

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.2593 of 2018

Arising Out of PS. Case No.-403 Year-2018 Thana- KATIHAR NAGAR District- Katihar

1. Arjun Kumar Singh, son of Late Chandrika Singh. Resident of Flat No.301,M.K. Residency,Vivekanand Marg, P.S. Sri Krishnapuri, Distt. Patna, presently posted as the Executive Engineer, Rural works Department,Works Division,Muzaffarpur West.
2. Bivash Kumar Gupta, son of Late Shivendra Prasad Sah @ Late Sri Shivendra Prasad, Resident of Flat No.104,Shiva Enclave,Tarkeshwar Path,Chiraiya Tand,P.O. -G.P.O.,P.S.Jakkanpur,Distt.-Patna,Presently posted as Junior Engineer under Suspension, Water Resources Department, Ganga Sone Flood Protection Division, Digha, Patna
3. Uday Kumar, son of Sri Ram Bilas Prasad, Resident of Kumar Hardware,4M/136, Bhoot Nath Road, P.O.-Bahadurpur Housing Colony,P.S. Agam Kuan,Patna Presently posted as Junior Engineer under suspension,Water Resources Department,Flood Control and Drainage Division, Kishanganj.
4. Vishwa Vallabh Kumar, son of Sri Ramchandra Prasad Jaiswal, Resident of Saryug Devi Colony, Naya Tola, Mirchai Bari P.O. and P.S.Mirchai Bari,Distt.-Katihar,Presently posted as Junior Engineer Under suspension, Water Resources Department,Flood Control and Drainage Division, Kishanganj
5. Sushil Kumar Pandey, son of Late Panchanand Pandey, Resident of Village and P.O. Churamanpur,P.S. Buxar,Distt.-Buxar,retired Executive Engineer,Water Resources,Department,Flood Control Division, Salmari
6. Jitendra Prasad Singh, son of Late Ramji Singh, Resident of Flat No.101,Shreya Apartment,Ara Garden Road,Jagdeo Path,P.O. Veterinary College,P.S.Roopaspur,Distt.-Patna,Presenty working as Superintending Engineer,Water Resources Department,Flood Control Circle Gopalganj.

... .. Petitioners

Versus

1. The State Of Bihar through the Director General of Police, Bihar, Patna
2. The Superintendent of Police, Katihar, Distt.-Katihar
3. The Station Head Officer, Katihar Town Sahayak Police-Station,



Distt.-Katihar

4. The Executive Engineer, Water Resources Department, Flood Control
Division Katihar

... .. Respondents

Appearance :

For the Petitioner/s : Mr.Ranjan Kumar Jha, Advocate
Mr.Sanjeev Kumar, Advocate
For the Respondent/s : Mr.Kunal Tiwary, AC to GA-II

**CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
C.A.V. JUDGMENT**

Date : 02-07-2025

Heard Mr. Ranjan Kumar Jha, learned counsel
appearing for the petitioners and Mr. Kunal Tiwary, learned
AC to GA-II, for the State.

2. The present writ application preferred by
aforementioned six petitioners under section 226 and 227 of
the Constitution of India, with following prayers and for
reliefs:

“(I) For quashing the prosecution of the petitioners in
connection with Katihar Town (Sahayak) P.S. Case
No.403 of 2018 dated 25.06.2018 in respect whereof a
written report was filed by the Respondent no.4 before
the Respondent no.3 on 25.06.2018, attributing
offences under Section 409/34 of the Indian Penal Code
on the ground that since the petitioners were not at all
connected with preparation and approval of the
estimate of the scheme in question even if a wrong
provision was made in the estimate of aforesaid
scheme, the petitioners had committed no offence, if



they had executed the work strictly in accordance with the estimate prepared by other accused persons and approved by the Chief Engineer.

(II) For issuance any other appropriate writ/writs, order/orders, direction/directions for which the writ petitioners would be found entitled under the facts and circumstances of the case.”

Substantial Question of Law involved in the present writ application.

“(1) WHETHER, the prosecution of the petitioners in the instant case would be misuse of the process of the court and ,therefore, it is liable to be quashed qua the petitioners ?

(II) WHETHER, if it is not the allegation that the petitioners have any role in preparation of estimate for any wrong provision made in the estimate by the others can be a ground for prosecution of the petitioners ?

(III) WHETHER, if after the irregularity in respect of item no.9 of the scheme in question was pointed out by the Flying Squad and on the basis of its recommendation, the payment made to the contractor in item no.9 of the estimate was already recovered and was credited to the government account, the department and/or the informant had any occasion to lodge First Information Report against the petitioners ?

(IV) Whether the prosecution of the petitioners is otherwise bad in law?”

