

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.9739 of 2013

Arising Out of PS.Case No. -458 Year- 2011 Thana -BEGUSARAI TOWN District- -

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1. Md. Azmatullah S/O Late Md. Ali Ahsan R/O - Mohammad Purkoari,
P.S. Waini, District - Samastipur

.... Petitioner.

Versus

1. The State Of Bihar

.... Opposite Party.

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Appearance :

For the Petitioner/s : Mr.

For the Opposite Party/s : Mr. Uday Chand Pd.(App)

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CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD
ORAL ORDER

3 16-07-2015 Heard learned counsel for the petitioner and learned
counsel for the State.

This a petition for setting aside the order dated
26.11.2012 passed in Begusarai (Town) P.S. Case No. 458 of
2011, G.R. No. 3647 of 2011 by which learned Magistrate has
taken cognizance for offence under Sections 419 and 420/34 of the
Indian Penal Code and issued summon against the petitioner.

The prosecution case alleged in the First Information
Report by Suresh Ram, Block Development Officer, that on the
direction of the District Magistrate, Begusarai, a raiding party was



constituted, by S.D.P.O., Inspector of Police, B.D.O. as well as Officer Incharge, Begusarai, P.S. raided a tea stall near Nagar Nigam Road and caught hold of seven accused persons along with certain documents. From the possession of these accused persons certain documents have been seized and it is alleged that those documents were kept for cheating. However, documents seized apparently are vacant forms for learning licence, owner book, form for renewal of licence, owner book of old vehicles, bank challan and other licences issued by the District Transport Officer.

However, in the entire investigation, there was not mentioned that any document was forged. The document sent to District Transport Officer for verification. However, report of the District Transport Officer has also been annexed in the case diary which mentioned that papers produced which was seized in raid are vacant forms, old driving licence forms for renewal of the licence, owner book of old vehicles, bank challan, learning licence and concern petitions, receipts of application receipt under Right to Information Act or public service, tax token given to the vehicle owner and permit of different pension papers and papers concerning permit. It has been reported that documents mentioned in the seizure list has earlier been issued by the Transport Officer



and there is possibility that person in possession of those documents had made available those documents to the shopkeepers. It has further been reported that forms of the concerned Transport Officer has sold by the local shopkeeper which is not made available by the office. The Transport Officer has not availed any form or document to the accused person.

Taking into consideration the fact that, though, cognizance has been taken for offence under Sections 419 and 420 of Indian Penal Code. Section 419 and 420 is cheating by impersonation and cheating by dishonestly inducing the person deceived to deliver any property to any person. Section 415 defined as cheating as whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person. However, there is no allegation of either an dishonest inducement nor material that person so induced deliver any property to make out a case for cheating nor there is any allegation that those documents were forged document and there is no allegation there is any inducement with fraudulent and dishonest intention to cheat nor there is any evidence for delivery of property nor there is any material to suggest that documents seized were forged.

Hence taking into consideration the entire material there is no material or ground to take cognizance and court below took cognizance without due application of mind and without taking into consideration the material on record. Accordingly, order taking cognizance is hereby set aside and miscellaneous petition is allowed.

m.p.

(Gopal Prasad, J)

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