

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.4418 of 2019

Arising Out of PS. Case No.-2 Year-2014 Thana- KACCHWA District- Rohtas

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Asha Upadhyay W/o Sri Ajay Upadhyay @ Ajay Kumar Upadhyay Resident of Village and P.O. Mangraon, P.S. Kachhawan, District - Rohtas at Sasaram, the then Mukhiya of Gram Panchayat Raj, Mangraon, Block- Nasriganj, District - Rohtas at Sasaram.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Kumar Mangalam, Adv.

For the Opposite Party/s : Mrs. Rina Sinha, Adv.

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 20-07-2026

1. Heard the parties.

2. Present petition preferred by the petitioner under Section 482 of Code of Criminal Procedure (in short Cr.P.C.) for quashing of order dated 05.05.2017, passed by learned A.C.J.M, Bikramganj, Rohtas, in Kachhawan P.S. Case no. 02 of 2014.

3. As per prosecution case, petitioner being *Mukhiya* of Gram Panchayat Raj, Mangraon alongwith Panchayat Secretary had alleged to commit irregularities in the distribution of the diesel subsidy to the farmers.

4. On the basis of written application of the informant who is the Block Development Officer (in short



BDO) of Nasariganj block, Kachhawan P.S. Case No. 02 of 2014 on 20.01.2014 was lodged against petitioner and other co-accused person. Petitioner is the *Mukhiya* of the concerned *Panchayat*.

5. Mr. Kumar Mangalam learned counsel for the petitioner submitted that no case is made out against this petitioner, in view of notification dated 26.07.2010 as issued through memo no. 4442, Department of Agriculture, Bihar, and therefore, impugned order dated 05.05.2017 *qua* cognizance against petitioner is bad in eyes of law.

6. Explaining further, Mr. Mangalam relied mainly on Para ग , घ , इ , च of aforesaid notification, which is as under:-

(ग) पंचायत क्षेत्रों के किसान को ग्राम पंचायत माध्यम से अनुदान का भूगतान किया जाएगा। नगर निकाय बक्षेत्र के किसानों को अनुदान का भूगतान प्रखंड विकास पदाधिकारी / प्रखंड कृषि पदाधिकारी के द्वारा किया जायेगा।

(घ) पंचायत क्षेत्र के किसान अपना आवेदन प्रपत्र में संबंधित पंचायत को समर्पित करेंगे। नगर निकाय क्षेत्र के किसान अनुदान के लिए विहित आवेदन पत्र प्रखंड को समर्पित करेंगे। आवेदन हेतु विहित प्रपन्न अनुसूची-3 संलग्न है किसान अपना आवेदन हस्तलिखित रूप में या टंकित कराकर तथा छपे हुए प्रपत्र पर भी आवेदन दे सकते हैं। पंचायत क्षेत्र के किसानों से प्राप्त सभी आवेदनों को पंचायत की ग्राम सभा की बैठक में विचार किया जायेगा। ग्राम सभा के बैठक के लिए तिथि का निर्धारण जिला पदाधिकारी द्वारा तुरन्त किया जायेगा पंचायत की ग्राम सभा द्वारा विभिन्न कृषको द्वारा फसल क्षेत्र का सत्यापन किया जाएगा। और क्षेत्रफल के साथ कृषको की एक प्रारूप सूची तैयार की जाएगी। पंचायत द्वारा जांच कर पुन ग्राम सभा में निर्णय के लिए रखना सुनिश्चित किया जायेगा। ग्राम पंचायत द्वारा इसमें संशोधन किया जा सकेगा एवं अंतिम



सूची प्रकाशित की जायेगी।

नगर निकाय दक्षेत्र के किसानों से प्राप्त आवेदन का सत्यापन प्रखंड विकास पदाधिकारी/ प्रखंड कृषि पदाधिकारी के द्वारा किया जायेगा। एवं प्रारूप सूची प्रकाशित की जायेगी। आपत्ति प्राप्त होने पर पुनः प्रखंड विकास पदाधिकारी प्रखंड कृषि पदाधिकारी जाँच कर अनुदान के भुगतान हेतु अंतिम सूची प्रकाशित की जायेगी।

