

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.58376 of 2019

Arising Out of PS. Case No.-1050 Year-2011 Thana- SITAMARHI COMPLAINT CASE
District- Sitamarhi

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1. GANESH PRASAD SINGH @ GANESH KUMAR SINGH RATHORE @ GANESH KUMAR SINGH @ GANESH PRASAD SINGH RATHORE
Son of Shyamnandan Singh Resident of Village-Yogiyara, P.S-Jale, District-Darbhangha, At present Bishwajeet Software Institute of Technology, Hospital Road, Murtaza Manjil Palace, Doctor Yugal Kishore Prasad, Ward No.17, P.S-Sitamarhi, District-Sitamarhi.
 2. Sarita Singh Rathaur @ Sarita Singh @ Sarota Singh W/o Ganesh Prasad Singh@Ganesh Kumar Singh Rathore @Ganesh Kumar Singh@Ganesh Prasad Singh Rathore Resident of Village-Yogiyara, P.S-Jale, District-Darbhangha, At present Bishwajeet Software Institute of Technology, Hospital Road, Murtaza Manjil Palace, Doctor Yugal Kishore Prasad, Ward No.17, P.S-Sitamarhi, District-Sitamarhi.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Ramesh Kumar Singh, Advocate, Son of Late Suraj Singh Resident of Mohalla-Janki Asthan, Ward No.88, P.S-Sitamarhi, District-Sitamarhi.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Abhishek Kumar
For the Opposite Party/s : Mr.Amitesh Kumar

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 05-12-2019

The present petition has been filed for quashing the order dated 21.5.2019 passed by the learned court of SDJM, Sadar, Sitamarhi in Complaint Case No. 1050 of 2011, by which the discharge petition dated 12.9.2017 filed by the petitioner has been rejected.

2. The brief facts of the case, according to the complaint filed by the complainant, namely, Ramesh Kumar Singh, is that the accused persons i.e. the petitioners herein are running an



institute in the name and style of 'Visit computer' at Sitamarhi where the complainant is said to have gone along with the complaint witnesses for the purposes of inquiring about the said institute providing the facility of study of B.Ed. course and upon meeting the petitioners herein, the complainant was told that in their institute, studies pertaining to B.Ed. Course and other courses are imparted whereupon the complainant had asked about the fees and he was told by the petitioners that for the purposes of B.Ed. course, a sum of Rs. 1,15,000/- will have to be paid. It is the further case of the complainant that the complainant had then given a sum of Rs. 30,000/- in cash to the petitioners and in fact, the complaint witness no. 1 had also talked about his admission and had deposited a sum of Rs. 20,000/- in the account of the petitioner no. 2. It is further alleged in the complaint petition that whenever the complainant used to meet the petitioners regarding studies and examination, the petitioners (accused persons) on one pretext or the other used to assure them not to worry. Subsequently, the petitioners had told the complainant about the test of the examination to be held, however, the admit card was not given and it was stated by the petitioners that the same would be supplied at the examination centre and when the complainant had gone to



Muzaffarpur from Sitamarhi two days prior to the examination, the petitioner no. 1 herein had told the complainant that the examination has been postponed, however, upon inquiry, the petitioners disclosed that on account of non-registration in the University within the prescribed time limit, the complainant and others had been debarred from taking the exam, hence, in the session 2007-08, they would be accommodated. The complainant is then stated to have objected and told the petitioners that since they have taken a sum of Rs. 1,16,500/- from him, it was their responsibility to get the complainant admitted, thereupon after great difficulty and harassment having been meted out to the complainant, ID card of Chambal College of Education, Morena (Madhya Pradesh) was made available by the petitioners to the complainant and he was told that they would inform him about the examination, as and when the same is held. It is the further case of the complainant that subsequently, the complainant had given examination at the prescribed centre, however, the examination result was never given to him and when he inquired into the matter, it transpired that the petitioners had not got the re-registration done, as far as the complainant is concerned hence, it transpired that the petitioners had again committed fraud with the complainant and



made him appear in a fake examination.

3. The learned counsel for the petitioners has submitted that the fact is that the complainant had written the examination although the result was not published due to pendency of litigation before the Hon'ble High Court at Madhya Pradesh and Hon'ble Supreme Court of India & finally, the result of the complainant could not be published on account of the orders of the Hon'ble Apex Court. It is further submitted that the allegation levelled against the petitioners is false and fabricated and the college in question is not fake and the examination conducted by the said college, in which the complainant had appeared, was also not a sham. It is thus submitted that the offences under Sections 406 and 420 of the Indian Penal Code are not made out, as against the petitioners herein.

4. I have heard the learned counsel for the petitioners and perused the materials on record and I find that the learned court below has considered the evidence of the witnesses, who had appeared before the learned court below, to adduce evidence in favour of the complainant and from the same, the learned court below has come to a conclusion that all the witnesses have unanimously stated that the complainant has been duped of his money by the accused persons i.e. the petitioners herein on the



pretext of admitting him in the B.Ed. course, which was finally not done. The learned court below has also perused the documentary evidence produced by the complainant at the stage of pre-charge evidence and found that the case set out in the complaint petition has been found to be prima facie true. The learned court below has also found that the defence has not produced any material to suggest their innocence in the alleged occurrence for which cognizance has been taken earlier, thus, I find that the learned court below has not found any material so as to discharge the petitioners and not proceed against them.

5. At this juncture, it would be relevant to mention here that it is a well settled law that the Courts should be slow in interdicting the trial against the accused persons and the accused persons should be discouraged from protracting the trial and preventing the culmination of the criminal cases by resorting to uncalled for and unjustified litigation. It is equally a well settled law that at the time of considering the discharge petition, it is not for the Magistrate or the Judge concerned to analyze all the materials including the prons and cons, reliability or acceptability etc. and the learned judge concerned has to appreciate their evidenciary value, credibility or otherwise of the statement, veracity of various documents at the time of trial



and take a decision one way or the other. Thus, the court below has to be prima facie satisfied as to whether there is sufficient ground for proceeding against the accused and at the stage of considering the discharge petition, the standard of test, proof and judgment, which is to be applied finally before finding the accused guilty or otherwise, is not exactly to be applied inasmuch as the prosecution evidence is yet to commence.

6. Having regard to the facts and circumstances of the case and for the reasons mentioned hereinabove, this Court does not find any infirmity in the impugned order dated 21.5.2019 passed by the learned court of SDJM, Sadar, Sitamarhi in Complaint Case No. 1050 of 2011 so as to interfere with the same, hence, the present petition stands dismissed.

(Mohit Kumar Shah, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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