

(2019) 05 PAT CK 0078

In the Patna High Court

Case No : Criminal Miscellaneous No. 24188 Of 2019

Shailendra Gupta @ Shailendra Prasad

APPELLANT

Vs

State Of Bihar And Anr

RESPONDENT

Date of Decision : 02-05-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 482
Indian Penal Code, 1860 — Section 409

Citation : (2019) 3 PLJR 901

Hon'ble Judges : Prakash Chandra Jaiswal, J

Bench : Single Bench

Advocate : Dr. Anjani Pd. Singh, Raghav Kumar, Shantanu Kumar

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the petitioner 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 14.12.2017 passed by learned Chief Judicial Magistrate, Sheikhpura in Barbigha P.S. Case No. 405 of 2016 whereby the learned Magistrate took cognizance of the offence against the petitioner under Section 409 of the Indian Penal Code.
3. Factual matrix of the case is that Barbigha P.S. Case No. 405 of 2016 was instituted under Section 409 of the Indian Penal Code against the petitioner on the basis of the written report dated 25.10.2016 filed by Raghvendra Kumar, B.D.O., Barbigha with the allegation in succinct that the petitioner Shailendra Gupta was the incharge of Nazarat in Block Office Barbigha from 06.01.2012 to 12.07.2015. During the aforesaid period, he has spent the amount of Social Security Pension Scheme for the year 2012-13 and 2013-14 but till date he has neither submitted any bill of expenditure nor the statement regarding remaining amount thereby committed financial irregularities and misappropriation. Presently he is working as Nazir at Block Office Ariyari.

4. Aforesaid case was investigated by the police and on conclusion of the investigation, I.O. submitted chargesheet under Section 409 IPC and on receiving the chargesheet and the case diary and perusing the same, learned Magistrate took cognizance of the offence against the petitioner under Section 409 IPC vide order dated 14.12.2017.

5. It is submitted by learned counsel for the petitioner that Block Development Officer, Barbigha vide letter No. 1516 dated 11.11.2017 has informed the Public Prosecutor, Sheikhpura in compliance to his letter dated 07.11.2017 that under Social Security Pension Scheme, Rs. 3,97,38,700/- was allotted for the financial Years 2012-13 and 2013-14. Out of which, Rs. 3,95,01,640/- was made available in advance to Panchayat Secretary, out of which Rs. 3,78,78,340/- was spent and Rs. 11,47,880/- has been deposited in Nazarat by cash while remaining amount of Rs. 4,75,420/- has not been adjusted till date. He has further explained that vouchers of Rs. 2,10,77,540/- have been adjusted earlier and rest vouchers of Rs.1,68,00,800/- have been submitted by the petitioner before the then B.D.O., Barbigha namely Shri Ishwar Dayal but any how he could not approve the same and for that reason the present B.D.O. has lodged the present case against the petitioner. Now the present B.D.O. has approved the voucher of Rs. 1,68,00,800/- and for the rest amount of Rs. 4,75,420/- a case has been lodged against the then Panchayat Secretary of Teus and Keoti vide Barbigha P.S. Case No. 529 of 2017. The aforesaid document indicates that the petitioner has not committed any irregularity or misappropriation of money and due to lack of communication and misunderstanding present case has been lodged in haste against the petitioner. As a matter of fact, liability of the aforesaid amount is not of the petitioner rather of the then Panchayat Secretary of Keus and Kewati namely Parsuram Singh for which a case has been lodged against him vide Barbigha P.S. Case No. 529 of 2017 and the petitioner has been made scapegoat. Hence aforesaid cognizance taken against the petitioner is nothing but the abuse of process of the Court and is liable to be quashed.

6. On the other hand, learned APP for the State opposing the quashing petition submitted that the document filed by the petitioner is not required to be considered at the time of taking cognizance and the petitioner has no locus standi at the time of taking cognizance and learned Magistrate perusing the case diary and finding prima facie case against the petitioner has rightly taken cognizance of the offence under Section 409 IPC against the petitioner and there is no illegality in the impugned order.

7. From perusal of the record, it appears that the aforesaid letter dated 11.11.2017 of the Block Development Officer, Barbigha relied upon by the petitioner is of subsequent to lodging of the case under hand against the petitioner and the said letter has been brought on record by the defence. It is settled principle of law that at the time of taking cognizance defence has no locus standi and document filed by the defence is not to be considered.

8. From perusal of the record it further appears that the learned Magistrate after

perusing the case diary and material available on record has taken cognizance of the offence under Section 409 IPC finding prima facie case against the petitioner by impugned order.

9. In the facts and circumstances of the case, I do not find any illegality in the impugned order and this quashing petition is shorn of merit. Accordingly, this quashing petition is dismissed.

10. However, the petitioner may take resort of aforesaid document before the learned lower court at the time of framing charge and learned lower court shall pass an appropriate order in accordance with law considering the aforesaid document filed by the petitioner without being prejudiced by this order.