

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.35826 of 2017**

Arising Out of PS. Case No.-250 Year-2014 Thana- AURANGABAD COMPLAINT CASE
District- Aurangabad

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Amar Nath Saha S/o Late Ram Briksha Saha Resident of Village - Ramnagri,
Sector - III, Road No. - 2, Ashiana Nagar, P.S. - Rajeev Nagar, Dist - Patna.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Ramesh Singh S/o Mukhdev Singh R/o Vill - Sonbarsa, P.S. - Nabenapur,
Dist - Aurangabad, Bihar.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Lakshmi Kant Sharma
For the Opposite Party/s : Mr.Sri Ram Sevak Choudhary

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**CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL JUDGMENT**

Date : 25-06-2025

Heard learned counsel for the petitioner and
learned counsel for the State. None has appeared on behalf of
the opposite party no. 02.

2. This application has been filed on behalf of the
petitioner for quashing the order taking cognizance dated
20.02.2015 passed by the learned A.C.J.M, Aurangabad in
connection with Complaint Case No. 250 of 2014, whereby vide
the impugned order cognizance under sections 420, 323, 379,
504 read with section 120-B of the Indian Penal Code has been
taken against accused persons including the petitioner.

3. The present complaint case has been filed at the



instance of one Ramesh Singh with respect to the misappropriation of the compensation amount which was acquired for construction of a minor canal of North Koel. It is stated that the alleged occurrence is said to have taken place from 09.04.2011 to 02.04.2014 at village Sonbarsa by Anuradha Devi, Prano Devi and the Special Land Acquisition Officer, Sone Yojna, Aurangabad.

4. In the complaint petition the complainant has stated that he and his brother had got 61.5 decimal of land appertaining to Thana No. 107, Khata No.07, Plot no. 226 and other piece of land measuring 94.5 decimals appertaining to Thana no. 107, Khata No. 74, Plot No. 41 and 543, through a Gift Deed bearing no. 3366 executed by Late Ramdev Singh and thereafter rent receipt was issued with respect to the aforesaid lands in name of complainant and his brother.

5. It is further alleged that aforesaid lands were acquired for construction of minor Canal of North Koel Canonal but the accused persons namely Anuradha Devi and Prano Devi in connivance with the Special Land Acquisition Officer, Sone Yojna, Aurangabad got the compensation amount for the acquisition of the aforesaid lands on 09.04.2011 and when the complainant came to know about the same, he served a legal



notice dated 06.02.2014 upon the accused Anuradha Devi and subsequent thereto on 10.03.2014, legal notice was also sent to the Special Land Acquisition Officer, Sone Yojna, Aurangabad but neither the complainant receive any reply to the aforesaid legal notices nor any money was paid/returned to him.

6. It is further alleged that when the complainant on 02.04.2014 at around 10:00 A.M. went to demand the compensation money from the accused Anuradha Devi and Prano Devi, both the accused persons i.e. Anuradha Devi and Prano Devi started abusing and assaulting the complainant and accused Prano Devi also took away Rs. 600/- from the pocket of complainant and refused to return the money. Thereafter, the complainant approached the S.H.O. of the concerned jurisdictional police station who advised him to file a complaint case and accordingly, the present case has been filed before the learned C.J.M, Aurangabad under Sections 420, 120B, 323, 379, 504 of the Indian Penal Code and after recording the statement of complainant and four witnesses, cognizance has been taken against all the named accused persons, including the present petitioner, under section 420, 323, 379, 504 read with 120B of the Indian Penal Code.

7. It has been submitted by the learned counsel for



the petitioner that the order taking cognizance against the petitioner is nothing but an abuse of the process of law and the impugned order has been passed in a mechanical manner without considering the facts of the case.

8. It has further been submitted by the learned counsel for the petitioner that the petitioner has falsely been implicated in the case as he was not posted as Special Land Acquisition Officer, Sone Yojna, Aurangabad at the relevant time when the payment of compensation amount was made i.e. on 09.04.2011. He further submits that without any supporting materials, regarding service of legal notice dated 10.03.2014 upon the petitioner, the present complaint case has been filed and cognizance has been taken against Special Land Acquisition Officer, Sone Yojna, Aurangabad also.

9. Learned counsel for the petitioner further submits that the petitioner had not received any notice on 10.03.2014 and therefore there is no question of responding to the legal notice dated 10.03.2014 and *prima facie* it appears that the petitioner has been made accused without even a shred of evidence or specific allegation against the present petitioner.