Prayer of the petitioners in the present writ

application may reads as under:

“It is, therefore, prayed that to admit this application, issue Rule NISI, calling upon the Respondents to show cause as to why this application be not admitted or



disposed of at the time of Admission Stage itself and on return of the Rule, if no sufficient cause is shown, make the Rule absolute, allow this application and after hearing the parties be further pleased to quash the prosecution of the petitioners in connection with Katihar Town (Sahayak) P.S. Case No.403 of 2018 dated 25.06.2018 pending in the court of the learned Chief Judicial Magistrate, Katihar

AND/OR

Pass such other order or orders as this court may deem fit and proper in the facts and circumstances of the case.

AND

During the pendency of this writ application, the further proceeding of Katihar Town (Sahayak) P.S. Case No.403 of 2018 dated 25.06.2018 pending in the court of the learned Chief Judicial Magistrate, Katihar the petitioners may kindly be stayed.”

Facts of the case with date of events

Sl.No	Date	Events
1.		A decision was taken by the Water Resources Department for raising and strengthening of Mahananda River Right and Left Embankment with other allied works for protection of public at large which was being affected by the flood of river Mahananda. The said scheme was being sponsored by Ganga Flood Control Commission (Government of India).
2.		The Water Resources Department, Bihar was notified as the Nodal Agency to implement the aforesaid scheme of Government of India. The Flood Control Division, Katihar was declared as Nodal Division for the aforesaid scheme.
3.	06.04.2010 (Anne-P-1)	The estimate was prepared by the Flood Control Division, Katihar which was signed by Sri Jai Prakash Chaudhary and Sri Ram Ekbal Sinha in the



		capacity of Junior Engineers. It was signed by Sri Mukhlal Ram and Sri Subhash Rai in the capacity of Assistant Engineer and by Sri Upendra and Sri Mod Narayan Chaudhary in the capacity of Executive Engineer and Engineer respectively.
4.		The petitioners were not associated with the preparation of estimate of said scheme in any manner whatsoever.
5.		The administrative approval of the scheme was approved by the Government of Bihar after concurrence of G.F.C.C.(Wing of Central Government).
6.		The estimate of the scheme so prepared was approved by the Chief Engineer.
7.		A tender notice was issued for selection of Contractor.
8.		After following the procedure for finalizing the contract, the Tender Committee of the department constituted in the headquarter had awarded the contract of said scheme to M/s G.S. Co. Infrastructure Private Ltd. of Chandigarh.
9.		After the work was allotted to the aforesaid company, the company proceeded with the work under the supervision of the petitioners and it was successfully discharging its contractual obligation in view of the provisions made in the estimate.
10.		While the work was in progress, it was supervised by the Quality Control Division of the Department and Senior Engineers on times without number and no fault was found either with the work done by the contractor or with the estimate.
11.	June, 2013	The work was complete in June, 2013.
12.		On receipt of some complaints, a Flying Squad was appointed to enquire and report on the complaint.
13.	25.07.2016 (Anne-P-2)	The Flying Squad reported irregularities with respect to item no.9 of the estimate.
14.	23.03.2017 (Anne-P-3)	The money paid to the contractor under item no.9 of the estimate was recovered from the contractor and it was credited to the government account.
15.	07.07.2017 (Anne-P-4)	The Executive Engineer Flood Control Division, Katihar informed the department about the recovery and closure of agreement with the Contractor.
16.		The show cause notices were issued to the petitioners and the petitioners filed their response wherein they had categorically stated that they were not connected with the preparation of estimate in



		any manner whatsoever and therefore, they should not be penalized for an irregularities even since it was not done by them.
17.		When the aforesaid File was placed before the Internal Vigilance Wing of the Water Resources Department, it was opined by Vigilance Wing of the department that if this irregularity would not have been detected by the Flying Squad, the government had suffered a financial loss of public money.
18.		A direction was issued by the department to lodge the First Information Report.
19.	25.06.2018 (Anne-P-6)	The Respondent no.4 filed a written report before the Respondent no.3 upon which the Respondent no.3 instituted a formal First Information Report and registered a case being Katihar Town (Sahayak) P.S. Case No. 403 of 2018 for the offences under Sections 409/34 of the Indian Penal Code.

3. Mr. Ranjan Kumar Jha, learned counsel appearing for the petitioners submitted that in the year 2010, the petitioner no. 1 was posted as an Assistant Engineer in the Flood Control Division, Salmari of the Water Resource Department., Bihar. The petitioner no. 2 was posted in the capacity of Junior Engineer (JE), whereas petitioner nos. 5 and 6 were posted there in the capacity of Executive Engineer and Assistant Engineer, respectively, in the same Division. It is further submitted that so far as petitioner nos. 3 and 4 are concerned, they were posted as JEs in the Flood Control Division, Katihar, at the relevant time.

4. It is submitted by Mr. Jha that in the year 2010, a



decision was taken by the Water Resource Department for raising and strengthening the height of the right and left embankments of the Mahananda River crossing the district of Katihar with other allied works for the protection of the public at large, which was being affected by the flood of the river Mahananda. The exercise was taken under the Flood Management Scheme (in short, 'FMS'), Phase-1, which was sponsored by the Govt. of India. It is submitted that the Water Resources Department, Bihar was notified as its Nodal Agency to implement the aforesaid scheme of the Govt. of India.

