

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.13935 of 2013

Arising Out of P.S. Case No. -76 Year- 2012 Thana -CIVIL LINE
District- GAYA

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1. Niraj Kumar, S/o Sri Raj Kumar Singh, R/o M-3, First Floor, Mukherjee Tower, Police Station-Mukherjee Nagar, Town & District-New Delhi.

2. Kundan Kumar, S/o Sri Dyaanand Singh, R/o Nutan Nagar, P.S.-Civil Line, Town & District-Gaya.

.... Petitioner/s

Versus

1. The State of Bihar.

2. Dr. Vijay Kumar, Son of R/o M.I.C. 98, Chanakyapuri, P.S.-Civil Line, Town & District-Gaya.

.... Opposite Party/s

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Appearance :

For the Petitioners : Mr. Ramesh Prasad Singh, Sr. Adv.

For the State : Mr. M. Rab, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL ORDER

5 28-02-2018 The petitioners, who are the president and convener of Dinkar Smriti Nyas and who were allotted a space in the Gandhi Maidan of Gaya for holding a Book Fare, have challenged the order dated 18.08.2012 passed by the learned Chief Judicial Magistrate, Gaya, whereby cognizance has been taken against them under Sections 420 and 34 of the Indian Penal Code (*in short "the I.P.C."*) in connection



with Civil Lines P.S. Case No. 76 of 2012, instituted for the aforesaid sections of the I.P.C.

One Dr. Vijay Kumar, opposite party No. 2, who has chosen not to appear in this case despite notices having been served upon him, has alleged that in the space which was allotted to the petitioners, a programme of one of the singers, namely, Anup Jalota, was arranged and for which tickets were being sold for Rs. 251/-, which was unauthorized use of the land. It was further alleged by the opposite party No. 2 that about five thousand passes were also distributed amongst citizens and without any rhyme or reason, later, the organizers of the said programme announced the cancellation of the aforesaid passes. It was, therefore, alleged that this gave rise to an offence of cheating as the holders of the passes were feeling absolutely dejected and insulted.

On the basis of the aforesaid written report lodged by the opposite party No. 2, Civil Lines P.S. Case No. 76 of 2012, dated 27.02.2012, was instituted for investigation under Sections 420 and 34 of the I.P.C.

Mr. Ramesh Prasad Singh, learned Senior Advocate appearing for the petitioners, has submitted that assuming but not admitting the entire allegation in the First Information Report to be true, no offence under Section 420 of the I.P.C. can at all be said to have been made out. In



support of the aforesaid contention, learned Senior Advocate has submitted that in the first instance, the opposite party No. 2 has not disclosed whether he had been given a pass or that he had paid money for purchase of a ticket for witnessing the programme by Anup Jalota. In that view of the matter, the opposite party No. 2 did not have any locus to initiate any criminal action against the petitioners. It has further been submitted on behalf of the petitioners that from the allotment letter itself it would appear that no such restrictions/embargo was put upon the organizers for not arranging for any programme in the aforesaid allotted space for Book Fare. What has aggrieved the opposite party No. 2 is the cancellation of the passes because of calling off the programme by Anup Jalota. This could not be given the colour of cheating the persons who were allotted passes.

During the investigation, nobody claimed that the opposite party No. 2 had paid money for purchase of tickets or had been given the passes. The opposite party No. 2 is neither a pass holder nor a purchaser of the ticket.

Section 420 of the I.P.C. provides for punishment of offence of cheating, which has been defined under Section 415 of the I.P.C. Section 415 of the I.P.C. 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".

There is nothing in the First Information Report or in the investigation papers which could attract the mischief of Section 415 to be punishable under Section 420 of the Indian Penal Code.

In the absence of the offence alleged having been made out squarely from the facts of this case, the order taking cognizance cannot be sustained in the eyes of law.

For the aforesaid reasons, the order of cognizance, dated 18.08.2012, as well as the entire criminal prosecution arising there from are quashed.

This application is allowed.

(Ashutosh Kumar, J)

Praveen-II/-

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