

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.28519 of 2016

Arising Out of PS.Case No. -264 Year- 2013 Thana -BARACHATTI District- GAYA

- =====
1. Suneel Keshri son of Dwarika Keshri, resident of Mohalla - Chand Chaura,
P.S.- Civil Lines, District - Gaya.
 2. Rajkumar Malakar son of Late Satnarayan Malakar, resident of village –
Nadraganj, P.S. - Civil Lines, District - Gaya.

.... Petitioner/s

Versus

The State of Bihar.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Mrigendra Pratap Singh, Advocate
For the State of Bihar : None

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT
Date: 18-01-2018

Heard Mr. Mrigendra Pratap Singh, learned counsel for the
petitioner.

2. Despite repeated calls and despite copy of the petition
having been served upon the Advocate General, counsel for the State
has not turned up.

3. This application under Section 482 of the Code of
Criminal Procedure (for short ‘the Cr.P.C.’) has been filed for
quashing the order dated 31.10.2014 passed by the learned Judicial
Magistrate, 1st Class, Sherghati, Gaya in Barachatti P.S. Case No.264
of 2013 by which cognizance has been taken against the petitioners
under Sections 419 and 420 of the Indian Penal Code (for short ‘the
I.P.C.’).

4. The prosecution case is based on the self statement of



one Sanjay Kumar, S.H.O., Barachatti Police Station. In his self statement recorded on 12.06.2013 at 9.20 p.m., he has stated that he received information on his cell phone that some kidnappers are moving in a Scorpio vehicle bearing registration number WB-06D-6050, whereafter he entered the message in the station diary and came to G.T. Road in search of the vehicle. At about 9 p.m., a Scorpio vehicle was seen coming from Dobhi, which was signalled to stop and at the same time police party of Dobhi also reached there. The police found five persons sitting in the vehicle. On enquiry, they disclosed their names as Sunil Kumar, Kesho Pathak, Driver Pankaj Kumar Pandey and Ramesh Yadav. They were asked as to whether they want their search to be carried out before the Gazetted Officer or by the police. They agreed to be searched by the police. After search two boxes were found which were sealed with Plaster of Paris. When the police enquired about the sealed boxes, they disclosed that they are involved in antic selling business and were going to Kolkata.

5. On the basis of the aforesaid self statement, the police prepared seizure list on 12.06.2013 at 9.10 p.m. and got the first information report (for short 'the FIR') registered on 12.06.2013 itself at 9.20.p.m. against the petitioners and three others under Sections 467, 468, 474, 419 and 420 of the I.P.C. and investigation was taken up.



6. On completion of investigation, the police submitted charge-sheet under Sections 419 and 420 of the Indian Penal Code vide charge-sheet no.168 of 2013 dated 31.07.2013.

7. On perusal of the materials available on record, the learned Magistrate, Sherghati, Gaya vide order dated 31.10.2014 took cognizance of the offences punishable under Sections 419 and 420 of the Indian Penal Code and summoned the petitioners to face trial. The aforesaid order dated 31.10.2014 is under challenge in the present case.

8. Assailing the impugned order Mr. Mrigendra Pratap Singh, learned counsel for the petitioners submitted that save and except seizure of Plaster of Paris coated two boxes, nothing incriminating has been recovered either from possession of the petitioners or from the vehicle in which they were found moving. He submitted that even if the entire allegations made in the FIR are taken to be true, there is no material on the basis of which the petitioners can be charged for the offences punishable under Sections 419 and 420 of the I.P.C..

9. On the other hand, learned counsel for the State submitted that since the petitioners themselves admitted that they are involved in illegal trade of antics, the offences punishable under Sections 419 and 420 of the I.P.C. would be clearly attracted.



10. I have heard learned counsel for the parties and perused the record.

11. From perusal of the record it would be evident that apart from seizure of Plaster of Paris coated two boxes, no other article was recovered by the police either at the time of institution of the FIR or subsequent thereto before submission of charge-sheet. I fail to understand that if that was the only material, as to how the police could have filed charge-sheet under Sections 419 and 420 of the I.P.C. and the learned Magistrate could have taken cognizance of those offences.

12. Section 419 of the Cr.P.C. prescribes punishment for cheating by personation whereas Section 420 prescribes punishment for cheating and dishonestly inducing delivery of property. The offence of cheating has been defined under Section 415 of the I.P.C. To hold a person guilty of cheating as defined under Section 415 of the I.P.C., it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise with an intention to retain the property. In other words, Section 415 of the I.P.C., which defines cheating, requires deception of any person inducing that person to deliver any property to any person or to consent that any person shall retain any property intentionally inducing that person to do or omit to do anything which he would not do or omit if he were not so deceived



and which act or omission causes or is likely to cause damage or harm to that person anybody's mind, reputation or property.

13. Apparently, there is no such allegation in the FIR or in the police report submitted under Section 173(2) of the Cr.P.C. that the accused persons played deception upon any person inducing that person to deliver any property. Hence, the ingredients of the offences under Sections 419 and 420 of the I.P.C. are completely wanting in the present case.

14. Since the learned Magistrate took cognizance mechanically without application of judicial mind and summoned the petitioners to face trial, the impugned order dated 31.10.2014 cannot be sustained.

15. Accordingly, the impugned order dated 31.10.2014 and the entire proceedings of Barachatti P.S. Case No.264 of 2013 are hereby quashed.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
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