

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.11817 of 2014

Arising Out of PS.Case No. -382 Year- 2013 Thana -PATNA COMPLAINT CASE District-
PATNA

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1. Uday Singh Kumawat Son Of Shri R.R. Kumawat Resident Of D-II, 303, Vinay Marg, Chanakyapuri, New Delhi.

.... Petitioner/s

Versus

1. The State Of Bihar
2. Sachidanand Rai S/O Late Jaleshwar Rai Director Of Eden Transport Pvt. Ltd. Resident Of Flat No.7, Third Floor, Loudan Street, Kolkata-7000017 At Present BSRTC, Bankipur Bus Depot Campus,Gandhi Maidan, P.S.- Gandhi Maidan, District- Patna

.... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Tuhin Shankar
		Mr. Gopal Kumar
For the State	:	Mr. Abhay Kumar 1, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 19-07-2017

This is an application under Section 482 of the Cr.P.C. for quashing the order dated 30.09.2013 passed by the Judicial Magistrate, 1st Class, Patna in Complaint Case No. 382 (c) of 2013 whereunder cognizance for the offence under Section 406/34 of the I.P.C. was taken against the petitioner and other co-accused.

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

3. The Opposite Party No. 2 is Director of Transport Company and operates buses on different routes under permits. The petitioner was Administrator of Bihar State Road Transport



Corporation Patna which published an advertisement inviting applications for operation of different buses on behalf of the Bihar State Road Transport Corporation (for short Corporation). The notice required the applicant to submit the Earnest Money Deposit (E.M.D.) @ Rs. 10,000/- per bus through bank draft along with the tender /application. The Opposite Party No. 2 is said to have filed application and paid E.M.D. amount to the tune of Rs. 20,40,000/- along with the applications. The Corporation published another advertisement for operation of buses in the inter-state route which also required filling of applications along with E.M.D. amount @ Rs. 20,000/- per bus. The Opposite Party No. 2 submitted applications for operation of 15 buses along with the E.M.D. of Rs. 3 lacs. The Corporation provided 66 permits for operation of buses on city routes but has not refunded the E.M.D. amount for the rest buses. Besides that several buses remained unutilized as the Corporation did not provide permits. The petitioner / Corporation in spite of repeated request did not refund an amount of Rs. 20,40,000/- on different counts and thereby, cheated the Opposite Party No. 2 and also committed breach of trust. The learned Magistrate enquired into the matter and finding prima facie case summoned the petitioner and others.

4. After hearing both sides and perusing the record, I find



that the complainant in course of enquiry has admitted that the petitioner and the other co-accused in the capacity of officers of the Bihar State Transport Corporation had invited applications. They were government servants and he had not taken sanction under Section 197 of Cr.P.C. from competent authority for prosecuting the petitioner and other officers. It further appears that O.P. No. 2 filed C.W.J.C. No. 2812 of 2013 for a direction to the Bihar State Road Corporation to refund E.M.D. amount. This petitioner was respondent no. 3 in the said C.W.J.C. The said writ was disposed of on 20.05.2016 and the Opposite Party No. 2 was directed to file a fresh request for refund of the E.M.D. amount before the Managing Director of the Corporation. On filing of fresh representation, the present petitioner and B.S.R.T.C. were to ensure payment / refund of the E.M.D. amount submitted by the O.P. No. 2. Against the said order, B.S.R.T.C. filed L.P.A. No. 2146 of 2016 which according to the learned counsel for the petitioner is still pending before the Hon'ble High Court. The dispute between the OP No. 2 and B.S.R.T.C. is purely a dispute relating to claim / refund of money for which a L.P.A. is pending before this Court. Besides that the petitioner was Government Servant at the relevant time and in discharge of official duty he had invited applications and E.M.D. from the transporters. The complainant admittedly has not obtained



sanction from competent authority for prosecuting the petitioner under Section 197 of the Cr.P.C. The dispute between the parties is essentially of a civil nature. The prosecution of the petitioner by instituting a criminal case is apparently an abuse of the process of the Court.

5. For the reasons afore-stated, the order dated 30.09.2013 including the Complaint Case No. 382(C) of 2013 pending before the learned Judicial Magistrate, 1st Class, Patna is hereby quashed. The application stands allowed.

(Sanjay Kumar, J)

ajaypd./-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	21.07.2017
Transmission Date	21.07.2017

