IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.48588 of 2014

Arising Out of PS. Case No.-752 Year-2011 Thana- KATIHAR District- Katihar

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Pradip Kumar Sinha S/o Sri Ganapati Sinha Resident of Village "Natural View" Flat No. 8/H. 82, Ultadanga Main Road, Kolkata, P.S. Ultadanga, District Kolkata West Bengal.

... ... Petitioner/s

Versus

1. The State Of Bihar
2. District Election Officer, Katihar, P.S. and District- Katihar Bihar

... ... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Purushottam Kr. Jha, Adv
	:	Mr.Sanjay Kumar Jha, Adv
	:	Mr. Rana Pratap Singh, Adv
	:	Mr. Satyaveer, Adv
For the Opposite Party/s	:	Mr.Raj Ballabh Singh APP

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT
Date : 22-08-2019

Heard learned counsel for the parties.

2. M/s Lyra Consultancy Service, Kolkata has been arrayed as accused through its Proprietor Pradip Kumar Sinha (petitioner) in Katihar (S) P.S.Case No.752 of 2011 registered under Sections 417,418/420 of the Penal Code. After investigation, the police submitted chargesheet and accordingly the learned Chief Judicial Magistrate, Katihar took cognizance on 30.09.2013 for offences under Sections 417,418 and 420 I.P.C.

3. The petitioner has challenged the order of cognizance. The challenge is on the ground that no offence alleged against the petitioner is made out. The materials available on the

record on the basis whereof the contract was signed between the parties have not been considered by the learned court below. Since the dispute arises out of business relationship between the parties, criminal prosecution would amount to abuse of the process of the Court.

4. Learned counsel for the State submits that in the FIR allegation against the petitioner is that while putting tender, the Company specifically declared in para-3 as follows:

> *"We would like to declare that we are not involved in any litigation with any Govt. in India and we are not under a declaration of ineligibility for corrupt or fraudulent practices."*

5. Contention is that the aforesaid declaration is palpably and malafidely false one just to ensure wrongful gain and persuade the informant to do what it could not have done in absence of misrepresentation made by the petitioner's Company. Submission is that the accused-Company was already blacklisted by the District Election Officer-cum-District Magistrate, Sitamarhi prior to making of the aforesaid false statement.

6. Learned counsel for the petitioner submits that the paper of tender relied upon by the prosecution, available at Page-

18 and 19 of the brief, was not a paper submitted by the Company rather this is a created document.

7. Learned counsel for the petitioner further drawn attention of the Court towards letter dated 12.05.2011 issued by the Company to the District Election Officer-cum-District Magistrate, Sitamarhi requesting therein for renewal of EPIC work 2011-12 and on that basis, work was renewed. The document is at Annexure-10.

8. Even in that letter, the petitioner has not disclosed about blacklisting of the Company which was to the best of its knowledge as the Company had challenged the correctness and the validity of the same before this Court as referred above.

9. It is not disputed that the Company of the petitioner was blacklisted by the District Election Officer-cum-District Magistrate, Sitamarhi vide order contained in Memo No.402 dated 15.06.2010 and the Company had sought for quashment of the same in CWJC No.21890 of 2013 filed before this Court. It is also a fact that the said memo was quashed by this Court on 21.02.2014 vide order at Annexure-4/1.

10. Thus the undisputed fact of this case is that the accused was declared ineligible by putting the Company in blacklist by the District Election Officer, Sitamarhi prior to

submission of tender dated 26.08.2011 at page-18-19 of the brief. The issue whether the document was issued by the Company or not is to be examined during course of the trial. Prima facie material is there on the record to substantiate that the petitioner suppressed the material fact and misled the informant to enter into an agreement with the accused-Company for preparation of photo identity card for residual electors of Katihar district.

11. Therefore, in my view, the prima facie material is there that the Company deceived to the informant fraudulently and dishonestly to enter into an agreement which the informant would not have entered if he would not have been induced, and being victim of inducement and deception of the petitioner. Therefore, prima facie offence of cheating is there against the petitioner. Hence, I am not inclined to interfere with the impugned order. Accordingly, this application stands dismissed as devoid of any merit.

(Birendra Kumar, J)

Nitesh/-

AFR/NAFR	NAFR
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