

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.18790 of 2025

Arising Out of PS. Case No.-93 Year-2009 Thana- CHARPOKHARI District- Bhojpur

Sushma W/O Sushil Kumar R/o Rental Flat No. 268, Kankarbagh, P.S.-
Kankarbagh, District- Patna, Bihar

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Rana Vikram Singh, Adv. Mrs. Rasika, Adv. Ms. Jyoti Singh, Adv. Mr. Janmejay Giridhar, Adv. Ms. Priti, Adv.
For the Opposite Party/s	:	Mr. Anil Kumar, Adv.

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 13-05-2025

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

2. The present petition is being filed on behalf of the petitioner for quashing of FIR bearing Charpokhari P.S. Case No. 93 of 2009 registered under sections 419, 420, 409, 467, 468, 471 and 477A of Indian Penal Code dated 31.08.2009 against the petitioner and other co-accused persons.

3. The prosecution case in brief, as it appears from the letter dated 24.08.2009 issued by the District Magistrate, Bhojpur, Ara which is the basis of FIR that petitioner along-with other co-accused persons, defalcated



money allocated under the *Indira Awas Yojana* to the respective beneficiaries. It is also alleged that illegal commissions were received from the beneficiaries and passbooks of some of the beneficiaries were illegally confiscated by the *Mukhiya Pati* and other members of *Panchayat Samiti* in lieu of illegal gratification. Further, it is alleged that co-accused persons namely, Nandlal, Kaushal Yadav and Jai Shankar Yadav @ Jata Shankar Yadav forcefully took away the bank passbook of some of the beneficiaries and demanded Rs. 5000/- for each passbook as illegal gratification for its returning to the holders.

4. Mr. Rana Vikram Singh, learned counsel appearing for the petitioner submitted that despite of lodging of an FIR in the year 2009, the investigation is still pending against the petitioner, who was working as Circle Officer cum Block Development Officer, Garahani Block, district Bhojpur at Ara at the relevant point of time. It is submitted that from the perusal of the inquiry report dated 12.05.2009, which is the basis of present the FIR dated 24.08.2009 prepared by Deputy Commissioner, Bhojpur (Ara), it can safely gathered



that no direct allegation appears available to implicate the petitioner for the alleged offences. It is submitted that mere as petitioner was posted at relevant point of time, she was implicated with the present case. The statements of affected/ suffered beneficiaries were recorded during the course of investigation, where they categorically stated that the petitioner never demanded any gratification from any of them. It is further submitted by Mr. Singh that the aforesaid report categorically stated that one Jai Shankar Yadav @ Jata Shankar Yadav, demanded and received illegal gratification in the name of Block Development Officer and Block *Nazir*. It is submitted that most of the beneficiaries received grant of Rs. 24,000/- in a time bound manner, as some of the beneficiaries suffered at the hands of members of the *panchayat samiti* and *mukhya pati* for non-payment of illegal gratification as asked by them, for which, petitioner cannot be said liable. It is also pointed out that letter no. 143 dated 18.05.2009, clearly states that the process of distribution of the passbook to the beneficiaries was already completed by petitioner. Investigation also suggests that grant of money



has already been allocated to the rightful beneficiaries, but despite the same, petitioner was implicated and as such she is facing the trauma of criminal trial since last 19 years. It is further submitted by learned counsel that departmental proceedings initiated against the petitioner was completed and final order of the same was issued by the General Administration Department, Government of Bihar, vide memo no. 8 dated 20.01.2015, wherein the petitioner was acquitted from all the charges, further confirming her innocence in the present matter. It is submitted that, however, the petitioner was found negligent in supervision of her work and for same punishment of “censor” was passed against her, which is a minor punishment in terms of Bihar CCA Rules, 2005. It is submitted that in view of discussed factual aspects no, offence as alleged under Sections 419, 420, 409, 467, 468, 471 and 477 of the IPC appears made out against the petitioner, and therefore the present FIR with all its consequential proceedings be set aside/ quashed.

5. In support of his aforesaid submissions Mr, Singh also relied upon the legal report of the Hon’ble



Supreme Court as passed in the matters of ***State of Haryana and Others vs. Bhajan Lal and Others*** reported in ***1992 Supp (1) Supreme Court Cases 335***, ***Ashoo Surendranath Tewari vs. Deputy Superintendent of Police, EOW, CBI and Anr.*** reported in ***(2020) 9 SCC 638*** and also upon the legal report of the Hon'ble Supreme Court as available through ***Pankaj Kumar vs. State of Maharashtra and Ors.*** reported in ***(2008) 16 SCC 117***, where considering the inordinate delay in investigation criminal proceedings were quashed. It is pointed out that the reason for non submission of the charge-sheet assigned by learned counsel is that government still failed to grant sanction for prosecution against the petitioner.

