

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 6097 of 2015

Arising Out of P.S. Case No.-144 Year-2012 Thana- LADANIYA District- Madhubani

1. Prahlad Rai, Son of Dev Narayan Rai.
2. Raman Kumar Rai, Son of Sri Prahlad Rai. Both residents of Village- Khojedih, P.S.- Ladaniya, District- Madhubani.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Harishankar Roy, Son of Late Ram Gopal Roy, resident of Village- Mangrauna, P.S.- Andharathadi, District- Madhubani.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Raj Kumar Rajesh, Advocate
For the Opposite Party/s	:	Ms. Rashmi and Mr. T. P. Mandal, Advocates
For the State	:	Mr. Jharkhandi Upadhyay, APP

**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH**

ORAL JUDGMENT

Date : 15-05-2019

Heard learned counsel for the petitioners; learned APP
for the State and learned counsel for the opposite party no. 2.

2. The petitioners have moved the Court under Section
482 of the Code of Criminal Procedure, 1973 for the following
relief:

*“That this is an application being filed
for quashing the Order taking cognizance dated
23.7.2013, passed the G.R. No. 3514/12, arising out
of Ladaniya P.S. Case No. 144/2012 by Learned
Court of Sri Kr. Kaushal Kishor, Judicial
Magistrate, Ist Class, Madhubani under taking
cognizance u/s 406, 420, 468, 471/34 IPC.”*



3. The allegation against the petitioners is of taking money by way of bribe for providing job of T.T. in the Railways to the opposite party no. 2, but the same was not done and money also not returned and in Panchyati, it is alleged that the petitioners had agreed to transfer land in favour of the opposite party no. 2, in lieu of the money taken by them, but despite the opposite party no. 2 buying stamp paper, the transfer was not made by the petitioners.

4. Learned counsel for the petitioners submitted that the present is absolutely a false and frivolous case as they have not taken any money after promising job of T.T. in the Railways to the opposite party no. 2. It was submitted that no evidence with regard to such payment has been brought on record and most importantly, such payment cannot be accepted as it is totally illegal for any person to give public employment after taking money as has been alleged. It was further submitted that the petitioners have no concern with the Railways and, thus, could not have given any promise to anyone for such employment. It was submitted that even with regard to the stamp paper, nothing has been brought on record to substantiate the claim that on stamp paper worth Rs. 25,000/-, the scribe had written with regard to sale of land by the petitioners. Learned counsel relied upon a decision of a co-ordinate Bench in the case of **Tarkeshwar Prasad Choudhary vs.**



State of Bihar reported as **2017 (4) PLJR 87**, for the contention that if the complainant himself entered into an illegal agreement alleging payment of bribe for getting job, such complaint has to be handled with iron hands and no mercy should be shown

5. Learned APP fairly submitted that in view of the law laid down by the Court as well as the fact that allegation is of paying bribe, which itself is illegal, no complaint in this regard is maintainable.

6. Learned counsel for the opposite party no. 2 was also not in a position to controvert the submissions made on behalf of the petitioners. Further, on a query of the Court with regard to failure to bring on record the so called stamp paper worth Rs. 25,000/-, on which transfer of land belonging to the petitioners was written, despite having entered appearance in the present case on 29.02.2016, i.e., more than three years back but not filing any counter affidavit, as well as the decision of the Court in the case of **Tarkeshwar Prasad Choudhary** (*supra*), how such case was maintainable; learned counsel could not give any reply.

7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that a case for interference has been made out.



8. As has rightly been submitted by learned counsel for the petitioners, the opposite party no. 2 himself accepts that he had paid bribe to the petitioners. Thus, for the grievance that the same has not been returned and he has also not been compensated, filing a criminal case cannot be permitted in law. The opposite party no. 2 himself is guilty of giving bribe for seeking public employment, which cannot be purchased and the same itself being illegal, it is the opposite party no. 2, who deserves to be prosecuted as he has admitted to paying bribe for getting such employment. Moreover, reliance has rightly been placed by learned counsel for the petitioners on the judgment in **Tarkeshwar Prasad Choudhary** (*supra*) with regard to no mercy being shown to the person who gets into an illegal agreement and pays bribe for getting job. Further, a co-ordinate Bench in the case of **Vijay Sharma vs. State of Bihar** reported as **2011 (1) PLJR 780**, at paragraph no. 11, has held as under:

“11. Section 23 of the Indian Contract Act declares void a contract which is contrary to the law or opposed to public policy. Therefore, even under the civil law the agreement between the parties was unlawful in its very inception. Both had agreed to do something which was prohibited in law. The contract ex facie being unlawful, both parties can be said to have intended to exploit the law for an illegal purpose. The reliance by the complainant on Section 65 of the Indian Contract Act may create a civil cause of action



as a money claim. This is a mere observation and not an affirmative finding for the maintainability of any such claim under an illegal contract which shall have to be decided on its own merits in an appropriate civil proceeding. It can however never constitute a criminal offence.”

9. In view of the aforesaid, the Court finds that the present case against the petitioners have been filed for oblique reasons to harass the petitioners and, thus, an abuse of the process of the Court.

10. Accordingly, the application is allowed. The entire criminal proceeding arising out of Ladaniya P.S. Case No. 144 of 2012, including the order dated 23.07.2013 by which cognizance has been taken, as far as it relates to the petitioners, stands quashed.

(Ahsanuddin Amanullah, J.)

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