

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.41961 of 2011

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

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1. Chetna Nand Nauriyal S/O Mr. B.N. Nauriyal, Admission Cordinator Galgotia University, Uttar Pradesh, 1, Knowledge Park-II, Greater Noida- 201306

2. Suneel Galgotia S/O Mr. P.D. Galgotia, Chancellor Galgotia University, Uttar Pradesh, 1, Knowledge Park-II, Greater Noida- 201306

.... Petitioner/s

Versus

1. The State Of Bihar

2. Shakti Suman Kumar, Advocate S/O Mr. Ramanuj Sharma, Advocate R/O North Sk Puri, Kasturbapath, House No.- 13/4, Patna- 800013

.... Opposite Party/s

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Appearance :

For the Petitioners : Mr. Akhileshwar Prasad Singh, Sr. Adv.
Mr. Anshuman Singh, Adv.

For the Opposite Party : Mr. R. S. Roy, Sr. Adv.

For the State : Mr. Nawal Kishore Prasad, APP.

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 12-09-2017

1. Heard learned counsel for the petitioners, the State and learned counsel appearing for opposite party No. 2.

2. This application has been filed for quashing the order dated 13-10-2011 passed by Shri Krishna Kumar, learned Judicial Magistrate-Ist Class, Patna in Complaint Case No. 2275(C) of 2011 by which, the learned Magistrate after holding inquiry u/S 202 Cr.P.C. has found prima facie against the petitioners for the offence under Section-406 of the Indian Penal Code.

3. The complainant has alleged that he has been cheated by Galgotiya University, Greater Noida, Gautam Budh Nagar, U.P. by



giving false information regarding infrastructure facility of the university. The complainant has alleged in the complaint that he found an advertisement in daily newspaper "Dainik Jagran" dated 13-07-2011 about Galgotiya University, Greater Noida, Gautam Budh Nagar, U.P. The complainant became impressed with the advertisement and thereafter, decided to get his son, Ratul Kumar admitted in aforesaid university in the faculty of BCA. The complainant along with his son went to the university office and his son was admitted for the Sessions 2011-12 after making payment of fees, as demanded by the university as mentioned in detail in paragraph-9 of the complaint petition. The complainant got message on his mobile on 23-07-2011 that the class is going to be started from 18-08-2011. Thereafter, the complainant went to Greater Noida on 22-07-2011 to verify the fact and he found that even the construction of the building of the university was not completed. The complainant alleged that the university has not been functioning and working in the atmosphere as advertised and the complainant has been cheated by giving false information only with a purpose to give wrongful loss to the complainant and for wrongful gain of their own by the accused persons.

4. The court after holding inquiry, found prima facie case against the petitioners for the offence u/S 406 of the Indian Penal



Code by the impugned order.

5. Learned counsel for the petitioners has submitted that opposite party No. 2 has filed Writ Petition No. 4467 of 2011 (Shakti Suman Kumar & Anr. Vs. State of UP and Others) before the Lucknow Bench of Allahabad High Court on similar ground as mentioned in this complaint petition. The said Writ Petition No. 4467 of 2011 was dismissed by Hon'ble Allahabad High Court, Lucknow Bench on 02-08-2011. Thereafter, Appeal has been preferred by the opposite party No. 2 in Division Bench of Hon'ble Allahabad High Court, (Lucknow Bench), vide Special Leave No. 625 of 2011, which as per submission of learned counsel for the petitioner, is pending.

6. This court after looking into the allegation made in the complaint petition finds that it is an admitted position that admission of son of opposite party No. 2 has been done in the aforesaid university after making payment of fees, as mentioned in detail in paragraph-9 of the complaint petition. The complainant has made allegation that after receiving message on his mobile that class is going to be started from 18-08-2011 he went to Greater Noida to verify the fact and he found that even the construction of the building of the university was not completed. The complainant alleged that the university has not been functioning and working in the atmosphere as advertised and the complainant has been cheated by giving false



information only with a purpose to give wrongful loss to the complainant and for wrongful gain of their own by the accused persons.

7. Section-405 of the Indian Penal Code defines the criminal breach of trust which is as follows:

*“ **Criminal breach of trust.**- Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits “criminal breach of trust”.*

8. In the instant case, from the allegation in the complaint, this court finds that there is no ingredient of offence of criminal breach of trust as described in Section-406 of the Indian Penal Code.

9. Therefore, this court is of the view that the impugned order is not in accordance with law. The petitioners have made averments in para-43 of this petition that as a gesture of goodwill, they are willing to refund the amount paid by the opposite party No. 2 for his ward's admission.

10. In such circumstances, this court having found no any ingredient of offence of criminal breach of trust as required under



Section-406 of the Indian Penal Code, is of the view that cognizance taken by the court below u/S -406 of the Indian Penal Code by the impugned order dated 13-10-2011 in Complaint Case No. 2275(C) of 2011 is not in accordance with law.

11. Therefore, the impugned order of cognizance along with entire criminal proceeding against the petitioners is hereby quashed.

12. However, as a gesture of goodwill as mentioned in para- 43 of the petition, petitioners are directed to refund the amount, paid by the opposite party No. 2 to Galgotia University for his ward's admission within a period of three months from, the date of receipt/production of this order, failing which, the petitioner will be liable to pay interest at the rate of 8% till the payment of the amount.

13. This Cr. Misc. Application is *allowed* with aforesaid direction.

(Sanjay Priya, J)

A.K.V./-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	24-09-2017
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