IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.23596 of 2016

Arising Out of PS. Case No.-115 Year-2011 Thana- SAKATPUR District- Darbhanga

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Phool Kant Mishra Son of Late Ram Bhagat Mishra Resident of village - Patti Tola, Police Station Bhairav Ashtan, District - Madhubani

... ... Petitioner/s

Versus

1. The State Of Bihar
2. Vinay Jha @ Vinay Kumar Jha Son of Late Bhogendra Jha Resident of Village-Borha (Raghopur Ithor) P.S.-Bisphi, Dist.-Madhubani

... ... Opposite Party/s

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Appearance :
For the Petitioner/s : Mr.Chandra Mohan Jha
For the Opposite Party/s : Mr.B.M.P.Sinhaapp

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
CAV JUDGMENT
Date : 14 -10-2025

1. The present application has been filed for quashing the order dated 16.04.2015 passed in Sakatpur P.S. Case No. 115 of 2011 (GR No. 4030 of 2011) by learned Sub Divisional Judicial Magistrate, Darbhanga whereby cognizance has been taken against the petitioner for the offences punishable under Sections 420, 467, 468, 471, 409 and 120-B of the I.P.C.

2. As per the first information report lodged by the informant namely Binay Kumar @ Binay Kumar Jha, who claims to be the Vice Chairman of the J.N.B. Trust, the parent body of J.N.B. Adarsh Sanskrit Mahavidyalaya, Lagma- Rambhadrapur, P.S.- Sakatpur, District- Darbhanga,

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Bihar, the college in question is a government aided Sanskrit institution receiving financial assistance from the Rashtriya Sanskrit Sansthan, New Delhi. The informant has alleged that government funds received by the college are deposited in joint Account No. 2284 maintained with the Central Bank of India, Jhanjharpur Branch, Madhubani, Bihar. On 15.06.2009 a sum of Rs. 6,75,000/- was withdrawn from the said joint account by the then Principal- Phool Kant Mishra i.e. the petitioner and on the same day an equivalent amount was deposited in the Account No. 6845 of the same bank. The said account stands in the name of Principal (Kalyan Kosh) J.N.B. Adarsh Sanskrit Mahavidyalaya but is alleged to be an unauthorized personal account of the petitioner opened for depositing misappropriated funds of the college. It has further been alleged that the aforesaid account has never been audited or reported to the Managing Committee and that the Principal has no authority to open any independent bank account in terms of the bye-laws of the college. The informant has also alleged that the first joint Account No. 2284 though audited was being illegally operated by unauthorized signatories. One Dr. Vidyeshwar Jha, who was relieved from service on 05.03.2009 is stated

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to have signed a cheque on 31.03.2009 and another Jwalanand Mishra, Junior Lecturer in Hindi was shown as senior most Lecturer and made a second signatory by the Principal thereby enabling illegal operation of the said account. The amount of Rs. 6,75,000/- which was government money sent for salary and scholarship for the financial year 2008-09 was siphoned off to the said unauthorized account and withdrawn in phases during 2009, 2010 and 2011 thereby rendering the audit report false and fabricated. The informant has claimed that Dr. Bidyeshwar Jha admitted in writing that his signature had been obtained by the Principal beforehand and were subsequently misused.

3. The petitioner has further alleged to have refused to furnish any explanation to the Chairman of the Trust and declined to respond to the queries raised under the RTI Act, 2005. The informant has stated that he has documentary evidence regarding misappropriation / embezzlement of Rs. 6,75,000/- but newspaper reports and the Chairman's communication suggest that the total embezzlement amount was Rs.11,70,000/-. It is further stated that the Rashtriya Sanskrit Sansthan had earlier conducted inquiries in 2006 and 2007 into the misconduct of the petitioner and found

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even his appointment to be illegal on the ground of inadequate and forged qualification. The informant claims to have been duly authorized by the parent body, J.N.B. Trust, to pursue legal action concerning the Trust. It is based on the aforesaid written report the F.I.R. bearing Sakatpur P.S. Case No. 115 of 2011 dated 28.11.2011 came to be registered against the petitioner and two other co-accused.

