

(2012) 01 PAT CK 0081
In the Patna High Court
Case No : Criminal Writ No. 90 of 2004

Tripit Narain Sada

APPELLANT

Vs

The State of Bihar thru the District Magistrate, Saharsa and
Others

RESPONDENT

Date of Decision : 24-01-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 409, 419, 420, 467, 468

Citation : (2012) 01 PAT CK 0081

Hon'ble Judges : Aditya Kumar Trivedi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Aditya Kumar Trivedi, J.—Petitioner has prayed for quashing of FIR of Mahisi P.S. Case No. 2/2004 registered under Sections 409, 419, 420, 467, 468 and 471 of the IPC.

2. In brevity, Mahisi P.S. Case No. 2/2004 was instituted on the basis of written report submitted by Reyaz Ahmad Khan, B.D.O., Mahisi against petitioner along with two others on the fact that during course of execution of Item No. 3/94-95, there was malpractice at the hand of the then Mukhia(Petitioner) along with the then Panchayat Sewak, Durga Kant Jha and contractor, Deo Narayan Jha. The matter was inquired into at the direction of the learned District Magistrate who, being satisfied therewith directed for institution of the case which has accordingly, been complied with.

3. Contention on behalf of the petitioner is that institution of instant case happens to be politically motivated. Further submitted that the whole process adopted by the administration, as it appears has been taken at the behest of Kamal Prasad Singh, a person who had unsuccessfully challenged the candidature of petitioner for the Mukhia. Also submitted that some defect was bound to occur because of the fact that the execution work was completed in the year 1995 for which enquiry was so entrusted in the year 2003 after interval of

eight years. Further, it has been submitted that the area is a flood prone zone and for any subsequent misfortune petitioner cannot be held responsible. That happens to be the reason behind that the Collector (Annexure-4) had taken into consideration the aforesaid event and consequent thereupon, constituted a Committee vide order dated 2nd August 2003. However, later on, over influenced by the circumstances and without waiting for enquiry report as per Annexure-4, directed the then B.D.O for institution of the case which in the facts and circumstances appears to be mala fide and sheer abuse of process of the court. So it is fit case for quashing.

4. On the other hand, learned Subhash Prasad Singh, G.A-7 opposed the prayer and submitted that writ court cannot be allowed to substitute as an investigating authority. Further submitted that investigation is going on. Also submitted that whatever materials happen to be, not only it was incumbent upon the I.O. to collect the same rather petitioner will be also at liberty to produce the same to justify his pleading. For the present, prayer happens to be non maintainable.

5. From Annexure-3 of the writ petition which has been filed by the petitioner himself before the District Magistrate, Saharsa on 8.7.2003 on the basis of which subsequently Annexure-4 was issued contains the disclosure that only 80 per cent work has been completed. So, there is an admission on the part of petitioner himself on this score regarding non completion of work.

6. At the stage while investigation is going on, the Court should normally restrain itself from interfering therewith and quash the FIR as has been held in 2006 (1) SCC (Cri) 324, relevant paragraph-2 which is as follows:-

By the impugned order, the High Court has quashed FIR No. 55 dated 27.04.2001. The FIR was registered against four respondents for having committed theft of cheel logs from the forest of Kukanet. In sum and substance, the allegation is of illegal felling of trees and theft of the same from the forest. Curiously, the High Court by entering into the factual arena has passed the impugned order quashing the FIR. Such a course is wholly impermissible. The High Court acted mere as an investigating agency at a stage when the FIR was under investigation. At this stage, we wish to say no more lest it may prejudice the parties.

7. The same view has further been adopted by the Hon''ble Apex Court itself as reported in 2007 (14) SCC 497 wherein at paragraph-3, it has been held as follows:-

Having heard the parties and perused the record. we are of the view that the High Court was not justified at this stage to examine the matter and quash the police investigation, which was pending against the respondents, Laxmi Dhaul.

8. Thus, in the background aforesaid factual as well as legal preface, instant petition appears to be non maintainable. Consequent thereupon, the same is dismissed.