

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.17245 of 2013

Arising Out of PS.Case No. -289 Year- 2012 Thana -PATORI District- SAMASTIPUR

1. Umesh Rai @ Umesh Prasad Rai @ Mohabia S/O Sri Baleshwar Rai
R/O Village - Sirdulpur, P.S. Patori, District - Samastipur

.... Petitioner/s

Versus

1. The State of Bihar

.... Opposite Party/s

Appearance :

For the Petitioner/s : Mr. N.K.Agrawal, Sr.Adv
Mr. D.N.Tiwari, Advocate
Mr. Ramesh Kumar, Adv

For the Opposite Party/s : Mr. J.K.Singh, APP

CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN
ORAL ORDER

4 30-07-2015

Heard learned counsel for the petitioner and learned APP
for the State.

2. The present petition has been filed for quashing the
order dated 06.02.103 passed by the learned Chief Judicial Magistrate,
Samastipur in connection with Patori P.S. Case No. 289 of 2012 for the
offences under Sections 420 and 406 of the Indian Penal Code.

3. According to the prosecution case the petitioner
approached the informant and offered to secure jobs for the informant's
unemployed son and daughter for which he demanded Rs. 3,00,000/-
claiming nearer to the District Education Officer, Samastipur, but no jobs
were provided.

4. It is submitted that the offence as alleged are not made
out against the petitioner as there is nothing, even a chit of paper was
there to prove the allegations made against the petitioner, Even

otherwise, no offence can be said to have been made out inasmuch as any money entrusted for illegal purpose would render the object of it illegal.

5. This Court finds itself in agreement with the submissions on behalf of the petitioner as the informant claims to have made payment to the petitioner for unlawful purpose of securing employment through unfair means.

6. This Court in 2011 (1) PLJR 780 (Vijay Sharma vs. State of Bihar) in similar circumstances has held in para 11 as follows :-

“11. Section 23 of the Indian Contract Act declares void a contract which is contrary to the law or opposed to public policy. Therefore, even under the civil law the agreement between the parties was unlawful in its very inception. Both had agreed to do something which was prohibited in law. The contract ex facie being unlawful, both parties can be said to have intended to exploit the law for an illegal purpose. The reliance by the complainant on Section 65 of the Indian Contract Act may create a civil cause of action as a money claim. This is a mere observation and not an affirmative finding for the maintainability of any such claim under an illegal contract which shall have to be decided on its own merits in an appropriate civil proceeding. It can however never constitute a criminal offence.”

7. The same effect is the decision reported in 2012 (3) PLJR 892 (P.N.Choudhary vs. State of Bihar).

8. In the above circumstances, this Court is of the view that no offence as alleged against the petitioner is made out on the basis of FIR.

Accordingly, the impugned order 06.02.103 passed by the learned Chief
Judicial Magistrate, Samastipur taking cognizance in connection with
Patori P.S. Case No. 289 of 2012 is hereby quashed.

9. The petition stands allowed.

(Vikash Jain, J)

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