5. It is further submitted that for the aforesaid exercise, an estimate was drawn and prepared by the Flood Control Division (in short, 'FCD'), Katihar, without any participation of petitioner nos. 3 & 4 despite of their posting over there. It is pointed out that the prepared estimate, as aforesaid, was signed by Sri Jai Prakash Choudhary and Sri Ram Ekbal Sinha, in the capacity of Junior Engineers. The document was further endorsed by Sri Mukhlal Ram and Sri Subhash Rai in their official capacity as Assistant Engineers,



and was subsequently approved and signed by Sri Upendra and Sri Mod Nrayan Chaudhary in their capacity as Executive Engineer and Superintending Engineer respectively. The aforesaid estimate/cost of scheme dated 06.04.02010 is annexed with the petition as **Annexure 'P-1'**.

6. It is further submitted by Mr. Jha that the aforesaid scheme was sent for technical sanction to the Chief Engineer of the Department, which was also technically sanctioned by him. The aforesaid estimate was forwarded to the Government of India for investment clearance through the G.F.C.C. In pursuance thereof, a tender notice was issued for the selection of a contractor , and upon completion of the requisite procedure for finalization of the contract, the Tender Committee of the Department, constituted at the Headquarters, awarded the contract pertaining to the said scheme to M/S 16 G.S. Co. Infrastructure Private Limited of Chnadigarh (hereinafter referred to as the "Company"). It is pointed out that at the time of the award of the contract to the aforesaid contractor, the estimate of the scheme was verified by the tender committee, rate-wise and item-wise, but no



fault was found thereof.

7. In the aforesaid context, it is further submitted that the Company commenced execution of the assigned work, as detailed hereinabove, under the supervision of the petitioners, and was duly discharging its contractual obligations in accordance with the provisions stipulated in the sanctioned estimate. Since the work was being executed in accordance with the specifications laid down in the sanctioned estimate, the petitioners, in their respective official capacities prepared the Measurement Book reflecting the work carried out by the Contractor, strictly within the scope and provisions of the said estimate.

8. It is pointed out that only after satisfactory work, the payment was made to the contractor after approval of the department, and no fault was found at any level. The work, as aforesaid, was completed in the year 2013, and thereafter, certain complaints were received against the contractor and department, pursuant to which a Flying Squad was constituted to verify the allegation raised through different complaints.

9. It is submitted by Mr. Jha, that Flying Squad Circle



No. 1 of the Water Resource Department conducted an enquiry and submitted its report to the Principal Secretary of the Department on 25.07.2016, pointing out certain irregularities with respect to item no. 9 of the estimate, which was not technically required to be provided for a scheme of raising, strengthening and brick soling of an embankment, and, therefore, it was recommended for recovery of the amount already paid to the contractor under item no. 9 of the estimate, which is evident from the report dated 25.07.2016 annexed with the present petition as **Annexure 'P-2'**.

10. It is also submitted by Mr. Jha that in view of the recommendation of the Flying Squad, corrective measures were immediately taken and money paid to the contractor under item no. 9 of the estimate was recovered from the contractor and was credited to the account of the department on 23.03.2017. Thus, no amount of government money was misappropriated by the petitioners, which is evident from the copy of the transfer entry order dated 23.03.02017, annexed as **Annexure 'P-3'** with the petition.

11. It is also submitted that with the aforesaid



recovery, the Flood Control Department, Katihar, informed the department about the recovery and closure of the agreement with the contractor vide letter no. 708 dated 07.07.2017, which is annexed as **Annexure 'P-4'** with the present writ application.

12. It is pointed out that, surprisingly, vide letter no. 647 dated 08.05.2017 and letter no. 380 dated 08.03.2017, a show cause notice was issued to the petitioner nos. 1 and 2, whereafter petitioner nos. 1 and 2 filed their response on 27.11.2017 and 02.05.2018 respectively, wherein both these petitioners categorically stated that they were not connected with the preparation of estimate in any manner, as submitted aforesaid, and they are not concerned with any irregularities. The same reply was also filed by petitioner no. 6. Petitioner no. 5 already retired by that time, i.e. in the year 2012 itself; therefore, no show cause notice was received by him.