10. Learned counsel for the petitioner further submits that from the complaint it is clear that compensation



money was released on 09.04.2011 in favour of one of the co-accused against the acquisition of the aforesaid lands. However, the legal notice was allegedly issued to the petitioner on 10.03.2014 but neither a copy of the aforesaid legal notice has been brought on record nor any receipt is placed on record showing service of the aforementioned legal notice upon the petitioner and thus there is no material on record to show that at any point of time, petitioner was appraised regarding illegal withdrawal of the alleged compensation amount. He further submits that the informant has a suitable remedy available to him but he has not availed any remedy to get the compensation money recovered and get his grievances redressed.

11. The learned counsel appearing for the petitioner has vehemently submitted that the petitioner joined as the Special Land Acquisition Officer, Sone Yojna, Aurangabad on 03.01.2012 and as per the complaint, the compensation amount was withdrawn on 09.04.2011 and therefore it is evident that at the time of withdrawal of compensation amount the petitioner was not posted as Special Land Acquisition Officer, Sone Yojna, Aurangabad which is also supported by the handing and taking over charge of the aforesaid office which is contained in Memo No. 6, dated 03.01.2012.



12. Learned counsel for the petitioner further submits that the petitioner was, in no way, concerned with the payment of compensation amount with respect to the acquired lands mentioned in the complaint petition and subsequently in course of his tenure i.e. from 03.01.2012 up to 28.02.2015, no legal notice was served upon him and thus there is no question of any involvement of petitioner in acquiring the lands in question and making the payment of compensation amount to other co-accused person.

13. Learned counsel for the petitioner next submits that the complainant brought four enquiry witnesses under section 202 of the Cr.P.C. but all the witnesses disclosed that the date of release of compensation amount is 09.04.2011 i.e. before the joining of the petitioner on the post of Special Land Acquisition Officer, Sone Yojna, Aurangabad and if there is any role played by the Special Land Acquisition Officer, Sone Yojna, Aurangabad in illegal withdrawal of the compensation amount then it is played by the Special Land Acquisition Officer, Sone Yojna, Aurangabad who was posted on the date of withdrawal, i.e., on 09.04.2011 and not the present petitioner.

14. Learned counsel for the petitioner further submits that the petitioner is a responsible government official



and presently holding the post of Additional District Magistrate and the impugned cognizance order is nothing but an abuse of the process of the Court as the cognizance has been taken without having the mandatory sanction from under section 197 of Cr.P.C. In support of his submissions, learned counsel for the petitioner has relied upon the Judgment of the Hon'ble Supreme Court passed in the case of ***G.C. Manjunath and Ors. Vs. Seetaram reported in 2025 INSC 439.***

15. A supplementary affidavit has been filed by the petitioner to bring on record the proceeding with respect to the land in question belonging to the complainant, which was acquired. It is submitted that the compensation amount of ₹ 4,85,925/- was paid through cheque no. 066384 dated 09.04.2011, signed by the then Special Land Acquisition Officer, Sone Project, Aurangabad namely Dhirendra Kumar Jha. A second supplementary affidavit has also been filed on behalf of the petitioner to bring on record the copy of the Cash Book where the entry of the aforesaid Cheque bearing no. 066384 was recorded. It is pointed out that the cheque was paid to one Tapeswar Singh and was issued by the then Special Land Acquisition Officer, Sone Project, Aurangabad namely Dhirendra Kumar Jha.



16. It is reiterated by the learned counsel for the petitioner that the entire process was imitated and completed even before the present petitioner joined the aforesaid position and therefore was in no way connected with the process. The present petitioner joined on 03.01.2012 as the Special Land Acquisition Officer, Sone Project, Aurangabad, however the payments were already disbursed much prior in time on 09.04.2011 when admittedly the present petitioner was not posted as the Special Land Acquisition Officer, Sone Project, Aurangabad and therefore the petitioner could not be fastened with criminal liability for acts done by his predecessor. It is further submitted that there is no material on record showing any complicity of the petitioner in the alleged wrong disbursement of compensation amount.

17. The learned counsel for the petitioner has also adverted to the statement of witnesses examined under section 202, Cr.P.C and pointed that the witness Ramesh Singh has categorically stated that he had preferred this complaint for non-payment of the compensation amount and at the time of filing the present complaint the petitioner namely Arun Kumar Sahu @ Saha was holding the post of Special Land Acquisition Officer, Sone Project, Aurangabad. The witness namely Arjun



Singh has stated that the date of occurrence was of 2011. The learned counsel for the petitioner has also pointed to the statement of witness Chabi Yadav and Dev Pujan Singh who have named the present petitioner and witness Dev Pujan Singh had further stated that the compensation amount was paid in connivance with co-accused Anuradha Devi. The learned counsel has vehemently argued that this statement is completely contrary to the records, since at the time of disbursement, Dharendra Kumar Jha, i.e. the predecessor of the petitioner, was posed as the Special Land Acquisition Officer, Sone Project, Aurangabad and not the present petitioner.