(इ) पंचायत क्षेत्र के किसानों के लिए अनुदान का भुगतान पंचायत सचिव के द्वारा ग्राम सभा से अनुमोदित अंतिम सूची के आधार पर की जायेगी। तथा उनके द्वारा डीजल खरीद के कैश मेमो प्राप्त रसीद को प्रतिहस्ताक्षरित की जायेगी। नगर निकाय क्षेत्र के लिए प्रकाशित अंतिम सूची के अनुसार किसानों को अनुदान का भुगतान प्रखंड विकास पदाधिकारी / प्रखंड कृषि पदाधिकारी के द्वारा किया जायेगा। डीजल का खरीद अधिकृत विक्रेता से ही किया जायेगा। और इन्ही अधिकृत विक्रेताओं से निर्गत रसीद कैश मेमो पर अनुदान देय होगा।

(व) भुगतान के पश्चात पंचायत सचिव द्वारा लाभान्वित कृषकों को सूची प्रखंड विकास पदाधिकारी को लेखा कार्यालय के लिए समर्पित किया जाएगा। ताकि समयानुसार डी०सी० बिल समर्पित किया जा सके।

7. Taking note of aforesaid notification, it is submitted that the "*Mukhiya*" was not under obligation to release the fund to the qualified farmer, rather same is the duty of *panchayat* secretary. It is submitted that the application preferred by farmers of *panchayat* was required to be submitted before the concerned *panchayat*, whereas for farmers of municipal areas same must be submitted in the block. It is submitted that all applications received from farmer be decided in the meeting of "*gramsabha*" as per schedule decided by the District Magistrate. It is further submitted by Mr. Mangalam that Gram Sabha is a statutory body and is defined under Section 2(m) of Bihar Panchayat



Raj Act 2006, which consists of person registered in the electoral role pertaining to any village falling within the territorial area of *panchayat* at village level. It is submitted that all such applications received, as aforesaid be published thereafter publically to invite the objections from any individuals, and if any objection be received in furtherance of publication same be sent to the "*gram sabha*" again by the BDO, to publish revised list, if so required, in view of objections. It is submitted that after final publications of qualified farmers the funds was released by the secretary of concerned *panchayat*. It is submitted that there is no role attributed to elected *mukhiya* like petitioner to indulge in distributions of fund or to decide any eligibility or objections in terms of aforesaid notification as issued by Department of Agriculture, Government of Bihar.

8. It is submitted by Mr. Mangalam that in view of aforesaid notification of Government of Bihar which is an unimpeachable piece of document, no criminal liability/ case is made out against this petitioner, who is a elected *mukhiya* and it is pointed out that just to settle local political



differences and oblique motive with all melafidness, the present false case was lodged against petitioner with harassing attitude, and therefore, same is likely to be quashed in view of ***State of Haryana and Others vs. Bhajan Lal and Others*** reported in ***1992 Supp (1) SCC 335***.

9. 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 nay 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."

10. In view of aforesaid factual submissions and by taking note of fact as notifications no. 4442 dated 26.07.2010 of Department of Agriculture, Government of Bihar categorically speaks that it is the "*gram sabha*" which decides the eligibility of the farmer and also to reconsider if



any objections received from BDO to decide eligibility to receive diesel subsidy amount, where the fund of subsidy be released by *panchayat* secretary in view of decision of *gram sabha*, which is a statutory body creating no role of *mukhiya*, in distribution of diesel subsidy, therefore, this Court is convinced with the argument that no criminal case is made out against this petitioner, who is an elected *mukhiya* and therefore, the present impugned order is fit to be quashed/ set aside.

11. In view of aforesaid and by taking note of golden principles no. 1 and 7 of ***Bhajan Lal case (supra)*** the cognizance order *qua* petitioner dated 05.05.2017 stands quashed/ set aside.

12. Let a copy of this judgment be sent to the learned trial court forthwith, with LCR, if any.

(Chandra Shekhar Jha, J)

Sudha/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.07.2026.
Transmission Date	21.07.2026.