13. It is submitted that when the aforesaid matter was placed before the Internal Vigilance Wing of the Water Resource Department, it was opined by the Vigilance Wing of the Department that if this irregularity had not been detected



by the Flying Squad, the government would have suffered a financial loss of public money and merely on the basis of opinion and assumption, Departmental Vigilance Wing, issued a direction to lodge the present First Information Report, in response of which the respondent no. 4 filed a written information/report before respondent no. 3 on 25.06.2018 alleging attempt to cause wrongful loss to the State but without attributing any specific allegation against any of the accused persons named by him in his written report, whereafter, respondent no. 3, who is the SHO Katihar Town, lodged the present FIR being Katihar Town (Sahayak) P.S. Case No. 403 of 2018 dated 25.06.2018 for the offences punishable under Sections 409/34 of the I.P.C., which is also annexed with the present petition as **Annexure 'P-6'** **(Prayed to quash).**

14. It is submitted that the allegation, as discussed aforesaid, does not constitute a prima-facie case *qua* attempt for the offence punishable under section 409 of the I.P.C. and, therefore, the FIR in issue be quashed and set aside in view of legal report of Hon'ble Supreme Court as available



through **State of Haryana v. Bhajan Lal and Others.**
reported in **1999 Supp (1) SCC 335.**

15. While concluding the argument, it is further submitted by Mr. Jha that, besides the aforesaid discussed merit, as available for quashing of the present FIR, another important ground to quash the FIR in issue is the delay in investigation, which is pending for the last seven (7) years against petitioners, as the FIR in issue was lodged on 25.06.2018. In support of his submission, Mr. Jha relied upon the legal report of the Hon'ble Supreme Court as available through **Pankaj Kumar Vs. State of Maharashtra & Ors.** reported in **(2008) 16 SCC 117; Biswanath Prasad Singh Vs. State of Bihar** reported in **1994 Supp (3) SCC 97; Santosh De Vs. Archana Guha and others** reported in **1994 Supp (3) SCC 735 and N. Raghavender Vs. State of Andhra Pradesh** reported in **(2021) 18 SCC 70.**

16. Learned counsel appearing for the respondents, filed a counter affidavit on 09.10.2020, submitted that the petitioners, being technical persons, were posted thereof and actively participated in the alleged payment to the company



for unwanted work mentioned at item no. 9 of the contract. Being technical persons they must have pointed it out, but it is fairly conceded that the extra payment qua item no. 9 was immediately returned to the department by the company and the allegation is only limited to an attempt to commit the alleged offence. It is also submitted that the investigation of this case is still pending *qua* petitioners.

17. This Court perused the material available on record and canvassed the argument as advanced by the learned counsel appearing for the parties. It would be apposite to reproduce the FIR being Katihar Town (Sahayak) P.S. Case No. 403 of 2018 dated 25.06.2018, for better understanding of the factual aspects of this case, which is as under:

कार्यपालक अभियंता का कार्यालय,
बाढ़ नियंत्रण प्रमण्डल, कटिहार।
पत्रांक617/कटिहार, दिनांक25-26/2018

सेवा में,

थानाध्यक्ष महोदय,
सहायक थाना, मिरचचाईबाड़ी, कटिहार।

विषय:- प्राथमिकी दर्ज करने के संबंध में।

प्रसंग:- विभागीय पत्रांक-सं0- 22/नि0सि0 (पू0)-01-07/2014/1181 दिनांक - 25.05.2018 एवं मुख्य अभियंता, बाढ़ नियंत्रण एवं जल निस्सरण, जल संसाधन विभाग, कटिहार का पत्रांक 1433 दिनांक 21.06.2018
महाशय,

उपरोक्त विषयक प्रासंगिक पत्र के संदर्भ में सूचित करना है कि बाढ़ नियंत्रण प्रमंडल कटिहार एवं बाढ़ नियंत्रण प्रमंडल सालमारी द्वारा वर्ष 2010 से वर्ष 2013 तक अपर महानन्दा फेज-1 के अधीन महानन्दा नदी के दौंये एवं बाँये तटबंध में कराये गये कार्यों की



जॉच विभागीय उड़नदस्ता जॉच दल द्वारा की गई। विभागीय उड़नदस्ता जॉच दल द्वारा पाया गया कि रोलिंग कम्पेक्शन मद में अनावश्यक रूप से 76.69 लाख रुपये का प्रावधान प्राक्कलन में किया गया था। क्रियान्वित करने वाले अभियंताओं द्वारा संवेदक को इस मद में 53.52 लाख भुगतान किया गया था जिसकी वसूली उड़नदस्ता जॉच दल द्वारा प्रतिवेदन देने के बाद संवेदक से कर ली गई है। उड़नदस्ता जॉच दल के प्रतिवेदन की विभागीय समीक्षा के क्रम में प्राक्कलन तैयार करने वाले, प्राक्कलन की स्वीकृति देने वाले एवं कार्य कराने वाले 20 अभियंतों को मिट्टी के कम्पेक्शन मद में दो बार प्रावधान किये जाने के कारण संवेदक को Wrongful Gain एवं सरकार को Wrongful loss कराने के प्रयास का दोषी पाया गया जो एक अपराधिक कृत्य है। इन अभियंतों के क्रियाकलाप को अपराधिक कोटी का मानते हुए प्राथमिकी दर्ज करने का आदेश प्रासंगिक विभागीय पत्र द्वारा संसूचित है। बाढ़ नियंत्रण प्रमंडल कटिहार के कार्यपालक अभियंता नोडल पदाधिकारी के रूप में नामित थे। इसलिए अधोहस्ताक्षरी द्वारा निदेशानुसार उड़नदस्ता जॉच में दोषी पाये गये अभियंतों पर प्राथमिकी दर्ज करने हेतु आवेदन दिया जा रहा है। आवेदन के साथ प्रासंगिक पत्रों की छाया प्रति एवं उड़नदस्ता जॉच दल का 670 पृष्ठों का जॉच प्रतिवेदन संलग्न किया जा रहा है।

