IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.22161 of 2024

Arising Out of PS. Case No.-44 Year-2011 Thana- KHUTAUNA District- Madhubani

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Arun Safi, Son Of Sri Jhameli Safi, R/O-Behta, P.S.-Manigachhi, Distt.-Darbhanga.

... ... Petitioner

Versus

1. The State of Bihar
2. Shiv Chandra Kumar S/O Late Ganga Prasad Sah, R/V- Kahalganj, Kadirabad, Ward No.-5, P.S. - Mithila University, District- Darbhanga (At Present B.D.O. Khutauna, District- Madhubani)

... ... Opposite Party

Appearance :

For the Petitioner	:	Mr.Ajay Kumar Thakur, Advocate Ms.Vaishnavi Singh, Advocate
For the Opposite Party	:	Mr.Uma Shankar Prasad Singh, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 11-02-2025

Heard Mr. Ajay Kumar Thakur, learned counsel appearing for the petitioner and Mr. Uma Shankar Prasad Singh, learned A.P.P. for the State.

2. This application has been filed for quashing the order dated 16.01.2024 passed by learned Judicial Magistrate - 1st Class, Jhanjharpur in G.R. No. 868/2011, TR 1218/2023, whereby and whereunder learned Magistrate has been pleased to reject the application for discharge, filed under Section 239 Cr.P.C., filed on behalf of the petitioner.

3. The brief facts of the case is that one Shiv Chandra Kumar, Block Development Officer, Khutauna lodged a written report to the officer Incharge of Khutauna Police Station stating therein that District Rural Development Agency, Madhubani has held an enquiry on the complaint made in the allotment of Indira Awas Scheme in Panchayat Chaturbhuj Piprahi, Parsahi East and Birpur, which comes under the Khutauna Block. In the light of the enquiry report, District Magistrate, Madhubani vide its letter dated 2557 dated 09.08.2011, directed to lodge the First Information Report against the petitioner along with other accused -persons, who were held responsible for the aforesaid allotment of Indira Awas Yojana.

4. On the basis of aforesaid written report, Khutauna P.S. Case No. 44 of 2011 was registered for the offences under Section 467, 419, 420, 406, 409/34 of the Indian Penal Code. After investigation, police submitted charge-sheet vide charge-sheet No. 70 of 2012 dated 15.09.2012 and, thereafter, after taking cognizance, the case is pending in the court of learned Judicial Magistrate - 1st Class,

Jhanjharpur vide G.R. No. 868/2012 and T.R. No. 1218/2023.

5. Mr. Ajay Kumar Thakur, learned counsel appearing for the petitioner submitted that petitioner has been falsely implicated in the present case. It is submitted that petitioner was posted as Block Development Officer, Khutauna since 04.04.2010 to 15.07.2011 and the present case was lodged after his transfer from Khutauna, although, till date no sanction was obtained in the present case.

6. Learned counsel submitted that as per prevailing procedure at the relevant time and on the basis of names of beneficiaries which was mentioned in the B.P.L. list published by the D.R.D.A., petitioner complied his official duties and send the cheques of the respective beneficiaries, which was deposited in their bank account.

7. Mr. Thakur, further submitted that as per the enquiry report, which is part of the F.I.R., it is absolutely clear that petitioner has no role to play either in opening of bank account or in the identification of beneficiaries for withdrawal of amount. Learned counsel submits that after verifying the

name of account holder, an advice was used to be sent to the concerned bank with cheque which reads as "संबंधित लाभूकों के खाता में राशि स्थानान्तरण करते हुए इसकी जानकारी प्र०कार्या० को उपलब्ध कराई जाए ।"

8. It is submitted that there were total 88 beneficiaries before the transfer of the petitioner in whose favour advice were sent to the Bank with single cheque to transmit the amount in their account, but Bank had not transferred any amount to any beneficiaries as the new incumbent had asked the concerned Branch Manager, Central Bank not to release the amount vide its letter no. 903 dated 16.07.2011.

9. Learned counsel further submitted that the work done by the petitioner was in discharge of his official duty, where petitioner was holding the post of B.D.O. and as such, without there being any sanction of the competent authority, he cannot be prosecuted in the present case. Lastly, learned counsel submitted that it is a fit case for quashing the order dated 16.01.2024 passed by learned Judicial Magistrate - 1st Class, Jhanjharpur in aforementioned case.

10. In support of his submission, learned counsel

relied upon the legal report of Hon'ble Supreme Court as available through **State of Haryana and Ors. Vs. Bhajan Lal and Ors [(1992) Supp (1) SCC 335].**

11. Mr. Uma Shankar Prasad Singh, learned A.P.P. for the State, while opposing the quashing petition, submitted that there is embezzlement of government money by the petitioner/accused. The I.O. has filed charge-sheet under Section 467, 419, 420, 406, 409/34 of the I.P.C. against the petitioner along with other co-accused persons, where cognizance has been taken against them as well. Learned A.P.P. further submitted that from perusal of the F.I.R. and other documents available on record, it is crystal clear that petitioner along with other co-accused persons had embezzled the government fund/money. Learned A.P.P. submitted that learned Magistrate has rightly rejected the discharge petition, as filed by the petitioner and, accordingly, he opposed the present quashing prayer of the order dated 16.0.1.2024 as passed by learned Judicial Magistrate in the aforesaid case.

12. It would be apposite to reproduce paragraph '102' of the legal report of Hon'ble Apex Court as available

through **Bhajan Lal's** case (supra) which is being reproduced hereunder for a ready reference:

> "**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 information 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 person 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 Act concerned (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 Act concerned, 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."

13. From perusal of the record and impugned order, it transpires that the petitioner was the B.D.O. at the time of occurrence and he issued cheques in capacity of B.D.O. There is nothing on record that defalcated amount was received by him for his personal gain. As per allegation, the manipulation in record took place either in panchayat samiti or at bank level. There is nothing on record which may suggest that any wrong *qua* occurrence took place in the office of the petitioner. In such circumstance, it is unsafe to say that the act of the petitioner was beyond his official capacity so as not to require the sanction for prosecution. Admittedly, in this case, the sanction for prosecution *qua* petitioner was not obtained.

14. Considering the aforesaid facts and circumstances and by taking a guiding note of the guideline

no. 1, 3 & 5 of **Bhajan Lal's** case (supra), the impugned order dated 16.01.2024 passed by learned Judicial Magistrate - 1st Class, Jhanjharpur in G.R. No. 868/2011, TR 1218/2023 is hereby quashed/set-aside *qua* petitioner.

15. Accordingly, this application stands allowed.

16. Let a copy of this judgment be sent to the learned trial court/concerned court forthwith.

(Chandra Shekhar Jha, J.)

Rajeev/-

AFR/NAFR	**NAFR**
CAV DATE	**NA**
Uploading Date	**14.02.2025**
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