4. The F.I.R. was investigated upon and a charge sheet no. 51 of 2014 dated 28.09.2014 under Sections 420, 467, 468, 471, 409 and 120-B of the I.P.C. was filed against two accused persons, namely Phool Kant Mishra i.e. petitioner and Dhirendra Jha.

5. The police, however, submitted closure report with respect to Dr. Bidyeshwar Jha and Jwalanand Mishra showing them as not charge sheeted. Thereafter, on perusal of the materials in the case diary and charge sheet, the learned Sub Divisional Judicial Magistrate, Darbhanga by order dated 16.04.2015 took cognizance of the aforesaid offences against the two charge sheeted accused persons and directed for further proceeding of the case. The further proceeding of the present case arising out of Sakatpur P.S. Case No. 115 / 2011 pending in the court of Sub Divisional

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Judicial Magistrate, Darbhanga was stayed by this Court vide order dated 07.08.2019.

6. Learned counsel for the petitioner argued that from bare perusal of the written report it would appear that the informant has made misleading statements with respect to the functioning of the college, the operation of bank accounts and even regarding his own capacity namely the alleged entrustment of authority by the Trust to take care of its legal and other issues. It is urged that the present F.I.R. has been lodged by the informant in order to wreak personal vengeance against the petitioner. Relying upon Annexure- 3 learned counsel submits that from perusal of the letter dated 29.04.2008 it would appear that the informant namely Binay Jha alias Binay Kumar Jha had himself addressed a communication to the Secretary of the Trust tendering his resignation from the membership of the Trust as well as its affiliated organizations and institutions. It is further pointed out that by subsequent letter dated 10.05.2008 the Chairman of the Trust duly certified that the said informant was no longer associated with the Trust or any of its institutions or organizations. This according to the petitioner clearly shows that the informant had ceased to be an authorized member of

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the Trust as early as in the year 2008 whereas the present F.I.R. came to be lodged only in the year 2011. The petitioner has further relied upon Annexure-5 which is a letter dated 22.01.2009 issued by the Chairman of the Managing Committee of the Trust addressed to the Deputy Registrar (Finance), Rashtriya Sanskrit Sansthan, New Delhi. In the said communication it was categorically stated that the allegations made against the petitioner was completely unfounded and that the informant namely Binay Jha @ Binay Kumar Jha had no locus.

7. Learned counsel further submits that insofar as the allegation of embezzlement of fund by opening Account No. 6845 is concerned, the same cannot by any stretch of imagination be termed as secret or personal account of the petitioner. It is pointed out that the account in question was opened with the Central Bank of India in the name of "Principal (Kalyan Kosh), J.N.B. Adarsh Sanskrit Mahavidyalaya, Lagma, Darbhanga" in the year 1990 and the petitioner joined as Principal in the year 1996 as such, it was not opened during the tenure of the petitioner as Principal and the same is an institutional account to be operated by whoever holds the office of the Principal of the

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said college. Therefore, the allegation that the said account was a private account of the petitioner is wholly incorrect. The Branch Manager of the Central Bank of India has by certificate dated 22.12.2011 (Annexure-6) categorically certified that Account No. 6845 had been opened in the year 1990.

8. Countering the allegations in the F.I.R. regarding non -audit of the college accounts, learned counsel submits that the said allegation is wholly false and misleading. In this regard reliance has been placed upon Annexure – 7 which contains both the auditor's report as well as utilization certificate. It is pointed out that in the auditor's report, it has been categorically recorded that the accounts of the college were duly audited for the year ending 31.03.2009 and the books of account and other relevant papers produced for verification were in agreement with the financial statements of the institution. Further from the utilization certificate it clearly emerges that the conditions on which grant-in-aid was sanctioned had been duly fulfilled and that the funds received had in fact been utilized for the very purpose for which they were sanctioned. He further argued that no doubt it is an admitted fact that the college in question maintains

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two separate bank accounts. One of these accounts namely Account No. 2284 is meant for the deposit of government grants and other official finances. The other account i.e. Account No. 6845 stands in the name of the Principal of the College and mainly comprises donations and income received from other sources.

