IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.36710 of 2016

Arising Out of PS.Case No. -313 Year- 2015 Thana -ARA NAGAR District- BHOJPUR

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Anjeesh Kumar, son of Brajesh Prasad, R/o Mo-Ramgarhwa, P.S. Town Arrah, Distt.-Bhojpur, at Present posted at Assistant Teacher, +2 High School, Dhanchuha, Bhojpur, Distt.-Bhojpur (Arah).

.... Petitioner/s

Versus

1. State of Bihar
2. Pradeep Kumar Sinha, S/o Late Sadhusaran Prasad @ Lala S.S. Prasad, Flat No.201, Kashyap Suman Palace, R.M.S. Colony Kankarbagh, P.S. Kankarbagh, Distt.-Patna, presently Managing Director, Ara (Central School), Ramgarhia, P.S.-Arrah Town and District-Bhojpur.

.... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. A. K. Thakur-Advocate
		Dr. Anjani Pd. Singh-Advocate
For the State	:	Mr. Jharkhandi Upadhyay-A.P.P.
For the Opposite Party	:	Mr. Ranjeet Kumar-Advocate
		Mr/s. Ranjeeta Singh-Advocate
		Mr. Akash Keshav-Advocate

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

CAV ORDER

06 30-10-2018 Heard learned counsel for the petitioner, learned counsel for the O.P. No.2 as well as learned Additional Public Prosecutor.

2. Petitioner has challenged the order dated 23.01.2016 passed by the A.C.J.M.-12th, Bhojpur at Ara in connection with Ara Town P. S. Case No.313 of 2015, whereby and whereunder petitioner along with Vijay Kumar has been summoned to face trial for an offence punishable under Section 420 of the I.P.C.

3. Succinctly, the case of the prosecution as is evident from written report filed by O.P. No.2 on 13.07.2015, is that he

happens to be President of Indian Heritage Educational Trust having its Head Office at 201, Kashyap Suman Palace, R.S.M. Colony, Kankarbagh, Patna. He also divulged the fact that Ara Central School located at Ramgarhia is being run by the aforesaid trust since 2003. Sri Anjish Kumar has been inducted as a Principal of the said School from April, 2004. After increasing of strength of Students, they have taken another building on rent. On 02.04.2011, an agreement was prepared in name of Anjish Kumar as a Principal of the School. Rent was being paid by him regularly. The new building accommodated the students from Nursery to Class-Vth as well as hostel, residence of Principal was also there. After expiry of the period of agreement, the Principal taking him in good faith got the agreement renewed in his own name as Anjish Kumar, son of Brajesh Kumar simply and since thereafter, Principal Anjish Kumar began to absent from the school. Later on, he came to know that Anjish Kumar has been appointed as a Government Teacher since May, 2013. On account of financial irregularity as well as considering his absence, he has been ousted from the school from 06.11.2014. Even thereafter, he has not vacated the residence. He has further stated that the Principal forcibly sit in the aforesaid building and on the basis of forged receipt is engaged in realizing money from the students and by such activity, he has misappropriated a sum of Rs.7,00,000/-. He has further stated that one another teacher namely Vijay Kumar is also deeply involved during course of aforesaid activity. On query, they both are saying that they will take Rs.4,00,000/- for vacating the school premises. Whenever he used to visit the place, they used to utter irrelevant talks. Because of the fact that he is unable to pay Rs.4,00,000/-, on account thereof, this case is being filed. It has also been narrated that all the documents, registers etc. are with the Principal.

4. After registration of Arrah Town P. S. Case No.313 of 2015, investigation followed with submission of chargesheet, whereupon cognizance of an offence punishable under Section 420 I.P.C. has been taken vide the order impugned, subject matter of instant petition.

5. Manifold argument has been made on behalf of learned counsel for the petitioner. The first and foremost happens to be, from the statements of the witnesses recorded under Section 161 of the Cr.P.C. as is evident from the case diary, no offence under Section 420 of the I.P.C. is made out. In support thereof, drew attention towards Para-31, statement of the landlord, who has completely denotified the status of the informant rather he has categorically stated that he had given the building on tenancy to Anjish Kumar. The informant Pradeep Kumar Sinha never visited

his place nor negotiated, nay single farthing has been paid by him. In the aforesaid background, it has been submitted that during course of investigation not even a single chit of paper has been filed in order to substantiate the disclosure made in the written report with regard to payment of monthly rent by the informant to the landlord, in likewise manner, the running of school at the house of landlord Lal Bahadur Singh being managed by the informant, payment of salary having been made to the petitioner up to which date. Because of the fact that there happens to be specific assertion at the end of the informant that after renewal of agreement, petitioner became absent on account thereof, he has been removed from 06.11.2014, though there happens to be own disclosure that from the month of May, 2013, he has been appointed as Govt. Teacher. So, at least there should have been presence of petitioner uptill April, 2013, which has not duly substantiated.

6. Then, it has been submitted that from written report as well as further statement, it is evident that there happens to be allegation of realizing the money from the students on behalf of informant issuing a forged and fabricated receipt, but during course of investigation neither any guardian has come forward to allege so, nor any receipt has been filed to be in handwriting of the petitioner showing realization of fee on behalf of informant.

Furthermore, inordinate delay in institution of case, being unexplained, casting doubt over authenticity of the prosecution version.

7. It has also been submitted that this case has been filed with malice and grudge due to business rivalry having no prima facie evidence to justify summoning of the petitioner along with co-accused for an offence punishable under Section 420 of the I.P.C. Consequent thereupon, this petition is fit to be allowed.

