

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.12255 of 2015

Arising Out of PS. Case No.-698 Year-1999 Thana- MUNGER COMPLAINT CASE
District- Munger

=====

Awadhesh Prasad Yadav, Son of Late Sahdeo Prasad Yadv, resident of
Mohalla- Bank, P.S.- Mufasil, District and Town – Munger.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Ramdeo Singh Yadav, son of late Govind Yadav, resident of Mohalla -
Khoza Bazar, P.S. Kasim Bazar, District and Town - Munger.

... .. Opposite Party/s

=====

Appearance :

For the Petitioner/s	:	Mr. Gaurang Chatterjee, Adv.
For the State	:	Mr. Dr. Kr. Uday Pratap, APP
For the O.P. No. 2	:	Mr. Shashi Bhushan Singh, Adv.

=====

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL ORDER

6 15-11-2019 Heard Mr. Gaurang Chatterjee, learned

Advocate for the petitioner and Mr. Shashi Bhushan

Singh, learned Advocate for the opposite party No. 2.

The petitioner has challenged the order dated
05.02.2009 passed by the learned Judicial Magistrate-Ist
Class, Munger in connection with Complaint Case No.
698(C) of 1999, whereby cognizance has been taken
under Section 420 of the Indian Penal Code as also
against the order dated 18.09.2014 passed by the



learned Addl. District & Sessions Judge-IV, Munger in Cr. Revision No. 66 of 2009, upholding and affirming the order of cognizance.

It has been submitted on behalf of the petitioner that the F.I.R. which was lodged by the In-charge Principle of the school against the petitioner and others of having accepted money in the garb of collecting fee from the unsuspecting students and misappropriating the same, was found to be incorrect and final report false was submitted. However, the protest petition was treated as complaint and on the solemn affirmation of a person who was substituted in place of informant, as the complainant had died by then, and the deposition of other witnesses on his behalf, cognizance was taken against the petitioner.

Mr. Gaurang Chatterjee, learned Advocate for the petitioner has impressed upon this Court that the complaint petition is absolutely vague in as much as no specific particulars have been given about the quantum of money paid and such payment having been made by



which student. It has further been submitted that the entire dispute was between the In-charge Principle and the Secretary of the school and the college was being run with the help of a local Parliamentarian, who had suggested that the Institution should not be shut down. It is precisely for this purpose that the college administration continued to run and fee from the students was realized for the purposes of depositing it in the University for the students to appear in the examination to be conducted by the University.

The aforesaid grounds would not be of any avail to the petitioner as in the solemn affirmation of the complaint petition, it has clearly been averred that the petitioner and others had tried to run the college in the name of Ramdeo Singh Yadav Science College and the fee which was extracted from the students was spent unauthorizedly. The details are not required to be provided in the complaint petition.

Since the order which is under challenge is of taking cognizance under Section 420 of the Indian Penal



Code, which appears to have been made out from the averments made in the complaint/solemn affirmation and the deposition of the witnesses, this Court is not inclined to go beyond the aforesaid materials which led to the subjective satisfaction of the concerned Magistrate.

The revisional order also appears to have sustained the order of the learned Magistrate on the same grounds.

The petition ought to fail for another reason.

This petition was filed in the year 2015 and it was taken up for the first time for admission on 01.07.2019, when notices were issued to the opposite party No. 2. In the absence of any stay operateing against the proceedings before the Court below, the matter proceeded and charges against the petitioner and others were framed, though no witness has been examined as yet. Since there was no stay on the proceedings of the Court below, the petitioner ought to have been careful and should have filed the petition for discharge, which he has not done.



After the petitioner challenged the order of cognizance in revisional jurisdiction, the present petition is though entertainable, but the Court is required to be cautious in exercising the powers under Section 482 of the Code of Criminal Procedure for entertaining such a petition.

The Supreme Court has cautioned in ***Krishnan and Anr. Vs. Krishnaveni and Anr.; (1997) 4 SCC 241*** that under such circumstances, the inherent powers of the Court is required to be exercised sparingly, so as to avoid needless multiplicity of procedure, unnecessary delay in the trial and protraction of proceedings. The proceedings remained pending for reason which may not be attributable to the petitioner, but the petitioner ought to have been conscious of the fact that no stay was granted in the present petition and, therefore, he was under an obligation to raise all the grounds in his defense at the stage of framing of the charge.

Since the charges have now been framed, this Court is not inclined to entertain the present petition.



The Trial Court is directed to conclude the trial as early as possible, preferably within a period of six months from the date of receipt/production of a copy of this order.

The disposal of the present petition, it is needless to state, would not be read to the prejudice of the case of the petitioner who has the liberty to contest the case at the trial.

The petition stands disposed off accordingly.

(Ashutosh Kumar, J)

Praveen-II/-

U		T	
---	--	---	--