अनुरोध है कि नीचे उल्लेखित अभियंतों पर प्राथमिकी दर्ज कर कानूनी कार्रवाई करना चाहेंगे तथा दर्ज प्राथमिकी संख्या से अधोहस्ताक्षरी को अवगत कराना चाहेंगे, ताकि विभागीय उच्चपदाधिकारियों को सूचित किया जा सके।

क्र० सं०	नम एवं पदनाम	पिता का नाम	स्थाई पता	पत्राचार का पता	अभियुक्ति
1	श्री सुभाष राय, तत्कालीन सहायक अभियंता, प्रोन्नत कार्यपालक अभियंता	स्व० लाल बहादुर राय	ग्राम+पो०+थाना- उच्चकागाँव, जिला -गोपालगंज	ग्राम+पो०+थाना-उच्चकागाँव, जिला -गोपालगंज	
2	श्री अर्जुन कुमार सिंह, तत्कालीन सहायक अभियंता, प्रोन्नत कार्यपालक अभियंता	स्व० चन्द्रिका सिंह	ग्राम- विजय रायके टोला पोस्ट- रिवलंगंज जिला-छपरा	प्लेट नं०-301 एम०के० रेसिडेन्सी अपार्टमेंट 1/16 विवेकानंद मार्ग उत्तरी एस० के० पूरी, पटना-13 मो०-9430849550	
3	श्री मुखलाल राम, तत्कालीन सहायक अभियंता	स्व० फुलचन्द राम	ग्राम+पो०- डेहरी भाया-चौसा जिला बक्सर पिन-802114	ग्राम+पो०- देवकाली भाया करहीया जिला-गाजीपुर, उत्तर प्रदेश पिन 232339 मो०-9430030446	
4	श्री मोहनधन अंसारी तत्कालीन कनीय अभियंता	स्व० करीम अंसारी	ग्राम-सुकुही पो०-खुडिया थाना-शिवसागर जिला-रोहतास (सासाराम)	ग्राम-सुकुही पो०-खुडिया थाना-शिवसागर जिला-रोहतास (सासाराम)	
5	श्री विश्वलाल कुमार, तत्कालीन कनीय अभियंता	श्री रामचन्द्र प्रसाद जयसवाल	ग्राम- आर्दश नगर फुलकिया पो०-घोघा थाना-कहलगाँव जिला-भागलपुर पिन-813205	ररुग देवी कॉलनी, नया टोला मिरचार्डबाड़ी कटिहार पिन - 854105	
6	श्री उदय कुमार, तत्कालीन कनीय अभियंता	श्री रामविलास प्रसाद	ग्राम+पो०-भातहार जिला- नालंदा पिन - 801307	कुमार हार्डवेयर 4 एम०/136, मुतनाथ रोड पो०-बी०एच० कॉलनी, पटना पिन-800026	
7	श्री जितेन्द्र प्रसाद सिंह तत्कालीन सहायक अभियंता	स्व० रामजी सिंह	प्लेट नं०-101 सिरया अपार्टमेंट, आर गार्डन रोड, जगदेव पथ पो०-पशु चिकित्सा कॉलेज, पटना, बेली रोड जि-पटना पिन-800014	प्लेट नं०-101 सिरया अपार्टमेंट, आर गार्डन रोड, जगदेव पथ पो०-पशु चिकित्सा कॉलेज, पटना, बेली रोड जि-पटना पिन-800014	
8	श्री विभाष कुमार गुप्ता, तत्कालीन कनीय अभियंता	स्व० शिवेन्द्र प्रसाद साह	ग्राम-बदलूगंज पो०-इसीपुर जिला-भागलपुर पिन-813206	शक्ति गुप्ता, प्लेट नं०-104, शिवा इन्कलेव तारकेश्वर पथ लोहानीपुर, पटना पिन-8000001	
9	श्री सुबोध कुमार तत्कालीन कनीय अभियंता	श्री रामवररूप सिंह यादव	ग्राम-चुक्ती पो०+थाना-मानसी जिला-खगड़िया पिन-851214	ग्राम-चुक्ती पो०+थाना-मानसी जिला-खगड़िया पिन-851214	
10	श्री उपेन्द्र तत्कालीन कार्यपालक अभियंता	स्व० सीता राम	ग्राम+पो०-चौधुआ जिला-मुजफ्फरपुर	कलामबाग रोड चौक रैनबसेरा हनुमान मंदिर के सामने, थाना-काजीमोहम्मदपुर जिला-मुजफ्फरपुर	सेवानिवृत्त
11	श्री मोहन लाल तत्कालीन कार्यपालक अभियंता	स्व० भगेलु साह	डॉ०आर.सी०पाल के सामने, जहाजी कोटी के नजदीक, पो०-कदमकुआँ जिला-पटना	डॉ०आर.सी०पाल के सामने, जहाजी कोटी के नजदीक, पो०-कदमकुआँ जिला-पटनामो०-9430513285	सेवानिवृत्त



