

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.17130 of 2016

Arising Out of PS.Case No. -1095 Year- 2014 Thana -SAMASTIPUR COMPLAINT CASE
District- SAMASTIPUR

- =====
1. Gangesh Jha, son of Sri Ram Chandra Jha, resident of village-Thahar, PO-Araut, P.S.-Rosera, District- Samastipur, at present Clerk, Legal Service Committee , Dalsingsarai, Civil Court, District Samastipur.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Krishnandan Prasad, son of Ram Uttim Mahto, resident of village- Karrakh, PO- Shakh Mohan, PS- Bibhutipur, District- Samastipur.

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. S. N. P. Sinha, Sr. Advocate with
Mr. J. N. Sinha, Advocate

For the Opposite Party No.1: Dr. Rabindra Kumar, APP

For the Opposite Party No.2: Mr. Gopal Pandey, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 16-08-2018

This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 22.02.2016 passed by the Additional Chief Judicial Magistrate, Rosera, Samastipur, in C.R. No.1095 of 2014 by which learned Magistrate after holding enquiry has found *prima facie* case against the petitioner for the offence under Section(s) 417 and 406 Indian Penal Code.

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

Counsel for the petitioner submits that there is no chit of



paper in support of the allegation that rupees twenty five thousand each was charged by the Petitioner from the Complainant and others as security money. It is further submitted that the matter was enquired by I/c District Sessions Judge-cum-Chairman, District Legal Services Authority, Samastipur, with regard to the allegation made by the Complainant and the same was found to be false and baseless.

Counsel for the Opposite Party No.2 submits that money was taken by the Complainant on the pretext of security money, but no receipt was given.

Counsel for the State submits that there is no illegality in the impugned order.

Having heard counsel for the parties and on perusal of the Complaint Petition, this Court finds that the Complainant has alleged that the petitioner, who was posted as Clerk in District Legal Services Authority, made demand of rupees twenty five thousand as security money from the Complainant and other witnesses as mentioned in the Complaint Petition for selection of Para Legal Volunteers. They made payment of the amount, but they were not selected. The Complainant went to make demand of his money, but the same was not returned and the petitioner has misappropriated the amount of the Complainant and other witnesses as mentioned in the



Complaint Petition.

Counsel for the petitioner submits that in the Complaint Petition besides the Complainant there was mention of seven witnesses, but during enquiry only two witnesses have appeared to give the statement. It is further submitted that there is no chit of paper in support of the allegation that security money of rupees twenty five thousand was demanded by the petitioner for getting selection of the Complainant and other as Para Legal Volunteers in District Legal Services Authority, Samastipur.

It is further submitted that the Complainant sent the complaint levelling the same allegation to different authorities. The matter was enquired by I/c District Sessions Judge-cum-Chairman, District Legal Services Authority, Samastipur, with regard to the allegation made by the Complainant and the same was found to be false and baseless by his report dated 18.12.2014, which is annexed as Annexure-2.

The Court below in mechanical manner after recording solemn affirmation of the Complainant and statement of two witnesses found *prima facie* case under Section(s) 417 and 406 Indian Penal Code.

Therefore, impugned order passed by the learned Court below is not in accordance with law.



In view of such, impugned order dated 22.02.2016 passed by the Additional Chief Judicial Magistrate, Rosera, Samastipur, in C.R. No.1095 of 2014 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	25-08-2018
Transmission Date	25-08-2018

