

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.49259 of 2013

Arising Out of PS.Case No. -589 Year- 2013 Thana -WEST CHAMPARAN COMPLAINT District-
WESTCHAMPARAN(BETTIAH)

- =====
1. Subhash Sahani, s/o late Bhikhari Sahani, R/O Mohalla- Baswaria, P.S.- Bettiah
Town, District- West Champaran

.... Petitioner/s

Versus

1. The State of Bihar
2. Bidyalal Mukhiya, s/o late Kamal Mukhiya, resident of village- Baidyanathpur,
Gidhaura, P.O.- Pipara, P.S.- Bettiah Muffasil, District- West Champaran

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Sanjeev Kumar, Advocate
For the Opposite Party No.1: Mr. Jharkhandi Upadhyay, APP
For the Opposite Party No.2: Mr. Shankar Kumar Thakur, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 05-04-2018

This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 03.05.2013 passed by the Judicial Magistrate, 1st class, Bettiah, West Champaran, in Complaint Case No.598-C of 2013 by which the learned Magistrate after holding enquiry has found *prima facie* case against the petitioner for the offence under Section(s) 420, 467, 468, 471 Indian Penal Code.

Heard counsel for the petitioner and the learned APP for the State as well as counsel for the Opposite Party No.2.

Main legal point raised by the counsel for petitioner in this case is that allegation made in the instant Complaint Petition is



election dispute in the Co-operative Societies. As per Explanation 1 of Section 48 of the Bihar Co-operative Societies Act, 1935, the question whether a person is or was a member of a registered society or not shall be a dispute within the meaning of this sub-section and such dispute shall be referred to Registrar.

Counsel for the petitioner has also pointed out Rule 21 (J) of Bihar Co-operative Societies Rules, 1959, which prescribe the procedure to be adopted by the Election Officer at the time of election.

Counsel for the petitioner on the basis of such legal question has submitted that the impugned order of cognizance is bad in law.

Counsel for the Opposite Party No.2 has appeared and submitted that Section 45 of Bihar Co-operative Societies Act, 1935, clearly provides penalties and procedure to be adopted in case criminal act is committed by the member of the Society. Counsel for the Complainant has referred Section 45(1)(e) of the Bihar Co-operative Societies Act, 1935, which provides that any person, who indulges in the corrupt practices before, during or after the election of the Officer-Bearer or member of the Board, will be punished for penal action in terms of Section 45 of the Act.

From the allegation made in the complaint, this Court



finds that there is allegation made against the petitioner that he being Secretary of Ad-hoc Committee of *Bettiah Block of Matasaya Jivi Sahyog Samittee Ltd.*, indulged in various interpolation in the name of the voter list by incorporating several names of voter after illegally deleting the name of genuine voters for extraneous consideration. He also caused manipulation and interpolation in the government record of which he was custodian.

Learned APP has submitted that the Court below has passed the impugned order on the basis of S.A. of the Complainant and statement of the witnesses recorded during enquiry.

This Court after hearing all the parties and looking into the nature of allegation in the Complaint Petition finds that nature of allegation alleged in the Complaint Petition is not simple election dispute, rather, it also involves criminal offence.

In terms of Section 45 of the Bihar Co-operative Societies Act, 1935, penal action can be taken against the members of the Societies including Secretary, who indulges in the corrupt practices before, during or after the election of the office-bearer or member of Board.

The Magistrate is required to see only prima facie case at the time of holding enquiry.

In view of such, this Court does not find any illegality



in the impugned order passed by the Court below.

The application is **dismissed**.

The petitioner is given liberty to raise all the points, as raised in the present application, at the time of framing of Charge, which shall be considered and disposed off by the Court below in accordance with law without being prejudiced by this order.

The Court below is directed to proceed with the trial in accordance with law.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	20-04-2018
Transmission Date	20-04-2018