18. The leaned counsel for the petitioner has argued that no *prima facie* case is made out against the petitioner as admittedly on 09.04.2011 the petitioner was not posted as the Special Land Acquisition Officer, Sone Project, Aurangabad and therefore there is not even an iota of evidence or any thread connecting the petitioner with the alleged disbursement of the compensation amount. Since the petitioner was not occupying the aforesaid office there is no question of connivance or involvement of the petitioner in handing over the cheque to alleged fake person instead of the complainant.

19. Learned APP for the State submits that the



order taking cognizance is legal and the same should not be interfered with.

20. I have heard the parties.

21. The complainant has instituted the present complaint case against two named individuals Anuradha Devi and Prano Devi as accused 1 and 3 respectively and also arrayed the Special Land Acquisition Officer, Sone Yojna, Aurangabad as accused no.2 without naming the individual occupying the post. The main grievance of the complainant is that certain parcel of land was acquired for the construction of a minor canal of North Koel project however, the compensation for the aforesaid acquisition was not credited to the complainant and rather misappropriated by the accused persons. The complainant also asserts that when he came to know about the misappropriation of the compensation amount he duly served two legal notices on different dates to the accused Anuradha Devi and the Special Land Acquisition Officer, Sone Yojna, Aurangabad, but received no response. The complainant has further alleged that on 02.04.2014 at around 10:00 AM when he went to demand his compensation amount the accused Anuradha Devi and Prano Devi not only refused to return the compensation towards the land acquisition but also abused and



assaulted the complainant and even snatched ₹ 600/- from the pocket of the complainant.

22. From the reading of the complainant petition, there are specific allegations of misappropriation made by the complainant against the two named individual accused persons however the complainant has not made any specific allegation against the present petitioner. In para-06 of the complaint, the complainant has also alleged specifically that the two named accused had abused and threatened the complainant on 02.04.2014 however the complainant has again not even whispered any thing against the present petitioner.

23. The complainant at paragraph 04 of his complaint petition has clearly mentioned that the accused persons had misappropriated the compensation amount on 09.04.2011, however the present petitioner joined the office of the Special Land Acquisition Officer, Sone Yojna, Aurangabad only on 03.01.2012. The criminal liability could not be fastened to the present petitioner for alleged acts done by his predecessor.

24. It is also pertinent to note that a criminal case cannot be set in motion arraying a post/designation *de-hors* the person occupying such posts/positions/designations. The High Court of Jharkhand at Ranchi in a string of judgments has held



that summons in a criminal case to face trial cannot be issued against posts or positions since the post itself is not a juristic person. In the case of ***Suma Devi vs The State of Jharkhand & Ors*** (Cr. M.P. No. 741 of 2016) neutral citation 2017:JHHC:13403 it was held as under -

19. By the impugned order, the Magistrate has also issued summons. The Magistrate issued summons against “accused persons”. The accused, as per the complaint, are the posts or designation of the employees of the Company, i.e., (1) Chief Manager, B.C.C.L., Kusunda Area, Kusunda Regional Office, PO Kusunda, PS Kenduadih, District Dhanbad; (2) Project Officer, B.C.C.L., Godhar Colliery, PO Godhar, PS Kenduadih, District Dhanbad; (3) Deputy Personnel Manager, B.C.C.L., Godhar Colliery, PO Godhar, PS Kenduadih, District Dhanbad; (4) Chief Office Clerk, B.C.C.L., Godhar Colliery, PO Godhar, PS Kenduadih, District Dhanbad.

20. An offence committed under the I.P.C. must be by some person, who can be punished for committing such offence. Section 2 of the I.P.C. provides that every person shall be liable to punishment under this Code and not otherwise for every act or omission contrary to the provisions thereto, of which he shall be guilty within India. Thus, to hold some one guilty for punishing under the I.P.C., the said perpetrator of the crime must be a person. So, a person, who prima facie seems to have committed an offence has to be summoned to face trial and none else.

21. Now the question arises, who is a 'person'. The dictionary meaning of the word ‘person’, as per Chambers Dictionary is “an individual; a living sole; a human being”. Section 11 of the I.P.C.



defines the word 'person', which reads as follows: -

“The word “person” includes any Company or Association or body of persons, whether incorporated or not.”

Obviously, this definition is inclusive.

22. In the case of Krishnan & Anr. Versus Krishnaveni & Anr. reported in (1997) 4 SCC 241, the Hon'ble Supreme Court, referring to Section 11 of the I.P.C. has held that the word 'person' would, therefore, include not only natural person but also juridical person in whatever form designated and whether incorporated or not. Thus, there are two types of persons – natural person and juridical person, i.e., a legal person. This legal person is a subject matter other than a human being to which the law attributes personality.

