

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.31071 of 2014

Arising out of P.S. Case No.50 Year 2013 Thana MOTIHARI CITY District EASTCHAMPARAN
(MOTIHARI)

=====

Praveen Kumar S/o Rameshwar Singh R/o village Murtiya, P.S. Adapur, District
East Champaran

.... Petitioner

Versus

1. The State of Bihar
2. Executive Officer Nagar Parishad Motihari, East Champaran

.... Opposite Parties

=====

Appearance :

For the Petitioner : Mr. Ajay Kumar Singh, Advocate

For the State : Mr. Chandra Sen Prasad Singh, APP

=====

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 13-09-2017

Heard learned counsel for the petitioner as well as learned
APP appearing on behalf of the State.

2. The petitioner seeks quashing of the cognizance order dated 04.03.2014, passed by learned Chief Judicial Magistrate, Motihari in Motihari Town P.S. Case No.50 of 2013, whereby learned Chief Judicial Magistrate, Motihari has taken cognizance for the offence under Sections 420 and 409 of the Indian Penal Code.

3. Short fact giving rise to the case is that the petitioner being the highest bidder, a settlement was made by Nagar Parishad, Motihari for parking slots of vehicles in different parts of the Nagar Parishad for the financial year 2012-13. The amount of settlement was Rs.24,65,500/- and initially half of the amount was given by the petitioner amounting to Rs.12,38,000/- and as per the agreement, the



remaining amount of Rs.12,27,500/- was to be deposited within three months, i.e., by month of June, 2012 but he continued collecting parking charges without depositing rest 50% amount despite several reminders issued by the Executive Officer, Nagar Parishad, Motihari. Ultimately the settlement was cancelled vide letter no.139 dated 31.01.2013 and started proceeding for recovery of the amount.

4. Learned counsel for the petitioner submits that it is only at best a breach of contract and no criminal offence of cheating and breach of trust is made out because the petitioner had no intention at the inception of the agreement to cheat the Nagar Parishad. Further contention is that already a certificate proceeding is going on to realize the remaining amount and the place was not allocated that from which place the parking charges are to be collected by the petitioner.

5. Contrary to that the learned counsel for the State submits that there is sufficient material in the case diary showing *prima facie* case under Sections 420 and 409 of the Indian Penal Code. He submits that settlement was made for the financial year 2012-13 and the notice of settlement itself mentions 14 places for different vehicles wherefrom the petitioner collected parking charges for almost ten months and did not deposit 50% settlement amount, so he had intention right from the beginning to cheat and collected the



parking charges and misappropriated the money.

6. Having considered rival submissions of both sides and on perusal of the record, this Court finds that the settlement for collecting parking charges of the vehicles was made by Nagar Parishad, Motihari with the petitioner for the financial year 2012-13 and as per terms and conditions, 50% amount was to be deposited at the initial stage and remaining 50% amount was to be deposited subsequently within three months after the settlement. Though as per clause 5, the discretion was with the Nagar Parishad, Motihari to cancel the settlement and to resettle it to the next highest bidder but unfortunately it was not done by the Nagar Parishad, Motihari and the petitioner was allowed to collect parking charges for almost ten months causing huge loss to the ex-chequer and petitioner appears to have misappropriated the amount, so *prima facie* case is made out against the petitioner.

7. Finding no merit, the quashing application stands dismissed.

(Arun Kumar, J.)

S.Kumar/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	04.10.2017
Transmission Date	04.10.2017

