

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.24718 of 2013

Arising Out of P.S.Case No. -1496 Year- 2011 Thana -PURNIA COMPLAINT CASE District-
PURNIA

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Dr. Manoj Kumar Jha S/O Late Dr. Bishnu Kishore Jha 'Bechan' (Late Dr. B.K. Jha 'Bechan') Resident Of Village- Lagma, Police Station- Saharsa, District- Saharsa, Presently Posted as Sub Divisional Officer, Triveniganj Sub Division, Triveniganj, District- Supaul

.... Petitioner

Versus

1. The State Of Bihar
2. Santosh Kumar @ Santosh Kumar Yadav S/O Sri Chhedi Lal Yadav Resident Of Village- Maharaji, Police Station- Jankinagar, District- Purnea

.... Opposite Parties

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Appearance :

For the Petitioner : Mr. Gyanand Roy, Advocate

For the Opposite Party : Mr. Humayu Ahmad Khan, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 12-07-2017

Heard.

2. This is an application under Section 482 of the Cr.P.C. praying for quash the order dated 03.05.2013 passed by Additional Sessions Judge-V, Purnea in Cr.Revision No.281 of 2012. The learned Additional Sessions Judge as per impugned order refused to interfere with the order dated 15.05.2012 passed by Judicial Magistrate, Ist Class whereunder this petitioner was summoned to face the trial for the offence under Section 417/34 of the IPC.

3. The complainant inter-alia has alleged that notice inviting tenders for settlement of Jankinagar Bus Stand for collection



of tax from the commercial vehicles was issued by this petitioner. As per terms of notice, the successful dealer was required to deposit half of the settlement amount immediately. The complainant Opposite Party No.2 had participated in the auction of settlement along with co-accused and others. The accused no.2 (this petitioner) anyhow managed to select the co-accused as successful highest bidder. This petitioner persuaded the complainant to take settlement in partnership with co-accused Binod Kumar to which the complainant agreed and a deed of partnership was also prepared and presented before Sub Divisional Officer (this petitioner) on 24.03.2011 and it was registered in the office of SDO as agreement no.8144 dated 24.03.2011. As per agreement half of the benefit of settlement was to go to the complainant and half to the accused no.1 and for getting the said benefit half of the settlement amount of Rs.9,50,000/-, i.e., Rs.4,75,000/- was to be deposited on 24.03.2011. The complainant and accused no.1 was requested to deposit half and half, i.e., to the extent of Rs.2,37,500/- each. The complainant further alleged that as per terms of agreement the petitioner got Rs.2,37,500/- deposited by the complainant. The petitioner after deposit of said amount issued settlement order in favour of the accused no.1 and thereby caused monetary loss to the complainant and thereby both the accused committed the offence under Sections 406, 420, 467, 468, 405 and



120B of the IPC.

4. The learned counsel for the petitioner submits that the petitioner was SDO on the relevant date and the agreement was produced before him by the parties for their solemn affirmation. This petitioner had no concern with the partnership agreement of the complainant and co-accused Binod Kumar. The agreement was entered into by both the parties and they had signed the agreement after going through its contents. The said agreement was verified by the parties to the agreement and also by their lawyer and so no offence as alleged is made out. The money deposited by complainant as bid amount which was deposited in the Govt. treasury and so no offence of breach of trust is made out. The petitioner being the gazetted officer cannot be prosecuted unless sanction under Section 197 Cr.P.C. is granted. The learned Sessions Judge passed the impugned in most mechanical manner without going into the merit of the case and so the same is fit to be quashed.

5. On perusal of the impugned order as well documents on record, I find that the petitioner was SDO on the relevant date and for his prosecution no sanction was obtained from the competent authority. The allegation of breach of trust is omnibus as the amount which was deposited by the complainant Binod has already been deposited in the Govt. Treasury. The court below while refusing to



interfere with the order of Judicial Magistrate has failed to consider this aspect.

6. In the aforesaid facts and circumstance the impugned order dated 03.05.2013 passed by Adhoc Additional Sessions Judge No.V, Purnea with respect to this petitioner is quashed and this criminal miscellaneous application is allowed.

(Sanjay Kumar, J)

B.Kr./-

AFR/NAFR	
CAV DATE	
Uploading Date	15.07.2017
Transmission Date	15.07.2017