23. Thus, an offence prima facie has to be committed by a natural person or a juridical person, i.e., body of persons, corporate or association whether incorporated or not, who, by virtue of some statute has been recognized to be a person, i.e., whose personality has been attributed by law. Thus, only these type of persons can be summoned for committing an offence under the I.P.C.

24. It is also worthwhile to note the provisions for issuance of summons in the Code of Criminal Procedure. Issuance of summons is governed under Chapter VI of the Code of Criminal Procedure. Section 62 prescribes as to how a summon should be served. Section 62(2) of the Cr.P.C. mandates that, the summon shall, if practicable, be served personally on the person summoned by delivering or tendering to him one of the duplicates of the summons. Sub section (3) of the said Section further provides that every person on whom summon is so served, shall, if so required by the serving officer, sign a receipt therefor on the back of the other duplicate. Section 63 of the Cr.P.C.



provides as to how a summon should be served on corporate bodies and societies. Thus, from the aforesaid provisions, it is clear that Section 62 provides for service of summons on persons and Section 63 of the Cr.P.C. provides for service of summons on corporate bodies and societies. The word 'person' is not defined in Code of Criminal Procedure, but Section 2(y) of the Cr.P.C. provides that words and expressions used in the Code of Criminal Procedure and not defined, but defined in Indian Penal Code have meaning respectively assigned to them in that Code. This means that definition of the word 'person', as mentioned in the I.P.C. will apply to Cr.P.C. also. So, it is clear that summons can only be issued against a natural person, who has to sign and receive a copy of the same or in case of corporates in the manner prescribed in the Code. 25. No doubt, a juridical person can commit an offence under the I.P.C., however, in that case the juridical person must be arrayed as an accused in the complaint and thereafter only if the Court finds prima facie that a case is made out to issue summons, then only summons can be issued against that juridical person. [authority : (2015) 12 SCC 781 (Sharad Kumar Sanghi versus Sangita Rane)]

26. The I.P.C. does not contain any provision for attaching vicarious liability. The question of vicarious liability will only arise if any provision is there under the Statute. The statute, undisputedly, must contain provision for fixing such vicarious liability

25. Again, in the case of **Santosh Kumar vs. The State of Jharkhand (Cr. M.P. No. 1211 of 2023, order dated 28.08.2023)** which was reiterated in **Steel Authority of India**



Limited vs. The State of Jharkhand and Ors. reported as ***MANU/JH/0563/2024***, the Court had held as under –

6. Having heard the submissions made at the Bar and after going through the materials in the record, it is pertinent to mention here that by now it is a settled principle of law as has been reiterated by this Court in the case of Santosh Kumar vs. The State of Jharkhand & Anr. (supra) that summons in a criminal case to face trial cannot be issued against positions or post as a post is not juridical person hence, learned Chief Judicial Magistrate, West Singhbhum, Chaibasa has committed illegality by issuing summons against DGM Sail, M/s. RMD Gua Ore Mines more so when such post undisputedly does not even exist. Thus, taking cognizance by not naming any person who was responsible for the alleged criminal act is certainly not sustainable in law.

26. The aforesaid view of has also been fortified in a recent decision in ***ATC Telecom Infrastructure Private Limited vs. The State of Jharkhand Through its Chief Secretary & Anr. (W.P. (Cr.) No. 1110 of 2023)***, neutral citation.

27. In the present case at hand the allegations levelled under the complaint petition are for alleged offence under sections 420, 323, 379, 504 read with section 120-B of the Indian Penal Code. In all the aforesaid offences the *mens rea* is imperative which is inherent in the aforesaid sections as illustrated from the words ‘dishonestly’, ‘voluntarily’,



‘intentionally’ ‘agreement to commit an offence’. A post or office cannot possess a mind or intent of its own and therefore consequently cannot form *mens rea*. Only the individual occupying that post, at the relevant time, who may have the required mental state, can be subjected to face criminal trial.

28. The Hon’ble Supreme Court in the case of *Pepsi Foods Ltd. v. Special Judicial Magistrate* reported in (1998) 5 SCC 749 and also in the case of *Delhi Race Club (1940) Ltd. v. State of U.P.* reported in (2024) 10 SCC 690 has held that the order of summoning should be passed only after application of judicial mind however in the present case, so far as the present petitioner is concerned, the impugned order taking cognizance dated 20.02.2015 is in teeth of the afore-quoted position of law.

29. In the present case, it is uncontroverted that the instant petitioner was clearly not in office at the relevant time and no specific allegations against the present petitioner is forthcoming from the reading of the complaint petition, it would be improper to allow the criminal prosecution to continue against him.

30. Accordingly, the order taking cognizance dated 20.02.2015 passed by the learned A.C.J.M, Aurangabad in



connection with Complaint Case No. 250 of 2014 *qua* the present petitioner, is hereby quashed.

(Sandeep Kumar, J)

Vikas/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	15.07.2025
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