

Arun Charan. Vs. State of Bihar.

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Court : Patna

Decided On : Sep-24-2010

Judge : Rakesh Kumar, J.

Acts : Code of Criminal Procedure (CrPC) - Section 482; Indian Penal Code (IPC)
- Sections 467, 468, 420, 120B

Appeal No. : CRIMINAL MISCELLANEOUS No.35575 OF 2001

Appellant : Arun Charan.

Respondent : State of Bihar.

Advocate for Def. : Smt. Indu Bala Pandey, Adv.

Advocate for Pet/Ap. : Sri Arvind Kumar Verma, Adv.

Judgement :

1. The sole petitioner, who was Executive Engineer in the Water Resources Department, Govt. of Bihar, has approached this Court, while invoking its inherent jurisdiction under Section 482 of the Code of Criminal Procedure, with a prayer to quash an order dated 26.2.2000 passed by the learned Chief Judicial Magistrate, Begusarai in Barauni P.S. Case No.13 of 1993. By the said order ,i.e. order dated 26.2.2000 the learned Magistrate has taken cognizance of offences under Section 467, 468, 420 and 120 B of the Indian Penal Code.

2. Short fact of the case is that an agreement was entered in between M/ S Barauni Tiles and the State Bank of India, Baranui Fertilizer Township Branch, Begusarai . As per the agreement, the payment of M/S Barauni Tiles for supply of Tiles to the Irrigation Department of Galudih Division was required to be made through Bank, but subsequently the Executive Engineer, Minor Distribution Division Galudih, Ghatshila made direct payment of Rs.6,39,307.00 to M/S Barauni Tiles and, as such, the Bank had suffered a loss. On the basis of written report of the Bank Officer, an F.I.R. vide Barauni P.S. Case No. 13 of 1993 was registered against partners/proprietors of M/S Barauni Tiles ,i.e. five named accused persons and the Executive Engineer, Minor Distribution Division Galudih, Ghatshila by his post.After registering F.I.R., police submitted chargesheet against all private persons including the petitioner.

3. Aggrieved with the order of cognizance, the petitioner approached this Court by filing the present petition, which was admitted on 7.8.2002. While admitting, it was directed that pending final hearing of this application, the interim order dated 9.7.2002 shall remain stayed. In this case by order dated 9.7.2002 while granting order of stay case diary was called for and the same has been received, which is lying with the record of the case.

4. Sri Arvind Kumar Verma, learned counsel appearing on behalf of the petitioner, has submitted that in the present case , agreement was entered in between the parties on 26.4.1989 and the entire alleged payments were made by the Executive Engineer, Minor Distribution Division Galudih, Ghatshila by the end of May,1990. The petitioner joined the post of Executive Engineer, Minor Distribution Division Galudih, Ghatshila on 1.4.1992. According to the learned counsel for the petitioner, since the petitioner was not at all in the scene, there was no occasion for the Investigating Officer to implicate him as an accused. The entire action was taken by the predecessor of the petitioner and since at the time of registering F.I.R., the petitioner was posted there as Executive Engineer, he was unnecessary made accused at the time of filing of the chargesheet by the Investigating Officer. On this ground alone, it has been submitted that the prosecution of the petitioner will amount to abuse of the process of the court.

5. Smt. Indu Bala Pandey, learned Addl. Public Prosecutor has appeared on behalf of the State. She has thoroughly examined the case diary and has fairly admitted that the petitioner was never posted during the period, while offence was committed.

6. In view of the fact that the petitioner was not at all posted at the relevant time, it would not be appropriate to allow the prosecution of the petitioner for an occurrence, which had never been committed by him, to further proceed. The Court is of the view that it is a fit case for exercising inherent jurisdiction in favour of the petitioner.

7. Accordingly, the impugned order of cognizance dated 26.2.2000 passed by the learned Chief Judicial Magistrate, Begusarai in Barauni P.S. Case No.13 of 1993 is hereby set aside and the petition stands allowed.

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