

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.45928 of 2014

Arising Out of PS.Case No. -2045 Year- 2012 Thana -WEST CHAMPARAN COMPLAINT
District- WESTCHAMPARAN(BETTIAH)

- =====
1. Shankar Prasad, s/o late Hanuman Prasad, resident of village- Purani Gudari Turha Toli, P.S. - Bettiah, District - West Champaran.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Manoj Mukhiya, son of late Kamal Mukhiya, resident of village - Baidyanathpur, P.S. - Bettiah, District - West Champaran.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Shankar Kumar Thakur, Advocate
For the Opposite Party/s : Mr. APP
Mr. Sanjeev Kumar, 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 25.03.2014 passed by the Judicial Magistrate, Bettiah, West Champaran, in Complaint Case No.2045-C of 2012 by which the learned Magistrate after holding enquiry has found *prima facie* case against the petitioner for the offence under Section(s) 417 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 in terms of Section 48 of Bihar Co-operative Societies Act, 1935, if any dispute touching the business of a registered society (other than a dispute regarding disciplinary action taken by the society or its managing committee against a paid servant of the society) arises, such dispute shall be referred to Registrar.

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 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-Bearers 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 against the petitioner that being Mantri of *Bettiah Block of Matasaya Jivi Sahyog Samittee Ltd.*, he collected money from different members of Samiti for settlement of different



ponds, but refused to give receipt or Parwana and misappropriated the amount.

Counsel for the petitioner has submitted that pond was to be settled only to the members of the Society and not to any others. The Complainant was not the member of the Society. Therefore, there is no question of settlement of pond with him.

On the other hand, counsel for the Complainant has submitted that Complainant and others were members of *Bettiah Block of Matasaya Jivi Sahyog Samittee Ltd.*

Learned APP has submitted that the Court below has passed the impugned order on the basis of statement of the witnesses recorded during enquiry and the material in the Complaint Petition.

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 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 bearers or member of the Board of Co-operative Society.

The Magistrate is required to see only prima facie case



at the stage of holding enquiry under Section 202 Cr. P. C.

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

