

(2020) 10 PAT CK 0036

In the Patna High Court

Case No : Criminal Miscellaneous No. 78262 Of 2019

Sandip Kumar Sinha

APPELLANT

Vs

State Of Bihar And Anr

RESPONDENT

Date of Decision : 08-10-2020

Acts Referred:

Indian Penal Code, 1860 — Section 406, 409, 420

Citation : (2020) 10 PAT CK 0036

Hon'ble Judges : Ahsanuddin Amanullah, J

Bench : Single Bench

Advocate : Syed Ashfaq Ahmad, Parmeshwar Mehta, Anjani Kumar, Agreya Pratap, Shailendra Kumar Singh

Final Decision : Dismissed

Judgement

1. The matter has been heard via video conferencing due to circumstances prevailing on account of the COVID-19 pandemic.
2. Heard Mr. Syed Ashfaq Ahmad, learned counsel for the petitioner; Mr. Parmeshwar Mehta, learned Additional Public Prosecutor (hereinafter referred to as the 'APP') for the State and Mr. Anjani Kumar, learned senior counsel along with Mr. Agreya Pratap and Mr. Shailendra Kumar Singh, learned counsel for the Bihar State Food and Civil Supplies Corporation Limited (hereinafter referred to as the 'Corporation').
3. The petitioner apprehends arrest in connection with Belhar PS Case No. 62 of 2017 dated 20.04.2017, instituted under Sections 406, 409 and 420 of the Indian Penal Code.
4. The allegation against the petitioner and another co-accused is of misappropriation in the procurement of paddy.
5. Learned counsel for the petitioner submitted that he was appointed as Subject Matter Specialist (hereinafter referred to as 'SMS') by the State Agriculture

Department and has no role or connection with the procurement of paddy, much less, in defalcation thereof. Learned counsel submitted that as per the duty assigned to the petitioner, he is only to verify/certify the quality of the paddy, which is to be procured, but the actual procurement relating to the amount and quantity has to be done by the Godown In-charge. It was submitted that it is the Godown In-charge, who is the main person responsible for procurement as even in the official guidelines, he is required to ensure procurement, its quality, weighing and storage. Learned counsel submitted that though the petitioner is similarly situated to Rakesh Kumar Kunal, who was also posted as SMS, and was also posted at the concerned Procurement Center, he has not been made accused. Learned counsel submitted that the petitioner has been made a scapegoat as the higher officials, including the District Manager of the Corporation, who were ultimately responsible for the procurement and required to monitor what was being done, which they failed to do, still have been left scot-free. It was submitted that pursuant to earlier order of the Court, now, the Corporation has admitted that there is error in the amount of shortfall of paddy, which indicates that the FIR itself is incorrect, as it was done in a hurried manner without proper verification. Learned counsel submitted that this indicates that the statement in the written complaint, based on an enquiry, cannot be relied upon. It was further submitted that the petitioner was not required and also did not in any manner participate in actual procurement and his work being limited to that of a specialist for verification of the quality of the paddy to be procured, which he discharged, the allegation, at least against him, is totally untenable. Learned counsel drew the attention of the Court to the terms of appointment of the petitioner to contend that his duty did not include procurement of paddy. Learned counsel submitted that the materials brought on record in the supplementary counter affidavit filed on behalf of the Corporation, which was affirmed on 06.10.2020 bringing on record copies of the various truck challans on which the petitioner's signature is present, were only for the purposes of movement of the trucks and not with regard to quantity of paddy purchased, having nothing to do with how much was loaded on the truck and what payment was made for such procurement. Learned counsel submitted that the petitioner is ready to abide by any conditions which the Court may set for his release on anticipatory bail.

6. Learned APP submitted that materials brought on record on behalf of the Corporation are sufficient to indicate the role of the petitioner in actual procurement and, thus, he is involved in defalcation of public money.

