

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.73107 of 2018

Arising Out of PS. Case No.-49 Year-2013 Thana- BADHAILA District- Rohtas

1. Jabbar Ansari and Anr Son of Gul Mohammad Ansari,
2. Rozidan Khatoon, Wife of Jabbar Ansari, Both of Resident of Village-Baligaon, P.S.- Rajpur and District- Rohtas.

... .. Petitioners

Versus

The State Of Bihar

... .. Opposite Party

Appearance :

For the Petitioner/s : Mr.Md. Nazir Ansari
For the Opposite Party/s : Mr.Sri Jai Narain Thakur

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

2 10-12-2019 Heard learned Counsel for the petitioners and the learned APP for the State.

Petitioners have challenged the order dated 25.4.2018 passed by 3rd Additional Chief Judicial Magistrate Sasaram in G.R. No. 2269 of 2013, Trial No. 196 of 2018 dismissing their application for discharge.

The allegation is that the petitioners along with others have taken money from the complainant for the purpose of providing them visa and job abroad. The complaint petition, which has been converted into FIR after orders passed under Section 156(3) Cr.P.C., alleges that in spite of the amount of Rs. Two Lakh Four Thousand having been paid to the petitioners they did not provide the job to the complainant nor have they returned the amount. The allegation is of cheating.

Cognizance of the offence was earlier taken under Sections 406 and 120B IPC along with Section 34 of the IPC.

It is submitted by petitioners' Counsel that the complainant has not brought on record any proof of giving money. Petitioner No. 2 is a lady and that the prosecution has been instituted one and half years after the alleged occurrence. The petitioners



apprehending such false implication had lodged an information petition (Annexure 3). The substance of the submissions made by the petitioners' Counsel is of the case being a false case and that the petitioners have been implicated on extraneous consideration.

The court below while considering the petitioners petition for discharge is not required to consider all the facts and evidence and conduct a mini trial so as to examine veracity of the allegation. From perusal of the order passed by the court below, which is impugned in the instant proceeding, it is apparent that the court has gone through the materials collected during course of investigation and found that there was sufficient materials existing for proceeding further in the matter. Prima facie the opinion formed on the basis of such materials does not require any interference as it is not for the Court to examine the veracity of the allegation against the petitioners.

Petitioners' Counsel has also relied upon a decision of this Court reported in **2019(3) PLJR 1259** in the case of ***Prahlad Rai & anr. Vs State of Bihar & anr.***

The reliance placed on the judgment, in the opinion of this Court, is misplaced as in the instant case there is no allegation which would constitute an illegal agreement or arrangement between the parties and there is no allegation that any bribe was paid. In fact the amount was paid for the services which was promised by the petitioners which as per allegation they fraudulently did not honour.

The application is devoid of merit and the same is dismissed.

(Madhuresh Prasad, J)

SNkumar/-

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

