

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.29891 of 2013

Arising Out of P.S.Case No. -527 Year- 2004 Thana -EAST CHAMPARAN COMPLAINT District-
EASTCHAMPARAN(MOTIHARI)

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1. Dr. Vinod Mittal S/O Late Ram Gopal Mittal R/O A-107/A, Sharma Market, P.S. Badarpur, Delhi at present Director, Dolphin Institute of Bio Medical and Natural Science, Mandwala, Near Saduwala Chaurta Road, Dehradun, Uttrakhand.
 2. Arvind Gupta S/O Ram Niwas Gupta R/O 68 Vasant Vihar Ph. 2, Dehradun at present Tresurer, Dolphin Institute of Bio Medical and Natural Science Dehradun.

.... Petitioners

Versus

1. The State Of Bihar
2. Entkhab Alam, son of Late Akhtar Hussain, resident of village-Sebrahiya, P.S.Chouradano, District-East Champaran

.... Opposite Parties

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Appearance :

For the Petitioners : Mr. Uma Shankar, Advocate
: Mr. Kamlesh Kumar Sharma, Advocate
: Mr. Gauri Shankar, Advocate
For the Opposite Parties : Mr. Akhileshwar Dayal, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 10-10-2017

This criminal miscellaneous application under Section 482 of the Cr.P.C. has been filed to quash the order dated 05.04.2011 passed by Judicial Magistrate, Ist Class, Motihari in Complaint Case No.527 of 2004 whereby and whereunder the learned Magistrate has taken cognizance for the offence under Sections 406 and 420 of the IPC against the petitioners.

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

3. It has been submitted that the complainant as per advertisement published on 09.09.2002 in a newspaper Hindustan, contacted with



the petitioners and as per his demand, he made payment and got admission in his institute. Subsequently, a demand of Rs.20,000/- was made from the complainant and in default of non-payment he was threatened to be ousted from the college. The complainant received admit-card for appearing in examination where he was debarred from appearing in examination on the ground that he has failed in internal examination and his attendance had also fallen. The complainant raised protest and demanded his money but to no effect. The petitioners have thus cheated the complainant and committed breach of trust by retaining the amount which were taken by him for admission on other accounts.

4. On perusal of complaint petition and documents on record, I find that the Opposite Party No.2 had filed complaint case no.1335 of 2005 before the Consumer Dispute Redressal Forum, Govt. of Delhi against the then Director of the College/Institute which after hearing was dismissed. It appears that an admit-card issued on 03.04.2003 by the H.M.Bahuguna Garhwal University and subsequently a notice dated 31.05.2003 disallowing the complainant to take the examination was issued to the complainant and some more candidates who were not found eligible to appear in the annual examination as their attendance had fallen below 75% . In this regard, letters were sent to the guardian of the complainant. The learned consumer Dispute Redressal Forum while dismissing his case has observed that the complainant Opposite Party No.2 has suppressed the fact regarding receipt of letter dated 18.06.2003 whereunder the university had canceled the permission given to him vide admit-card dated 03.04.2003. The allegation of cheating and committing breach of trust appears omnibus. The complainant was refused to appear in examination only on account of his fault. The learned counsel has also raised objection as regards jurisdiction of the court below. The complainant was admitted in the institution at Dehradun. There is



nothing on record to show that any negotiation for admission took place within the jurisdiction of court below.

5. In view of the above facts, I find that the criminal prosecution of the petitioner in face of decision of Consumer Redressal Forum appears misuse of the process of the Court. This criminal miscellaneous application is therefore allowed and the order dated 05.04.2011 taking cognizance against the petitioner is hereby quashed.

(Sanjay Kumar, J)

B.Kr./-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	18.10.2017
Transmission Date	18.10.2017