12	श्री जय प्रकार चौधरी तत्कालीन कनीय अभियंता	स्व कुवर प्रसाद चौधरी	ग्राम-सोहेली पो0-बमदेव जिला-बाका पिन-813107	ग्राम-लालुचक बंगारी पो0-इसाचक जिला भागलपुर मो0-9431498615	सेवानिवृत्त
13	श्री राम इकबाल सिन्हा तत्कालीन कनीय अभियंता	स्व0 बहादुर शर्मा	ग्राम+पो0-बन्धुगंज जिला-जहानाबाद	ग्राम+पो0-बन्धुगंज जिला-जहानाबाद	सेवानिवृत्त
14	श्री सुभाष प्रसाद तत्कालीन कनीय अभियंता	स्व0 श्याम सुन्दर साह	ग्राम-महमदा, पोस्ट-पाटम जिला-मुंगेर	रेक्टर-5 एम0 एच0 आई0 जी0 38, न्यू हॉउसिंग बोर्ड कॉलोनी ग्राम+पो0बरासी जिला भागलपुर पिन-812003 मो0-9470897081	सेवानिवृत्त
15	श्री सुशील कुमार पाण्डेय तत्कालीन कार्यपालक अभियंता	श्री पंचानंद पाण्डेय	ग्राम+पो0-चुरामनपुर थाना-बक्सर जिला-बक्सर	ग्राम+पो0-चुरामनपुर थाना-बक्सर जिला-बक्सर	सेवानिवृत्त
16	श्री सत्नेश कुमार तत्कालीन कार्यपालक अभियंता	स्व0 दामोदर प्रसाद	ग्राम-बैक पो0- कसुम्भा जिला-शेखपुरा	मोहल्ला-रोड नं-1 खासमहल चिड़र्यॉटार, पटना पिन-800001 मो0-9430603021	सेवानिवृत्त
17	श्री अनंत लाल यादव तत्कालीन कार्यपालक अभियंता	स्व जीवछ यादव	ग्राम+पो0+थाना-फलपरास जिला-मधुबनी	ग्राम+पो0+थाना-फलपरास जिला-मधुबनी	सेवानिवृत्त
18	श्री इन्द्रजीत सक्सेना तत्कालीन मुख्य अभियंता	स्व0 अनुप राम	शिशमहल अपार्टमेंट, ब्लाक-4बी, बहादुरपुर गुमटी, राजेन्द्र नगर, पटना पिन-800016	शिशमहल अपार्टमेंट, ब्लाक-4बी, बहादुरपुर गुमटी, राजेन्द्र नगर, पटना पिन-800016	सेवानिवृत्त
19	श्री मोद नारायण चौधरी तत्कालीन कार्यपालक अभियंता	स्व0 विष्णुकान्त चौधरी	ग्राम-सहुरीया पो0-देनहर जिला-मधुबनी	डी0/36, अजंता कॉलनी, केशरी नगर पटना 24 मो0-9431093130	सेवानिवृत्त
20	श्री उदयभान सिंह तत्कालीन प्राक्कलन पदाधिकारी	स्व0 सुदर्शन सिंह	ग्राम-अमेठी, पोस्ट-मसोना, थाना-संजौली, भाया-नोखा जिला-रोहतास, सासाराम पिन-802215	विशाल नगर (Near AIIMS, Patna) रोड नं0-6/7 जानीपुर रोड (NH-98) पोस्ट-मुबारकपुर भाया-फुलवारी शरीफ जिला-पटना पिन-801505 मो0-9431881319	

विश्वासभाजन
ह0/- अस्पष्ट
कार्यपालक अभियंता
बाढ़ नियंत्रण प्रमंडल, कटिहार
स्थायी पता:- ग्राम+पो0-सैदपुर
थाना:- गोपालपुर, जिला:-भागलपुर
मो0-7463889238

18. It would further be apposite to reproduce section 409 of the I.P.C. which reads as under:

“409. Criminal breach of trust by public servant, or by banker, merchant or agent.—

Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with 1[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”



19. Taking note of submissions and counter submissions, and also upon perusal of the record, it transpires that petitioners were not members of the estimate committee in terms of the letter dated 25.07.2016. It also transpires that estimate was approved at all higher levels including by the Technical Committee. It is also an admitted position that the payment was received by the Company, which has not been arrayed as an accused in this case. The non-impleadment of the Company, despite its receipt of the payment, raises serious questions regarding the propriety and fairness of the proceedings.

