

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.10174 of 2016

Arising Out of PS.Case No. -1220 Year- 2013 Thana -SAMASTIPUR COMPLAINT CASE
District- SAMASTIPUR

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1. Ram Kripal Ray @ Ram Kripal Rai, son of late Baishakhi Ray, resident of village and P.O. – Korbaddha, P.S. - Samastipur Muffasil, District -Samastipur.
.... Petitioner/s

Versus

1. The State of Bihar.
2. Rambrit Ray, son of late Prayag Ray, resident of village and P.O. - Dhepura, P.S. - Dalsingsarai, District - Samastipur
.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Abhay Shanker Singh, Advocate
Mr. Amit Kumar Mishra, Advocate
For the Opposite Party No.1: APP
For the Opposite Party No.2: Mr. Ratanakar Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 18-08-2018

This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 10.08.2015 passed by the Judicial Magistrate, 1st class, Rosera, in Protest-cum-Complaint Case No.1220 of 2013 by which learned Magistrate after holding enquiry has found *prima facie* case against the petitioner and others for the offence under Section(s) 420 Indian Penal Code.

Heard learned counsel for the parties.

Counsel for petitioner submits that no offence under Section 420 Indian Penal Code is made out in this case. Allegation



made by the Complainant is with regard to non-payment of money by the petitioner.

Counsel for the Complainant-Opposite Party No.2 submits that enquiry was held by the District Education Officer, Samastipur, and several irregularities were found and it was mentioned in the enquiry report that money has been paid to the persons, who were not eligible for the same.

Counsel for the petitioner, in reply to the aforesaid submission, has submitted that in the Solemn Affirmation of the Complainant itself, it is mentioned that amount of Rs.22,65,000/- and odd was received during the period of In-Charge Principal, Dr. Ashok Kumar, and not this petitioner.

The petitioner made demand of original Appointment Letter from the informant before making payment of the amount.

Counsel for the Opposite Party No.2 submits that original Appointment Letter has been lost and, therefore, it was not produced.

In the Complaint Petition, which was sent to P.S. under Section 156(3) Cr. P. C., it is alleged that petitioner being In-charge Principal during relevant time has asked for original Appointment Letter from the petitioner. The same was lost somewhere in the house and payment was not made to the petitioner although aid has



been received by the college.

The police investigated the case and submitted final form in the case as false and recommended for initiating a proceeding under Section 182/211 Indian Penal Code against the Complainant-Informant. Thereafter, on the basis of protest petition filed by the Complainant the learned Magistrate hold enquiry and found *prima facie* case against the petitioner for the offence under Section(s) 420 Indian Penal Code on the basis of Solemn Affirmation of the Complainant, statement of two witnesses recorded during enquiry as well as allegation made in the Complaint Petition.

Necessary ingredients for the offence under Section(s) 420 Indian Penal Code is clearly mentioned in Section 415 Indian Penal Code, which are as follows:

- (a) Deceiving any person, fraudulently or dishonestly,
- (b) Inducing the person so deceived to deliver any property to any person, or to consent that any person shall retain any property,
- (c) Intentionally inducing the person so deceived 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 in body, mind, reputation or property.

In the entire complaint, there is allegation that money,



which was received as aid from the government in the College, was distributed amongst various teachers and non-teaching staff, but the same was not paid to the Complainant.

Solemn Affirmation of the Complainant was recorded in Protest-cum-Complaint Petition, wherein, Complainant has stated that he was not paid money by the petitioner from the amount of aid, which has been received in the College. The money has been paid to different persons, who were not entitled for the same.

It is mentioned in the Complaint Petition itself by the Complainant that Complainant made demand of money then Petitioner asked for original Appointment Letter, which was not produced by the Opposite Party No.2 because the same was lost.

In this manner, from the allegation in the Complaint Petition and Solemn Affirmation of the Complainant, it appears that main grievance of the Complainant is of non-payment of amount and not taking teaching work from the petitioner.

The Hon'ble Supreme Court in the case of *Indian Oil Corporation Vs. NEPC India Ltd. and Ors.* reported in *2006(6) SCC 736* has mentioned about the essential ingredients of offence of cheating in para 25 of the aforesaid judgment.

Therefore, on the basis of the allegation in the Complaint Petition and Solemn Affirmation of the Complainant,



which has been enclosed with the instant application, this Court finds that there is no ingredient of offence under Section 420 Indian Penal Code.

Therefore, the impugned order is not in accordance with law.

Accordingly, impugned order dated 10.08.2015 passed by the Judicial Magistrate, 1st class, Rosera, Samastipur, in Protest-cum-Complaint Case No.1220 of 2013 along with entire criminal proceeding against the Petitioner is hereby quashed.

This application is, accordingly, **allowed**.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	28-08-2018
Transmission Date	28-08-2018

