

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.14986 of 2015

Arising Out of PS. Case No.-3828 Year-212 Thana- VAISALI COMPLAINT CASE District-
Vaishali

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Awadhesh Chaudhary @ Awadhesh Kumar Chaudhary son of Sri Jagannath Chaudhary, resident of Village - Bari Yusufpur behind Bazar Samiti, P.S.- Hajipur Town, District - Vaishali.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Sanjay Kumar son of Sri Bhagwan Chaudhary, resident of Village and Post - Tarwan, Mangarpal, P.S. - Dariyapur, District - Saran, Chapra.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr.Sanjay Kumar Verma, Advocate Mr.Vinit Kumar, Advocate
For the Opposite Party/s	:	Mr.Arvind Kumar Sinha, Advocate Mr.Neeraj Kumar Gupta, Advocate
For the State	:	Mr.Shyam Kumar Singh, A.P.P.138

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 24-07-2019

Heard learned counsel for the parties.

2. The petitioner is accused in connection with Complaint Case No.3828 of 2012, wherein the learned Judicial Magistrate-1st Class, Hajipur has taken cognizance for the offences under Sections 406, 420 and 323 of the Indian Penal Code, vide impugned order dated 11.11.2013.

3. According to complaint petition, the petitioner allegedly persuaded the complainant to give Rs.2,00,000/- (Rupees Two Lacs) for managing job for the complainant in the Railways. It was further agreed that the money would be paid in



installments. The complainant allegedly paid Rs.1,88,000/- (Rupees One Lac and Eighty Eight Thousand) in different installments. Thereafter, the petitioner stated that complainant would be required to pay Rs.7,00,000/- (Rupees Seven Lacs) instead of Rs.2,00,000/- (Rupees Two Lacs). The matter went before the *Panchas*, however remained without any solution.

4. Submission of the learned counsel for the petitioner is that there is no chit of paper to substantiate that any money was paid by the complainant to the petitioner, rather fact of this case is that the complainant wanted to marry a girl of his relation with the petitioner after that petitioner got a job in the State Bank of India. Moreover, complainant was himself indulged in managing back door entry in public appointment. Hence, he is not entitled for protection of law.

5. Learned counsel for the opposite party No.2 submits that though there is no documentary proof of payment of money to the petitioner, however witnesses have stated during inquiry under Section 202 of the Code of Criminal Procedure that money was paid to the petitioner in their presence. Therefore, meticulous appreciation of evidence is not permissible at this stage and that can be considered only at the stage of trial.



6. *Section 23 of the Contract Act* says that the consideration of an agreement is lawful, unless it is forbidden by law, or is of such a nature that, if permitted, it would defeat the provisions of any law, or is fraudulent, or involves or implies injury to the person or property of another, or the Court considers it as immoral, or opposed to the public policy.

7. The conduct of the complainant is squarely covered by the aforesaid definition. If the object of the complainant would have been achieved, it must have caused injury to the deserving person in whose place complainant would have been appointed by bribing others. Moreover, the conduct of the complainant was immoral and was to defeat the provisions of law which mandates fairness and impartiality in public appointment.

8. *According to Section 24 of the Contract Act*, if the consideration or object of an agreement is unlawful even in part, the agreement is itself void.

9. In view of the aforesaid provisions, the complainant cannot recover the alleged money in a duly instituted civil proceeding. Therefore, it cannot be allowed to agitate the matter in a criminal proceeding in absence of any documentary evidence to support payment of that amount to the petitioner. Hence,



criminal prosecution of the petitioner would amount to abuse of process of the Court.

10. Accordingly, the impugned order and the entire subsequent criminal proceeding referred above stands *quashed* and this application stands *allowed*.

(Birendra Kumar, J)

abhishek/-

AFR/NAFR	NAFR
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