

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.12627 of 2013

Arising Out of PS.Case No. -1433 Year- 2010 Thana -COMPLAINT CASE District- JAMUI

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Chandan Kumar Sinha, son of Upendra Prasad Sinha, resident of Village -
Sono, P.S. - Sono, Distt. – Jamui.

.... Petitioner/s

Versus

1. The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.

For the Opposite Party/s : Mr. H.A.Khan (App)

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

4 09-07-2015 Heard learned counsel Mr. Pankaj Kumar Sinha for the

petitioner.

2. This application under Section 482 Cr.P.C. has been

filed by the petitioner for quashing the order dated 19.10.2011
passed by the learned J.M., 1st Class, Jamui in Complaint Case
No.1433C of 2010 whereby the court below has taken cognizance
under Section 420 I.P.C.

3. The complainant filed aforesaid complaint alleging
that the petitioner identified himself to be the contractor of the
Eratec Company and he used to install internet tower. He insisted
to pay Rs.1,69,000/- for installment of an internet tower in the
house of the complainant and then the complainant paid
Rs.1,45,000/- for the purpose of installing the internet tower but

the internet tower was never installed nor the amount was returned to the complainant.

4. The learned counsel for the petitioner submitted that in fact the petitioner resides in another village and the complainant is of another village, who is a friend of brother-in-law of the petitioner, namely, Mukesh Kumar Sinha. After retirement of the father of the petitioner there was dispute between Mukesh Kumar Sinha and this petitioner regarding the distribution of retiral benefits, therefore, Mukesh Kumar Sinha instigated the complainant and then this false case has been filed. According to the complaint itself, Mukesh Kumar Sinha had also gone for demanding amount but surprisingly Mukesh Kumar Sinha has not been made an accused in the case, which shows that he is in conspiracy with the complainant. The learned counsel further submitted that the two witnesses examined under Section 202 Cr.P.C. were not present at the time of alleged occurrence of payment of money but they have falsely supported the case before the Magistrate.

5. According to the learned counsel, he has not received any amount and in fact if any amount has been paid, it is a case of civil nature and, therefore, the complainant may initiate appropriate civil proceeding to realize the amount.

6. From perusal of the complaint application, it appears that allegation is that this petitioner in the garb of installing an internet tower received Rs.1,45,000/- and then he neither installed the internet tower nor returned the amount taken from the complainant. He is denying the fact that he has received the amount. Now, therefore, this question as to whether amount has been paid by the complainant to the petitioner or not is a pure question of fact. The Hon'ble Supreme Court in the case of **Rishipal Singh Vs. State of Uttar Pradesh and another, (2014) 7 Supreme Court Cases 215** has held that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the Court is as to whether the uncontroverted allegations as made in the complaint prima facie establish the case, and High Court should not convert itself into a trial court and dwell into disputed questions of fact.

7. In my opinion, therefore, in view of the settled decision of the Hon'ble Supreme Court all the questions raised by the learned counsel for the petitioner are questions of fact and cannot be decided in exercise of jurisdiction under Section 482 Cr.P.C. and accordingly, this criminal miscellaneous application is dismissed.

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(Mungeshwar Sahoo, J)