

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.23802 of 2019

Arising Out of PS. Case No.-188 Year-2016 Thana- KOTWALI District- Patna

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1. Sukhdeo Rajak S/o Late Ganauri Rajak Junior Engineer, Bihar State Tourism Development Corporation, Resident of Bank Colony, Gola Road, P.S.- Danapur, District- Patna.
 2. Shambhu Kumar S/o Late Triveni Singh Assistant Accounts Clerk, Bihar State Tourism Development Corporation, Resident of - Gardanibagh, Bhikahchak, P.S.- Gardanibagh, District - Patna.
 3. Sanjay Kumar S/o Priyabrath Narayan Yadav Assistant Accounts Clerk, Bihar State Tourism Development Corporation, Resident of - Bhirakhi South, Ward No. 25, Madhepura, P.S.- Madhepura, District - Madhepura.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Umesh Kumar Singh
For the Opposite Party/s : Mr. Mukeshwar Dayal.

CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

Date : 25-04-2019

Heard learned counsel for the petitioners and learned APP for the State.

2. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 29.01.2018/17/02/2018 passed by learned J.M. 1st Class, Patna in Kotwali P.S. Case No. 188/16, G.R. No. 2590 of 2016 and revisional order dated 20.11.2018 passed by 10th Additional Sessions Judge, Patna in Criminal Revision No. 113 of 2018, whereby the learned Magistrate rejected the discharge petition of the petitioners which was affirmed by the learned Revisional



Court.

3. Factual matrix of the case is that Kotwali P.S. Case No. 188 of 2016 was instituted under Sections 341, 323, 379, 504 and 506/34 of the Indian Penal Code against the petitioners on the basis of written report of contractor Uday Shankar Pandey with the allegation, in succinct that the informant is a contractor in the Bihar State Tourism Development Corporation Ltd. He has carried out the work related to suspension bridge, boundary wall, toilet block ticket counter and external electricity works etc. at Kunda area, Rajgir. After completion of work, he submitted application for return of his earnest money and security deposit, but the petitioners started demanding graft in lieu of releases of the aforesaid amount despite signature of Chief Engineer and Executive Engineer on the file. On informing the petitioners about making complain to the Secretary of the Department for their misdeed, petitioners misbehaved with him and tried to snatch his application and assaulted him and snatched his chain and took out his purse containing Rs. 2-3 thousand and also extended threatening of dire consequences.

4. The aforesaid case was investigated by the police and on conclusion of the investigation, I.O. submitted charge-



sheet against the petitioners under Sections 341, 323, 379, 504 and 506/34 of the Indian Penal Code.

5. Petitioners filed discharge petition under Section 239 Cr.P.C. which was rejected by the learned Magistrate vide order dated 29/01/2018/17/02/2018. Assailing the aforesaid rejection order, the petitioners filed Criminal Revision vide Criminal Revision No. 113 of 2018 which was dismissed by learned 10th Addl. Sessions Judge, Patna vide order dated 20.11.2018.

6. It is submitted by learned counsel for the petitioners that the petitioners happen to be office bearer of Bihar State Tourism Development Corporation, Patna. Petitioner no. 1 happens to be Junior Engineer while petitioner nos. 2 and 3 are the Assistant Accounts Clerk in the said Corporation. Petitioners have cleared all the bills of the informant and no bill of the informant was pending, but in order to mount pressure upon the petitioners to grab other contract works, the informant has filed this false and frivolous case against them with altogether false and concocted allegation. It is further submitted that the informant had misbehaved with the petitioners and regarding the said misdeed of the informant, the petitioners had informed the Managing Director, Bihar State Tourism



Development Corporation vide letter dated 20.04.2016 and getting the knowledge of the same and peeved with it, the informant has filed this false and frivolous case with ulterior motive. It is further submitted that as the petitioners were the office bearer and discharged their duties in their official capacity, no cognizance of the offence should have been taken against them without obtaining necessary sanction for their prosecution from their department. Hence, the impugned orders are liable to be quashed.

7. On the other hand, learned APP for the State opposed this quashing petition.

8. From perusal of record, it appears that the petitioners happen to be office bearer of the aforesaid Corporation being the Junior Engineer and Assistants Account Clerk of the said Department. Regarding the nuisance created by the informant in the office and causing hindrance in discharging official duties by the petitioners and also on extending threatening and creating reign of terror by the informant on 20.04.2016, the petitioners have given information to the Managing Director, Bihar State Tourism Development Corporation vide letter dated 20.04.2016. On getting knowledge of the aforesaid petition filed by the petitioners against the



informant, the informant appears to have filed written report against the petitioners on 21.04.2016 at 10:30 AM. Though the P.S. is located at 2 Km. from the place of occurrence i.e. Department and moreover, the aforesaid FIR was received in the court of C.J.M. on 23.04.2016 which creates serious doubt about the aforesaid prosecution case, and in my considered opinion, the same appears to be after thought and concocted and framing of charge against the petitioners on the basis of the aforesaid after thought accusation made in the aforesaid written report of the informant would be nothing, but an abuse of the process of the Court.

9. Accordingly, the order dated 29.01.2018/17/02/2018 passed by learned J.M. 1st Class, Patna in Kotwali P.S. Case No. 188/16, G.R. No. 2590 of 2016 and revisional order dated 20.11.2018 passed by 10th Additional Sessions Judge, Patna in Criminal Revision No. 113 of 2018, is hereby set aside and this petition is allowed.

(Prakash Chandra Jaiswal, J)

rohit/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	30-04-2019
Transmission Date	30-04-2019