9. It has been submitted that it has been the long standing practice of the college that expenses of the institution /college are met from both accounts which includes disbursement of salary to teaching and non teaching staff as well as other day -to- day management expenses. Even as per the allegation in the F.I.R. the sum of Rs. 6,75,000/- was stated to be government money remitted for payment of salary and scholarship for the financial year 2008-2009, however, in reality the said amount was not earmarked for salary but for other purposes such as scholarship and allied expenditures. It is further submitted that perusal of statement of Account No. 6845 would reveal that a substantial portion of the fund still remains unutilized inasmuch an amount of Rs. 3,43,479/- continues to be available in the said account.

10. Learned counsel further submits that the learned

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court of S.D.J.M., Darbhanga without applying its judicial mind has taken cognizance against the petitioner in a mechancial and casual manner without considering the absence of foundational material to constitute the alleged offence. It is urged that such an order of cognizance passed in a perfunctory manner cannot sustain in the eye of law and is therefore liable to be quashed. In support of his submissions he relied upon the judgments of the Hon'ble Supreme Court in the case of State of Haryana versus Bhajan Lal & Ors reported in 1992 Supp (1) SCC 335 and Anand Kumar Mohatta versus State (NCT of Delhi) reported in (2019) 11 SCC 706.

11. I have heard learned counsel appearing for the petitioner and have also perused material on record. As far as the appearance on behalf of the opposite party no. 2 / informant is concerned, despite valid service of notice no one has appeared.

12. The only question that falls for consideration is whether the order taking cognizance dated 16.04.2015 is legally sustainable. As per plain reading of the F.I.R. the main allegation levelled against the petitioner is that being the Principal of the college he misappropriated Rs.

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6,75,000/- by transferring it from the official joint account to an allegedly illegal personal account of the Principal and thereafter withdrew the amount for his own use by manipulating audit reports and signatures to conceal the act.

13. It is specific case of the petitioner supported by relevant document that account in the name of the Principal was opened in 1990 and the petitioner took charge as Principal in the year 1996. The amount was allegedly deposited in the Principal account in the year 2009 and the audit of both the accounts were conducted for the year ending 31.03.2009. The auditor has found books of account and other relevant papers produced for verification were in agreement with the financial statements of the institution.

14. The petitioner has also annexed the statement of account of both the accounts and from the statement of account of the concerned Account No. 6845 it appears that said account was debited in the name of various persons may be teaching or non -teaching staff of the college as on 30.03.2010 Rs. 3,43,479/- was still available in the account as unutilized amount. The petitioner has claimed that the present F.I.R. has been lodged in order to wreak vengeance against the petitioner due to some dispute in the Trust. The

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informant resigned from the Trust claiming mismanagement and deviating from the objectives of the Trust which was accepted by the Chairman of the Trust. It is only thereafter in order to disturb the functioning of the institutions and organizations run by the Trust the present F.I.R. has been lodged.

15. After investigation the police submitted charge sheet on 28.09.2014 against the petitioner and one Dhirendra Jha under Sections 420, 467, 468, 471, 409 and 120B I.P.C. The learned Magistrate has taken cognizance by the impugned order dated 16.04.2015 recording in its order that on perusal of the F.I.R., case diary and charge sheet and considering material available in the case diary a prima facie case is made out for the aforesaid offences against the accused.

