

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.40289 of 2012

Arising Out of PS.Case No. -923 Year- 2010 Thana -null District- SAHARSA

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1. Dr. Sudhakar Thakur, S/O Dina Nath Thakur, J.K. Trust Gram Vikash Yojna,
R/O Mohalla- Thana Chowk, Gandhi Nagar, Madhubani, P.S. + District -
Purnia

.... Petitioner/s

Versus

1. The State of Bihar
2. Kundan Kumar, s/o Sri Dinesh Sah, r/o Naya Bazar, Ward No. 3, Police Station
- Saharsa, District - Saharsa

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Pramod Mishra, Advocate
Ms. Rashmi Jha, Advocate

For the Opposite Party/s : Dr. Rabindra Kumar, APP
Mr. Diwakar Prasad Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 22-03-2018

This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 24.05.2011 passed by the Judicial Magistrate, Saharsa, in Complaint Case No.923-C of 2010 by which the learned Magistrate after holding enquiry has found *prima facie* case against the petitioners for the offence under Section(s) 323, 447, 406 Indian Penal Code.

Counsel for the petitioner has submitted that he is neither employee of the Complainant/Opposite Party No.2 nor Trustee of J. K. Trust Gram Vikash Yojna registered under PTR No.E-717 (Bom). Petitioner is one of the managerial staff of the J. K. Trust. He has nothing to do with the deduction of Employees



Provident Fund Contribution. Counsel for the petitioner has further submitted that under self employment scheme of the Trust, the Complainant allegedly got registered himself as volunteer, which is known as Gopal, for effectively performing the work of artificial insemination and other services for improvement of cattle breeding etc. and for forming self help group training is given to Gopal. Agreement was entered into between the Complainant and the Gopal. It has been mentioned in categorical terms that there is no relationship of employee and employer between Trust and Gopal. It is also mentioned in categorical terms that since there is no relationship of employee and employer, therefore, Gopal is not entitled to get the benefit of Employees Provident Funds. However, for developing habit of compulsory saving, the Trust was helping him even though he was volunteer by deducting P.F. Contribution from honorarium of Gopal and adding equivalent amount in the PF Contribution and the amount so deducted and added by trust, used to be deposited with RPFC in the code of Trust. The scheme was conducted as per the sanctioned scheme of Central Government/ State Government. As such, registration of Gopal is co-terminus with the project and the registration will automatically come to an end with cessations of the scheme/project. For working as Gopal, an honorarium of Rs.1340/- was provided to each Gopal so that he



remain interested with the work. As soon as Gopal become able for self employment, the amount of honorarium will be recovered. In the agreement, provisions for incentive have also been mentioned for encouragement of Gopal. Xerox copy of draft agreement has been annexed as Annexure-2.

Learned counsel for the Opposite Party No.2 has filed Counter Affidavit stating therein that petitioner has cheated many unemployed youth. Interview was held in Koshi Hotel at Saharsa and Opposite Party No.2 was selected in the said interview for the post of Gopal. He received letter for giving training and he was directed to make payment of rupees five thousand towards expenses of training. He deposited the aforesaid amount in support of which he has enclosed Annexure-B, which is the receipt issued from the aforesaid Trust. Thereafter, from Annexure-A, it appears that Opposite Party No.2 was selected as Gopal for training under self employment scheme. Terms and conditions of the training was mentioned in Annexure-A, which was accepted by Opposite Party No.2. Thereafter, he joined after depositing the amount. Annexure-C is the letter issued by the Trust, which shows that his name has been registered as Volunteer in the aforesaid Trust under self employment scheme. In the aforesaid letter, all the terms and conditions have been given in detail in which it has been clearly



stipulated under Clause 7 that there will be no relationship of employer and employee between the Trust and Opposite Party No.2.

This Court from Annexure-A and C to the Counter Affidavit filed by the Opposite Party No.2 finds that Opposite Party No.2 was selected as Volunteer under Self Employment Scheme. There was no relationship of employer and employee between the Trust and Opposite Party No.2. It further appears from Annexure-A and C that petitioner was nowhere involved in issuing those letters.

Counsel for the petitioner has submitted that petitioner was one of the employees of the aforesaid Trust and he was not liable to make any payment of the amount deducted towards PF. Amount has been deposited by the Opposite Party No.2 for training in terms of Annexure-A of J. K. Trust Gram Vikash Yojna. Receipt was also issued by J. K. Trust Gram Vikash Yojna. Therefore, no criminal liability is made out against this petitioner.

This Court after looking into the allegation in the Complaint Petition and Annexure-A and C to the Counter Affidavit filed by the Opposite Party No.2, is of the view that there is no ingredients of Section(s) 323, 447, 406 Indian Penal Code against the petitioner.

In view of such, impugned order dated 24.05.2011 passed by the Judicial Magistrate, Saharsa, in Complaint Case



No.923-C of 2010 along with entire criminal proceeding against the petitioner is hereby quashed.

The Opposite Party No.2 submits that he has dues of rupees fifty thousand with the Company towards the money which he has deposited in the P.F. and also the amount of motorcycle allowance.

This Court is of the view that civil remedy is available to the Opposite Party No.2 for recovery of his due amount from the J K Trust.

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

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	07-04-2018
Transmission Date	07-04-2018

