IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Revision No. 357 of 2022

Ajit Kumar Choudhary, aged about 55 years, son of Late Tej Narayan Choudhary, Resident of Quarter No. M.B. 6C Near Shiv Mandir, B Type, Adityapur, P.O. and P.S.-Adityapur, Dist. Seraikella-Kharsawan, Jharkhand

……Petitioner

Versus

1. The State of Jharkhand
2. Prabhat Kumar Bardiyar, S/o-Late Sukhdeo Ram Bardiyar (B.D.O., Kharsawan), Village-Jojohatu, P.O. & P.S. and District-Khunti

…. Opp. Parties

For the Petitioner : Mr. Naveen Kumar Jiaswal, Advocate
For the State : Mrs. Priya Shrestha, Spl.P.P.

PRESENT
CORAM: HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA
ORDERS

CAV on 07.09.2026 **Pronounced on 06/11/2026**

1. I have heard Mr. Naveen Kumar Jaiswal, learned counsel for the petitioner and Mrs. Priya Shrestha, learned Spl.P.P. for the State.

2. Instant criminal revision is directed against the order dated 28.02.2022 whereby and whereunder an application under section 239 of Cr.P.C for discharge of the petitioner has been rejected by learned Additional Chief Judicial Magistrate, Seraikella in connection with G.R. Case No.727 of 2013 corresponding to Kharsawan P.S. Case No.42 of 2013 for the offence under sections 406 and 409 of IPC.

Factual Matrix:-

3. Factual Matrix giving rise to this revision as per FIR lodged by Block Development Officer, Seraikella, Kharsawan is that the construction

work of Panchyat Bhawan, Telaiyadih under the scheme No.30/2011-12 estimated cost of Rs.21,15,900/- got administrative approval on 05.05.2010. Initially the departmental contractor Sri Bam Prasad, Junior Engineer was advanced Rs.6 lakhs to initiate the above construction work to which he declined and returned the money. Thereafter, the above scheme work was allotted to Junior Engineer, Ajit Kumar Choudhary (present petitioner). It is alleged that total Rs.12 lakhs was advanced to the said Ajit Kumar Choudhary and till the date of lodging the FIR, physical structure of the building was (i) casting of roof of ground floor roof was completed (ii) Erection of wall of first floor was completed and casing of roof remain pending (iii) Up-to-date measurement of Rs.12,83,609/-, (iv) royalty and sales tax of Rs.13,698/- and (v) dues-83,609/-.

The measurement book was also certified by Assistant Engineer and Executive Engineer. The bills raised as per measurement book by the departmental agent (petitioner), the amount of royalty and sales tax of Rs.13,698/- was provided through cheque dated 24.12.2010 and dues of Rs.83,609/- was also paid through cheque No.016704 by the Executive Engineer. It is further alleged that for completion of remaining work, petitioner demanded advance of Rs.2 lakhs for casting of roof of first floor and the same amount was paid by BDO, Kharsawan and labour charges Rs.7,200./- was sent to Post Master, Chaibasa. The petitioner produced measurement book on 20.02.2012 for the amount

Rs.2,51,336/- and the same was certified by Assistant Engineer and Executive Engineer. It is further alleged that for installing doors and windows and plaster work, advance of Rs.3 lakhs were demanded by the petitioner but in spite of paying advance as per Measurement Book Rs.50,000/- was paid through Cheque No.295791 dated 12.03.2012. It is further alleged that the present petitioner by his application dated 24.04.2012 informed that Blocks MNREGA and others works are going on and due to posting of only two junior engineers, it is very difficult to complete the work of Telaidyah Panchyat Bhawan and also prayed to get the work completed by Panchyat Secretary/Mukhiya, Telaiyadih and he may be exonerated. It is further alleged that the petitioner also deposited all bills, master rolls and receipts of his work and requested to complete the work through Panchyat Sevak but Panchayat Sevak from entering into the agreement due to meager amount of the scheme. In the aforesaid situation, the construction work remained pending for two months without any progress, then show-cause notice was issued vide Letter No.597 dated 19.05.2012 against the departmental agent, Ajit Kumar Choudhary (present petitioner) and also directed to deposit royalty and sales tax deductions but he did not reply. Thereafter, the work measurement through physical inspection was conducted and several irregularities and discrepancies was found and it was also found that the work is not in accordance with his measurement mentioned in the scheme. Therefore, Ajit Kumar Choudhary (petitioner) has

withdrawn the Government money by placing false measurement of work done by him against the specification of the scheme and also not paid the royalty and sales tax and misappropriated the government money.

On the basis of above written report (computerized typing), FIR was registered as Seraikella P.S. Case No.42 of 2013 dated 25.07.2013 for the offence under sections 406 and 409 of IPC. After completion of investigation, charge-sheet was submitted against the petitioner. He filed an application for discharge the petition under section 239 of Cr.P.C, which has been rejected and assailed in this revision against which this petition is filed.

