

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Miscellaneous No.26143 of 2011**

Arising Out of PS.Case No. -2626 Year- 2010 Thana -null District- PATNA

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Tarkeshwar Prasad Choudhary son of Late Ram Kishun Choudhary Choudhary  
Bhawan, Muradpur, P.O. Bankipur, P.S. Pirbahore, Distt. Patna .... Petitioner  
Versus

1. The State Of Bihar

2. Anil Kumar Singh Sri Radha Mohan Singh Maulabagh, P.O. Maulabagh, P.S.  
Ara ,Distt. Bhojpur

.... Opposite Parties

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**Appearance :**

For the Petitioner/s : Mr. Dhanendra Chaubey, Advocate

For the Opposite Party/s : Mr. APP

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**CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA**

**ORAL JUDGMENT**

**Date: 27-04-2017**

The instant criminal miscellaneous application has been filed for quashing the entire proceeding of Complaint Case No.2626 ( C ) of 2010 pending before Sri Ashutosh Khetan, J. M. Ist Class, Patna whereby the learned Judicial Magistrate has taken cognizance vide order dated 04.06.2011 for the offence under Sections 420, 406 and 504 of the Indian Penal Code and directed to issue summons against the petitioner.

2. Heard learned counsel for the petitioner and learned counsel representing the State.

3. In spite of service of notice O. P. No. 2 has not appeared.

4. On 20.09.2010 the O. P. No. 2 filed a complaint petition before the learned Chief Judicial Magistrate, Patna stating that he is unemployed youth and is looking for job and the accused claimed



himself as priest and Astrologer in the specialized field of Advance Nakshatra Science and working in the name of 'Choudhary Jee'. The complainant came under influence on 12.02.2009 when so many spiritual remedies were suggested and further in that process the petitioner quoted that he has professional contacts with people of high influence who can provide a suitable job to him and for that he demanded Rs. 4,50,000/-. The complainant believing his version paid Rs. 2,00,000/- to the accused persons in presence of three friends on 15.04.2009, further paid Rs. 1,00,000/- on 17.08.2009, again Rs. 1,00,000/- on 20.11.2009 and Rs. 50,000/- on 23.12.2009 in presence of three friends. On 24.12.2009 the complainant handed over his brief resume and asked to provide suitable job at the earliest upon which the petitioner told O. P. No. 2 that by the end of February, 2009 a suitable job will be provided to him. Thereafter, till April 2010, the complainant could not get any job and then being fed up, he asked the petitioner to return his amount but the accused petitioner evaded the payment on one pretext or the other and lastly refused. The complainant at first approached the Pirbahore Police Station on 12.05.2010 for lodging the first information report where he was advised to file complaint, then the complaint petition was filed. The complainant was examined on solemn affirmation and one inquiry witness was examined and the learned Magistrate passed the



impugned order.

5. Submission on behalf of the petitioner is that the summoning order is not in accordance with law, without proper appreciation of the facts the learned Magistrate has passed the order, the complainant in his statement on solemn affirmation has stated in cross-examination by the court that he has given money after selling the land and his family members knew everything. Inquiry witness no. 1 Raj Kumar also, during his cross-examination, has stated that the complainant has given the money after selling the lands. Complainant was asked to bring the proof for selling the land but two certified copy of sale deeds were filed which are of 01.12.2000 and 11.12.2000 whereas, according to the complainant, money was paid to the petitioner in April, 2009, so, the copy of two sale deeds filed by the complainant are not relevant and without any material the learned Magistrate has passed the order. Further giving bribe and taking bribe, both are punishable. For taking job giving bribe is also an offence but the complaint case has been filed due to retaliation as the complainant has filed complaint case against one Ran Vijay Singh and that Ran Vijay Singh got filed the aforesaid complaint petition against the petitioner. There is no chit of paper in proof of the alleged payments and as such the impugned order is fit to be set aside. The complainant is not interested and is not turning up in spite of the



records was called for, so, notices have been issued to him. The proceeding of complaint case is stayed since 08.09.2011 and in spite of that the complainant is not turning up.

6. On the other hand, learned APP submits that at the time of taking cognizance the learned Magistrate is only required to see as to whether on the basis of material collected during inquiry prima facie offence is made out or not and the learned Magistrate after considering the materials collected during inquiry has passed the impugned order.

7. Having considered the submissions urged at the bar, going through the records, impugned order, complaint petition and statement of complainant on solemn affirmation, statement of inquiry witness and further copy of list of documents, it is apparent that for taking job the complainant gave bribe to the petitioner. The complainant himself entered into illegal agreement with the petitioner and thereafter, he is knocking the door of justice. The complaint suffers from *pari delicto* and further from photo stat copy of list of documents it reveals that copy of two sale deeds of the year 2000 were filed to show the source for making payment in the year 2009 which cannot be believed. In my opinion, issuance of process is misuse of the process of the law and misuse of court process. Such type of complaint should be handled with iron hands and no mercy



can be given to such type of complaint. No family member of the complainant has been examined and only on the basis of one inquiry witness the order summoning the accused has been passed which appears not proper and justified.

8. Learned Magistrate has failed to consider that the complainant has filed the Photostat copy of two sale deeds of the year 2000. The learned Magistrate has not applied his judicial mind in passing the impugned order.

9. Accordingly, the order dated 04.06.2011 passed in Complaint Case No. 2626 (C ) of 2010 and further the entire proceeding of Complaint Case No. 2626 (C ) of 2010 pending in the court of Sri Ashutosh Khetan, the then Judicial Magistrate Ist Class, Patna is hereby quashed.

10. In the result, this criminal miscellaneous application is hereby allowed.

**(Jitendra Mohan Sharma, J)**

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