

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.50360 of 2022**

Arising out of PS. Case No.-46 Year-2020 Thana- SHASTRINAGAR District- Patna

Rajendra Kumar, S/o Late Budhan Mahto, Resident of A.G. Colony, Plot No-A/78, P.S.- Shastri Nagar, Patna-25, Ex Secretary, Patna Branch A.G. Housing Cooperative Society, Ltd. Patna.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Awadhesh Kumar Pandit, Advocate

Ms. Puja Kumari, Advocate

For the Opposite Party/s : Mr. Aditya Narayan Singh.1, APP

**CORAM: HONOURABLE MR. JUSTICE ANSUL
ORAL JUDGMENT**

Date : 10-03-2026

Re: I.A. No. 01 of 2025

This Interlocutory Application has been filed for quashing of the order dated 04.09.2025 passed by learned Judicial Magistrate, 1st Class-V, Patna in connection with Shastri Nagar P.S. Case No. 46 of 2020 (G.R. No. 637 of 2020) by which a discharge petition filed by the petitioner has been rejected.

2. For the reasons stated in the application and affidavit, Interlocutory Application No. 01 of 2025 stands allowed.

3. Learned counsel for the petitioner is permitted to amend the prayer for quashing of the order of cognizance as well as the order dated 04.09.2025 by which a discharge petition filed



by the petitioner had been rejected by Judicial Magistrate, 1st Class-V, Patna.

3. Heard Mr. Awadhesh Kumar Pandit, learned counsel assisted with Ms. Puja Kumari, learned counsel for the petitioner and Mr. Aditya Narayan Singh-I, learned Additional Public Prosecutor for the State.

4. Petitioner seeks quashing of the order of cognizance dated 26.06.2021 passed in connection with Shastri Nagar P.S. Case No. 46 of 2020 (G.R. Case No. 637 of 2020) whereby and whereunder the learned Additional Chief Judicial Magistrate-IV, Patna has taken cognizance of the offence under Sections 406 and 420 of the Indian Penal Code.

5. The prosecution case is that the informant namely Satyendra Kumar Singh had written a letter to the Officer In-charge, Shastri Nagar, Patna on 16.01.2020 for lodging an FIR against the petitioner for compliance of the Letter No. 123 dated 10.01.2020 issued by the District Co-operative Officer, Patna stating therein that the letter written by the petitioner bearing Letter No. 19-20/163 dated 13.12.2019 is not in consonance with sub-section 4(b) of Section 41 of the Bihar Co-operative Societies Act, 1935 since the Society was dissolved automatically due to resignation of 10 Members of the Managing Committee of Patna



Branch, AG Office Co-operative Society Limited, Patna including President and Vice President. Thereafter, an *ad hoc* committee was constituted by the District-Co-operative Officer *vide* Memo No. 1131 dated 15.05.2019 by appointing Sri Shrish Chouhan, the Co-operative Extension Officer as a Special Officer still the petitioner assuming himself to be Secretary has discharged the departmental work illegally in the capacity of Secretary.

6. Learned counsel for the petitioner submits that *vide* Letter No. 123 dated 10.01.2020 (Annexure-2), the FIR was lodged by the District Co-operative Officer, Patna alleging therein that the Ex-Secretary, Rajendra Kumar, i.e., the petitioner was claiming himself to be Secretary. On the basis of which the FIR was lodged under Sections 406 and 420 IPC and thereafter cognizance was taken under Sections 406 and 420 IPC. He further submits that Letter dated 18.01.2020 (Annexure-4) would disclose that the petitioner made a representation to the District Co-operative Officer on 18.01.2020 where he had admitted that the fault committed by him was not deliberate and he had also stated that for last six years he was suffering from serious disease like cancer. The District Co-operative Officer made a noting on the representation itself that the FIR could be withdrawn after issuance of warning against him. The same happened on 18.01.2020 but



apparently none took care of the same and the police submitted charge-sheet on 31.12.2020 *vide* Charge-sheet No. 758 of 2020 and, thereafter, cognizance was taken on 26.06.2021. It is also submitted that police during investigation recorded the statement of District Co-operative Officer in paragraph 23 of the case diary in which she had admitted that after issuing letter by him no loss has been occasioned by the act of the petitioner. It is clear that the cognizance order dated 26.06.2021 strangely refers to paragraph 23 but the learned Magistrate has not taken the pain of going through paragraph 23 of the case diary which almost exonerates the petitioner.

7. Learned counsel for the petitioner has relied on following judgments of Hon'ble Supreme Court:-

(i) Anand Kumar Mohatta and Anr. vs. State (NCT of Delhi) Department of Home and Anr. reported in (2019) 11 SCC 706.

(ii) Md. Naushand Khan and Ors. vs. State of Bihar and Anr. reported in 2023 SCC Online Pat 9587.

(iii) Rajnish Kumar Bishwakarma vs. State of NCT of Delhi & Anr. (Special Leave Petition (Criminal) No. 5290 of 2024).

8. It is settled law that for every wrong act criminal prosecution is not the remedy but the person could be proceeded departmentally by means of initiating departmental proceeding but



the Department has chosen short-cut method of harassing the petitioner by filing criminal prosecution against him.

8. In such view of the matter, the order of cognizance dated 26.06.2021 passed in Shastri Nagar P.S. Case No. 46 of 2020 (G.R. Case No. 637 of 2020) whereby and whereunder the learned Additional Chief Judicial Magistrate-IV, Patna as well as the order dated 04.09.2025 by which a discharge petition filed by the petitioner had been rejected is quashed and set aside so far as the petitioner is concerned.

9. Accordingly, the present petition is allowed.

(Ansul, J)

Vikash/-

AFR/NAFR	
CAV DATE	N/A
Uploading Date	
Transmission Date	