8. On the other hand, the learned Additional Public Prosecutor as well as learned counsel for the O.P. No.2 extraneously argued that at the present stage, the proprietary of the order is to be seen whether the same happens to be in accordance with law or not. It has also been submitted that right from ***Raghubansh Dubey's Case***, it has been settled at rest that only prima facie materials is to be seen at the time of summoning of an accused, which the learned lower Court found and for that, gave his reasoning by incorporating the relevant paragraphs of the case diary. Furthermore, submitted that whatsoever been argued at the end of the petitioner is a matter of trial, as the same happens to be defence, which at the present stage goes out of consideration. So, the petition is found non-maintainable in the eye of law.

9. What should be the approach of the Court while

exercising the power vested under Section 482 of the Cr.P.C. At an earlier occasion, it has been properly identified in ***AIR 1992 SC 604 State of Hariyana & Ors. Versus Bhajan Lal & Ors.*** Recently, the same has been magnified in ***Parbatbhai Aahir alias Parbatbhai Bhimsinghbhai Karmur and others vs. State of Gujarat and another reported in 2017(9) SCC 641***, wherein it has been observed:-

> *"16. The broad principles which emerge from the precedents on the subject, may be summarised in the following propositions :*
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> *(1) Section 482 preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court;*
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> *(2) The invocation of the jurisdiction of the High Court to quash a First Information Report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 of the Code of Criminal Procedure, 1973. The power to quash under Section 482 is attracted even if the offence is non-compoundable.*
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> *(3) In forming an opinion whether a criminal proceeding or*

complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power;

(4) While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised; (i) to secure the ends of justice or (ii) to prevent an abuse of the process of any court;

(5) The decision as to whether a complaint or First Information Report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated;

(6) In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences;

(7) As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing in

so far as the exercise of the inherent power to quash is concerned;

(8) Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute;

(9) In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and

(10) There is yet an exception to the principle set out in propositions (8) and (9) above. Economic offences involving the financial and economic well-being of the state have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance.

10. In the aforesaid backdrop, now, one has to see whether summoning of the petitioner for an offence punishable under Section 420 of the I.P.C. is justified or not. It has been

settled at rest that at the time of summoning an accused under Section 204 Cr.P.C. in terms of an order passed under Section 190 of the Cr.P.C., only prima facie material has to be seen. Side by side, it has also been held that the criminal prosecution should not be allowed to be used as a tool to settle the soar and that happens to be reason behind that consistently, it has been settled at rest that even during course of invoking jurisdiction under Section 482 of the Cr.P.C., the High Court is justified in quashing the order in an appropriate case, on account of being malicious prosecution or otherwise, more particularly, when no offence is made out from the materials available on the record.

11. Before coming to see whether the prayer is maintainable, first of all ***Section 420 of the I.P.C.*** to be seen. For better appreciation, same is quoted below:-

> *"420. Cheating and dishonestly inducing delivery of property.—Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."*

12. Cheating is defined under ***Section 415 of the I.P.C.***, which reads as follows:-

> *"415. Cheating.—Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces 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, is said to "cheat".*
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> *Explanation.—A dishonest concealment of facts is a deception within the meaning of this section."*

13. Before perceiving the commission of an offence punishable under Section 420 of the I.P.C., there should be deceptive presentation at the end of the accused by which, he has put the allegationists to put belief upon him whereunder, he has been induced to act as defined thereunder. That means to say, transfer of property or to make alter or destroy whole or part of valuable security or signed and sealed, which could be converted as valuable security, on account of deceptive approach. After going through the materials available on the record, right from the written report, it is evident that there happens to be no document

to suggest that petitioner has ever received fee on behalf of informant being Principal of the institute, more particularly in the background of own admission that after second agreement having in his name petitioner became absent. Paragraph-36 is the first agreement dated 02.04.2011, which was for a year and the second was dated 19.12.2012 under Para-37 of the case diary. There happens to be no disclosure with regard to continuation of school even after expiry of date of the first agreement, which expired on 01.04.2012. The second agreement is of 19.12.2012 valid for a year, that means to say, after an interval of eight months at the expiry of 1st agreement. If the aforesaid activity is seen in the background of statement of the landlord, it is manifest that the 2nd agreement expired on 18.12.2013. That means to say, instant prosecution has been launched after nearly two years thereafter. When the statement of witnesses as referred in the order impugned has been gone through, it is evident that they are also silent on that very score. The place of occurrence as incorporated by the I.O. under Para-30 of the case diary did not speak that there was any board affixed over the building regarding running of Ara Central School nor any guardian, students were present at the time of inspection of the P.O. None came forward to say that petitioner by deceptive means succeeded in getting tuition fee on behalf of informant, nor informant been able to place, nor explained the situation subsequently after expiry of tenure of 2nd agreement, i.e. after 18.12.2013. In likewise manner, also failed to properly identify the real period for which, an allegation has been levelled. The I.O. during course of inspection of the P.O. under Para-30, which he visited on 04.11.2015 had not shown presence of petitioner to be occupant of the aforesaid building nor found school was running, nay had seized any items, registers, paper there from. Moreover, there happens to be no disclosure at the end of the prosecution that petitioner under deceptive manner, have procured any kind of property from the informant. In the aforesaid background, the major ingredient of Section 420 I.P.C. is not at all found exposed.

14. In the aforesaid facts and circumstances of the case, summoning of petitioner for an offence punishable under Section 420 of the I.P.C. by the order impugned is not at all found in accordance with law and that being so, is set aside. Petition is allowed.

(Aditya Kumar Trivedi, J)

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