20. Admittedly, the payment for unwanted work out of certain irregularities in item no. 9 as received by the Company was returned to the department, which is apparent through the letter dated 23.03.2017.

21. It is the settled position of law that to constitute an offence under section 409 of the IPC, there must be 'entrustment' along with 'breach of trust'. It is an admitted position that the work was under execution after approval from the higher level, and the petitioners were only



monitoring the work on site in terms of the contractual obligation of the Company, and, in view of the same, it cannot be said that any entrustment of property was with them. The gravamen of the offence of criminal misappropriation lies in the presence of a dishonest intention in dealing with the property belonging to another. There is no retention of property even for a moment with the petitioners. This is a case of extra payment by the department to the Company, where even an estimate was not prepared by the petitioners, which was immediately returned to the department when it was brought to the knowledge of the Company. This may be a case of irregular payment but cannot be said by any stretch of prudent imagination as an attempt *qua* criminal breach of trust. The allegation, as alleged in the FIR *prima facie* not appear to constitute the legal ingredients of the alleged offence under section 409 of the IPC *qua* petitioners.

22. It would be apposite to reproduce paras 41, 45 & 46 of **N. Raghavender's case (supra)**, which reads as under for ready reference:

"41. We may point out that in the case before us, neither the trial court or the High Court has discussed the ingredients of Sections 409, 420, or 477-AIPC, nor have



they made any effort to refer to the specific evidence which may satisfy such ingredients. There is no gainsaying that the role of the trial court and the High Court is not just to decipher and bring to light the relevant evidence, but also to apply the relevant laws to the factual matrix before it. It further appears that the courts below have interchanged and mixed up the allegations against the appellant. While the charges were framed primarily with respect to the issuance of the three loose cheques and the alleged unlawful withdrawal of Rs 10 lakhs from Account No. 282, the courts below have proceeded to convict the appellant on the ground that he prematurely and fraudulently encashed the two FDRs, which stood in the name of B. Satyajit Reddy.

45. Section 409IPC pertains to criminal breach of trust by a public servant or a banker, in respect of the property entrusted to him. The onus is on the prosecution to prove that the accused, a public servant or a banker was entrusted with the property which he is duly bound to account for and that he has committed criminal breach of trust. (See *Sadhupati Nageswara Rao v. State of A.P.* [*Sadhupati Nageswara Rao v. State of A.P.*, (2012) 8 SCC 547 : (2012) 3 SCC (Cri) 979 : (2012) 2 SCC (L&S) 638])

46. The entrustment of public property and dishonest misappropriation or use thereof in the manner illustrated under Section 405 are a *sine qua non* for making an offence punishable under Section 409IPC. The expression “criminal breach of trust” is defined under Section 405IPC which provides, inter alia, that whoever being in any manner entrusted with property or with any dominion over a property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property contrary to law, or in violation of any law prescribing the mode in which such trust is to be discharged, or contravenes any legal contract, express or implied, etc. shall be held to have committed criminal breach of trust. Hence, to attract Section 405IPC, the following ingredients must be satisfied:

46.1. Entrusting any person with property or with any dominion over property.

46.2. That person has dishonestly misappropriated or converted that property to his own use.

46.3. Or that person is dishonestly using or disposing of that property or wilfully suffering any other person so to do in violation of any direction of law or a legal contract.”

23. As far second submission as raised by learned



counsel appearing for the petitioners I.e., *qua* inordinate delay of investigation, it appears that admittedly the investigation of this case is pending for last seven (7) years, which appears *prima facie* the violation of the right of the speedy trial of petitioners/accused as available under article 21 of the Constitution of India.

24. It would further be apposite to reproduce the para nos. 25 to 28 of the **Pankaj Kumar Case (supra)**, which reads as under:-

"25. Though, it is true that the plea with regard to inordinate delay in investigations and trial has been raised before us for the first time but we feel that at this distant point of time, it would be unfair to the appellant to remit the matter back to the High Court for examining the said plea of the appellant. Apart from the fact that it would further protract the already delayed trial, no fruitful purpose would be served as learned counsel for the State very fairly stated before us that he had no explanation to offer for the delay in investigations and the reason why the trial did not commence for eight long years. Nothing, whatsoever, could be pointed out, far from being established, to show that the delay was in any way attributable to the appellant.

26. Moreover, having regard to the nature of the accusations against the appellant, briefly referred to above, who was a young boy of about eighteen years of age in the year 1981, when the acts of omission and commission were allegedly committed by the concerns managed by his parents, who have since died, we feel that the extreme mental stress and strain of prolonged investigation by the Anti-Corruption Bureau and the sword of Damocles hanging perilously over



his head for over fifteen years must have wrecked his entire career.

27. Be that as it may, the prosecution has failed to show any exceptional circumstance, which could possibly be taken into consideration for condoning the prolongation of investigation and the trial. The lackadaisical manner of investigation spread over a period of four years in a case of this type and inordinate delay of over eight years (excluding the period when the record of the trial court was in the High Court), is manifestly clear.

