

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.15554 of 2012

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

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1. International Meritime Academy, 41, Jamin Korattur, Pudchatiram (From Poonamalle to Tirupathy Road)Chennai -602107 through its Managing Director J.Senthil Kumar, S/O K.Jayaraman, 41, Giri Road, T.Nagar, Chennai-600017

2. W.Yasmin Sultana W/O Mr. Muner Khan 41, Giri Road, T. Nagar, Chennai-600017 Petitioners.

Versus

1. The State Of Bihar

2. Amar Biswas S/O Late B.K.Biswas, Guidance Centre , 203, C.R.Complex, 3rd Floor, R.K.Bhattacharya Road, P.S.-Gandhi Maidan, Patna.

.... Opposite Parties.

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Appearance :

For the Petitioner/s : Mr. Ramakant Sharma, Adv with
Mr. L.K. Sharma, Adv.

For the Opposite Party No.2: Mr. Kaushal Kishore, Adv.

For the State : Mr. S.N.Shukla, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date: 05-09-2017

Heard the learned counsel for the petitioners as well as learned counsel for the State-Opposite party and opposite party No.2.

2. The opposite party No.2 filed Complaint Case No.1468 (C) of 2011 against the petitioners for the offences under Sections 420 and 406 of the Indian Penal Code before the court of learned Chief Judicial Magistrate, Patna.

3. By the impugned order dated 15.11.2011, the learned court below has found a prima facie case against the petitioners under Sections 406 /34 of the Indian Penal



Code and has ordered for issuance of summons against the petitioners to face the trial. The aforesaid order is under challenge in this application under Section 482 Cr.P.C.

4. Contention of the petitioners is that a bare perusal of the complaint petition would reveal that there is no allegation of entrustment of property or its criminal misappropriation by the petitioners. Therefore, the finding of the court below that a prima facie case under Section 406 of the Indian Penal Code is made out against the petitioners is apparently erroneous and criminal prosecution of the petitioners is abuse of the process of the court.

5. On the other hand, learned counsel for the complainant-opposite party no.2 submits that even if it assumes that the offence under Section 406 of the Indian Penal Code is not made out prima facie case under Section 420 of the Indian Penal Code is made out on perusal of the complaint petition. Hence, the charges can be amended at the appropriate stage and criminal prosecution of the petitioners cannot be quashed.

6. However, learned counsel for the opposite arty No.2 concedes that opposite party No.2 he has not challenged the impugned order on the ground that the process should have been issued under Section 420 of the



Indian Penal Code also. As such, to that extent the impugned order got finality.

7. According to complaint petition, the complainant was running a guidance centre at Bhattacharya Road, Patna. The petitioners were running International Meritime Institute at Chennai. The petitioners allegedly contacted the complainant and both parties agreed that the complainant would counsel the willing students to get admission in the Institute of the petitioners and the petitioners agreed to pay Rs.50,000/- per candidate. It is further stated that for admission of one of the students Rs.50,000/- was paid to the complainant. However, in the matter of other four named students, no payment was made. As such, the petitioners misappropriated Rs. 2,00,000/- of the complainant.

8. A bare perusal of the aforesaid complaint case reveals that there is no disclosure of entrustment of property. Hence, the important ingredient of the offence of criminal misappropriation is missing. Furthermore, even if it assumes that the parties had agreed in the manner alleged, each and every non-payment of the agreed amount would not attract the ingredient of dishonest intention of the petitioners at the beginning of argument. Different reasons may be for



non-payment of the money. Moreover, when there is admission that at one occasion, the petitioners made payment to the complainant.

9. Hence no offence is disclosed for which summons have been issued against the petitioners. Accordingly, the impugned order is not sustainable in law. The same is hereby set aside and this application is allowed.

(Birendra Kumar, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	07.09.2017
Transmission Date	07.09.2017

