminal Breach of Trust.

5. It is submitted by the learned counsel appearing for the petitioner that without any involvement of petitioner, the present false case was registered against him. It is submitted that there was no any misappropriation of the selling amount of the Government fertilizer as alleged for Rs. 73,677/- rather it was deposited by same very date i.e., on 31.07.2019, in local Biscomaun Branch at Makdumpur, which was operational in Madhya Bihar Gramin Bank/Dakshin Bihar Gramin Bank, Makhdumpur. It is submitted that as petitioner along with other co-worker/staff went on strike against mismanagement of the institution, the petitioner along with other co-worker/staff were implicated falsely with present case. It is pointed out that knowing the fact that the account as alleged had already deposited with local branch of Biscomaun on 31.07.2019 itself, police exonerated petitioner. It is submitted that without



having any cogent material, in a very mechanical manner the learned trial court took cognizance against petitioner for the offence under section 409 of the I.P.C. and as such he is facing the trauma of criminal proceeding since last 5 years for nothing. It is submitted by learned counsel that the petitioner be compensated accordingly for unnecessary facing the trauma of criminal proceeding. In support of the his submission as referred above, the learned counsel also relied upon the report of ***State of Haryana and Others vs. Bhajan Lal and Others reported in 1992 Supp (1) Supreme Court Cases 335.***

6. Learned counsel, Mr. Rakesh Kumar appearing for Biscomaun, while arguing through counter affidavit dated 11.09.2022 submitted that the present FIR in issue was lodged against the petitioner due to mistake of fact, as on 31.07.2019, itself the amount in issue i.e., Rs. 73,667/- was deposited on 31.07.2019 , in account of local account of Biscomaun as available in



Madhya Bihar Gramin Bank/Dakshin Bihar Gramin Bank, Makhdumpur Branch. It is pointed out that as petitioner was under obligation to advance the deposit report to the headquarter regarding deposition at local level, which was not forwarded by him therefore, out of misconception, the present FIR was lodged, which was not lodged intentionally with harassing attitude.

7. It would be appropriate to reproduce the paragraph no. 102 of the Apex Court decision in the case of ***Bhajan Lal Case (supra)***, 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 any 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. In view of the aforesaid legal and factual submissions and by taking note of the fact that amount alleged as per FIR was already deposited on same very day with Biscomaun negating any defalcation as alleged, on its face, which also appears affirmed by opposite party



no. 2 through counter affidavit as filed on behalf of the opposite party no. 2 on 11.09.2022.

9. In view of aforesaid, no case as alleged made out against the petitioner, accordingly, the F.I.R registered under Makhdumpur P.S. Case No. 354 of 2019 on dated 08.08.2019 with all its consequential proceedings, *qua*, petitioner is hereby quashed and set aside.

10. Hence, this application stands allowed.

11. TCR (Trial Court Records), if any, be returned to learned trial court alongwith the copy of this judgment.

12. It appears from the fact of this case that the petitioner suffered trauma of criminal proceeding for long five years for no wrong. Any monetary compensation can not compensate such trauma, however, opposite party no. 2 is directed to compensate the petitioner for a sum of Rs. 1,00,000/- (One Lakh rupees) within one month from the date of receiving this order.



13. At this juncture, it is pointed out by opposite party no. 2 that the bank details of the petitioner be provided to him, today itself, so that the compensatory cost as imposed by this Hon’ble Court be reimbursed at its earliest.

14. Accordingly, learned counsel for the petitioner is directed to provide the bank details to Opposite Party No. 2 within a week

(Chandra Shekhar Jha, J)

Sudha/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	17.05.2024
Transmission Date	17.05.2024