16. I have gone through the case diary also. From the entire investigation report it does not appear that police has found any material to connect the petitioner with the offences for which the petitioner has been charged. The investigation done by the police is vague and perfunctory. For constituting an offence under Section 467 & 468 of the I.P.C. condition precedent is making a false document. In this regard paragraph nos. 13 & 14 of the judgment reported

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in (2009) 8 SCC 751 Mohammed Ibrahim & Ors. versus The State of Bihar & Anr. is relevant, which are reproduced here for ready reference:-

> "**13.** The condition precedent for an offence under Sections 467 and 471 is forgery. The condition precedent for forgery is making a false document (or false electronic record or part thereof). This case does not relate to any false electronic record. Therefore, the question is whether the first accused, in executing and registering the two sale deeds purporting to sell a property (even if it is assumed that it did not belong to him), can be said to have made and executed false documents, in collusion with the other accused.
>
> **14.** An analysis of Section 464 of the Penal Code shows that it divides false documents into three categories:
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> *1*. The first is where a person dishonestly or fraudulently makes or executes a document with the intention of causing it to be believed that such document was made or executed by some other person, or by the authority of some other person, by whom or by whose authority he knows it was not made or executed.
>
> *2*. The second is where a person dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part, without lawful authority, after it has been made or executed by either himself or any other person.
>
> *3*. The third is where a person dishonestly or fraudulently causes any person to sign, execute or alter

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> a document knowing that such person could not by reason of (*a*) unsoundness of mind; or (*b*) intoxication; or (*c*) deception practised upon him, know the contents of the document or the nature of the alteration.
>
> In short, a person is said to have made a "false document", if (*i*) he made or executed a document claiming to be someone else or authorised by someone else; or (*ii*) he altered or tampered a document; or (*iii*) he obtained a document by practising deception, or from a person not in control of his senses."

17. In Nitin Ahluwalia versus State of Punjab & Anr. reported in 2025 INSC 1128 the Hon'ble Supreme Court has held that it is true that elaborate defences and evidence brought on record is not to be considered at this stage, it is equally true that a mechanical approach cannot be countenanced. What renders a judicial mind distinct is its application to the given facts in accordance with law. Therefore, the Court ought to have appreciated, at least to some extent, the background in which the respondent filed the subject FIR.

18. In another decision of Salib @ Shalu @ Salim vs State of UP reported in 2023 INSC 687 the Supreme Court has held that whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure or extraordinary jurisdiction

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under Article 226 of the Constitution to get the FIR or the criminal proceedings quahsed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR / complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR / complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR / complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines.

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19. In this backdrop the analytical framework laid down by the Hon'ble Supreme Court in Pradeep Kumar Kesarwani v. State of U.P. reported in 2025 Live Law (SC) 880 becomes relevant. The court in that case delineated four steps to determine the veracity of a prayer for quashing under Section 482 Cr.P.C.

(i) Step one, whether the material relied upon by the accused is sound, reasonable, and indubitable i.e. the materials is of sterling and impeccable quality?

(ii) Step two, whether the material relied upon by the accused would rule out the assertions contained in the charges levelled against the accused, i.e. the material is sufficient to reject and overule the factual assertions contained in the complaint i.e. the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false.

(iii) Step three, whether the material relied upon by the accused has not been refuted by the prosecution / complainant; and / or the material is such , that it cannot be justifiably refuted by the prosecution / complainant?

(iv) Step four, whether proceeding with the trial would result in an abuse of process of the court, and would not

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serve the ends of justice?

20. If the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal proceedings, in exercise of power vested in it under Section 482 of the Cr.P.C. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as, proceedings arising therefrom) specially when, it is clear that the same would not conclude in the conviction of the accused.

21. In the present case the F.I.R. though detailed and meticulously drafted runs into 69 pages with 12 annexures containing a detailed written complaint, reference to college bye-laws and even the allegation touching upon the petitioner's appointment, qualification and administrative decisions, the F.I.R. reads more like a departmental charge-sheet than a criminal complaint drafted with precision. A close reading reveals that the informant who has resigned from the membership of the Trust in 2008 lodged the F.I.R. only in 2011 alleging the incident said to have occurred in the year 2008-09. The delay of more than two year without any plausible explanation casts a deep shadow on the bona

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fide of the complaint.

