

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.8829 of 2015

Arising Out of PS.Case No. -106 Year- 2013 Thana -JAMHORA District- AURANGABAD

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Gayatri Kumari, daughter of late Rajeshwar Singh, Resident of Village - Kateya,
Police Station - Jamhor, District - Aurangabad (Bihar).

.... Petitioner/s

Versus

1. The State of Bihar.
2. Ramashray Singh, son of Ram Prasad Singh, r/o village Teri, P.S. Barun, Distt. Aurangabad.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Gajendra Prasad Yadav, Advocate.
For the Opposite Party/s : Mr. Nawal Kishore Prasad, A.P.P.
For the informant : Dr. Leelawati Kumari, Advocate.

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 03-08-2018

1. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 07.01.2015 passed by the learned Additional Chief Judicial Magistrate, Aurangabad, in Jamhor P.S. Case No. 106 of 2013, G.R. No. 1732 of 2013 by which the learned Magistrate after looking into the material available in the case diary after submission of charge sheet has taken cognizance against the petitioner and other accused person for the offence under Sections 406 and 420/34 of the Indian Penal Code.

2. Heard learned counsel for the petitioner, learned counsel for the opposite party No. 2 and learned counsel for the State.



3. Learned counsel for the petitioner has submitted that there is no chit of paper in proof of payment of Rs.2,50,000/- to the petitioner by opposite party No. 2. It has further been submitted that even if allegation is taken to be true, from the contents of First Information Report itself, it appears that opposite party No. 2, wanted to get illegal work done by petitioner. As per allegation, he has paid the amount for getting employment of his son-in-law in civil court Sasaram by illegal means. The opposite party No. 2 has alleged that he had paid Rs.10,000/- in the account of father of this petitioner. There is no allegation that money was ever given to petitioner by opposite party No. 2.

4. The case as per the First Information Report is that the opposite party No. 2 had gone to the house of accused persons who are distantly related to him. The petitioner told that vacancy in the post of fourth grade in civil Court, Sasaram, has been advertised. If he wants to get employment of his son-in-law, he would have to spend Rs.2.5 lacs. The opposite party No. 2 deposited Rs.10,000/- in the Bank account of father of petitioner on 28.10.2011. It is further alleged that son-in-law of informant did not get employment. Thereafter, the opposite party No. 2 made demand of his money then petitioner became angry and threatened to implicate opposite party No. 2 and his son-in-law in false case.



5. The court below by the impugned order on the basis of charge sheet submitted by the police took cognizance against the petitioner along with other accused person for the offence under Sections 406 and 420/34 of the Indian Penal Code.

6. From the allegation in the written report itself this Court finds that there is no agreement between the informant and petitioner. It further appears that petitioner has no concern with the vacancy in the civil court Sasaram. There is no any chit of paper filed on behalf of the opposite party No. 2 to show that even single farthing was taken by the petitioner. It further appears from the written report that informant wanted some illegal work to be done by the petitioner for which he has paid Rs.1,50,000/- to him.

7. In such circumstances, this Court is of the view that no offence as alleged in the written report, is made out against the petitioner. The cognizance taken by the court below for the offence under Sections 406 and 420/34 of the Indian Penal Code against the petitioner is illegal and not based on any valid evidence.

8. Therefore, the impugned order dated 07.01.2015 passed by the learned Additional Chief Judicial Magistrate, Aurangabad, in Jamhor P.S. Case No. 106 of 2013, G.R. No. 1732 of 2013 along with entire Criminal Proceeding against the petitioner is hereby quashed.



9. This Criminal Miscellaneous application is accordingly allowed.

(Sanjay Priya, J)

S.Ali/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	09/08/2018
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