

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.13109 of 2015

Arising Out of PS. Case No.-2327 Year-2013 Thana- MUZFFARPUR COMPLAINT CASE
District- Muzaffarpur

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1. Ram Kumar S/o Late Gauri Shankar Thakur Director/Secretary, Central A.N.M. Training Institute, Pradhan Sadan, Khabra, P.S. - Sadar, District - Muzaffarpur.
 2. Rajiv Kumar S/o Sri Baidyanath Prasad Gupta Clerk Bara Babu, Central A.N.M. Training Institute, Pradhan Sadan, Khabra, P.S. - Sadar, District - Muzaffarpur.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Sudhir Singh S/o Late Kedar Singh R/o Village - Dhanaur, P.S. - Katra, District - Muzaffarpur.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Manoj Kumar Manoj

For the Opposite Party/s : Mr.A.M.P.Mehtaapp

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 13-09-2019

Heard learned counsel for the parties.

2. The petitioners have been arrayed as accused in Complaint Case No.2327 of 2013. The petitioners have challenged the cognizance order dated 10.07.2014 whereby the petitioners have been asked to appear to face trial for offences under Sections 406 and 420 of the Indian Penal Code pending before the Court of Mr. Amit Kumar Dixit, learned Judicial Magistrate, 1st Class, Muzaffarpur.

3. Challenge is on the ground that on bare



perusal of the complaint petition it would be evident that no offence for which cognizance has been taken is made out; rather the criminal prosecution suffers from malice to wreck vengeance.

4. According to the complaint petition three candidates, namely, Usha Kumari, Nutan Kumari and Manisha Kumari, contacted for their training as ANM (Auxiliary Nursing Midwife) in Central ANM Training Institute, at Khabra run by the petitioners. On 30.09.2010 all the three candidates were admitted and receipt of admission charge of Rs.30,000/- per candidate was issued on 05.10.2010. Thereafter, each candidate paid rupees one lac in the office of the accused persons. On 07.10.2010 itself and again rupees two lacs and fifty thousand on 05.12.2010.. Entire payment was made in cash. However, the candidates were not allowed to fillup the forms and appear in the final examination. As such, the complainant and the candidates found themselves cheated by the petitioners, who are running the Institute either as Director or an Assistant.

5. Contention of the learned counsel for the petitioners is that as per norms prescribed for courses of training by the Indian Nursing Council the candidates were required to pass in the internal assessment written examination. All the



aforesaid candidates failed in the internal assessment examination, which would be evident from answer sheets produced for perusal of the Court. When they failed they started pressurizing to allow them to appear in the main and final examination and just to wreak vengeance malicious complaint petition has been filed.

6. On the last date learned counsel for Opposite Party No.2 was appearing. However, after perusal of the answer sheet of the candidates he is not appearing today to oppose the prayer of the petitioners.

7. Since, prima facie material on record is that the concerned candidates did not qualify in the internal written examination to appear for the final examination. Hence, they were not permitted to appear in the examination prior to the date of filing of the complaint petition and there is no material to substantiate that such a huge amount was paid without any proof of the payment of the same whereas the complainant was conscious that receipt was being issued by the Institute against any payment made to the Institute. If the complainant had paid rupees two lacs and fifty thousand to get undue favour, there is no reason for protection of law to the complainant who was himself indulged in illegal activity of procuring a favour which



could not have been made legally.

8. For the reasons aforesaid, it is evident that continuance of the criminal proceeding against the petitioners is abuse of the process of the Court. Hence, the impugned order is quashed and the application is allowed.

(Birendra Kumar, J)

Mkr./-

AFR/NAFR	NAFR
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