

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.15363 of 2011

Arising Out of PS.Case No. -0 Year- null Thana -null District- PATNA

Bindeshwar Prasad Shukla, son of late Surendra Prasad Shukla, resident of village and P.O.-Bishnupur Titidha, P.S.-Rajapakar, District- Vaishali, at present C/o Dr. M. P. Shukla, Advocate, Shushma Apartment, Road No.10, Rajendra Nagar, Patna-16

.... Petitioner/s

Versus

1. The State of Bihar &
2. Vinay Singh alias Vinay Kumar @ Vinay Kumar Shukla, son of Rama Autar Singh, resident of Mohalla-Dargah Road, P.S.-Sultanjanj, District- Patna, resident of village -Bishnupur Titidha, P.S.-Rajapakar, Barati OP, District- Vaishali, at present residing at Dargah Road, P.S.-Sultanganj, District- Patna.

.... Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Umesh Lal Verma, Advocate

For the Opposite Party/s : Mr. R. A. Singh, APP

CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

ORAL JUDGMENT

Date: 22-09-2015

The Petitioner seeks quashing of the order of cognizance dated 07.10.2002 passed by the Judicial Magistrate, 1st class, Patna City, in Complaint Case No.701-C of 2002.

Case of the Complainant is that the Complainant was unemployed and was looking for a job in course of which he met accused Apsar Pasa, who promised him a job but even after taking huge amount of money from him he did not procure the same and hence, the present Complaint.

It has been submitted on behalf of the Petitioner that, in fact, the Complainant is his own brother but by changing the name

of his father he has filed this Complaint against him for the reasons of harassing him. There has been property dispute within the family since last fifteen years on account of which Title (Partition) Suit No.220 of 2009 was filed and due to this the present Complaint was filed with oral allegation.

Notice had been issued to the Opposite Party No.2 but none appears on his behalf.

Having considered the fact that the case is based only on oral allegation which may not be proved during trial and the trial would be nullity, the order of cognizance dated 07.10.2002 passed by the Judicial Magistrate, 1st class, Patna City, in Complaint Case No.701-C of 2002, is hereby set aside without prejudice the rights of the parties **in so far as Petitioner is concerned.**

The application stands **allowed.**

(Anjana Prakash, J)

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