6. Learned APP while opposing the quashing petition, affirmed this fact that the matter is pending for investigation for only reason as no sanction was granted against the petitioner in view of Section 197 of Cr.P.C. and this fact was also confirmed by the I.O. concerned, who was called in person to explain the reason that why the charge-sheet was not submitted even after a gap of 16 years.



7. It would be appropriate to reproduce 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. It would be appropriate to reproduce

Paragraph Nos. 8, 9, 10, 11, 12 and 13 of **Ashoo**

Surendranath Tewari Case (supra), which read as:-

“8. A number of judgments have held that the standard of proof in a departmental proceeding, being based on preponderance of probability is somewhat lower than the standard of proof in a criminal proceeding where the case has to be proved beyond reasonable doubt.

“3. The short question that arises for our consideration in this appeal is whether the respondent is justified in pursuing the prosecution against the appellant under Section 5(2) read with Section 5(1)(e) of the Prevention of Corruption Act, 1947 notwithstanding the fact that on an identical charge the appellant was exonerated in the departmental proceedings in the light of a report submitted by the Central Vigilance Commission and concurred by the Union Public Service Commission.”

9. This Court then went on to state:

“17. At the outset we may point out that the learned counsel for the respondent could not but accept the position that the standard of proof required to establish the guilt in a criminal case is far higher than the standard of proof required to establish the guilt in the departmental



proceedings. He also accepted that in the present case, the charge in the departmental proceedings and in the criminal proceedings is one and the same. He did not dispute the findings rendered in the departmental proceedings and the ultimate result of it.”

10. *This being the case, the Court then held: (P.S. Rajya case [P.S. Rajya v. State of Bihar, (1996) 9 SCC 1 : 1996 SCC (Cri) 897] , SCC p. 9, para 23)*

“23. Even though all these facts including the report of the Central Vigilance Commission were brought to the notice of the High Court, unfortunately, the High Court took a view [Prabhu Saran Rajya v. State of Bihar, Criminal Miscellaneous No. 5212 of 1992, order dated 3-8-1993 (Pat)] that the issues raised had to be gone into in the final proceedings and the report of the Central Vigilance Commission, exonerating the appellant of the same charge in departmental proceedings would not conclude the criminal case against the appellant. We have already held that for the reasons given, on the peculiar facts of this case, the criminal proceedings initiated against the appellant cannot be pursued. Therefore, we do not agree with the view taken by the High Court as stated above. These are the reasons for our order dated 27-3-1996 for allowing the appeal and quashing the impugned criminal proceedings and giving consequential reliefs.”

11. *In Radheshyam Kejriwal v. State of W.B. [Radheshyam Kejriwal v. State of W.B., (2011) 3 SCC 581 : (2011) 2 SCC (Cri) 721] , this Court held as follows: (SCC pp. 594-96, paras 26, 29 & 31)*

“26. We may observe that the standard of proof in a criminal case is much higher than that of the adjudication proceedings. The Enforcement Directorate has not been able to prove its case in the adjudication proceedings and the appellant has been exonerated on the same allegation. The appellant is facing trial in the criminal case. Therefore, in our opinion, the determination of facts in the adjudication proceedings cannot be said to be irrelevant in the criminal case. In B.N. Kashyap [B.N. Kashyap v. Crown, 1944 SCC OnLine Lah 46 : AIR 1945 Lah 23] the Full Bench had not considered the effect of a finding of fact in a civil case over the criminal cases and that will be evident from the following passage of the said judgment: (SCC OnLine Lah: AIR p. 27)



‘... I must, however, say that in answering the question, I have only referred to civil cases where the actions are in personam and not those where the proceedings or actions are in rem. Whether a finding of fact arrived at in such proceedings or actions would be relevant in criminal cases, it is unnecessary for me to decide in this case. When that question arises for determination, the provisions of Section 41 of the Evidence Act, will have to be carefully examined.’

