

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.40 of 2018**

Arising Out of PS. Case No.-451 Year-2016 Thana- ROHTAS COMPLAINT CASE District-
Rohtas

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ASHOK KUMAR SINGH @ ASHOK SINGH

... .. Petitioner/s

Versus

State Of Bihar and Anr

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr.Ramchandra Singh, Adv.
	:	Mr. Jitendra Kr. Singh, Adv.
	:	Mr. Mahendra Prasad, Adv.
For the Opposite Party/s	:	Mr. K.N. Chaubey, Sr. Adv.
	:	Mr. Prashant Kumar, Adv.

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**CORAM: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
ORAL JUDGMENT**

Date : 25-09-2019

Heard learned counsel for the parties.

Petitioner, by means of this application under section 482 of the Code of Criminal Procedure, has invoked the inherent jurisdiction of this Court with a prayer to quash the order dated 15.09.2017 passed by the learned Session Judge, Rohtas at Sasaram, whereby the revision petition filed by the accused person/O.P. No.2 has been allowed and the order taking cognizance dated 06.07.2017 passed by the A.C.J.M., Rohtas at Sasaram has been set aside by the revisional court.

The brief facts of the case in nutshell is that the complainant has filed a complaint petition which has been converted into Sasaram (Model) P.S. Case No. 678 of 2015 dated 16.09.2014 *inter alia* alleging that on 19.09.2014 complainant



felt pain on the left side of his stomach and thereafter he went to the clinic of the Doctor namely "Anjani Arogya Mandir Sasaram" which belong to the O.P. No.2, where on deposit of consultation fee, complainant has been medically checked by O.P. No.2 and upon advice of O.P. No.2, the complainant has been operated for Hernia after depositing the required amount and get discharged from the hospital on 29.10.2014. Even after operation and proper medicine, the complainant did not get rid of his pain and he again has been advised to undergo operation for which the complainant was asked for deposit of required amount of Rs. 20000/- Thereafter the complainant got impression that he has not been properly operated by the Doctor and he went to take advice of another doctor who advised him that he has not been properly diagnosed and operated. Being aggrieved the complainant sent a legal notice to the O.P. No.2 and in pursuance to the notice, the matter has been compromise but the O.P. No.2 failed to act upon by the terms of the compromise. Thereafter the petitioner left with no option has filed the instant complaint petition which was converted in to Sasaram (Model) P.S. Case No. 678 of 2015. The police after investigation submitted final report stating that no criminal offence has been committed and only breach of contract has been found which is said to be civil in nature. Thereupon the complainant filed protest petition on 30.04.2015 which was instituted as Complaint Case No. 2796 of



2016 rejecting the final report and after considering the version of the witnesses, the learned Magistrate has taken cognizance for the offence under Section 420 of the Indian Penal Code vide order dated 06.07.2017 and issued process under Section 204 Cr.P.C. against the accused which has been challenged and set aside by the revisional Court vide order dated 15.09.2017, which is under challenge before this Court.

Learned counsel for the petitioner submitted that the O.P. No.2 who happens to be a Doctor is playing with the life of poor people. The O.P. No.2 has negligently operated the petitioner after taking amount of Rs. 20000/- and when the problem of the petitioner did not cure, he again has been advised to undergo operation for which Rs. 20000/- has again been demanded by the O.P. No.2. But the petitioner approach to another doctor who advised him that he has negligently been operated and his life is under threat. Thereafter the petitioner filed complaint petition upon which considering the the S.A. of the complainant and the other witnesses, cognizance has been taken under Section 420 of the Indian Penal Code against the O.P. No.2 vide order dated 06.07.2017 passed by the A.C.J.M.-V, Rohtas at Sasaram which has been challenged before the revisional Court and the revisional Court without appreciating the materials available on record, has mechanically passed the order and set aside the cognizance order dated 06.07.2017 passed by the



learned A.C.J.M.-V, Rohtas at Sasaram, which is not sustainable in the eye of law.

Learned counsel appearing on behalf of the O.P. No.2 has vehemently opposed the prayer of the petitioner and submitted that the learned revisional court after going through material available on record and considering the version of the witnesses has rightly set aside the order taking cognizance under Section 420 of the Indian Penal Code. The learned revisional court while setting aside the order taking cognizance has rightly dealt with the materials available on record and witnesses and passed a well versed and well reasoned order which does not require any interference in exercise of powers under Section 482 Cr.P.C by this Court.

From perusal of the materials available on record and the submissions made above, it is evident that not a single document has been produced by the complainant which attracts any criminal offence committed by the O.P. No.2. No case of criminal act or offence of cheating is made out against the O.P. No.2. Although the O.P. no. 2 has not acted upon by the terms and conditions of the compromise arrived at between the parties but for the same the O.P. No.2 is not liable to be prosecuted under the criminal liability as the same appears to be civil in nature. Accordingly, the order taking cognizance under Section 420 of the Indian Penal Code has rightly been set aside by the learned



revisional court vide order dated 15.09.2017 considering the material available on record and the revisional court has passed a well reasoned order and the same does not require any interference by this Court.

In view of the above, the present application is dismissed.

(Arvind Srivastava, J)

Brajesh/-

AFR/NAFR	
CAV DATE	18.06.2019
Uploading Date	27.09.2019
Transmission Date	