Submission on behalf of petitioner:-

4. Learned counsel for the petitioner has submitted that after institution of FIR, the petitioner was requested to complete the remaining work of Panchyat Bhawan (Anxxure-8) and re-inquiry was also conducted for verifying the measurement of the work completed as per terms and specification of the project under the scheme. District Panchyat Raj Officer vide letter No.2012 dated 07.03.2017 directed the B.D.O., Kharsawan to allow the present petitioner to complete the Panchyat Bhawan. Accordingly, B.D.O., Kharsawan wrote Letter No.299 (Annexure-7) dated 08.03.2017 to APP civil court, Seraikella to obtain the permission of the court concern for the completion of the work by the petitioner. Learned Additional Public Prosecutor filed an application

before the concerned court, ACJM, Kharsawan seeking permission to complete the work under the scheme by the petitioner vide order dated 19.04.2017. The said application was allowed with observation that "The court has no objection if the concerned authorities have decided to complete the pending work from the accused since this case has been filed by the state." Thereafter, Block Development Officer, Kharsawan vide Memo No.844 dated 10.06.2017 addressed to Mukhiya/Panchyat Secretary (Annexure-9), Gram Panchyat, Telaiya including the entire documents regarding the construction of the said Panchyat Building to start remaining the construction work through the present petitioner. Accordingly, Village Pradhan Secretary/Mukhiya directed the present petitioner to start the remaining work of building in question vide his Letter No.27 dated 11.06.2017 (Annexure-10). The petitioner completed the entire building work of the Panchyat Bhawan and after satisfying the work, a Work Completion Certificate dated 18.10.2017 (Annexure-11) was jointly issued by the Assistant Engineer, Junior Engineer, Panchyat Secretary/Mukhiya of Telaiyadih Panchayat. After finding the construction work satisfactory and as per scheme, the newly constructed Panchyat Bhawan of Telaiyadih along with original measurement books of the said building was handed over by the petitioner to Receiving Officer on 18.10.2017 and in this regard, the certificate was also issued under signature of Receiving Officer, Panchyat Sevak (Annexure Nos. 12 and 13). It is further submitted that after handing over the said

building vide Letter dated 25.04.2018 addressed to BDO, Kharsawan, the petitioner informed that he has received the entire amount and there is no dues relating to the construction of the above building (Annexure-14). It is further submitted that the petitioner has never defalcated any government money in connection with the aforesaid scheme rather due to meager amount of estimated cost and its delayed payment of installment, the construction work was delayed. Even, after institution of the FIR, the petitioner was extended the period for completion of the construction work and ultimately satisfying from all corners, the building was handed over and Panchyat Bhawan is functional. Not a single penny has been defalcated by the petitioner. In spite of the above information given to the Investigating Officer, charge-sheet was submitted against the petitioner for the aforesaid offence and cognizance has been taken. It is further submitted that the entire factual scenario as depicted above do not constitute any offence under sections 406 and 409 of IPC against the petitioner. Learned trial court without discussing the above materials, which were also pointed out during argument has relied upon the earlier report submitted by the Department. Although, the re-inquiry report submitted to the Investigating Officer and part of the record has also not considered at all and the further development, which took place in this case with permission of the court has been ignored. Learned trial court has not recorded any sound reasoning as to how the offence under sections 406

and 409 of IPC is constituted in the present facts and circumstances against the petitioner. Therefore, passed an absolutely illegal and erroneous order, which is liable to be set aside allowing this revision.

Submission on behalf of State:-

5. On the other hand, learned Spl.P.P controverting the aforesaid points of argument has submitted that all the points taken by the petitioner are concerned with the probable defence, which has to be proved during trial and not warranted to be decided at the very initial stage of the proceeding. It is further submitted that during enquiry several discrepancies in the actual construction work and measurement book were found, which is indicative of defalcation of money provided under the scheme for construction work. At this stage of proceeding, there is no valid reason for interfering with the impugned order. Therefore, this revision has no merits and fit to be dismissed.

Analysis, Reasons and Decision:-

6. I have gone through the record of the case along with impugned order in the light of contentions raised on behalf of both side.

7. It appears that the main dispute arose in this case for delayed construction work of the Panchyat Bhawan by the petitioner. The constraints and compelling circumstances like meager amount of estimated cost and others were pointed out by the petitioner before the Authorities and alternative request was also suggested to get completion of remaining work through Panchyat Secretary/Mukhiya appointing him

as an agent. In spite of that the petitioner was prosecuted issuing a show cause notice to him. It further transpires that after institution of FIR and realizing the consequences, the petitioner requested the authority to extend the time for completion of the remaining work and also requested for re-inquiry regarding discrepancies as pointed out in the earlier inquiry and to permit him to complete work in accordance with terms and conditions of the scheme. Thereafter, the completion work of the building was expedited and the same was completed and verified by the Competent Authority. Being satisfied with specification of work completed and detailed project of the scheme, a certificate was issued by the Competent Authority and finally the building was handed over and receipt of the same has also been issued from the Office of Deputy Commissioner, Kharsawan. These developments and correspondence were held under official norms and cannot be categorized as probable defence of the petitioner. It further transpires that there is no whisper in the entire FIR and materials collected during investigation as to how much money was defalcated under the scheme by the petitioner rather the entire allegations are centered around against the delay of construction work. Therefore, it appears that learned trial court has not taken into consideration the entire factual aspects of the case and further developments in this case after institution of FIR under the permissive umbrella of the court and the officials involved in the completion of scheme work and passed the impugned order without recording any

valid reasons as to what are the materials constituting the offence under sections 406 and 409 of IPC against the petitioner.

8. In view of the above discussion and reasons, I find substance in this revision. Therefore, the impugned order dated 28.02.2022 passed by learned Additional Chief Judicial Magistrage, Seraikella is hereby set aside and this criminal revision is **allowed**.

9. The matter is remitted back to the learned trial court for hearing the parties afresh and pass a fresh reasoned order in the light of aforesaid observation without being prejudiced by its previous rejection order.

10. Pending I.A(s), if any, is also disposed of accordingly.

11. Let a copy of this order be sent back to the concerned court for information and needful.

(Pradeep Kumar Srivastava, J.)

High Court of Jharkhand, Ranchi

Date:-06/11 /2026

Pappu/-N.A.F.R.

Uploaded on 06/11 /2026