7. Learned counsel for the Corporation submitted that, initially, stand of the petitioner in the main application was that he had been transferred at the relevant time from the place in question, is belied by documents, which have been brought on record on behalf of the Corporation in its various affidavits. It was submitted that besides that, the role of the petitioner, as contended by the learned counsel for the petitioner based on his terms of employment may not be of much help to him for the reason that in the terms of such employment, even

though a specific duty to verify the quality of the paddy, may not be indicated, then how can he explain that he was there in the capacity of a quality checker, when such duty was also not specifically indicated. It was contended that the petitioner cannot approbate and reprobate on the issue, i.e., on the one hand contend that he had no role in procurement and was only involved in certifying its quality, while on the other hand, admitting that he was there only as a quality checker, relying on the same terms of employment, is impermissible, more so, when the said conditions of his employment does not state with regard to certifying the quality of the paddy at the time of procurement. It was submitted that even thereafter, there is a clause in the engagement agreement, which stipulates that instructions issued from time to time shall also have to be complied with and, thus, the instruction being specific that the SMSs also shall be equally responsible, along with the Godown In-charge, for actual procurement, the responsibility automatically gets conferred on him. Learned counsel submitted that the basic defence of the petitioner being that he was in no way involved in actual procurement, gets belied from the materials brought on record in the supplementary counter affidavit filed on behalf of the Corporation, affirmed on 06.10.2020, which proves that on the truck challans, where the actual numbers of bags which had been loaded has been mentioned, just next to which the petitioner has signed, leaves no shade of doubt that he was responsible and actively involved in actual procurement.

Learned counsel submitted that if, at all, the contention of the petitioner is correct that he had certified only for the purpose of the trucks being released, without verification of the number of bags and the materials loaded thereon, then it was incumbent for some other person to certify on behalf of the Corporation, with regard to the same. Thus, the petitioner being the sole signatory of the challans clearly indicates that he was certifying whatever was filled up in the challans, on behalf of the Corporation, and there being no other signature of any other person, the plea that the petitioner had no role in the actual procurement is not only erroneous but patently false. Learned counsel submitted that pursuant to earlier orders of the Court, affidavits have been filed with regard to the Corporation getting the matter reverified year-wise and it has come to light that some persons have been left out from the column of the accused though they also had a direct role in such procurement leading to defalcation, for which corrective measures have already been initiated. At this juncture, learned counsel submitted that the Managing Director of the Corporation has conveyed to him that the Court be informed that he undertakes to ensure that the matter with regard to the mistake in the initial written complaint filed on behalf of the Corporation, relating to incorrect quantity being mentioned as also with regard to person(s), who are prima facie involved, not being made accused, shall be corrected by taking immediate steps, in accordance with law. It was further submitted that the petitioner's anticipatory bail in another case of the same police station for an earlier period with regard to the same charge of defalcation, in which the amount of misappropriation was

Rs.29,18,667/-, has been allowed on the undertaking given by the petitioner to get 50% of his salary deducted per month towards the alleged misappropriated amount, whereas, in the present case, the defalcation amount in terms of the already filed written complaint is Rs.23,32,906/-, whereas, after re-verification, pursuant to earlier orders in the present case, the same now stands at Rs.1,87,72,174/-. Learned counsel submitted that the petitioner has actively participated in such criminal activity of defalcating public money by showing much greater paddy to have been purchased compared to what was actually brought to the godown. Learned counsel submitted that misgivings of the Court, as expressed in its earlier orders with regard to there being no year-wise division has also been taken care of by the authorities and the year-wise bifurcation of the shortfall has been verified from the records and, thus, such huge amount of over Rs.1.8 Crore has been found as the amount of defalcated paddy equivalent to 13356.70 quintals of paddy.

8. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, in view of the materials brought on record, especially with regard to the truck challans signed only by the petitioner on behalf of the Corporation, which was the procuring agency, on which the number of bags has clearly been mentioned, the Court finds substance in the submissions advanced by learned counsel for the Corporation and, thus, is not persuaded to grant pre-arrest bail to the petitioner.

9. Accordingly, the application stands dismissed.