

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.44120 of 2016

Arising Out of PS.Case No. -257 Year- 2011 Thana -BHABHUA District- BHABHUA (KAIMUR)

=====

Devata Charan Singh, son of late Sri Kishun Singh, resident of Village- Seon, P.S.- Bhabhua, District- Kaimur, at present residing in Mohalla- Bhabua, Ward No.6, P.S.- Bhabua, District- Kaimur.

.... Petitioner/s

Versus

1. The State of Bihar
 2. Sunil Kumar, son of Raghunath Prasad, District Prosecution Officer, Kaimur,
- Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Baxi S. R. P. Sinha, Sr. Advocate
Mr. Ravi Shankar Sahay, Advocate
For the Opposite Party/s : Dr. Amitesh Kumar, APP

=====

CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 12-09-2018

This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 07.06.2016 passed by the Sessions Judge, Kaimur, in Cr. Revision No.54 of 2016 by which he has set aside the order dated 30.01.2016 passed by the Sub-Divisional Judicial Magistrate, Kaimur at Bhabua, in Bhabua P.S. Case No.275 of 2011 whereby the learned Magistrate has discharged the petitioner from the case.

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

Counsel for the petitioner has submitted that revisional Court has illegally set aside the order of the learned Sub-Divisional



Judicial Magistrate, Kaimur, by which he had allowed the petition filed by the petitioner under Section 239 Cr.P.C.

Counsel for the petitioner has submitted that it is admitted that amount of Rs.86,800/-, which is alleged to have been deposited in the account of the petitioner as grant of government aid, has been returned by him. He is guilty of performing double duty only, which is violation of Section 16 of the Bihar Service Conduct Rules.

Counsel for the petitioner submits that the college where petitioner was teaching, namely, Manorama Devi Ramrati Patel Degree Mahila Mahavidyalaya, Bhabua, was totally a private college. He was working on honorarium basis. Some money as grant was allotted to the college by the government. Out of the aforesaid grant money, Rs.86,800/- was deposited in the account of this petitioner without his knowledge, which he had immediately returned to college by cheque, which is evident from the Xerox copy of cheque as well as statement of the college authorities made in para 40 of the case diary. (Anneuxre-2 series).

Counsel for the petitioner further submits that police after looking into all the materials has submitted final form stating as mistake of fact. The learned Magistrate, however, differing with final form, as submitted by the police, took cognizance against the



petitioner, which was challenged by the petitioner in the Hon'ble Court. The Hon'ble High Court by order dated 24.04.2014 passed in Cr. Misc.No.51495 of 2013 did not interfere with the cognizance order, but gave liberty to the Petitioner to raise all the points at the time of framing of charge. Thereafter, at the time of framing of Charge, petitioner filed petition under Section 239 Cr.P.C. for his discharge and the Court below after appreciating materials in the case diary and the relevant facts of the case has discharged the petitioner by order dated 30.01.2016 under Section 239 Cr.P.C.

Learned Sub-Divisional Judicial Magistrate, Kaimur, has mentioned in the impugned order that there is clear averment in para 40 of the case diary about return of the money by the petitioner in the account of the college.

The State has filed revision application against the aforesaid order. The revisional Court by order dated 07.06.2016 passed in Criminal Revision No.54 of 2016 has set aside the order of the learned Sub-Divisional Judicial Magistrate, Kaimur, on the ground that *prima facie* case of cheating and forgery under Section 417 and 468 Indian Penal Code is made out though no *prima facie* case is made out under Section 409 Indian Penal Code.

This Court finds that such observation given by the Sessions Judge was without any basis. There is no ingredient of



offence under Section(s) 467 and 468 Indian Penal Code in the instant case as the Petitioner has already returned the money, which had wrongly been credited in his account.

Accordingly, impugned order dated 07.06.2016 passed by the Sessions Judge, Kaimur, in Cr. Revision No.54 of 2016 is hereby set aside.

The order dated 30.01.2016 passed by the Sub-Divisional Judicial Magistrate, Kaimur at Bhabua, in Bhabua P.S. Case No.275 of 2011 is hereby upheld.

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

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	18-09-2018
Transmission Date	18-09-2018

