

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.23179 of 2012

Arising Out of PS. Case No. -1333 Year- 2009 Thana - Rajpur (Nokha) District- Rohtas

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DR. SANJAY SINGH @ HARENDRA SINGH, S/O DADAN SINGH, R/O VILL-
RAJANDIH, P.O.-RAJANDIH, P.S.-RAJPUR (NOKHA), DISTT-ROHTAS.

.... PETITIONER/S

VERSUS

1. THE STATE OF BIHAR

2. AJIT KUMAR SINGH @ GUDDU, S/O VIJAY SINGH, R/O VILL-
MASADH, P.S.-UDWANT NAGAR, DISTT-BHOJPUR.

.... OPPOSITE PARTY/S

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Appearance:

For the Petitioner/s	:	Mr. Bakshi S.R.P. Singh, Sr. Adv.
For the O. P. No.2	:	Mr. Ajit Kumar Singh, Adv.
For the State	:	Mr. Jharkhandi Upadhyay, Adv.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
CAV JUDGMENT

Date: 03-03-2015

Petitioner / accused has challenged order dated 19.04.2010 whereby and whereunder he has been summoned to face trial for an offence punishable under Section 420, 406 IPC by Sri Ashutosh Kumar, Judicial Magistrate, 1st Class, Bhojpur at Ara in Complaint Case No.1333(C) of 2009, Trial No.4087 of 2010.

2. Opposite Party No.2, Ajit Kumar Singh alias Guddu filed complaint petition before Chief Judicial Magistrate, Bhojpur at Arrah disclosing therein that he developed intimacy with accused Dr. Sanjay Singh @ Harendra Singh on account of having his cloth shop adjacent to clinic of accused Dr. Sanjay Singh, at Rajpur Bazar. It has further been disclosed that



complainant happens to be unemployed educated person and on account thereof, was filing forms concerning notified vacancy. Taking this event as an opportunity, accused allured him to pay Rs.2,50,000/- in order to get him employed at Bokaro Steel City at the instance of Ram Bilash Paswan, with whom, he was in direct contact. Putting belief on assurance of accused, he paid Rs.2,50,000/- in different installments. Then, thereafter, accused had directed him to furnish photo as well as relevant certificates. Accused also took him away to Bokaro Company in order to cast further belief. However, complainant did not get service and so, he began to demand refund. In the aforesaid background on 28.06.2009 when he gone to the place of accused, his wife and two unknown persons abused as well as assaulted with fist and slap and further, refused to pay the amount.

3. The aforesaid compliant was transferred to the court of Magistrate under Section 192(2) of the Cr.P.C. for holding an inquiry under Section 202 Cr.P.C. and after concluding the same, vide order impugned took cognizance for an offence punishable under Section 420, 406 IPC and summoned the petitioner to face trial consequent thereupon, instant petition has been filed.

4. It has been submitted on behalf of petitioner that no offence under Section 420 or 406 IPC is made out in the background of the fact that the aforesaid money, even if allegation made by complainant is accepted, for arguments sake, not admitted was for illegal purpose and being so, neither entrustment could be held in accordance with law nor, in the

aforesaid background complainant is said to be deceived. In support of such contention, learned counsel for the petitioner relied upon 2011 (1) PLJR 780.

5. It has further been submitted that from perusal of the complaint petition itself, the place of occurrence is found lying within jurisdiction of Rohtas district and in terms of Section 177 of the Criminal Procedure Code, the prosecution is permitted ordinarily within jurisdiction whereunder place of occurrence lies. On account thereof, instant prosecution having been launched at Bhojpur at Ara, is found contrary to Section 177 Cr.P.C. and that being so, the order impugned is bad in law. So, submitted that on any count, the order impugned did not justify its sustenance.

6. On the other hand, the learned Additional Public Prosecutor contradicted the same and submitted that on account of unemployment of complainant, who was an educated person and was engaged in taking necessary measures by way of filling application against the vacancies, so notified, by different departments, was exploited by the petitioner and further, alluring him succeeded in squeezing Rs.2,50,000/-. Petitioner had acted in artifice manner to cheat the complainant of Rs.2,50,000/- which is found completely exposed by his subsequent conduct. Therefore, taking cognizance of an offence coupled with summoning the petitioner is in accordance with law.

7. Admittedly, Section 177 permits prosecution at the place whereunder the place of occurrence lies. Defiance however, is found mere an irregularity which did not affect upon



propriety of the order of cognizance in terms of Section 460(e) of the Cr.P.C. Not only this, Section 462 Cr.P.C. also takes care thereof, whereunder no finding, sentences or order of any criminal court should be subject to annulment on the ground of having been sailed at wrong place unless and until, in the opinion of the court such error occasioned a failure of justice. Hence, the objection having been raised on behalf of petitioner over jurisdictional avenue that too, at the present stage, did not attracts interference.

8. Now coming to adjudge the propriety of the order under the guise of principle laid down by coordinate bench reported in 2011 (1) PLJR 780, it is evident that the same is not found applicable in the facts and circumstances of the case. After going through the citation referred above, it is apparent that court perceived presence of a case instituted by the petitioner (accused) for committing dowry death against the Opposite Party (complainant) for committing murder of his sister whereunder they were under custody as well as with regard to specific assertion in the complaint petition itself that the offer was for getting employment as police constable that means to say Government job. In the aforesaid background, the subsequent event have been dealt with the aid of Section 23 of the Indian Contract Act observing that any kind of contract contrary to the law or oppose to public policy happens to be void. Furthermore, in the aforesaid background reliance has been put over Chellor Mankkal Narayan Ittiravi Nambudiri vs. State of Travancore

reported in AIR 1973 SC 489 as well as 1(2007) Banking Cases 218, Spring Field Financial Services Ltd. vs. State of A.P. & Anr.

For better reference para 10 & 11 is quoted below.

“10. A bare perusal of the complaint reveals that even if the allegations are correct the parties were in *pari delicto* to commit an offence. Employment in the Government is available on advertisement and selection and not purchased by money. Such appointment is an outright illegal appointment. If two persons agreed to commit an act, which is an offence under the Indian Penal Code and the agreement fails because the crime could not be committed can it be said that it constitutes an offence under the Indian Penal Code when under the Penal Code the agreement itself was an offence.

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.”

9. From perusal of the complaint petition, it is crystal clear that there is complete absence of disclosure that accused had assured employment in government Department, and being so, the policy adopted, and followed for employment under Government Department would not be applicable for ascertainment of private job. Therefore, the ratio decided in the aforesaid case is not applicable.

10. Now coming to allegation, it is apparent that allurement on the pretext of getting employment in the background of intimacy with high political staunches and further receiving the amount, under chicanery manner found duly covered under relevant provisions of law whereunder cognizance has been taken. Consequent thereupon, the order impugned did not attract interference. As such petition is found devoid of merit and is accordingly, dismissed.

(Aditya Kumar Trivedi, J.)

Patna High Court
Dated, the 3rd day of March, 2015
Prakash Narayan

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