

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.46165 of 2015

Arising Out of PS.Case No. -1299 Year- 2013 Thana -BHOJPUR COMPLAINT CASE District-
BHOJPUR

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Prem Shankar Singh Son of Late Rup Narayan Singh, Residence of Village -
Bihita, P.S. - Imadpur, District - Bhojpur.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Upendra Kumar Chaubey, Son of Late Dhanpath Chaubey, Residence of
Village - Bihita, P.S. - Imadpur, District - Bhojpur.

.... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Gopal Govind Mishra, Advocate
For the State	:	Mr. Ajay Kumar 2, APP
For Opp. Party No. 2	:	Mr. Sanjay Kumar Ojha, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL JUDGMENT

Date: 02-05-2018

This petition has been filed under Section 482 of the
Code of Criminal Procedure for quashing an order dated 12.12.2013
passed by the Judicial Magistrate, 1st Class, Ara, in Complaint Case
No. 1299C/2013 Trial No. 3763/2015, whereby cognizance for
offence under Section 406 of the Indian Penal Code has been taken.

Inter alia, contending that ingredients necessary for
constituting an offence under Section 406, IPC is not made out this
application has been filed by the petitioner.

The complainant and the applicant herein entered into a
contractual agreement by way of a partnership deed dated
18.09.2006 and according to the partnership deed they were to



execute jointly a work entrusted by the Government and consideration for execution of the work was Rs.17 lakhs. It is said that the work was executed in accordance with the agreement but after payment was made for the work in question, the applicant kept the entire consideration amount and did not transfer the amount which was required to be paid to the complainant as his share. It is alleged that initially a sum of Rs. 5,50,000/- lakhs was paid, thereafter a sum of Rs.3 lakhs was paid and in third installment a sum of Rs.2,50,000/- was paid. As per the terms and condition of the contract. the amount was to be kept in the joint account of the firm and the amount was to be distributed as per the contract according to which the complainant was to receive Rs. 9 lakhs. It is alleged that fraudulently the applicant kept the entire amount, did not deposit the same to the joint account and, therefore, committed criminal breach of trust. It is further alleged that he has taken out the entire amount of Rs.17 lakhs and deprived the complainant of his share to the tune of Rs.9 lakhs.

Taking note of all the factors and going through the several documents signed by both parties acknowledging the debts and the material available on record with regard to the partnership deed in question the complaint has been registered and the learned court below has taken cognizance of the offence.



Learned counsel for the parties have been heard and after perusal of the complaint and the nature of allegations levelled against the applicant and the statement recorded by the complainant it is clear that allegations are with regard to breach of trust in the matter of payment of consideration money received after execution of the contractual work as per the terms and conditions of the agreement and at this stage in a proceeding under Section 482 Cr.PC this Court does not deem it appropriate to interfere into the matter.

Accordingly, finding no ground to make any indulgence into the matter the application stands dismissed.

(Rajendra Menon, CJ)

mr1/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	03.05.2018
Transmission Date	03.05.2018