28. Thus, on facts in hand, we are convinced that the appellant has been denied his valuable constitutional right to a speedy investigation and trial and, therefore, criminal proceedings initiated against him in the year 1987 and pending in the Court of the Special Judge, Latur, deserve to be quashed on this short ground alone.”

25. In this context, it would be apposite to reproduce the para no. 5 of the **Biswanath Prasad Case (supra)**, which reads as under:-

“5. It is true that the charges against the appellant relate to misappropriation of public funds. In such a case, we should take a more stricter view as indicated in the Constitution Bench decision in *Abdul Rehman Antulay v. R.S. Nayak* [(1992) 1 SCC 225 : 1992 SCC (Cri) 93 : AIR 1992 SC 1701] . But there are certain circumstances in this case which induce us to interfere in the matter. The most glaring one is that even though the FIR was issued on 10-12-1977, the charge-sheet was filed only on 5-2-1983, i.e., after a lapse of 5 years. No explanation is forthcoming for this extraordinary delay. Maybe, this being a case of misappropriation of public funds, the investigation may have taken a longer time but it cannot certainly take more than five years, having regard to the facts and circumstances of the case. Added to the said circumstance is the fact that even though there was no stay in this



special leave petition/criminal appeal, the case has not progressed much as stated above. Moreover, the appellant has been dismissed from service on these very allegations. His provident fund and gratuity amounts have been forfeited and he has crossed the age of superannuation. Calling upon him now to enter upon defence, after 16 years, in all the facts and circumstances of the case, is bound to cause prejudice to him.”

26. It would further be apposite to reproduce the para nos. 4, 6 and 18 of the **Santosh De Case (supra)**, which reads as under:-

“4. A few relevant facts may be stated. The respondent was the Director of Mines, Government of Bihar. A raid was conducted on his premises and certain amount of cash and jewellery recovered. On 27-3-1978, a preliminary charge-sheet was filed under Section 5 of the Prevention of Corruption Act. The substance of the charge was that the respondent was in possession of assets beyond the known sources of his income. On 15-12-1982, the Government of Bihar refused to grant sanction for prosecuting the respondent, which was required under the provisions of the Prevention of Corruption Act. For that reason — or any other, as the case may be — no final charge-sheet was filed. Yet the proceedings were kept pending. It is in these circumstances that the respondent approached the High Court by way of a writ petition which was allowed. We are also told that in the criminal appeal filed against the judgment of the High Court, this Court made an order on 23-11-1987 permitting the parties to lead evidence with the restriction that no further proceedings shall be taken in the matter. Taking advantage of the said interim order, it appears, sanction for prosecution was accorded by the State Government on 29-3-1990 but it is stated by the learned counsel for the respondent, no statements of witnesses were recorded in the



case. Meanwhile, the respondent retired from service on 30-11-1991.

6. In the facts and circumstances of this case, it cannot be said that the delay in conduct of the case has been caused by the accused-respondent. From 1978 to 1986 and again from November 1987 till this day, there has been no progress in the case. Not a single witness has been examined so far. In these circumstances, following the principles enunciated in *Abdul Rehman Antulay v.R.S. Nayak* [(1992) 1 SCC 225 : 1992 SCC (Cri) 93] , the judgment of the High Court is affirmed and the criminal appeal is dismissed.

18. While we appreciate that a serious criminal offence might have taken place at the hands of Respondents 1 to 9, we cannot be oblivious to the fact that almost 17 years have elapsed since the date of that occurrence and there are these several delays pointed out earlier which remain unexplained. We think that in the circumstances the rights of Respondents 1 to 9 to a speedy trial have been breached and no interference with the judgment under appeal is called for. The appeal is dismissed.

27. And in para 102 of the case of **Bhajan Lal (supra)**, the Hon'ble Apex Court has provided the guidelines, which are being reproduced hereunder for a ready reference:

102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.



(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

28. In view of the aforesaid discussion and by taking note of the fact that the allegation as made in the FIR does not constitute any *prima facie* offence punishable under



section 409 of the IPC *qua* petitioners, rather it only suggests irregular payment to the Company, out of contractual obligation, where petitioners not even appears to be a part of estimate committee and, moreover, the payment made for unwanted work as per the report of flying squad committee immediately returned to the department by the accused/company, therefore, FIR being Katihar Town (Sahayak) P.S. Case No. 403 of 2018 dated 25.06.2018, pending in the court of learned Chief Judicial Magistrate, Katihar, is hereby quashed/set aside *qua* above-named petitioners with consequential proceedings, if any.

29. Accordingly, the present writ application stands allowed.

30. Let a copy of this judgment be sent to the learned trial court/concerned court immediately.

(Chandra Shekhar Jha, J)

Rajeev/-

AFR/NAFR	AFR
CAV DATE	18.06.2025
Uploading Date	02.07.2025
Transmission Date	02.07.2025