22. When these facts are considered it becomes evident that the F.I.R., however well drafted, is a product of personal vendetta and ulterior motive.

23. The petitioner relies upon the following materials- (a) the bank certificate dated 22.12.2011 (Annexure-6) stating Account No. 6845 was opened in 1990 in the name “Principal (Kalyan Kosh) J.N.B. Adarsh Sanskrit Mahavidyalaya”; (b) the Auditor’s Report and Utilization Certificate for FY 2008-09 (Annexure-7) confirming accounts were audited and grant conditions were complied with; (c) the statement of Account No. 6845 showing a balance of Rs. 3,43,479/-; and (d) official communications certifying the informant’s resignation and the Chairman’s earlier rejection of the allegations (Annexure- 3).

24. The bank’s certification dated 22.12.2011 conclusively records that Account No. 6845, described as “Principal (Kalyan Kosh), J.N.B. Adarsh Sanskrit Mahavidyalaya, Lagma, Darbhanga,” was opened in 1990, long before the petitioner assumed office in 1996. This prima facie shows that this is not petitioner’s secret personal account for siphoning funds. The auditor’s report and

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utilization certificate for the year ending 31.03.2009 further record that the accounts were duly audited and the grant-in-aid utilized for its sanctioned purposes. The account statement itself shows that a substantial balance amount of Rs. 3,43,479/- remains in the account, which is wholly inconsistent with any claim of misappropriation or embezzlement.

25. Secondly, whether the material relied upon by the accused would rule out the assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false.

26. The main allegation against that the petitioner is that he opened or used an unauthorised personal account (A/c No. 6845) to siphon Rs. 6,75,000/- from joint account (A/c No. 2284).

27. Upon perusal of the case diary, this Court finds no evidence which, even if taken at its face value, would establish the essential ingredients of the offences alleged. There is no material indicating that the petitioner converted

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government funds for personal use; there is no evidence of falsification or forgery of any document; there is no proof of deceit or fraudulent inducement. The entire allegation rests upon the transfer of Rs. 6,75,000/- from one college account to another which, by itself, is incapable of constituting a criminal offence in the absence of mens rea or personal gain.

28. Thirdly, whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant?

29. The prosecution has not refuted aforesaid documents nor produced any material capable of justifiably contradicting them.

30. Fourthly, whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

31. The charge-sheet is bereft of foundational evidence, and the documents placed on record by the petitioner are unimpeachable. The continuation of prosecution on such a hollow record would only result in needless harassment and misuse of judicial time. The attending circumstances of this

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case, the informant's lack of locus, his resignation in 2008, the delay of more than two years in lodging the FIR, and the absence of any proof of personal gain or criminal intent clearly suggest that the FIR was motivated by personal animosity and designed to wreak personal vengeance under the garb of criminal prosecution.

32. The Hon'ble Supreme Court in a judgment reported in (2015) 12 SCC 420 Mehmood Ul Rehman versus Khazir Mohammad Tunda and Others has held that no formal or speaking or reasoned orders are required at the stage of Section 190 / 204 Cr.P.C., there must be sufficient indication on the application of mind by the Magistrate to the facts constituting commission of an offence. The failure to assign brief reason renders the order vulnerable.

33. In the backdrop of the discussion held hereinabove on law and upon facts, in the opinion of this Court, permitting the prosecution to continue against the petitioner shall amount to abuse of the process of criminal court. Accordingly, in order to prevent the abuse of the process of court and secure the ends of justice, I deem it fit to quash the order of cognizance qua the petitioner.

34. In the result, the order dated 16.04.2015 passed by

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learned S.D.J.M., Darbhanga in Sakatpur P.S. Case No. 115 of 2011 (GR No. 4030 of 2011) is hereby quashed.

35. This application is allowed.

(Anil Kumar Sinha, J)

praful/-AFR

AFR/NAFR	AFR
CAV DATE	29.08.2025
Uploading Date	14-10-2025
Transmission Date	14-10-2025

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