29. We do not have the slightest hesitation in accepting the broad submission of Mr Malhotra that the finding in an adjudication proceeding is not binding in the proceeding for criminal prosecution. A person held liable to pay penalty in adjudication proceedings cannot necessarily be held guilty in a criminal trial. Adjudication proceedings are decided on the basis of preponderance of evidence of a little higher degree whereas in a criminal case the entire burden to prove beyond all reasonable doubt lies on the prosecution.

1. It is trite that the standard of proof required in criminal proceedings is higher than that required before the adjudicating authority and in case the accused is exonerated before the adjudicating authority whether his prosecution on the same set of facts can be allowed or not is the precise question which falls for determination in this case.”

12. *After referring to various judgments, this Court then culled out the ratio of those decisions in para 38 as follows: (Radheshyam Kejriwal case [Radheshyam Kejriwal v. State of W.B., (2011) 3 SCC 581 : (2011) 2 SCC (Cri) 721], SCC p. 598)*

“38. The ratio which can be culled out from these decisions can broadly be stated as follows:

- (i) Adjudication proceedings and criminal prosecution can be launched simultaneously;*
- (ii) Decision in adjudication proceedings is not necessary before initiating criminal prosecution;*
- (iii) Adjudication proceedings and criminal proceedings are independent in nature to each other;*
- (iv) The finding against the person facing prosecution in the adjudication proceedings is not binding on the proceeding for criminal prosecution;*
- (v) Adjudication proceedings by the Enforcement Directorate is not prosecution by a competent court of law to attract the provisions of Article*



20(2) of the Constitution or Section 300 of the Code of Criminal Procedure;

(vi) The finding in the adjudication proceedings in favour of the person facing trial for identical violation will depend upon the nature of finding. If the exoneration in adjudication proceedings is on technical ground and not on merit, prosecution may continue; and

(vii) In case of exoneration, however, on merits where the allegation is found to be not sustainable at all and the person held innocent, criminal prosecution on the same set of facts and circumstances cannot be allowed to continue, the underlying principle being the higher standard of proof in criminal cases.”

13. *It finally concluded: (Radheshyam Kejriwal case [Radheshyam Kejriwal v. State of W.B., (2011) 3 SCC 581 : (2011) 2 SCC (Cri) 721] , SCC p. 598, para 39)*

“39. In our opinion, therefore, the yardstick would be to judge as to whether the allegation in the adjudication proceedings as well as the proceeding for prosecution is identical and the exoneration of the person concerned in the adjudication proceedings is on merits. In case it is found on merit that there is no contravention of the provisions of the Act in the adjudication proceedings, the trial of the person concerned shall be an abuse of the process of the court.”

9. It would be appropriate to reproduce Paragraph Nos. 22 and 23 of ***Pankaj Kumar case (supra)***, which read as:-

22. *It is, therefore, well settled that the right to speedy trial in all criminal prosecutions is an inalienable right under Article 21 of the Constitution. This right is applicable not only to the actual proceedings in court but also includes within its sweep the preceding police investigations as well. The right to speedy trial extends equally to all criminal prosecutions and is not confined to any particular category of cases.*

23. *In every case, where the right to speedy*



trial is alleged to have been infringed, the court has to perform the balancing act upon taking into consideration all the attendant circumstances, enumerated above, and determine in each case whether the right to speedy trial has been denied in a given case. Where the court comes to the conclusion that the right to speedy trial of an accused has been infringed, the charges or the conviction, as the case may be, may be quashed unless the court feels that having regard to the nature of offence and other relevant circumstances, quashing of proceedings may not be in the interest of justice. In such a situation, it is open to the court to make an appropriate order as it may deem just and equitable including fixation of time for the conclusion of trial.

10. In view of the aforesaid factual and legal submissions and by taking note of admitted fact as the government has failed to grant sanction for prosecution in view of section 197 of the Cr.P.C. in last 16 years against the petitioner, where the petitioner was exonerated from the departmental proceedings in year 2015 itself, therefore considering the inordinate delay in investigation and for granting sanction that too for long 16 years, importing guiding note of ***Pankaj Kumar case (supra)*** and also considering the nature of accusation and by taking guiding note of ***Bhajan Lal case (supra)*** the present FIR bearing Charpokhari P.S. Case No. 93 of 2009 is hereby quashed/set aside *qua* petitioner, with all its consequential proceedings in



interest of justice.

11. Accordingly, the petition stands allowed.

12. Let a copy of the judgment be sent to the
learned trial court forthwith.

(Chandra Shekhar Jha, J)

Sudha/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.05.2025
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