

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.8210 of 2016

Arising Out of PS.Case No. -1802 Year- 2014 Thana -NAWADAH COMPLAINT CASE District-
NAWADA

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1. Abhimanyu Kumar @ Abhimanyu Prasad Yadav, son of Late Balchand Yadav, resident of Chotki Gulni, P.S.- Dhamaul, (Pakribarawan), District- Nawada.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Bhola Pandey S/o Late Braj Bihari Pandey Village- Pakaribarawa, Bich Bazar, P.S. Pakari Barawa Dist- Nawada.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ansul

For the Opposite Party/s : Mr. Dinesh Singh(App)

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH
ORAL ORDER

9 18-07-2016 Heard learned counsel for the parties.

This application for grant of anticipatory bail arises out of Complaint Case No. 1802 of 2014, disclosing offences under Section 420 of the Indian Penal Code.

The petitioner is said to have induced the complainant to pay to him an amount of Rs. 9 lacs on different dates giving him an assurance that he would get him employment against the post of T.C. (Ticket Collector) in the Railways. After having received the said amount, the petitioner is said to have refused to fulfill his commitment to the complainant and denied to pay back the amount which had received from the complainant.



Learned counsel for the petitioner has submitted that even if the entire allegations as made in the complaint petition are taken to be true, no offence under Section 420 of the Indian Penal Code is made out. He has relied on a decision of this Court in case of **Vijay Sharma and Anr. vs. State of Bihar** reported in **2011 (1) PLJR 780** and has contended that in similar circumstance, this Court quashed the complaint petition itself. He has referred to following paragraphs of the said decisions:-

“That brings to the fore, the submission that nonetheless an offence of cheating under Section 420 I.P.C was made out. Section 415 defines offence of cheating. The essential ingredients are intention to deceive any person fraudulently, to dishonestly induce the person so deceived to deliver any property which he would not have done if he was aware of the deception. The essential ingredient therefore is a dishonest intention from the very inception. In the present case there is no allegation of a dishonest intention from the inception. On the contrary the complaint states that the parties were related by marriage and the complainant was satisfied of the assurance for Government employment for a money consideration on the promise that in case of failure the money shall be returned. What is then urged is that when the illegal contract fell through, the money was not being returned. In absence of any allegations of a fraudulent and dishonest intention from the very inception or a narration to that effect, this Court is not satisfied to accept the plea that charge could always be framed under the appropriate sections. If the complainant voluntarily parted with money for an illegal purpose of securing appointment in Government service for a money consideration, which itself was an offence, can he urge that he was been cheated. The concept of cheating shall have no application where the act which is stated to constitute cheating was itself an offence. He

was aware of the crime and cannot contend that failure to commit the crime amounted to cheating him.

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."

In that case, this Court quashed the order taking cognizance holding that the contract being *ex facie* illegal and the parties can be said to have intended to exploit the law for an illegal purpose, no offence can be said to have been made out if one of the parties refuses to fulfill the terms of unlawful agreement.

It further appears from the said decision that this Court held that there being absence of essential ingredients that there was dishonest intention from the very inception, no offence could be said to have been made out under Section 420 of the Indian Penal Code.

It is true that dishonest intention at the very inception is an essential ingredient to constitute an offence under Section 420 of the Indian Penal Code. The question in the present case is as to whether fraudulent or

dishonest intention was there from the very beginning when the petitioner had induced the complainant to pay to him the said amount of Rs. 9 lacs in the name of granting him job in the Indian Railway.

Section 415 of the Indian Penal Code defines cheating and reads as follows:-

"415. Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to 'cheat'".

One cannot be unmindful of the stark ground realities that unemployed youth in this country are considerably vulnerable to luring offers in the name of public employment or otherwise promising them short gains and they can be easily allured, enticed and duped by persons by exploiting their situation and dishonestly induced to deliver property in lieu thereof. Only because there is no specific averment in the complaint case that the petitioner had dishonest intention from the very inception, it cannot be said in the present sets of fact that there is no material to infer that there was no such intention from the

very beginning. Allegations in the complaint case are sufficient to indicate that dishonest intention was from the beginning.

As has been noticed, in the present case, the allegation against the petitioner is that he induced the complainant to pay to him a sum of Rs. 9 lacs with an assurance that the complainant will be provided a job in the Indian Railway. The intention to cheat from the very beginning is made out on the basis of the allegation made in the complainant petition.

On that basis of what has been alleged in the complaint petition, in my considered view, an offence is made out against the petitioner for commission of offence under Section 420 of the Indian Penal Code.

Considering the facts and circumstances of the case and the manner in which the complainant allegedly stood cheated by the petitioner, I am not inclined to grant the petitioner, privilege of anticipatory bail

This application is rejected.

(Chakradhari Sharan Singh, J)

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