

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 50398 of 2014

Arising Out of P.S. Case No.-27 Year-2010 Thana- PIRBAHORE District- Patna

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Binit Kumar Sinha Son of Umesh Kumar Sinha, resident of Qr. No. 523/800,
Lal Bahadur Shastri Nagar P.S. Shastri Nagar, District- Patna.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Rajeev Kumar Verma, Sr. Advocate Mr. Karuna Nath Sahay and Mr. Anjan Singh, Advocates
For the State	:	Mr. Shailendra Kumar-1, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH

ORAL JUDGMENT

Date : 02-04-2019

Heard learned counsel for the petitioner and learned
A.P.P. for the State

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

*“That this is an application for quashing
of the order of cognizance dated 9.9.2014 passed
by Sri A. K. Ram, Judicial Magistrate 1st Class,
Patna in Pirbahore P.S. Case No. 27 of 2010 by
which the learned Magistrate, has taken
cognizance under Sections 406, 420 and 120(B) of
the Indian Penal Code.”*

3. The allegation against the petitioner, though not
named in the F.I.R., is of collecting money from persons on the



plea of providing them employment in Government establishments.

4. Learned counsel for the petitioner submitted that besides he not being made accused in the F.I.R. filed by the Inspector of the Central Industrial Security Force, his implication subsequently is totally *mala fide*. It was submitted that the petitioner was never involved in any such racket of duping job seekers and collecting money for providing them employment. Learned counsel submitted that the petitioner himself was a victim of such fraud which would be clear from him having deposited Rs. 45,000/- in cash in the account of one Ajay Kumar, whom the police has found to be one of the main persons involved in the racket. Learned counsel submitted that the petitioner got employment in the year 2013 in a private Company and, thus, when he asked for return of the money paid to Ajay Kumar, he has been falsely implicated in the case. Learned counsel submitted that in **Vijay Sharma vs. State of Bihar** reported as **2011 (1) PLJR 780**, a Bench of this Court has held that if the complainant voluntarily parted with money for an illegal purpose of securing appointment in Government service for a money consideration, which itself was an offence, he cannot urge that he has been cheated. Learned counsel submitted that the same principle has



been followed in **Manju Devi vs. State of Bihar** reported as **2017 (2) PLJR 560** and **Ashutosh Mishra vs. State of Bihar** reported as **2017 (3) PLJR 152**.

5. Learned A.P.P., from the case diary, submitted that the submissions made on behalf of the petitioner are totally misconceived. It was submitted that during investigation it has clearly come that the petitioner was also one of the persons who collected money from persons on the plea that they would be provided employment in Government institutions. Learned counsel submitted that in the case diary, victims, Amrit Sagar at paragraph no. 201 and Sanjay Ram at paragraph no. 205 have stated that the petitioner was present when money was paid by them to co-accused for providing them appointment in Government institutions. It was further submitted that the petitioner, who has brought on record copy of a pay-in-slip showing deposit of Rs. 45,000/- in cash in favour of Ajay Kumar, does not show that he was the person who had deposited the amount.

6. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court does not find any merit in the present application.



7. The petitioner has not been accused by a victim of having taken money and then not providing job or not returning the money. Here is a case where such activity of persons collecting money from unemployed persons on the plea that they would be provided job in Government institutions was brought to light by the F.I.R. filed on behalf of the Central Industrial Security Force. During the course of investigation, the police found that it was a racket and then only the accused persons were identified and also chargesheeted. Thus, the fact that the name of the petitioner does not figure in the F.I.R. is of no relevance. Moreover, the decisions relied upon by learned counsel for the petitioner in **Vijay Sharma** (supra), **Manju Devi** (supra) and **Ashutosh Mishra** (supra) are totally not applicable in the facts and circumstances of the present case for the simple reason that in all those cases, the criminal case was instituted by persons, who allegedly had given money for securing Government job. Thus, in such background, the Court held that a person who himself has committed illegality of giving bribe for an illegal purpose of getting Government employment without competing in open selection, cannot take the plea that he has been cheated by the person who has taken the money. The background and facts of the present case are completely different. At the cost of repetition, the



petitioner herein is accused of collecting money from persons seeking employment in Government institutions on the plea of providing such employment. Thus, in effect, the charge against the petitioner is that he was collecting money, by way of illegal gratification, holding out promise of providing job in Government institutions and further, witnesses have stated that in his presence such money was handed over to co-accused. Thus, the Court finds that the decisions relied upon by learned counsel for the petitioner are of no help to him in the present case.

8. At this juncture, the Court would also refer to Annexure-2, which is copy of pay-in-slip of ICICI Bank which shows that Rs. 45,000/- cash was deposited in to the account of one Ajay Kumar co-accused on 15th April, 2009. Thus, if such plea is taken to be correct, then there is no explanation as to why the petitioner had not made any demand from Ajay Kumar for four years when he got employment only in the year 2013, as there is no averment that he had made any complaint before any authority with regard to such payment to Ajay Kumar for providing job. Further, the other glaring aspect is the fact that the F.I.R. is of January, 2010 and the statement/investigation of the police is of the year 2011 and, thus, the petitioner having got employment in 2013 renders the whole defence worthless for the reason that



getting a job in 2013 cannot be co-related to the money paid in the year 2009 i.e., more than two years after the victims and the petitioner himself having made statement before the police in investigation which was in the year 2011 itself. Besides the pay-slip does not show that the money was deposited by the petitioner.

9. For reasons aforesaid, the application stands dismissed.

(Ahsanuddin Amanullah, J.)

P. Kumar

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